

Health and Safety
Representative
Participant Workbook

WorkSafe Consulting Services

Participant Name: _____



WorkSafe Consulting Services - Health and Safety Representative.

WorkSafe Consulting Services is committed to helping Employers and Employees to take a proactive approach to loss prevention in the workplace.

Please note you will need a copy of the Occupational Health and Safety Act.

To get a copy of the Occupational Health and Safety Act Online link is here

<https://www.ontario.ca/laws/statute/90o01>

Health and Safety Representative

Health and Safety Representative

Objectives

1. Understand the organization and contents of, and definitions in the Occupational Health and Safety Act.
2. Describe the general duties and responsibilities of the employer, supervisor and the worker.
3. Understand the legal duties of the Health and Safety Rep.
4. Describe workers rights including “the right to participate”, “the right to know” and the “right to refuse unsafe work.”
5. Describe enforcement, offences and penalties for non-compliance with the Act and the Regulations.
6. Understand the pertinent Health and Safety Laws and regulations affecting your workplace.



Health and Safety Representative

Structure and Content of the Act

Explanation of the Act

The Act contains many provisions for the administration of safety and health in the workplace:

It provides for;

- A.) the duties of all workplace parties, the employer, supervisor and workers,
- B.) the work refusal process
- C.) participation by workers in the Safety and Health program
- D.) control of Toxic Substances
- E.) establishes roles and responsibilities for the Joint Health and Safety Committee or Health and Safety Representative.

The Internal Responsibility System

The principal underlying the Act is the internal responsibility system which is to encourage self-reliance in the workplace. This means that:

1. Employers and workers each have responsibilities for safety in the workplace.
2. The Act sets out interlocking duties.
3. The Inspector determines if fulfilled.
4. Health and Rep is there to assist the employer in this process...

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Using the Occupational Health and Safety Act- the book copy is fine to use or the online version. Link provided at the beginning of this module with the online link. Please open the act and have a look.

Just to give you the overall feel of how to move around in the Act we will review some key points on how to find things.

The Act will always start with a table of contents. Either at the beginning of the book if you are using the actual hard copy or for the online version the table of contents will be on the left-hand side.

Table of contents



The Act is listed by Sections.

These are not page numbers so when you are looking something up you are looking for the bold number in the column.

So, for example Legal Definitions is Section 1



1. Definitions

PART I APPLICATION



2. Crown and other Acts
3. Private residences, farming, teaching
4. Self-employed persons

PART II ADMINISTRATION

- 4.1 Administration of Act
5. Delegation of powers
6. Appointment of inspectors and Directors
7. Certificate of appointment
 - 7.1 Standards – training programs
 - 7.2 Standards – persons who provide training
 - 7.2.1 Equivalent training

The Act is also divided into Parts. We will review the parts later.

Health and Safety Representative

Just to give you a glimpse of how the Act and Regulations are structured.

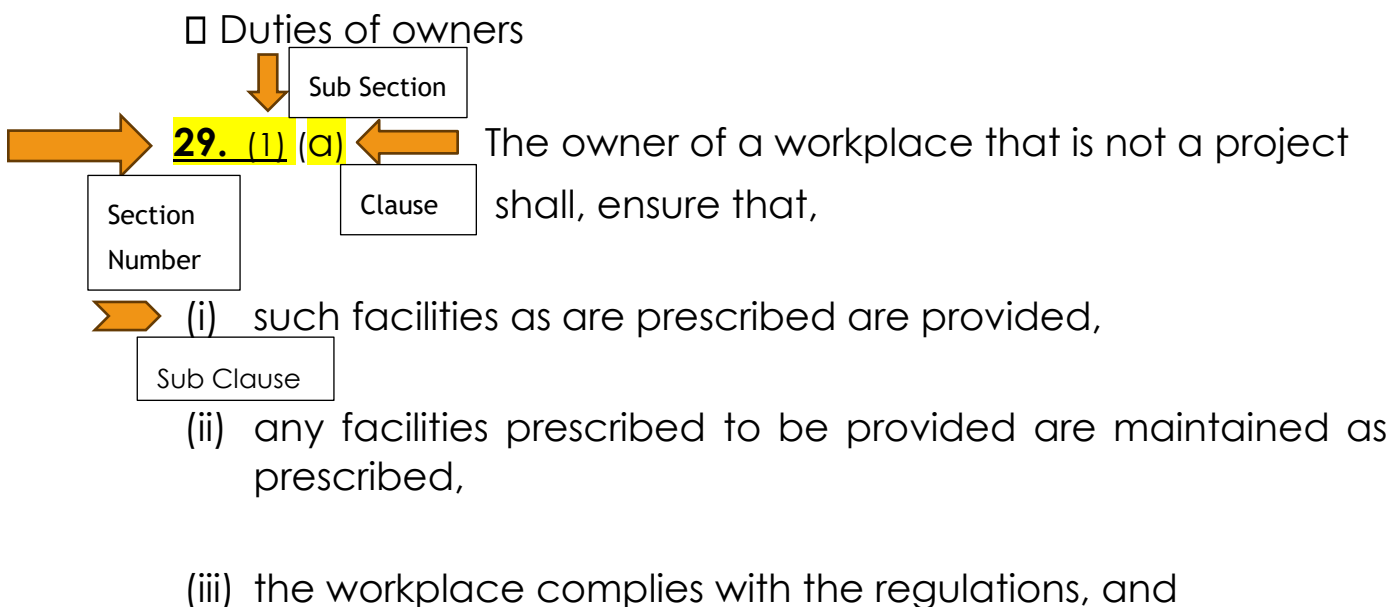
The Bold Number is what we call a section number so when you are using the index to find things its not page numbers they are using its section numbers. So, you always look for the bold number first.

