

A Guide for

Joint Health and Safety Committees
and
Health and Safety Representatives
in the Workplace

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and
Health and Safety Representatives in
the Workplace

October 2012

The Guide and other Guides, Statutes and Regulations relating to Occupational Health and Safety may also be viewed at the following website:

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Foreword

Note: This document does not constitute legal advice. To determine your rights and obligations under the Occupational Health and Safety Act (OHSA or the Act) and its regulations, please contact your legal counsel or refer to the legislation at:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm

Please note that throughout this Guide, the word “employer” generally includes “constructor”. In some cases, “constructor” has been left out to make the Guide easier to read.

Introduction

We all share the goal of making Ontario's workplaces safe and healthy.

The Occupational Health and Safety Act provides us with the legal framework and the tools to achieve this goal. It sets out the rights and duties of all parties in the workplace. It establishes procedures for dealing with workplace hazards, and it provides for enforcement of the law where compliance has not been achieved voluntarily.

Changes to the Act in 1990 and subsequent years continued the evolution of occupational health and safety legislation in Ontario since the Act came into force in 1979. These changes reinforce the Internal Responsibility System (IRS) and the workplace structures, in particular the joint health and safety committees that have proven to be effective in establishing a strong IRS and health and safety culture in the workplace.

Employers should note that the Act makes it clear that the employers have the greatest responsibilities with respect to health and safety in the workplace. However all parties have a role and a responsibility for promoting health and safety in the workplace.

Every improvement in occupational health and safety benefits all of us. Through cooperation and commitment, we can make Ontario a safer and healthier place in which to work.

It's worth working for.

Joint Health and Safety Committees

What is a joint health and safety committee?

A joint health and safety committee is composed of worker and employer representatives. Together, they should be mutually committed to improving health and safety conditions in the workplace. Committees identify potential health and safety issues and bring them to the employer's attention and must be kept informed of health and safety developments in the workplace by the employer. As well, a designated worker member of the committee inspects the workplace at least once a month.

What is the joint health and safety committee's role?

The committee is an advisory body that helps to stimulate or raise awareness of health and safety issues in the workplace, recognizes and identifies workplace risks and develops recommendations for the employer to address these risks. To achieve its goal, the committee holds regular meetings and conducts regular workplace inspections and makes written recommendations to the employer for the improvement of the health and safety of workers.

Why are joint health and safety committees important?

Joint health and safety committees assist in providing greater protection against workplace injury and illness and deaths. Joint health and safety committees involve representatives from workers and employers. This co-operative involvement

ensures that everything possible is done to identify and eliminate or mitigate workplace health and safety hazards.

Joint health and safety committees are a key element of a well-functioning workplace Internal Responsibility System.

Which workplaces must have joint health and safety committees?

No. of Workers	Legislative requirement
1 to 5	You are not required to have a JHSC or a health and safety representative unless your workplace uses designated substances.
6 to 19	You are required to have one health and safety representative who is selected by the workers they represent. If your workplace uses designated substances, you are required to have a JHSC.
20 to 49	You are required to have a JHSC. The committee must have at least two (2) members.
50 plus	You are required to have a JHSC. The committee must have at least four (4) members.

Workplaces that require committees include:

- any workplace that regularly employs 20 or more workers [clause 9(2)(a)]. Note that workers taking part in community participation (workfare) under the Ontario Works Act, 1997 are not counted for the purpose of determining whether there are 20 or more workers regularly employed
- construction projects on which 20 or more workers are regularly employed and expected to last three months or more [clauses 9(2)(a) and 9(1)(a)]
- any workplace (other than specified construction projects) to which a designated substances regulation applies, even if there are fewer than 20 workers regularly employed in the workplace [clause 9(2)(c)]
- any workplace where a Director's order has been issued under section 33 of the Act, even if there are fewer than 20 workers regularly employed in the workplace [clause 9(2)(b)]
- any workplace or construction project in respect of which the Minister of Labour has ordered the employer or constructor to establish a committee [subsection 9(3)]
- farming operations at which 20 or more workers are regularly employed and have duties related to mushroom, greenhouse, dairy, hog, cattle or poultry farming. Detailed information is available in the Ministry of Labour's *A Guide for Health and Safety Representatives and Joint Health and Safety Committees on Farming Operations*.

<http://www.labour.gov.on.ca/english/hs/pubs/farming/jhsc/index.php>

The Minister of Labour may also permit a single committee to be established for more than one workplace [subsections 9(3.1) and 9(5)]. These committees are commonly referred to as “multi-workplace committees.” For more information on

multi-workplace committees, please see the section of this guide entitled “Multi-workplace Joint Health and Safety Committees” or contact a local Ministry of Labour office nearest your workplace.

http://www.labour.gov.on.ca/english/hs/pubs/jhsc_multiwork/index.php

How many members must a joint health and safety committee have?

In workplaces in which fewer than 50 workers are regularly employed, the Act requires the committee to have a minimum of two (2) members [clause 9(6)(a)]. Where there are 50 or more workers regularly employed, the committee must have at least four (4) members or any other number prescribed in regulation [clause 9(6)(b)]. At least half the members must be workers employed at the workplace who do not exercise managerial functions [subsection 9(7)]. The employer or constructor is required to select the remaining members from persons who exercise managerial functions for the employer/constructor [subsection 9(9)].

The Ministry recommends that joint health and safety committees be representative of the entire workplace. For example, if a workplace has a plant, office, laboratory and warehouse, the committee should include representatives from each of these areas.

What about workplaces with fewer than 20 workers?

