



**Announcer**

It is time for the *IHSA Safety Podcast*.

**Ken Rayner**

Welcome to the *IHSA Safety Podcast*. I'm your host, Ken Rayner. This is the first in our three-part series on federal occupational health and safety and how it applies to a significant portion of IHSA's membership, particularly those in the transportation industry. Our three-part series looks at three foundational pieces: part one, which is today's episode—what jurisdiction does your business fall under? Is it federal or is it provincial? Part two, what are the first steps a federally regulated business should consider when building their occupational health and safety system? And part three, worker misclassification, which can occur when drivers incorporate themselves and sell their driving services to a carrier. So all important topics to discuss, and very glad to have two occupational health and safety experts who both have extensive experience in the transportation industry joining us on these podcasts. So very pleased to welcome to the *IHSA Safety Podcast* for the first time, Liz Tavares. Liz is an occupational health and safety officer with Employment and Social Development Canada [ESDC] and their labour program, so part of the Government of Canada. So Liz, thank you so much for joining us on this podcast.

**Liz Tavares**

Hi. Thanks Ken. Thank you for having me. And on behalf of the federal minister of labour, I want to say thank you for having me here today to provide this information on useful occupational health and safety information specific to federally regulated companies.

**Ken Rayner**

Awesome. And yes, and a big thanks to ESDC and all their overall support on this three-part series. And welcoming back certainly a regular on our podcast, who's not only one of IHSA's subject matter experts on transportation. She's also our Vice President for Stakeholder and Public Relations, Michelle Roberts. Michelle, great to have you back.

**Michelle Roberts**

Thanks, Ken. Look forward to this conversation. Thanks.

## **Ken Rayner**

Alright. Okay, Liz, let's start off with this jurisdiction piece because you know what, we've had a lot of other podcasts that we've done focusing on the construction industry, the electric utilities, but we've never really gotten to a discussion on jurisdiction. Why is it important to discuss this, especially when we're talking about the transportation industry?

## **Liz Tavares**

Certainly. Well, jurisdiction can certainly be a convoluted piece. In Canada, there are separate jurisdictions when you're looking at labour relations. And in the province of Ontario, we have Ontario jurisdiction and there's federal. So to best answer that question, we have to go way back to section 91 of the *Constitution Act*, specifically 1867 to 1982. And in there it defines the powers of the federal government. So labour relations is presumed to fall under provincial regulations, which is the case for the construction and healthcare industries, for example, and probably why the topic of jurisdiction has not been covered in some of your other podcasts. Federal jurisdiction is the exception that applies to a few industries and business lines. Part of road Transportation services fall under federal jurisdiction. This includes trucks and buses that cross provincial borders, say into the province of Quebec, or into international borders, say into the USA. But this does need to happen on a regular and continuous basis. So federal jurisdiction is based on the operation of the business, not where the company is registered. For employers under federal jurisdiction, the labour legislation that applies is the *Canada Labour Code*, which covers labour relations such as unions and collective bargaining agreements. That's part one. Occupational health and safety, which is part two, and labour standards, which is part three. All this to say that if your road transportation company regularly crosses provincial or international borders, you're very well likely to be federally regulated and covered under the Canada Labour Code.

## **Ken Rayner**

Okay, good stuff. And Liz, also, on a number of other podcasts, we have dealt with Ontario's *Occupational Health and Safety Act* and its regulations, but we haven't delved too much into the *Canada Labour Code*. So could you share with us some key elements of federal occupational health and safety requirements under part two of the *Canada Labour Code*?

## **Liz Tavares**

Yeah, absolutely. So part two of the Canada Labour Code and the occupational, excuse me, the Ontario *Occupational Health and Safety Act* are two laws from two different legislative bodies. So there are some differences. Let me highlight some of the key elements of the part two of the *Canada Labour Code*. So the *Canada Labour Code* is strongly reinforced on the internal responsibility system. So processes are established, excuse me, in order to deal internally with occupational health and safety complaints, work refusals, before it's submitted to the labour program for further investigations. Employers have duties and obligations to ensure the health and safety at work of all their employees and persons granted access into their workplace. This includes administrative measures such as occupational health and safety policies, posting of documents on their health and safety board, ensuring processes of answering to health and safety complaints, identifying and assessing hazards and implementing preventative measures within their workplace. There is also a duty to regularly inspect the

workplace or investigate if workplace injuries or any other health and safety occurrences such as a fire or explosion should happen within the workplace.

Employees also have specific rights and duties as well. So they have the right to know, such as training information on hazards, how to do the job, and the preventative measures to keep them safe. They have the right to participate through a policy committee if there's more than 300 employees, through a local workplace committee if there's more than 20 employees, or as a health and safety representative in their local workplace if there's less than 20 employees. And of course they have the right to refuse dangerous work duty to follow prescribed procedures and comply with instructions from their employer concerning health and safety. And they also must remember to report any thing or circumstance that is likely to be a hazardous to themselves or any other person who may have access to that workplace. Occupational health and safety officers, such as myself, can intervene in federally workplaces for preventative inspections or investigations in the case of complaints or accidents that would result in a lost time injury. On any case, if non-compliance is identified in means of a health and safety inspection, the labour program follows its compliance policy. First, we would receive an assurance of voluntary compliance, then we may issue a direction, we may issue an administrative monetary penalty or we may proceed with a prosecution.

#### **Ken Rayner**

Okay. That's very helpful. So, okay, Liz, I'm just imagining that there's an owner operator, an owner of a small transportation company, and they're right now kind of going, you know what? I'm not certain if I'm provincially regulated or federally regulated. I've got some questions in my mind. What are some resources an owner of a transportation company could leverage to determine what legislation applies to them?