Then you will see numbers beside the section number they are written with no bold. These are called sub-sections.

The letter beside the number is called a clause and within a section or sub-section you can have a number of clauses.

The roman numerals are what we call sub clauses.

Sections, Subsections, Clauses and Sub-clauses...



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Parts of the Act

Using a copy of your green book or online copy of the Act I would like you to have a look at your index and scroll through and have a look at all the different parts. We will discuss each of these parts as we go along.

- Part I Application
- Part II Administration
- Part 11.1 Prevention Council, Chief Prevention Officer and Designated Entities
- Part III Duties of Employers and other Persons
- Part III.0.1 Violence and Harassment in the Workplace
- Part III.1 Codes of Practice
- Part IV Toxic Substances
- Part V Right to Refuse or Stop Work where Health and Safety in Danger
- Part VI Reprisal by Employer Prohibited

Health and Safety Representative

- Part VII Notices
- Part VIII Enforcement
- Part IX Offences and Penalties
- Part IX.1 Administrative Penalties
- Part X Regulations

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Using the green book turn to Section 1 which is your legal definitions. We will look at a few examples. The legal definitions are an important part of the Act. When you are reading the Act you will see words you are not sure about and will need clarification. Words are very important and as such the Legal Definition section is often used to determine exactly what the meaning is for certain words being used.

Worksheet # 1

Using the Green Book, Section 1. Subsection 1 Legal Definitions

define what is meant by:

(Write Down your answers)



1. Competent Person
2. Employer
3. Supervisor
4. Workplace

COMPETENT PERSON

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EMPLOYER

SUPERVISOR

WORKPLACE

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Review of the answers and the importance.

Competent Person – you will see that within that definition it lists three things required. A person under the Act who is considered competent must have all three things. Anyone, one of those items missing or nonexistent, means the person is not considered competent. So often you will see in the Act for example: the employer provides “competent” supervision or an operator using the equipment shall be “competent”. This is how we use these definitions to determine what does competent mean.

Employer Definition is important as it determines who is ultimately responsible. The idea on this definition is the person who is considered the employer is hiring people to work for them and are paying them. How this one plays out if you have volunteers, they are not getting paid for their work. But this can cause legal challenges in determining who must ensure volunteers are safe.

Supervisor Definition- is essentially saying that anyone designated by the employer has authority over a worker. A supervisor has legal liability because they have been designated to act on the employer’s behalf. So, it’s vitally important that all supervisors “ensure” that they have what we call “due diligence” to show that they are doing all they can do to keep and maintain a safe workplace. We will talk about Due Diligence later but basically it means to be able to prove with documentation.

Workplace is relevant in determining things like what are we required to inspect monthly as a Health and Safety Representative. So based on this definition its anywhere someone is performing work, that could be a physical building, the land around the building, a worksite for a client, an outbuilding or even a vehicle that’s used for the company. So when it says the physical condition of the workplace is inspected monthly then that’s how this definition helps to determine what to inspect. We will talk about inspections in another module.

Health and Safety Representative

PART III

DUTIES OF EMPLOYERS AND OTHER PERSONS

Let's move ahead now to Part 111 Legal Duties of Workplace Parties. You will see legal duties for the employer under Section 25 and additional duties under Section 26, the legal duties for the Supervisor are under Section 27 and the Legal duties for the employees are found under Section 28. Using the Act review Sections 25, 26, 27 and 28. When you have reviewed you will move onto the next worksheet Worksheet 2 and complete the questions.