Unless they are subject to a designated substances regulation or the subject of a Director’s or Minister’s order, workplaces with fewer than 20 regularly employed workers are not required to have a joint health and safety committee.

In workplaces where the number of workers regularly exceeds five but no JHSC is required (e.g., because there are fewer

than 20 workers) the workers must select, from among themselves, one person to be a **health and safety representative** [subsection 8(1)].

Unless they are subject to a designated substances regulation or a Director's or Minister's order, workplaces with five or fewer regularly employed workers are not required to have either a committee or a health and safety representative.

What is a worker trades committee? When is one required?

Where a joint health and safety committee is required at a construction project (other than those which are expected to last less than three months or at which fewer than 50 workers are regularly employed) the committee must establish a worker trades committee [subsection 10(1)].

Members of the worker trades committee must represent workers employed in each of the trades at the project [subsection 10(2)]. These members must be selected by workers employed in the trades they represent or, if a trade union represents workers, by the union [subsection 10(3)].

The committee's primary responsibility is to inform the joint health and safety committee of any health and safety concerns that workers employed in the trades at the workplace might have [subsection 10(4)].

When is a joint health and safety committee required on a farming operation?

A joint health and safety committee is required on a farming operation if there are 20 or more workers who are regularly employed in the workplace and have duties related to one or more of the following operations:

- Mushroom farming
- Greenhouse farming
- Dairy farming
- Hog farming
- Cattle farming
- Poultry farming.

[Subsection 9(2) of the Act and subsections 3(1) and 3(2) of Farming Operations Regulation, O. Reg. 414/05.]

More detailed information is available in the Ministry of Labour's *A Guide for Health and Safety Representatives and Joint Health and Safety Committees on Farming Operations*.

<http://www.labour.gov.on.ca/english/hs/pubs/farming/jhsc/index.php>

Who is considered “regularly employed” for the purpose of determining whether a joint health and safety committee is required at a workplace?

Although this is a fact-specific determination which may vary by workplace, the Ministry typically considers a worker who is filling a position at the client's workplace as “regularly employed” if the position exceeds (or is expected to exceed) three months.

There may be situations where there is a high turnover of staff in a particular position, with each person working in it for less than three months. If the term of the position exceeds three months, the Ministry recommends that the position should be included in the “regularly employed” count when determining whether a health and safety representative or joint health and safety committee is required, even though no single worker may have occupied that position for more than three months.

Members

How are committee members selected?

At least half the committee members must be worker members, (specifically workers who do not exercise managerial functions) at the workplace, who are selected by the workers. In a unionized workplace, the worker members must be chosen by the trade union or unions [subsections 9(7) and 9(8)].

The employer or constructor chooses the remaining members from persons in the workplace who exercise managerial functions [subsection 9(9)]. It is recommended that the employer select members by giving consideration to their knowledge of operations and health and safety processes and procedures in the workplace.

Must the names of the JHSC members be posted in the workplace?

The names and work locations of the members shall be posted in the workplace by the employer or constructor [subsection 9(32)].

Do committee members need special training or certification?

Unless otherwise prescribed in regulation, the Act requires that at least two members of the committee (one representing workers and one representing persons who exercise managerial functions) be certified. Until April 1, 2012 the Workplace Safety and Insurance Board was authorized to certify committee members under the Workplace Safety and Insurance Act, 1997 (WSIA). As of April 1, 2012, the Ministry of Labour's Chief Prevention Officer has been authorized to certify members under the Occupational Health and Safety Act (OHSA) [clause 7.6(1)(b)]. Any person who was certified under

the WSIA before April 1, 2012 is deemed to be certified under the OHSA.

In order to be certified, a person must complete the Parts 1 and 2 of mandatory training: Basic Certification and Workplace-Specific Hazard Training.

Part One, Basic Certification provides an overall knowledge of health and safety that applies to all workplaces. The training is available through the Health and Safety Associations.

Part Two, Workplace-Specific Hazard Training focuses on significant hazards in the workplace. It covers how to assess those hazards and ways to control and/or eliminate them. Members can be trained through the Health and Safety Associations.

More information on certification training can be obtained at:

<http://www.labour.gov.on.ca/english/hs/topics/certification.php>

Certified members are not required for committees at workplaces that regularly employ less than 20 workers, or at construction projects that regularly employ less than 50 workers [section 4 of O. Reg. 385/96], or for projects expected to last less than three months, see subsection 9(13).

Certified health and safety committee members play a key role on the committee. Specialized health and safety training for other members of the committee is available through health and safety associations. Although it is likely beneficial for all members of the committee to have health and safety training, it is not a requirement under the OHSA.

Can more than two members of the committee be certified?

Yes. The Act specifies the minimum number of members of the committee who must be certified. However, the employer may have more than two members of the committee certified.

If there is more than one certified member representing workers, the workers (or the union where applicable) must designate one or more certified members who then become solely entitled to exercise the rights and are required to perform the duties of a certified member representing workers [subsection 9(15)].

Similarly, if there is more than one certified member representing the employer, the employer must designate one or more of them who will then become solely entitled to exercise the rights and are required to perform the duties of a certified member representing the employer [subsection 9(16)].

What if a certified member resigns or cannot serve on the Committee?

The OHSA does specifically address the issue of absent certified members. Under section 9(17) of the OHSA if a certified member resigns or is unable to act, the employer shall within a reasonable time, take all the steps necessary to ensure that the requirement to have at least one member of the committee representing the employer or constructor and at least one member representing the workers are certified [subsection 9(12)]

How long is a committee member's term on the committee?