#### **Liz Tavares**

Yeah, I would say that that does occur where an employer registers their business and they're unclear as to what labour legislation they follow. So to best determine an employer's jurisdiction for labour law, it can be very complex, and no two cases are alike. My first message to all the employers, to any employer, excuse me, would be to seek legal advice if you're uncertain. Jurisdiction determinations are only done by the labour program. An officer would investigate and determine the jurisdiction of the company or the Canadian Industrial Relations Board. As I mentioned, jurisdiction determination is based on the activities of a business as well as jurisprudence on past court decisions that have clarified the intent of the law. If there's an employer who is uncertain on their jurisdiction, whether or not they fall under provincial labour law or they fall under federal labour law, they may consult the labor program website, [labour.gc.ca](http://labour.gc.ca), or they can reach out to the labour program via phone: 1-800-641-4049.

#### **Michelle Roberts**

Liz, if I can ask, could you just walk us through very briefly what the employer could expect if they did make that phone call to the labour program to help them out?

#### **Liz Tavares**

Yeah, absolutely. So what happens is, during regular business hours we do have an officer on the line who does attend general inquiry calls. So should anyone call that line, they would provide basic information and education and also provide resources where the caller can get further information with respect to jurisdiction. If the caller strongly believes that their workplace is federally regulated, they can request a consultation or an education session. There's no cost to that employer and the request would be put forward to a manager where an officer can attend that employer's worksite at their request and provide that consulting session.

**Michelle Roberts**

So that's great. So that means they can call and ask those general inquiry and get immediate guidance and advice, and together help them explore which jurisdiction do they fall under?

**Liz Tavares**

Absolutely. Unfortunately, calling the 1-800 line will not provide a definitive decision as to whether or not the employer is federal or provincial, because as I said it is a case by case basis, but they can certainly request a consultation or an education session.

**Ken Rayner**

Excellent. Great advice. Thank you. Thank you, Liz. And we're going to post both the website that Liz mentioned and the 1-800 number up on the podcast channel so people can access it very easily. So great information. That's fantastic. Now, Liz, in the time period when a transportation company is operating or a federally regulated company is operating, could their jurisdiction go back and forth, from one year they're federal and then the next year they're provincial? Does that ever happen?

**Liz Tavares**

So the core activities of a transportation company. Well, if the core activities of the transportation company changes, then the answer to that question is yes, jurisdiction could change. As I mentioned, jurisdiction is based on the business's nature of operation and the ongoing character of the business. So jurisdiction determinations are very unique and all the specifics of the situation would be considered and examined.

**Michelle Roberts**

So can I ask Liz, is there any example where a company would change jurisdictions from fed to provincial, just so it helped explain that a little more?

**Liz Tavares**

Yeah, so as I said earlier, if a trucking company, so a common carrier, crosses into another province or into the United States, they most likely would fall into a federal jurisdiction. However, if the nature of their business were to change so that they were no longer crossing borders and they are now exclusively local transportation company, then they would change from federal jurisdiction to provincial jurisdiction. That's one example. The second example I could give is a common carrier, for example, is a

common carrier who does cross borders into other provinces or into the US would be considered, or excuse me, may be considered federally regulated. However, freight forwarding is considered provincially regulated. So if a common carrier were to no longer possess any licenses that would allow them to touch their own goods that they're transporting and they would change to a freight forwarder, they would then change from being federally regulated to provincially regulated.

**Ken Rayner**

Alright, so it can happen. It doesn't always happen, but it can happen.

**Liz Tavares**

Yes, certainly it can happen. And the reverse can be true too. So a company who might be operating local under provincial jurisdiction then obtains a USDOT number and they're regularly continuously crossing to the US, they're changing their jurisdiction from provincial to federal.

**Ken Rayner**

Good point. Alright, so we're throwing a bunch of tough questions at you, Liz. Here's another one. So let's say a company has multiple sites. Is it possible that one part of the company could be federal and another part of the company could be under provincial jurisdiction?

**Liz Tavares**

Well, Ken, this is almost a trick question. Every case is so different, and each case needs to be analyzed on their own merit as jurisdiction is based on the current and ongoing nature of their operations. If the worksite can be considered as separate businesses and the nature of the operations are so different, then depending on the specifics of the situation, one site could potentially be considered federal and another provincial. But this is unlikely, and every situation would have to be analyzed.

**Ken Rayner**

Okay. Well, there you go. Liz, what I heard from you today was there's a lot of nuances that go into whether or not you're federal or provincial. It's just not as simple as whether you necessarily cross a boundary or whether you a border or whether you don't. And it reaching out to the ESDC Labor Program is probably a really good start in terms of determining what jurisdiction you do fall under.

**Liz Tavares**

Certainly. Yes. Yep.

**Ken Rayner**

Fantastic. Alright, Michelle, Liz, thank you both for joining us on this. I hope this provides a lot more clarity to our transportation companies out there that are maybe unsure whether they're federal or provincial. Hopefully this has given us some clarity on that, so that's great. Liz, Michelle, thank you very much for joining us on the *IHSA Safety Podcast*.

**Liz Tavares**

Thanks. Thanks.

**Ken Rayner**

And thank you to the listeners for listening to the *IHSA Safety Podcast* and our three part series with ESDC. Be sure to subscribe and “like” us on your podcast channel and visit us at [ihsa.ca](http://ihsa.ca) for a wealth of health and safety resources and information,

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