

Legislative Change: A Primer on Employer Incident Investigations

Changes to the *Workers Compensation Act*

Overview of Changes to the *Workers Compensation Act*

The *Workers Compensation Amendment Act, 2015* (Bill 9), received Royal Assent on May 14, 2015 and made a number of changes to Part 3 of the *Workers Compensation Act* (the Act). The following changes were effective immediately:

- Expanded stop work order powers
- Changes to employer incident investigation requirements
- Expanded injunction powers
- Changes to penalty due diligence

On August 4, 2015, the following provisions were brought into force by Order-in-Council:

- Compliance agreements (effective Sept. 15, 2015)
- OHS Citations for employers (in force August 4, 2015 and implemented February 1, 2016)
- New 45-day timeline to request a review of Prevention decisions as set out in the Time Period for Review Regulation (effective Sept. 15, 2015)
- Additional members on our Board of Directors (effective Sept. 15, 2015)

The *Workers Compensation Amendment Act (No. 2), 2015* (Bill 35), received Royal Assent on November 17, 2015 and introduces changes, effective as of January 1, 2016, that build on the legislative changes made under Bill 9.

The rest of this document focuses on the changes to employer incident investigation requirements.

1. Overview of Changes to Employer Incident Investigations

Bill 9 made two major changes to the requirements for employer incident investigations. First, section 175 of the Act was amended to require an employer to undertake a preliminary investigation within 48 hours of the incident. Second, section 176 of the Act was amended to require an employer to submit a full investigation report to WorkSafeBC within 30 days of an incident, unless WorkSafeBC grants an extension.

As of January 1, 2016, Bill 35 makes it mandatory for employers to submit preliminary and full investigation reports to the employer's joint occupational health and safety committee or worker representative, as applicable, or, if neither exists, post these reports at the workplace. Under Bill 9, only the interim and full corrective action reports were required to be given to the committee.

Bill 35 also specifies the preliminary incident investigation report is to be provided to the committee as soon as practicable after the report is completed and the full report provided within 30 days of the incident (subject to extensions).

Bill 35 also added "accidents that involved a fire or explosion that had a potential for causing serious injury to a worker" to the types of incidents that employers are required to investigate as a result of the amendment

made to section 172 of the Act. They must continue to investigate all the incidents they're currently required to (e.g., fatalities, serious injuries, near-misses, etc.), including diving- and blasting-related incidents.

2. Preliminary Investigation, Report and Follow-up Action

Incident Investigation

Employers must immediately undertake a preliminary investigation into an incident. As far as possible, they must identify any unsafe conditions, acts, or procedures that significantly contributed to the incident.

Employers must identify what interim corrective action they plan to take between the date of the incident and the time the full investigation report is due, which is 30 days from the incident. During that interim period, they must take all actions reasonably necessary to prevent a recurrence of the incident. If an employer is only able to identify some, or only able to identify in broader or more general terms, the unsafe conditions, acts or procedures that significantly contributed to the incident, the interim corrective action may include a full or partial shutdown of a workplace, removing equipment, or reassigning workers.

Preliminary Incident Investigation Reports

Employers must prepare a report of their preliminary investigations. That report must be prepared and completed within 48 hours of the occurrence of the incident. As soon as practicable after the report is completed, the employer must provide the preliminary report to its joint committee or worker health and safety representative, as applicable, or if neither exist, post it at the workplace. Upon request, the employer must provide a copy of the preliminary report to WorkSafeBC.

If the employer takes interim corrective action, a report is required. The employer's corrective action report must include information such as the unsafe

conditions, acts, or procedures that resulted in the corrective action, the interim corrective action taken, and the date that corrective action was taken. The report must be provided to the joint committee or worker representative, as applicable, or if neither exists, posted in the workplace.

3. Full Investigation, Report and Follow-up Action

Incident Investigation Process

The employer must undertake a full investigation immediately following the completion of the preliminary investigation. Employers must determine the cause or causes, and identify unsafe conditions, acts, or procedures that significantly contributed to the incident.

Incident Investigation Report

There are no material changes to the content of the required investigation reports, though the final list of elements to be included as of January 1, 2016 is expanded to include employer identification information in both the preliminary and full investigation reports, the details of which are more extensive for the full report. Contact information for other relevant workplace parties, such as owners and prime contractors, will also be required in the full report after January 1, 2016.

The corrective actions flowing from the preliminary investigation report are focused on corrective actions that will be in place during the interim period until the full investigation is completed.

Employers are required to submit their full investigation report within 30 days of the incident to both:

- WorkSafeBC and
- The employer's joint occupational health and safety committee or worker representative, as applicable, or, if neither exists, to post these reports at the workplace.

Employers can now submit their Full Incident Investigation Report to WorkSafeBC using our secure, online submission portal. Alternatively, employers can continue to submit the report by fax or mail. For more information, including a link to the portal and a downloadable version of our Employer Incident Investigation Report form, please visit the “Employer Incident Investigation Report Submissions” page at worksafebc.com.

An initial extension and additional extensions to that time period may be granted by WorkSafeBC where the employer can demonstrate that delays in its ability to complete the investigation by the deadline are due to factors outside its control. Where WorkSafeBC grants an extension, employers should notify the joint committee or worker representative of the details of the extension.

Final Corrective Action Requirements

Employers must provide a copy of the report that outlines their full investigation’s corrective action to the joint committee or worker health and safety representative, as applicable, or if neither exist, post the report at the workplace. This report must also include the following:

- The unsafe conditions, acts, or procedures that made the corrective action necessary
- The corrective action taken to prevent the recurrence of similar incidents
- Employer identification information
- The names and job titles of the persons responsible for implementing the corrective action following the full investigation
- The date the corrective action was taken

WorkSafeBC may request a copy of either of the corrective action reports from the employer.