



Ken Rayner:

Think your Ontario small business is too small for health and safety rules? Think again. When is a health and safety representative required? How are they selected? And what are their functions, according to workplace health and safety legislation? Well, that's exactly what we're breaking down today on the *IHSA Safety Podcast*.

Announcer:

It's time for the *IHSA Safety Podcast*.

Ken Rayner

Welcome to the *IHSA Safety Podcast*. I'm your host, Ken Rayner.

A health and safety representative can be a critically important role that supports an employer's efforts to create a safe and healthy environment, both within federally and provincially regulated workplaces. When it comes to comparing related federal and provincial legislation regarding health and safety representatives, the good news is that there are more similarities than differences. And joining me to discuss those similarities and differences are IHSA's Deb Moskal and Doug Heintz. Great to have you both here.

Deb Moskal

Hi, Ken. Thanks for having me back.

Doug Heintz

Great to be here, Ken.

Ken Rayner

All right, great to have you both. Now, we've decided to separate this topic into two podcasts. The first one, what we're doing today, dealing with specific legislation for the role of a health and safety representative. And the second part focusing on how to make the health and safety representative really flourish in their role. I mentioned there's similarities and differences between federal and provincial legislation, which is why we have Doug Heintz and Deb Moskal here to provide guidance on both.

Now, Doug, before we jump into the first question regarding health and safety reps, maybe you could just provide a high level overview for our listeners on really some examples of what is a federally regulated workplace, what's a provincially regulated workplace?

Doug Heintz

Thanks, Ken. It's a great question, and certainly as it relates to knowing which piece of legislation you need to follow from a workplace health and safety perspective, getting that determination is an important piece. So in general I would say that federally regulated workplaces would be those businesses that relate to the national interest. So if we're talking about railways, pipelines, grain elevators, shipping, air transportation, those are all federally regulated. And as it relates to IHSA membership, general trucking that's inter-provincial or extra-provincial, they regularly go outside the borders of the province of Ontario would be an example, and the ones that will relate to on this podcast.

Ken Rayner

And what about some provincially regulated workplaces, what would be some examples of those?

Doug Heintz

Well, so if we're talking transportation, a trucking company that solely operates within the borders of the province of Ontario would be provincially regulated. And as such, they would follow the *Occupational Health and Safety Act*. If the nature of their work regularly takes them outside the province, there's potential they would then change to being federally regulated. Now, I don't want to leave anybody with the impression I'm the person to ask in regards to federal jurisdiction, because that is something that's left for legal advice or is best to be determined by your legal representation. So from a transportation perspective, that would be same kind of business, but they follow different pieces of legislation based on where they regularly go.

Ken Rayner:

Excellent. And we have a podcast on that in regards to jurisdiction, with Liz Tavares from ESDC [Employment and Social Development Canada] and Michelle Roberts if anybody is interested. And then other members of our membership, such as construction aggregates and the electrical utilities would also be examples of provincially regulated workplaces. Okay, so that being said, Doug, when does an Ontario workplace require a health and safety representative? And is there a difference between the provincial legislation and the federal legislation?

Doug Heintz

Very similar, but a slight change between the two. So if we're talking *Occupational Health and Safety Act*, provincial legislation, there's a requirement for a health and safety representative when you have employees in a workplace between... The number is six to 19 workers. Health and Safety rep is a requirement. You don't have to have a joint health and safety committee. I won't get into that, whether you might or might not, but that's our next podcast. From a federal perspective, if you are less than 20 employees in a workplace, that's where a health and safety rep would be a requirement. Maybe just one add-on piece related to *Occupational Health and Safety Act*: depending on the nature of the work they're doing, designated substances or otherwise, there may be a requirement for joint health and safety committee below that threshold of 20.

Ken Rayner

Okay, perfect. All right, so we got six to 19 within provincial legislation and under 20 from a federal perspective. All right, Deb, let's bring you in here and find out, hey, can anybody become a health and safety rep? Are there certain parameters around that? What does that look like?

Deb Moskal

Sure. So in Ontario, a health and safety representative is a worker who represents the health and safety of the other workers. The Act itself does not outline specific formal qualifications or certifications to become a representative. It does however... oh, sorry, to become a representative. However, there are few key requirements and characteristics that should be considered for someone to take on this role.

The individual is required to be a worker at the workplace, meaning they're employed and regularly performing work tasks. So this role cannot be filled by an employer, a supervisor, or a manager. The representative needs to be peer to the workers they're going to be representing. The representative also needs to be elected or appointed by the workers in the workplace. The election process should be very open and transparent and the workers should have a say in who is going to be representing them.