The Act does not specify requirements relating to the terms of committee members. The Ministry of Labour recommends a

term of at least one year. Where there is more than one worker member and one employer member, terms should be staggered to allow continuity. Vacancies should be filled as quickly as possible.

Do committee members get paid for their time?

A member of the committee is considered to be at work when performing specified activities relevant to his or her role and must be paid at either their regular rate or, where applicable (i.e., when duties take them beyond their usual hours of work), their premium rate of pay [subsection 9(35)].

Those activities for which a member of the committee must be paid are:

- performing inspections of the workplace [subsections 9(26) and (27)]
- investigating incidents where a worker is killed or critically injured at a workplace [the Act requires that a member of the committee be designated to perform this role, see subsection 9(31)]
- preparing for and attending meetings of the committee [clauses 9(34)(a) and (b)]
- becoming trained as a certified member of the committee, except in specified circumstances [subsection 9(36)].

Are committee members entitled to paid preparation time?

As noted above, each member must be paid for one hour of preparation time before every committee meeting. If it becomes apparent that one hour is not sufficient, the committee can decide that more paid preparation time is required and the employer must remunerate the members accordingly [clause 9(34)(a)].

Are committee members entitled to be paid when attending certification training?

A member who is participating in a training program to meet the requirements for becoming a certified member is considered to be at work. These members must be paid by the employer at either their regular rate or, where applicable, their premium rate of pay (unless they are paid to become certified by the Workplace Safety and Insurance Board) [subsections 9(36) and 9(37)].

Meetings

How often must the joint health and safety committee meet?

Committee members are required to meet at the workplace at least once every three months [subsection 9(33)]. More frequent meetings may be useful particularly in industries where the work involves hazardous substances or procedures.

Who chairs the meeting?

Committees must be co-chaired by two members. One of the co-chairs is chosen by the members who represent workers, the other by members who exercise managerial functions [subsection 9(11)]. It is recommended that the chairs alternate the chairing of each meeting.

How is an agenda prepared?

Agendas for meetings should be prepared by the co-chairs and should be distributed one week in advance of the committee meeting. Agendas are important to the success of the meeting. Agendas ensure that:

1. Members know the date, time and place of the meeting.
2. Every item the committee considers will receive attention.
3. Business will not be side-tracked.
4. Deferred items or business outstanding will be carried forward.
5. Members will have the opportunity to study the items before the meeting.

Members who wish to have items added to the agenda should make such request to the co-chairs.

Effective communication and cooperation (e.g., cooperative problem solving) are crucial factors in a well-functioning JHSC. Members should be encouraged to share their knowledge and experience freely to resolve health and safety issues in the workplace. A sample meeting agenda template is found in Appendix A.

How are committee members informed of upcoming meetings?

Meeting dates should be established on a pre-set schedule or at the conclusion of each committee meeting. This date should be recorded in the minutes of the meeting. A copy of the minutes should be distributed to members a few days after the meeting. The dates of upcoming meetings should also be recorded at the top of each agenda.

Is a quorum needed to hold a meeting?

The Act does not specify any requirements related to quorums for meetings of committees. As such, the committee can determine its own rules for a quorum at meetings as long as they are consistent with statutory requirements (e.g., members representing both workers and the employer are present). Ideally, both co-chairs should be present at every meeting.

Must the minutes be recorded? What should the minutes include?

Minutes of each meeting must be recorded and available for review by a Ministry of Labour inspector [subsection 9(22)]. Minutes should contain details of all matters discussed, as well as a full description of issues raised, any action recommended by the committee members and the employer response to the recommendation(s). Minutes should identify members by title and not by name. Members' names should be used only for attendance purposes.

Minutes should be signed by the co-chairs and posted in the workplace within one week of the meeting. A sample template for meeting minutes is found in Appendix B.

Are there other procedures a committee must follow?

The committee may make its own rules and procedures provided that they are consistent with statutory requirements relating to committees. A template of a committee's terms of reference is found in Appendix C.

Roles and Responsibilities

What are the committee's principal functions?

The committee has various powers, including:

- identifying actual and potential hazards in the workplace
- obtaining information from the employer relating to health and safety in the workplace
- inspecting the workplace on a regular basis
- being consulted about and having a member representing workers be present at the beginning of any health and safety-related testing in the workplace

- recommending health and safety improvements in the workplace.

To carry out its functions, the committee is required to hold meetings at least once every three months [subsection 9(33)]. There may be a need to meet more often if there are specific workplace health and safety issues to address or if the work involves hazardous substances or procedures.

Joint health and safety committees may want to consider developing a terms of reference to help guide them towards their goals. A sample terms of reference is provided in Appendix C.

What other functions does a committee have?

Generally speaking all committee members should be available to receive worker concerns, complaints and recommendations, to discuss issues and recommend solutions, and to provide input into existing and proposed workplace health and safety programs. Some regulations under the Act also set out additional functions for a committee, such as requiring the employer to consult with the joint health and safety committee/health and safety representative in specified circumstances. One example is the Health Care and Residential Facilities Regulation, O. Reg. 67/93, which requires the employer to consult the committee or health and safety representative during the development of health and safety policies and programs, including training programs (see sections 8 and 9 of that Regulation).

Under O. Reg. 490/09 (Designated Substances), the employers are required to consult with the committees in assessments of likely worker exposures to designated substances in the workplace, and the committees are entitled to make recommendations in respect of said assessments.

Other key functions are investigating when a worker is killed or critically injured 9(31) and being present in the investigations following a work refusal – see 43(4)(a) and (7).