Employer Responsibilities

What are the employer's responsibilities?

An employer must:

- establish and maintain a joint health and safety committee, or cause workers to select at least one health and safety representative
- take every reasonable precaution to ensure the workplace is safe
- train employees about any potential hazards and in how to safely use, handle, store and dispose of hazardous substances and how to handle emergencies
- supply personal protective equipment and ensure workers know how to use the equipment safely and properly
- immediately report all critical injuries to the government department responsible for OH&S

- appoint a competent supervisor who sets the standards for performance, and who ensures safe working conditions are always observed.

Supervisor Responsibilities

What is the manager or supervisor's responsibilities?

As a manager or supervisor, he or she:

- must ensure that workers use prescribed protective equipment devices
- must advise workers of potential and actual hazards
- must take every reasonable precaution in the circumstances for the protection of workers.
- Managers and supervisors act on behalf of the employer, and hence have the responsibility to meet the duties of the employer as specified in the Act.



Worker Duties

Found in Section 28 of the Act

- Use and wear PPE (Personal Protective Equipment)
- Report Contraventions
- Work in a Safe Manner
- Do not remove or make a safety device ineffective.
- Do not engage in any prank, contest, feat of strength.

Worksheet # 2

List 3 main responsibilities for the:

1. Employer
2. Supervisor
3. Employee

EMPLOYER

SUPERVISOR

EMPLOYEE

The main idea and concepts here for the legal duties.

The Employer Provides > Examples a safe workplace, training, Personal Protective Equipment, Safety Rules to follow.

The Supervisor Ensures > Examples ensures the workplace is safe, ensures employees are trained, ensures employees wearing PPE, ensures employees follow safety Rules.

The Employee Does > Examples works in a safe manner, participates in training, wears all required PPR, follows safety Rules.

Health and Safety Rep Duties

Found in Section 8 of the Act

(Find the bold number 8 this is where the legal duties of the Health and Safety Rep are listed.)

1. Assist the employer
2. Conduct monthly Inspections
3. Investigate Accidents – Fatalities, Critical Injuries (Reg 834) We will have a look at the critical injury definition in a bit.
4. Be present at the beginning of testing by the MOL (Ministry of Labour) Let's say they are doing air sampling testing then you are allowed to be at the beginning of testing to determine what they are testing how they will be testing etc.
5. Accompany MOL (Ministry of Labour) Inspector
6. Be present and involved in the Work Refusal Process with the Supervisor
7. Make recommendations to the employer for corrective action.
8. Employee Representation – If an employee has a concern about a hazard, they will bring their concerns to you, and you will use the Hazard Report Form found in Section 6 of the policy manual. This will be filled out and given to the appropriate person for corrective action.

Let's Look at some of the specific sections pertaining to your duties as a Health and Safety Representation

Mandatory selection of health and safety representative

8 (1) At a project or other workplace where no committee is required under section 9 and where the number of workers regularly exceeds five, the constructor or employer shall cause the workers to select at least one health and safety representative from among the workers at the workplace who do not exercise managerial functions.

So, between 5 and 19 employees regularly employed you are required to have a Health and Safety Representative. It says does not exercise managerial functions which means you are not a supervisor. You must be an employee.

Selection of representatives

(5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the workplace, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions.

Selected by your peers. An employer can appoint by as long as the employees agree to the representation.

Inspections

(6) Unless otherwise required by the regulations or by an order by an inspector, a health and safety representative shall inspect the physical condition of the workplace at least once a month.

Idem

(7) If it is not practical to inspect the workplace at least once a month, the health and safety representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month.

Conduct Monthly Inspections:

This is to be done monthly. You are to inspect the entire facility once a month. You can set this up on a schedule, where you do certain areas within the month, but the entire facility needs to be completed within the year.

In your Health and Safety Policy manual I have all your workplace inspection forms for you that you will use. They are checklists that will help you know what to check and look for. Found in Section 5.00 of your policy manual.

You are looking for anything that is a hazard and could cause potential harm or injury to employees.

We will discuss how to do and conduct your monthly inspections in our Hazard Identification for Workplace Inspection Course in more detail.

Powers of representative

(11) A health and safety representative has the power,

(a) to obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety.

(b) to be consulted about, and be present at the beginning of, testing referred to in clause (a) conducted in or about the workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and

(c) to obtain information from the constructor or employer respecting,

(i) the identification of potential or existing hazards of materials, processes or equipment, and

(ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge.

Make Written Recommendations to the Employer for Corrective Action.