In addition, they should have a willingness to learn about health and safety issues, regulations, workplace hazards and risks, as well as have a general understanding of the hazards and the risks and be comfortable working collaboratively with both the employers and the workers to address safety concerns.

Ken Rayner

Excellent. As far as I understand, that is pretty much the same between the federal and the provincial legislation, there's no difference in that regard. Doug, how about we talk a little bit more about this selection and this election process for actually determining who is going to be the health and safety representative. What does that look like in the workplace?

Doug Heintz

So the health and safety representative needs to be picked from among workers. That can be picked by workers. When you have a unionized firm, then the union picks the individual who would be the health and safety representative. And that is mirrored in provincial and federal legislation.

Ken Rayner

All right. So that's the difference though. If it's non-unionized or unionized, there's a little bit of a difference there. They're both selecting from the workers, but typically the trade union is being involved in that selection as well.

All right. Okay, so there are lots of duties of a health and safety rep. Why don't we get into them and make sure that we're covering everything both from a provincial and a federal standpoint? So Deb and Doug, what are some of those duties of a health and safety rep?

Deb Moskal

Sure. So I can start this one off, Ken. Some of the duties of a representative include identifying any actual or potential workplace hazards, inspecting the workplace at least once a month, being consulted about and being present at the beginning of any health and safety related testing in the workplace, making recommendations to the employer about health and safety concerns or initiatives, participating in work refusals. And they may inspect the workplace after a critical injury or a fatality as well.

Ken Rayner

Okay. Doug, is there anything to add from the federal standpoint?

Doug Heintz

Yeah, not a lot to add. Again, the responsibilities are very similar. Certainly from *Canada Occupational Health and Safety Regulation*, part 19, Hazard Prevention Program, it's a requirement. You put a program in place that's reflective of the size of your workplace and the hazards associated with it. The health and safety rep would play an integral part in the development of that hazard prevention program. So very prescriptive requirement to be able to have something in place. And again, that health and safety rep participates fully.

Ken Rayner

For all those small businesses out there that maybe have seen this as an obstacle or just, "Geez, there's just one more thing I've got to do on top of everything else," let's go back to that list that Deb just went through. Identifying actual and potential workplace hazards, inspecting the workplace, being present when you're testing, doing some health and safety related testing, making recommendations on how to improve health and safety in the workplace, participating in work refusals, which we'll get into more, and then potentially dealing with an inspection in the workplace when there's any type of critical injury and fatality, those are critically important rules for the well-being of a workplace. So this is a critically important position and one that we really want small employers to embrace and really see it as an ally to be able to assist you in creating a healthy and safe workplace.

Doug and Deb, there are some workplaces that would be exempt, and we've kind of touched on it a little bit already, but what types of workplaces are exempt from having a health and safety rep?

Deb Moskal:

You're correct, in Ontario some workplaces are exempt from having a representative. This is based on criteria set out in the Act. So main exemptions include if a workplace has five or fewer workers regularly employed, there's no legal requirement for a health and safety representative to be selected or appointed. However, I will note, the employer is still responsible for ensuring the health and safety of their workers and ensuring compliance with relative health and safety regulations.

A little caveat to this requirement here is the workplace may also receive an order from the minister to have a representative at the work location. This can be even if there are fewer than five workers, as Doug had mentioned earlier, in relation to things such as designated substances being on a project site or in the workplace. Another exemption that is in place is, if a workplace has 20 or more workers, it's required to have a joint health and safety committee instead of a health and safety representative. And

so this is something we'll get into in future podcasts, but again, it's 20 or more workers require the committee as opposed to a single representative.

Ken Rayner

Now, let's say that we've got a small business owner, someone who's newly started up their company, they're starting to grow the company. They've got three or four employees. They're hoping to have five, six, seven by the end of this year. So they really want to be able to look up perhaps how this legislation pertains and what it says about health and safety reps. So can we get into that in case that small business owner is sitting at home right now or in their home office and they've got their computer open and perhaps they want to go to e-Laws or they want to go and find this legislation online. Can we help them out in that regard? So, what legislation specifically outlines the requirement for a health and safety rep in Ontario? Deb, let's start with you.

Deb Moskal

So the requirement for health and safety representative in Ontario is outlined in the Act, specifically in Section 8. And so just quickly here, when you're looking for this information, there are a few ways that we can find the criteria. So the first is electronically through a site such as e-laws, where you can electronically search for keywords and find the information that you're looking for. Alternatively to that, if you have a hard copy of the *Green Book*, just a really quick overview here, you can search this information through the table of contents, and the table of contents is located at the front of the book page Roman numeral I, and look for the words health and safety representative. If you follow the dotted lines across, this will tell you to refer to Section 8. So when we're referring to legislation, we talk in section numbers as opposed to page numbers. So Section 8 is the bolded eight within the text, which will outline the responsibilities and requirements for the rep.