Who carries out workplace inspections?

Worker committee members must select a worker member in their group to inspect the workplace [subsection 9(23)]. The Act requires that the selected member be a certified member if possible [subsection 9(24)]. Where a multi-workplace committee has been established by an order of the Minister of Labour, under subsection 9(3.1), the committee members may designate a worker who is not on the committee to perform inspections. Situations that may be a source of danger or hazard to workers must be reported to the committee [subsection 9(30)].

How often must workplace inspections be carried out?

Regular inspections of the workplace by the designated worker member of the joint health and safety committee help to identify hazards and thereby prevent or mitigate workplace injuries. The workplace must be inspected at least once a month, unless a different schedule of inspections is ordered by a Ministry of Labour inspector or is prescribed in a regulation under the OHS Act [subsection 9(26)]. Where it is not practical to inspect the workplace on a monthly basis (e.g., where the workplace is too large or where parts are shut down on a seasonal basis), the designated member is required to inspect the workplace at least once a year and ensure that at least part of the workplace is inspected each month [subsection 9(27)] in accordance with a schedule established by the committee [subsection 9(28)].

After a source of danger or hazard is reported to the committee, what happens?

If a source of danger is reported to the committee by a designated worker who carried out a workplace inspection, the committee or members of the committee are required to consider the information within a reasonable period of time. The committee would then typically make written recommendations to the employer or constructor to address the identified hazard(s). The Act requires that the employer provide a written response within 21 days, to any **written recommendations** from the committee. If the employer agrees with the recommendations, the response must include a timetable for implementation. If the employer disagrees with a recommendation, the response must give the reasons for disagreement [subsections 9(20) and 9(21)].

Although the OHSA does not stipulate that the committee is supposed to work on a consensus basis it is highly recommended. However, there will be situations where a consensus may be not reached. If the committee has failed to reach a consensus about making recommendations to the employer after trying to reach a consensus in good faith to do so, either co-chair of the committee has the power to make written recommendations to the constructor or the employer [subsection 9 (19.1)].

Do certified members have added responsibilities?

Because certified members receive special training in workplace health and safety, they are given additional powers under the Act. For example, certified employer and worker representatives can, under specified circumstances, collectively order the employer or constructor to stop work that is dangerous to a worker [subsection 45(4)].

Employer Responsibilities

What are the employer's responsibilities regarding joint health and safety committees?

Employers have a range of obligations in respect of joint health and safety committees. Examples of employer obligations relating to committees include:

- causing a JHSC to be established and maintained at a workplace where one is required [subsection 9(4)]
- selecting committee members who exercise managerial functions for the employer to sit on the joint health and safety committee [subsection 9(9)]
- assisting and cooperating with committee members in the carrying out of their functions [clause 25(2)(e)]
- providing the committee with information relating to hazards in the workplace and any work practices and standards in similar industries [clause 9(18)(d)]
- providing the committee with a copy of all orders or reports issued to the employer by a Ministry of Labour inspector [subsection 57(10)] informing the committee of any work-related incidents involving injury, death or occupational illness [sections 51 and 52] (see Section VII of the *Guide to the Occupational Health and Safety Act*).

<http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php>

- consulting with the JHSC or health and safety representative on the development of health and safety programs and policies (including training programs), where prescribed, and,
- provide a joint health and safety committee member representing the workers with the opportunity to

accompany a Ministry of Labour inspector on the physical inspection of the workplace [subsection 54(3)].

It is an offence for any person, including an employer, to knowingly hinder or interfere with, or to give false information to, the joint health and safety committee or to a committee member who is in the process of performing his or her duties under the Act. See also the section in this Guide entitled “Multi-workplace Joint Health and Safety Committees”.

Must an employer act on committee recommendations?

An employer who receives written recommendations from the committee must provide a written response to the committee within 21 calendar days [subsection 9(20)]. If the recommendations are accepted, a timetable for action must be outlined and provided to the committee. If an employer decides against acting on all or some of the committee's recommendations, reasons must be given in writing [subsection 9(21)].

General Procedures

A worker must report any hazard or contravention of the Act to the employer or supervisor [clauses 28(1)(c) and 28(1)(d)]. As a best-practice it may also be advisable to alert the JHSC that the matter has been presented to the employer. If the matter is not resolved to the worker's satisfaction, a worker should then formally inform the committee. The committee has the power to make recommendations to the employer in respect of the identified hazard.

What if the committee cannot reach a consensus on a recommendation?

If the committee has failed to reach a consensus about making recommendations after trying to reach a consensus in good

faith, either co-chair of the committee has the power to make written recommendations to the constructor or the employer.

In these instances, written recommendations may include the following:

1. A summary of the position of the members of the committee who supported the recommendations.
2. A summary of the position of the members of the committee who did not support the recommendations.
3. Information about how the committee attempted to reach consensus.

What should the committee do in the event of a work refusal?

A committee member, who represents workers, must be present during the employer or supervisor's investigation of a work refusal [subsection 43(4)]. This investigation is typically conducted by the supervisor.

If the issue is not resolved following the employer's investigation under subsection 43(4), the employer, a worker or other person on behalf of the employer or worker must notify a Ministry of Labour inspector [subsection 43(6)]. The inspector is required to investigate the work refusal in consultation with specified persons, including the committee member where applicable [subsection 43(7)].

See also the *Guide to the Occupational Health and Safety Act, Part V*.

<http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php>

What should the committee do in the event of a worker's critical injury or death?

Members of the committee, who represent workers, must designate one or more worker members to investigate incidents in which a worker is killed or critically injured [subsection 9(31)].