Response to recommendations

(12) A constructor or employer who receives written recommendations from a health and safety representative shall respond in writing within twenty-one days.

The Employer is required to respond with yes or no and list what the correction action will be and when it will take place. You will then have to determine do you prevent workers from accessing the danger until it is corrected. If the answer is no then you will need to determine if you need to consult the Ministry of Labour for direction. This is only required when you are dealing with something that is serious and you feel could be a danger to the employees' safety and still needs a resolution.

Notice of accident, inspection by representative

(14) Where a person is killed or critically injured at a workplace from any cause, the health and safety representative may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings in writing to a Director.

We Will cover this in more detail in the Accident Investigation Course.

Entitlement to time from work (You are entitled to be paid for your time doing your work as a Health and Safety Rep.

(15) A health and safety representative is entitled to take such time from work as is necessary to carry out his or her duties under subsections (6) and (14) and the time so spent shall be deemed to be work time for which the representative shall be paid by his or her employer at the representative's regular or premium rate as may be proper.

Understanding the Workers' Rights and the Work Refusal Process

Rights of Workers...

Workers have the right to:

KNOW ABOUT HAZARDS IN THE WORKPLACE

PARTICIPATE IN HEALTH AND SAFETY

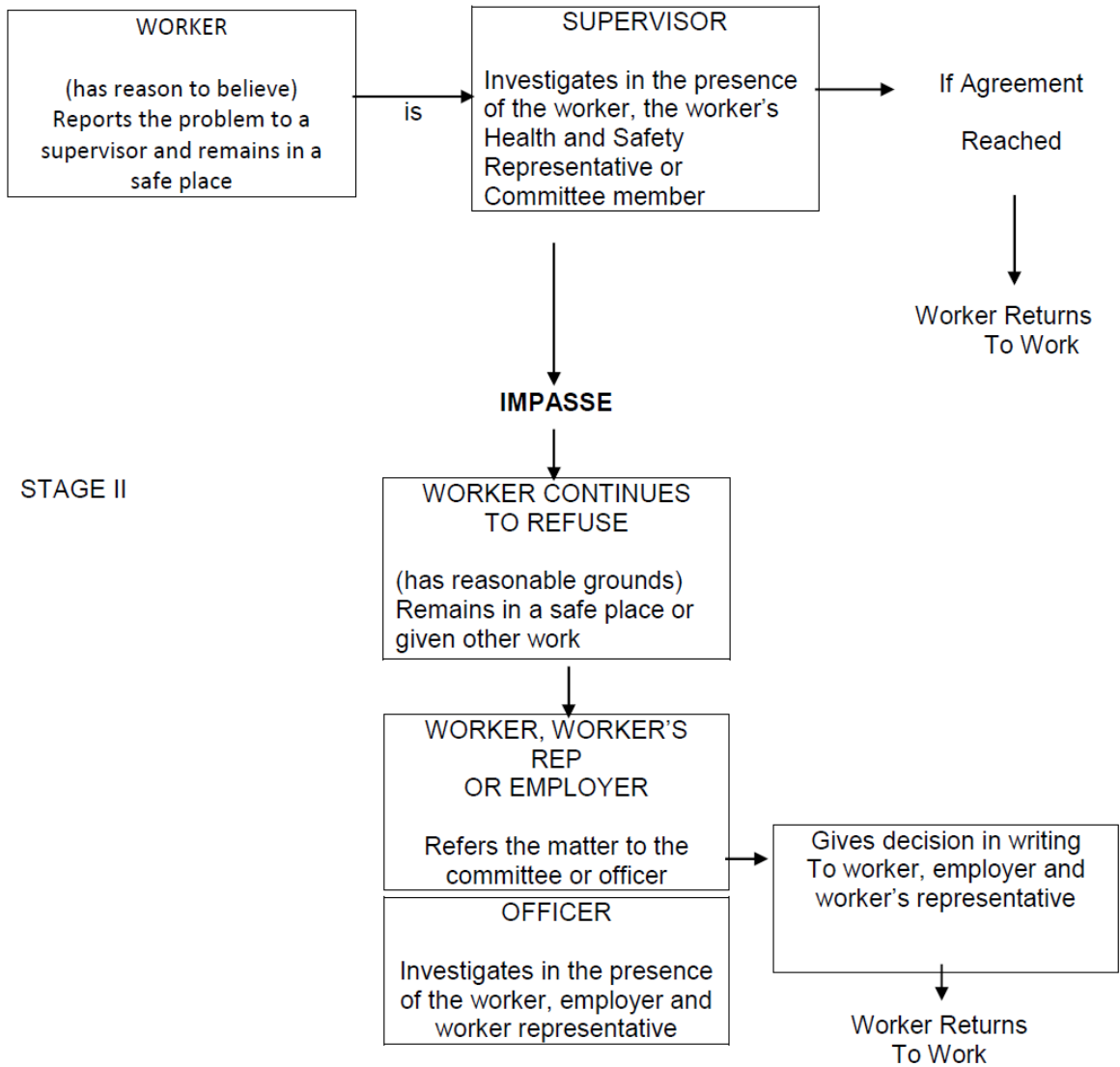
REFUSE UNSAFE WORK IN THE WORKPLACE

STOP WORK WHERE *DANGEROUS CIRCUMSTANCES EXISTS*

This Stop Work process is for Joint Health and Safety Committees

Work Refusal Process and your participation in it as a Health and Safety Rep.

STAGE 1



Key Points

Step 1 Worker Refuses to work

Step 2 Reports their concerns to the Supervisor

Step 3 Health and Safety Rep is called to be involved in the investigation and to help with making suggestions for corrective action.

If resolution reached then worker returns to work

If resolution is not reached then worker remains in a safe place and the work refusal continues.

The idea is to try to resolve this in-house without having to call Ministry of Labour

If still at impasse

Moves to Stage 11

Step 1 Worker Continues to refuse with reasonable grounds

Step 2 Ministry of Labour is called to come and investigate

Step 3 Ministry of Labour will investigate in the presence of the Supervisor and the Health and Safety Representative.

Step 4 They will give a written decision

If Likely to Endanger they will give orders for corrective action

If Not Likely to Endanger then the worker will be required to continue with the work.

Please note the Ministry of Labour will not put someone back to work where they may be a danger.

Limited right of refusal. If the danger is inherent in the work then people who have high risk jobs have limited ability to refuse to do the work.