Alternatively, you can also search the index to the Act, and this is located at the back of the book. Starting on Roman page... Oh, sorry, starting on page A1, look up health and safety representative, and it will provide you with all the sections and subsections for where to find information relating to the health and safety representative.

So now that our overview of finding legislation is complete, Section 8 of the Act outlines the requirements to help a health and safety representative as well as the responsibilities and powers of the role. In addition to this, Section 136 of the *Canada Labour Code, Part II* outlines the requirements for health and safety representatives and associated duties as well for federal workplaces.

Ken Rayner

Thanks very much, Deb. Doug, anything else to add on the *Canada Labour Code, Part II*?

Doug Heintz

Yes, certainly. Accessing *Canada Labour Code*, if you Google Canada Labour Code or Canada Labour Code Part II specifically, it'll take you to a Justice Canada website. Very easy to navigate. The topics are listed and you click on it and it'll take you to the appropriate section that you're looking to get information on, as Deb said, Section 136. *Canada Labour Code* is set up a little bit different than

provincial legislation. Provincial legislation has labour relations, occupational health and safety legislation, and labour standards. *Canada Labour Code* includes all of those in three parts. Part two being the occupational health and safety legislation.

Ken Rayner

So for listeners, they only thought they were tuning in to find out about health and safety rep information, and now they've got a nice overview on how to circumvent and look up things in legislation. So thank you for that extra bonus, Deb and Doug. I hope I'm not being charged for that.

Okay. Deb, I know we mentioned earlier that part of the duties of a health and safety rep is inspecting the workplace. How often should a health and safety rep be inspecting that workplace?

Deb Moskal

Correct. So they should inspect the workplace at least monthly. If it's not practical to inspect the workplace at least once a month, then the health and safety representative is required to inspect the physical condition of that workplace at least once a year, inspecting at least part of the workplace in each month. If the same health and safety representative inspects the same workplace monthly, there is a potential for hazard oversight to occur, just things become familiar to us. So a good idea is to engage with workers, ask them questions as you're doing your inspection. The workers are in a really great position to tell you about any concerns, any hazards they see with the work that maybe you don't, maybe because of your background or maybe again, you've just been looking at this workplace for so long. So involve some fresh eyes, engage with workers, and make them part of the process as well.

Ken Rayner

All right, love that. Great tip. Hey, Doug, for those people out there that are thinking about, "Hey, well, okay, this sounds kind of interesting. I wouldn't mind being a health and safety rep." Do they get paid for this role within the workplace?

Doug Heintz

Absolutely. Legislation requires that any duties that they complete as a health and safety rep they are compensated for their time. So what a great way to assist your co-workers, assist the business in being successful from an occupational health and safety perspective. Additionally, just gaining knowledge about legislation, great opportunity for individuals. And again, to answer your question, they get paid for that time.

Ken Rayner

Okay. Deb, we're kind of working our way down the list of some of the duties that we had talked about earlier, and one of the things that came up was a work refusal. My first question for you would be, can you explain what a work refusal is, and then what should the health and safety representative do in the event of a work refusal in their workplace?

Deb Moskal

Sure, absolutely. So work refusal is outlined in the Act. It's Section 43, subsection 3. And so I'm just going to get a little legislative on you here for a minute with context, but in Ontario, a worker may refuse work where they have reason to believe that one of the following is applicable to their situation. So any equipment, machine, device or thing the workers to use or operate is likely to endanger themselves or another worker. The physical condition of the workplace or part of it in which they work or is to work is likely to endanger themselves. Workplace violence is likely to endanger themselves, or any equipment, machine, device, or thing that they're to operate or the physical condition of the workplace or part thereof in which they're working is a contravention of the Act or regulations and that contravention is likely to endanger themselves or another worker. And that's straight from the Act, Section 43, subsection 3.

I will caution that it should be noted there are individuals that this section does not apply to, so you're going to want to make sure that you read this section in its entirety to make sure you fully understand.

Ken Rayner:

Would one of those, Deb, been if you had refused to come on the podcast today? Would we have been able to do that or no?

Deb Moskal

You know what, I'm not sure that I would really fit the criteria, but I'm actually very thankful for that.