The designated member(s) have the right to inspect the place where the incident occurred as well as any relevant machine, device or thing, but must not disturb the scene pending a Ministry of Labour investigation.

Following the investigation, all findings must be reported to the committee and to a Director [subsection 9(31)]. Where appropriate, the committee may wish to make specific recommendations to the employer in respect of the hazard which led to the injury or fatality.

Note: A person is “critically injured” for the purposes of the Act if he or she has an injury of a serious nature that places life in jeopardy, produces unconsciousness, results in substantial loss of blood, involves the fracture of a leg or arm but not a finger or toe, involves the amputation of a leg, arm, hand or foot but not a finger or toe, consists of burns to a major portion of the body, or causes the loss of sight in an eye (Regulation 834).

What sort of information can the joint health and safety committee expect to obtain?

The JHSC has various powers relating to the collection of health and safety-related information. For example: the JHSC has the power to obtain information from the employer about health and safety related testing and any actual or potential hazards in the workplace [clause 9(18)(e)]. The employer must share any knowledge of health and safety practices, tests and standards in the industry [clause 9(18)(d)]. The employer is

further obligated to provide the joint health and safety committee with health and safety reports under clause 25(2)(l).

Where a person is killed or critically injured from any cause at a workplace the employer must immediately notify the Ministry and the JHSC [section 51].

The employer must notify the JHSC of lost time injuries caused by accident, explosion, fire or incident of workplace violence at the workplace, and must report any occupational illnesses of which he or she has knowledge [section 52].

The employer may also be required to provide other specific information to the JHSC where prescribed. Therefore, as stated previously, it is important that the employer and the JHSC be familiar with the regulations that apply to their workplace.

The Workplace Safety and Insurance Board, at the request of the joint health and safety committee, is required to send an annual summary of data relating to the number of fatalities, lost workday cases, workdays lost, non-fatal cases requiring medical care (but not involving lost workdays) and incidence of occupational illnesses [section 12].

What assistance can the joint health and safety committee expect from the employer?

The Act places a general duty on an employer to assist and cooperate with the joint health and safety committee in the performance of its functions [clause 25(2)(e)].

More specific employer responsibilities with respect to the joint health and safety committee include:

- upon the request of the joint health and safety committee, provide information regarding the identification of potential or existing hazards involving

materials, processes or equipment [paragraph 9(18)(d)(i)]

- upon request provide the committee with information about health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge [paragraph 9(18)(d)(ii)]
- provide the joint health and safety committee with a copy of all orders or reports issued to the employer by an inspector of the Ministry of Labour [subsection 57(10)(a)]
- provide a joint health and safety committee member with the opportunity to accompany a Ministry of Labour inspector on the physical inspection of the workplace [subsection 54(3)]
- provide a joint health and safety committee with information and assistance the committee requires for the purposes of inspecting the workplace [subsection 9(29)]
- advise the committee of the results of the assessment or reassessment of the risks of workplace violence, and provide it with a copy of the assessment if it is in writing [subsection 32.0.3 (3)(a)], and
- Provide any other specific information where prescribed.

It is an offence for any person to knowingly hinder or interfere with, or to give false information to a joint health and safety committee member who is in the process of exercising his or her powers and/or performing his or her duties under the Act.

Health and Safety Representatives

What is a health and safety representative?

In workplaces, including construction projects, at which the number of workers regularly exceeds five and at which no joint health and safety committee is required, employers or constructors must ensure that workers select a health and safety representative [subsection 8(1)]. Like joint health and safety committee members, the representative should be committed to improving health and safety conditions in the workplace.

The health and safety representative is selected by workers at the workplace who do not exercise managerial functions or by the union where the workplace is unionized [subsection 8(5)]. At the present time, the Act does not require that the representative be specifically trained. However, there have been amendments to the OHSA, which relate to training requirements for health and safety representatives, but which have not yet been put into effect. When these amendments do come into effect, they will require that, unless otherwise prescribed, the employer or constructor ensure that the representative receives training that enables him or her to effectively exercise the powers and perform the duties of a health and safety representative [subsection 8(5.1)].

When is a worker health and safety representative required on a farming operation?

A worker health and safety representative is required on all farming operations at which the number of workers regularly exceeds five, and at which no health and safety committee is

required. More detailed information is available in the Ministry of Labour's *A Guide for Health and Safety Representatives and Joint Health and Safety Committees on Farming Operations*.

<http://www.labour.gov.on.ca/english/hs/pubs/farming/ohsa/index.php>

Is a health and safety representative entitled to get paid for their time?

A health and safety representative is entitled to take time from work as is necessary to carry out his or her duties to carry out monthly inspections of the workplace and inspect the place where a person is killed or critically injured at a workplace.

A health and safety representative must be paid at either their regular rate or, where applicable, their premium rate of pay when absent from work for the purposes of carrying out his or her duties under the Act [subsection 8(15)].

Roles and Responsibilities

Does a health and safety representative have different responsibilities from a joint health and safety committee member?

Generally speaking, a health and safety representative has the same responsibilities and powers as a joint health and safety committee member. These include:

- identifying actual and potential workplace hazards [subsection 8(10)]
- inspecting the workplace at least once a month [subsection 8(6)] or, if that is not practical, inspecting the workplace at least once a year and at least part of the workplace each month [subsection 8(7)] in accordance

with a schedule agreed upon by the representative and the employer (constructor) [subsection 8(8)]

- being consulted about and being present at the beginning of health and safety-related testing in the workplace [subsection 8(11)]
- making recommendations to the employer [subsection 8(10)] about health and safety in the workplace, and
- participating in the first and second stage investigation of work refusals [subsections 43(4) and (7)] and inspecting workplaces when there are critical injuries or fatalities [subsection 8(14)].

