



MEMBER BULLETIN

December 2017

Historic Changes to Ontario OHSA

In the most far-reaching changes made to the *Ontario Occupational Health & Safety Act* (OHSA) in over 15 years, the government has moved to, amongst other matters, triple corporate OHS penalties and quadruple individual OHS penalties.

The amendments are made in a Bill titled the [*Stronger, Fairer Ontario Act \(Budget Measures\), 2017 \(Bill 177\)*](#). Here are the key changes:

- **Tripled Corporate OHS Fines.** From 1990 forward, until today, the maximum corporate penalty under the Ontario OHSA for a violation of the Act or Regulations, has been \$500,000 per charge.
 - Now, corporations are liable to a fine of not more than \$1,500,000 per charge. A surcharge of 25%, required under the Provincial Offences Act, is in addition to those penalties;
- **Quadrupled Individual OHS Fines.** Until this amendment, any individual, including a supervisor, worker, director or officer, was liable to a maximum penalty under the Ontario OHSA of \$25,000 per charge and/or one year in jail.
 - Now, individuals are liable to a fine of not more than \$100,000 per charge for a contravention of the OHSA or its Regulations, in addition to a potential jail term. A surcharge of 25%, required under the Provincial Offences Act, is in addition to those penalties;
- **Limitation Period for Charges Expanded.** The limitation period for bringing a prosecution under the OHSA or its Regulations has historically been one year from the date of the alleged contravention.
 - The amendment changes the limitation period which now includes the day upon which an inspector becomes aware of the alleged offence. This results in the possibility that if an inspector becomes aware of circumstances providing a foundation for an alleged OHS contravention, even if it occurred more than one year ago, and even before this historic change, a charge could be commenced. Further, this could potentially create issues about what sentencing regime will apply;



- **New Reportable Incident – Structural Inadequacy.** An employer must now notify a MOL Director if a joint health and safety committee or a health and safety representative identify potential structural inadequacies of a workplace as a source of danger or a hazard to workers.
 - Note that this obligation does not apply to an employer that owns the workplace;
- **Further Reportable Incidents May Be Added to Regulations.** The Bill 177 provisions amending the OHSA allow for passage of further Regulations to specify additional prescribed locations in which employers or other parties are required to report an accident or other incident under s. 53 of the OHSA, other than a project site or mine at which certain reportable events such as explosions, fires, floods, equipment failure, must now be reported. Section 53 OHSA has also been amended to clarify, in a new section 53(2), the persons who are obligated to give notice;
- **Potential Further Expansion to Content and Timing of Reportable Injury Notices.** The Bill also allows for Regulations to specify additional notice requirements that must be met where a person is killed or critically injured at a workplace; where a person is disabled or requires medical attention because of an accident, explosion, fire, or incident of violence at a workplace; and where an accident occurs at a project site or mine. This may result in requirements for further details and particulars of investigations and corrective action to be statutorily required in accident reports in the foreseeable future.

Should any members have any questions on this matter, please contact Giovanni Cautillo at giovanni.cautillo@OSWCA.org or directly at 905.629.7766 ext.: 229.