Ken Rayner

I'm just glad I didn't give you that idea ahead of time, that's all

Deb Moskal

Right? So no, we are not included in this today. As far as the process and how this unfolds, just generally speaking how this works, so the worker has reason to believe one of the criteria we talked about is their current situation, they're in one of those situations. The worker's going to refuse the work and notify their employer or supervisor. From there, their employer or their supervisor is going to investigate the situation with the worker and the health and safety representative. The worker will be designated to a safe area. We're going to keep them safe as this investigation's ongoing. And if we can resolve the problem, then we return to work. We document the controls that are put in place and we return to work. If we can't resolve the problem, that's when the worker will continue to refuse unsafe work because we haven't rectified the situation. And at that point, we're going to call in the Ministry of Labour to be part of this investigation with us, to provide that other set of eyes and assistance on the process.

The Ministry of Labour inspector will investigate in consultation with the worker, the employer, or the supervisor, and the health and safety representative. The inspector will make a determination based on the information they're provided and what they're seeing if it is safe to return to work. If it is, we'll return to work at that point there. And if not, they will have some corrective actions that the employer will need to put in place to make that work safe. And then work resumes at that point.

So there's different avenues that we can get into along the lines of work refusal. What's important is we want to be proactive in identifying hazards, so again, the importance of inspections and talking with workers. And we want to create that open line of communication between the worker and the health and safety representative, as well as the employer, to ensure that information is shared and we're communicating with respect to ideas and corrective action. So it's this concept of something called the internal responsibility system, where all these workplace parties are working together proactively to resolve concerns.

Ken Rayner

Love it, love it. How you tied that all together. So Deb, you did such a great job with that one, I'm going to ask you the last question here. Start off with you. Again, as we've gone through some of these duties of a health and safety rep, they're critically important in terms of being able to assist in all matters of occupational health and safety within the workplace. So in this next one, hopefully a health and safety rep never has to come across this, never has to do with this situation, but unfortunately in the province of Ontario we continue to have fatalities and critical injuries that occur. So what should a health and safety representative do in the event of a critical injury or a death, Deb?

Deb Moskal

Absolutely. So this is a heavy one, and hopefully we're never in a situation where we have to deal with one of these situations. I think as a starting point, let's try to define critical injury. I will say, the full list is available under *Ontario Regulation 420/21*. Just to give a little bit of an example here, and this is not an exhaustive list, but critical injury are things that... they place life in jeopardy, they produce unconsciousness. It involves a fracture of a leg or arm, but not a finger or a toe. So there's a pretty detailed list available in the regulation, so you're going to want to familiarize yourself with that.

The health and safety representative under the Act may inspect the place where the incident occurred, as well as any relevant machinery, devices, etcetera that were involved in the incident and has a requirement to report their findings in writing to the ministry. So again, this one here is not an item that they have to do, it's one that they can participate in. And where appropriate, the health and safety representative may wish to make specific recommendations back to the employer in respect of the hazard which led to this critical injury or fatality.

Ken Rayner

Okay, so a very, very important role in the unfortunate eventuality that they have that within the workplace. Doug, is there anything different in federal legislation in regards to a critical injury or a fatality?

Doug Heintz

So process is very similar. Part 15 of the *Canada Occupational Health and Safety Regulation* indicates what's required, and the employer needs to appoint a qualified investigator to be able to do that investigation on the situation. And whether there's a disabling injury, that's the sort of federal terminology for a specific type of injury, they also require that qualified investigator to be appointed. They don't say who that person needs to be or shouldn't be. The legislation does indicate that the

individual that has been appointed, that person needs to be identified to the health and safety rep. It is a little bit confusing in that when you look at the duties of the health and safety rep in federal legislation, Section 136.5(g) [of the *Canada Labour Code, Part II*] talks about they shall participate in all inquiries and investigations. My sense is they're really talking about proactive inquiries and investigations, not specific situation as opposed to a health and safety rep being directly involved with a fatality investigation, which obviously could be very traumatic for the individual.

Ken Rayner

Gotcha. All right, so let's hope that, Deb, as I'll go back to something that you mentioned when we were talking about work refusals, if an employer is utilizing a health and safety rep as an ally in the workplace and they're doing a lot of the duties in a proactive manner, then let's just hope and believe that work refusals, fatalities, and critical injuries will not occur or have a much, much less chance of occurring because of the proactive nature of what's taken place with the employer and the health and safety rep. Let's stick to that. I know we're kind of leaving this on a bit of a downer, talking about critical injuries, but those things can absolutely be avoided from a proactive standpoint if you're putting in the effort ahead of time.

Doug, Deb, thank you very much for pointing us in the right direction of legislation for both provincial and federal when it comes to health and safety reps, and really guiding those small business owners to the right spots in legislation where they can look it up for themselves. So appreciate you both being here on part one of this podcast, and thank you very much to the listeners for listening to this episode on health and safety reps. Be sure to "like" us and subscribe on your podcast channel and visit us at ihsa.ca for a wealth of health and safety resources and information.

Announcer

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