General Procedures

A worker must report any hazard or contravention of the Act to the employer or supervisor [clauses 28(1)(c) and 28(1)(d)]. As a best-practice it may also be advisable to alert the health and safety representative that the matter has been presented to the employer. If the matter is not resolved to the worker's satisfaction, a worker may choose to inform the health and safety representative about the identified hazard or contravention.

What should the health and safety representative do in the event of a work refusal?

The health and safety representative must be present during the **employer or supervisor's** investigation of a work refusal [subsection 43(4)]. This investigation is typically conducted by the supervisor.

If the issue is not resolved, the employer, the worker, or a representative of one of them, must notify a Ministry inspector [subsection 43(6)]. The health and safety representative must be consulted by the inspector who conducts the investigation [subsection 43(7)].

The inspector is required to investigate the work refusal in consultation with specified persons, including the health and safety representative where applicable [subsection 43(7)].

See also the *Guide to the Occupational Health and Safety Act*, Part V.

<http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php>

What should the health and safety representative do in the event of a critical injury or death?

The health and safety representative has the power to inspect the place where the incident occurred as well as any relevant machine, device or thing and shall report his or her findings in writing to the Ministry of Labour [subsection 8(14)].

Where appropriate, the health and safety representative may wish to make specific recommendations to the employer in respect of the hazard which led to the injury or fatality [subsection 8(10)].

Note: A person is “critically injured” for the purposes of the Act if he or she has an injury of a serious nature that places life in jeopardy, produces unconsciousness, results in substantial loss of blood, involves the fracture of a leg or arm but not a finger or toe, involves the amputation of a leg, arm, hand or foot but not a finger or toe, consists of burns to a major portion of the body, or causes the loss of sight in an eye (Regulation 834).

What sort of information can the health and safety representative expect to obtain?

The health and safety representative has various powers relating to the collection of health and safety-related information. For example: the health and safety representative has the power to obtain information from the employer about

health and safety related testing and any actual or potential hazards in the workplace [subsection 8(11)]. The employer must share any knowledge of health and safety practices, tests and standards in the industry [clauses 8(11)(a),(b), and (c)]. The employer is further obligated to provide the health and safety representative with health and safety reports under clause 25(2)(l)].

Where a person is killed or critically injured from any cause at a workplace the employer must immediately notify the Ministry and the health and safety representative [section 51].

The employer must notify the health and safety representative of lost-time injuries caused by accident, explosion, fire or incident of workplace violence at the workplace, and must report any occupational illnesses of which he or she has knowledge [section 52].

The employer may also be required to provide other specific information to the health and safety representative where prescribed. Therefore, as stated previously, it is important that the employer and the health and safety representative be familiar with the regulations that apply to their workplace.

The Workplace Safety and Insurance Board, at the request of the health and safety representative, is required to send an annual summary of data relating to the number of fatalities, lost workday cases, workdays lost, non-fatal cases requiring medical care (but not involving lost workdays) and incidence of occupational illnesses [section 12].

What assistance can the health and safety representative expect from the employer?

The Act places a general duty on an employer to assist and cooperate with the health and safety representative in the performance of his or her functions [clause 25(2)(e)].

More specific employer responsibilities with respect to the health and safety representative include:

- upon the request of the health and safety representative, provide information regarding the identification of potential or existing hazards involving materials, processes or equipment [paragraph 8(11)(c)(i)]
- provide the health and safety representative with a copy of all orders or reports issued to the employer by an inspector of the Ministry of Labour [subsection 57(10)]
- provide a health and safety representative with the opportunity to accompany a Ministry of Labour inspector on the physical inspection of the workplace [subsection 54(3)]
- provide a health and safety representative with information and assistance the representative requires for the purposes of inspecting the workplace [subsection 8(9)]
- provide the information to the health and safety representative as required under any applicable designated substances regulation
- advise the health and safety representative of the results of the assessment or reassessment of the risks of workplace violence, and provide him or her with a copy of the assessment if it is in writing [subsection 32.0.3(3)(a)], and
- provide any other specific information where prescribed.

It is an offence for any person to knowingly hinder or interfere with, or to give false information to a health and safety representative who is in the process of exercising his or her powers and/or performing his or her duties under the Act.

Multi-workplace Joint Health and Safety Committees

What is a multi-workplace joint health and safety committee?

A multi-workplace joint health and safety committee is a single joint health and safety committee, established and maintained for more than one workplace, each of which would normally require its own committee. Generally, this arrangement must be approved by order of the Minister (or his or her delegate) under subsection 9(3.1) of the OHS Act. The Minister's authority to permit a multi-workplace joint health and safety committee is currently delegated to the Regional Directors of the ministry. When approving a multi-workplace JHSC, the Minister (or Regional Director) may specify what the composition, practice and procedure of the JHSC will be – which may differ from and replace the usual OHS Act requirements.

Examples

- A city establishes a multi-workplace JHSC that represents separate work locations by a particular department in a large municipal government (e.g., multi-workplace JHSC covering parks and recreational facilities).
- A multi-workplace JHSC for workers belonging to the same union, working in separate schools for the same employer (e.g., unionised non-teaching staff in schools within the same school board). (Multi-workplace JHSCs in the education sector for teachers can be unique. See Appendix B of *Multi-workplace Joint Health and*

Safety Committee Guidance for more details http://www.labour.gov.on.ca/english/hs/pubs/jhsc_multi_work/index.php).