For example, a firefighter who has been trained, has the protective gear they cannot refuse to go fight the fire. They must go do their job.

But if let's say the brakes weren't working on the fire truck then yes they would have the right to refuse.

Another important section that goes along with the Work Refusal Process is

Reprisals by the Employer Prohibited

No Discipline, Dismissal etc. by Employer Shall,

50(1) No employer or person acting on behalf of an employer

- a) Dismiss or threaten to dismiss a worker;
- b) Discipline or suspend or threaten to discipline or suspend a worker;
- c) Impose any penalty upon a worker; or
- d) Intimidate or coerce a worker,

Review of Answers

You can list any of the main duties from Section 25 of the Act but the main point is to keep the workers safe.

The worker has the right to refuse.

No the Supervisor cannot send someone home if they refuse to work they are to remain in a safe place until it is resolved.

You can suggest here alternate safety measures such as use a signal person, take one load at a time, travel in reverse if your vision is obstructed going forward.

Understanding Offences and Penalties found in Section 66 of the Act

PART IX OFFENCES AND PENALTIES

Penalties

66 (1) Subject to subsections (2) and (2.1), every person who contravenes or fails to comply with,

- (a) a provision of this Act or the regulations;
- (b) an order or requirement of an inspector or a Director; or
- (c) an order of the Minister,

is guilty of an offence and on conviction is liable to a fine of not more than **\$500,000** or to imprisonment for a term of not more than twelve months, or to both.

Please note these are individual fines, could be for the Supervisor, Employee etc and this is per contravention.

Same (These fines below are for the company)

(2) If a corporation is convicted of an offence under subsection (1),

- (a) the maximum fine that may be imposed upon the corporation is **\$2,000,000**; and
- (b) for a second or subsequent offence that results in the death or serious injury of one or more workers in a two-year period, the minimum fine that may be imposed is **\$500,000**.

Same

(2.1) A director or officer of a corporation who contravenes or fails to comply with section 32 is guilty of an offence and on conviction is liable to a fine of not more than **\$1,500,000** or to imprisonment for a term of not more than twelve months, or to both.

If you are found guilty of the offence then you must pay your fine and or do your jail time.

What can we do to protect ourselves.

Being able to show due diligence.

Examples of Due Diligence include:

1. Documentation
2. Show training records
3. Show Inspection Reports
4. Show Hazard Reporting and Corrective Action
5. Purchasing Protective Equipment
6. Signage to show where PPE is required
7. Maintenance Logs
8. Equipment Service Logs
9. Established Written Policies and Procedures
10. Enforcement by Supervisors of the company rules.

These are all examples only the idea is to make sure you document and maintain those documents.

Work Hard to Keep Your Workplace Safe!

Thank you for Participating

You will continue with the Accident Investigation Module and the Workplace Inspection Module.