How many members is a multi-workplace JHSC required to have?

Subsection 9(6) of the OHS Act sets out minimum requirements for the composition of a JHSC – at least two members if the workplace has fewer than 50 workers, and at least four members if there are 50 or more workers. At least half the members of the JHSC must be workers employed at the workplace who do not exercise managerial duties and/or functions.

In practice, most Minister's orders made under subsection 9(3.1) require the committee to have more than the minimum number of worker and employer members to ensure that the committee can effectively exercise its powers and functions.

How many certified members is a multi-workplace JHSC required to have?

Subsection 9(12) of the OHS Act requires an employer/constructor to ensure that a JHSC has at least two certified members, one representing the employer/constructor and one representing workers.

When exercising his/her discretion to determine the composition of a multi-workplace JHSC, the Minister (or Regional Director) may decide that more than two certified members are needed to ensure they can effectively exercise their powers and fulfil their roles on the committee.

The size and location of workplaces served by the committee will be considered. In practice, most Minister's orders made under subsection 9(3.1) provide for more than the minimum number of certified members on a multi-workplace JHSC.

What is a “designated worker” for the purposes of a multi-workplace JHSC?

In an order issued under subsection 9(3.1) of the OHSA, the Minister (or Regional Director) may specify that the members of a multi-workplace JHSC who represent workers may designate a worker who is not a member of the committee, at any of the workplaces served by the committee, to do the following:

- inspect the physical condition of the workplace (subsection 9(23)), and
- participate in the investigation of a work refusal, by exercising the rights and responsibilities that a committee member would normally have under clause 43(4)(a), and subsections (7), (11) and (12).

The worker members of a multi-workplace JHSC do not give up or lose their powers to carry out the above duties if they designate a worker under subsection 9(3.2).

A worker does not become a member of the multi-workplace JHSC as a result of being designated. However, he or she must comply with section 9 of the OHSA as if he or she is a member of the committee, and certain corresponding rights and entitlements of committee members also apply to a ‘designated worker’.

What training must an employer provide to a worker designated under clause 9(3.2)(a) of the OHSA?

If an order under subsection 9(3.1) provides that the multi-workplace JHSC may designate a worker, the order may also specify that the employer must provide training to the designated worker to enable the worker to adequately perform the tasks that the worker members of the committee may have delegated to him or her, which are limited to performing

workplace inspections and exercising a committee member's rights and responsibilities with respect to work refusals.

Multi-workplace JHSC Functions

How do the responsibilities and duties of multi-workplace JHSC members differ from regular JHSC members?

The responsibilities and duties set out in the OHS Act apply equally to multi-workplace JHSC members, with the understanding that any reference to "workplace" refers to each of the individual workplaces covered by the multi-workplace JHSC agreement.

What is the "workplace" with respect to required frequency of JHSC inspections for workplaces with a multi-workplace committee?

Each workplace covered by the multi-workplace JHSC is considered "the workplace" for the purposes of inspection frequency. The existence of a multi-workplace JHSC does not convert multiple workplaces into a single workplace. Inspection frequency is mandated by subsections 9(26) and 9(27) of the OHS Act, which require that the workplace be inspected at least once a month and, if that is not practical, the entire workplace must be inspected at least once a year with at least part of the workplace inspected each month.

Can a multi-workplace JHSC use video conferencing or other technology to help carry out its functions?

Video-conferencing may be an effective way for members of a multi-workplace JHSC to communicate with one another, with other workplace parties, and to reduce some travel costs. It may be a reasonable option for carrying out regular committee meetings. It will be up to the workplace parties to demonstrate that the use of video conferencing or other technology meets the requirements set out in the Terms of Reference.

For more information related to multi-workplace joint health and safety committees please visit:

http://www.labour.gov.on.ca/english/hs/pubs/jhsc_multiwork/index.php

Appendix A: Sample Template for Joint Health and Safety Committee Agenda

[Name] Joint Health and Safety Committee

AGENDA

Date:

Time:

Location:

- 1. Review of Agenda and Minutes of Previous Meeting**
- 2. Old Business**
 - (a) Action Items from Previous Minutes
 - (b) Approvals/Responses from Management
- 3. Incident Summary**
- 4. Monthly Reports from Worker Members**
 - (a) Inspections
 - (b) Audits
- 5. Policy or Program Updates**
 - (a) Policy review and/or update
 - (b) New health and safety programs (e.g., new Risk Management Manual additions, new designated substance assessments or control programs)
- 6. New Business**
 - (a) New items/issues
 - (b) Ministry of Labour visits (if any)
 - (c) Policies or programs
- 7. Annual Reviews**
 - (a) Terms of reference (date)
 - (b) Statistics summary (date)
 - (c) Training (date)
 - (d) Committee membership (date)
 - (e) Designated substances (date)
- 8. Other Business**

Contacts:

Worker co-chair:

Management co-chair:

Minutes prepared by:

BUSINESS ARISING FROM MINUTES:		
Item #:	Discussion (heading, description, actions taken, recommendations)	Actions Done By
1		
2		
3		
4		

NEW BUSINESS:		
Item #:	Discussion (heading, description, actions taken, recommendations)	Actions Done By
1		
2		
3		
4		

OTHER BUSINESS:

NEXT MEETING:
Date: _____ Time: _____ Location: _____

SIGNATURES:	
_____ [Worker Co-Chair]	_____ [Management Co-Chair]

CC:	<i>Responsible Line Manager/Supervisor</i> <i>Department Heads</i> <i>Union(s)</i> <i>Safety Bulletin Boards</i>
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Appendix C: Terms of Reference

The following information represents suggested items that could be included in a joint health and safety committee's terms of reference.

The Act does not spell out detailed procedures about how a joint health and safety committee (JHSC) must operate but it does set out the key requirements to be met. Other than the requirements contained in the Act, a committee is free to decide its own procedures. It can be helpful for a committee to create terms of reference and written procedures even though there is no legal requirement to do so.

Terms of reference describe the purpose and structure of a committee. Terms of reference set out a road map. They give a clear path for the members, by stating what needs to be done (legislated requirements), by whom, and when. Terms of reference help keep a committee on track, clarify the meeting procedures to be followed, and help new members integrate into the way the committee functions. Terms of reference should be reviewed, at least, on an annual basis.

Topics to Consider:

- a. appropriate committee structure, having considered legislated requirements
- b. a procedure for the co-chairs to facilitate the operations and actions of the committee
- c. a method for the selection of alternates and a protocol for their attendance at committee meetings
- d. a meeting schedule for committee meetings setting out the frequency and place for meetings
- e. a procedure for the attendance of resource persons at committee meetings

- f. a determination of the number of certified members (if more than the minimum number) and a method for their selection
- g. a schedule for inspection of the workplace and provisions for the conduct of inspections including a process by which the worker members shall designate from among themselves one member to perform the workplace inspections
- h. a process to develop and convey recommendations in writing arising from inspections back to the co-chairs, the committee and to the employer
- i. a method and system for providing accident statistics and information and other health and safety information
- j. procedure for accident investigations, including types and severity of accidents to be investigated (beyond the legal requirements), including a method for designating a worker member to conduct the investigations
- k. a method and system for reporting an accident investigation to the committee
- l. a procedure for selection of members representing workers or designated workers in the workplace to accompany Ministry of Labour inspectors during a physical inspection of the workplaces, or any part or parts thereof
- m. a procedure for the selection of a member representing workers or designated workers in the workplace for the purposes of the statutory provisions for investigating a work refusal
- n. a procedure for the selection of a worker member to attend the commencement of workplace testing

- o. the arrangements with respect to minutes of meetings, including the requirement to identify issues and set out recommendations, the responsibility of taking, reviewing, circulating and editing of the minutes, and the preparation of agendas for meetings and notice of meetings
- p. a determination of a quorum for a committee meeting
- q. a method or system for achieving consensus at meetings
- r. a procedure for dispute resolution by the committee
- s. a procedure to address situations when the co-chairs do not agree on a recommendation
- t. a procedure for the referral of issues to the committee
- u. the entitlement of payment for members attending meetings or carrying out duties and responsibilities under the Act or the Regulations
- v. a regular review of committee and members' responsibilities including confidentiality and effectiveness
- w. such other health and safety matters as the workplace parties or committee members consider appropriate or necessary.

Please refer to the *Multi-workplace JHSC Guidance* for terms of reference at

http://www.labour.gov.on.ca/english/hs/pubs/jhsc_multiwork/index.php

Appendix D: Ministry of Labour – Occupational Health and Safety Contacts and Resources

Occupational Health and Safety

- If there is an emergency occurring in your workplace, call 911 immediately.
- To report critical injuries, fatalities, work refusals, health and safety complaints, or suspected unsafe work practices:
 - Contact the Ministry of Labour Health & Safety Contact Centre any time toll-free, 1-877-202-0008
- Note that general inquiries about workplace health and safety are responded to from 8:30 a.m.–5:00 p.m., Monday–Friday.

Central Region – West and East

Central Region West includes the following counties: York, Peel, Dufferin and Simcoe

Central Region East includes Toronto and Durham

Western Region

Western Region includes the following counties: Brant, Bruce, Elgin, Essex, Grey, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Huron, Kent, Lambton, Middlesex, Niagara, Oxford, Perth, Waterloo and Wellington

Northern Region

Northern Region includes the following counties: Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Timiskaming

Eastern Region

Eastern Region includes the following counties: Frontenac, Haliburton, Hastings, Lanark, Leeds & Grenville, Lennox & Addington, Muskoka, Northumberland, Ottawa-Carleton, Peterborough, Prescott & Russell, Prince Edward, Renfrew, Stormont Dundas & Glengarry and Victoria

Health and Safety Resources

Health & Safety Ontario

<http://www.healthandsafetyontario.ca/HSO/Home.aspx>

Infrastructure Health & Safety Association

<http://www.ihsa.ca/>

Public Service Health & Safety Association

<http://www.healthandsafetyontario.ca/PSHSA/Home.aspx>

Workplace Safety & Prevention Services

<http://www.healthandsafetyontario.ca/WSPS/Home.aspx>

Workplace Safety North

<http://www.healthandsafetyontario.ca/WSN/Home.aspx>

Workers Health & Safety Centre

<http://www.whsc.on.ca>

Occupational Health Clinics for Ontario Workers

<http://www.ohcow.on.ca>

NOTES:

All calls relating to employment standards (i.e., hours or work, overtime, public holidays, vacation, leaves of absence, termination, etc.) should be directed to:

- Employment Standards Information Centre
 - GTA: 416-326-7160
 - Canada-wide: 1-800-531-5551
 - TTY: 1-866-567-8893

For more contact information, or if you are not sure what region you are in, see the List of Regional Offices (under “Contact Us”) on the Ministry of Labour’s website:

<http://www.labour.gov.on.ca>