



ONTARIO ENGLISH
**Catholic
Teachers**
ASSOCIATION

a teacher's guide to the

Occupational Health and Safety Act

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NOTE: The *Occupational Health and Safety Act* uses the terms of “worker, supervisor, employer and trade union” throughout the Act and regulations. The Association has interchanged the terms of teacher and worker, principal/ vice-principal and supervisor, board and employer, and the Association and trade union throughout the document.

introduction

The *Occupational Health and Safety Act* came into law in 1979. Teachers were included under the Act through Regulation 857 in 1984. Major changes to the Act occurred in 1990 with the passage of Bill 208 and more recently with the *Economic Development and Workplace Democracy Act* in 1999. Not all changes have served the best interests of workers in Ontario. This guide is to assist you in understanding the *Occupational Health and Safety Act* and its relevance to you as a teacher worker in the province of Ontario.

The guide is designed to provide you with basic information and interpretation of the Act. It answers questions about your rights and your school board's obligations as an employer. There are references to the various sections of the Act after each topic or statement.

Teachers are often unaware of the importance of health and safety in the school setting. Sometimes there is a feeling that the school building can't be that dangerous. However, carcinogens such as friable asbestos have been found in schools even in the year 2000. Teachers have been exposed to unsafe drinking water. Mould has been found in many of the portables and classrooms across the province. All of the medical implications regarding these contaminants have been documented through the hard work of health and safety activists and members of Joint Health and Safety Committee (JHSC). Only recently has the Workplace Safety and Insurance Board recognized the relationship between work and occupational disease such as cancer. There are

many areas that remain untested or unrecognized for compensation benefits.

Thousands of Canadian workers are killed or are injured on the job every year. It is fortunate that many teachers have not been part of the death statistics. However, many teachers are injured each year at work and have suffered permanent damage as a result. The Ontario English Catholic Teachers' Association, your union, must remain deeply committed to strengthening the laws that govern health and safety in the province. We must remain vigilant in retaining the rights of teachers and other educational workers to the protection afforded under the *Occupational Health and Safety Act*.

The continued protections of health and safety law will not come automatically. Change will not occur because the experts have confirmed the health risks and dangers. It will only come when all workers, teachers included, and their representative unions refuse to be poisoned and maimed on the job.

Your knowledge is important in securing that message and that commitment. It is a matter of survival. As the Ontario Federation of Labour so aptly stated, "It's your life; don't leave work without it." This guide has been prepared to assist you as a teacher in these efforts.

PART A

application of the Act

1. WHO IS COVERED BY THE OCCUPATIONAL HEALTH AND SAFETY ACT?

>> *The Occupational Health and Safety Act*, as amended in 1990 by Bill 208, covers the majority of workplaces in Ontario.

>> A workplace is wherever the worker performs work. In the case of teachers, this could mean the space that is rented or leased as a classroom or other teaching facility.

>> The Act applies to workers, employers, supervisors, contractors, owners of premises and suppliers of materials and equipment.

>> It also covers people who hold logging licenses under the *Crown Timbers Act* and self-employed workers.

>> It applies to teachers working in elementary, secondary and university settings.

2. WHO IS NOT COVERED BY THE ACT?

>> The Act does not apply to farming operations and work performed by the owner/occupant or domestic servants in a private residence.

Sec. 3 Sub.1 and 2

>> The Act does not apply to workplaces under the jurisdiction of the federal government of Canada, such as post offices, airlines and airports, the telecommunications sector and inter-provincial transportation services.

3. WHAT IS THE INTERNAL RESPONSIBILITY SYSTEM?

>> Management and employees influence what a workplace is like and so the parties share responsibility for making the workplace safer and healthier.

- >> The Act outlines the responsibilities and duties of all the workplace parties.
- >> Employees and management are keys to the system. The Ministry of Labour is an essential part of the system as well. Commitment of all the parties, support and back up are necessary for success.
- >> The Internal Responsibility System is not described in the Act and a particular section is not referenced.
- >> The Internal Responsibility System can only work if the parties make a commitment to its success.
- >> An Internal Responsibility System does not remove the obligations of the school boards to ensure that there is a healthy and safe work environment.
- >> Collective agreements can improve upon the provisions in the Act and make the Internal Responsibility System more accountable.

4. ARE SCHOOL PRINCIPALS AND VICE-PRINCIPALS DEFINED AS WORKERS UNDER THE ACT?

- >> Principals and vice-principals are considered to be management or supervisors under the provisions of this Act.
- >> All teachers are considered to be workers under the Act whether you are part-time or full-time, elementary or secondary or occasional.

PART B

duties and responsibilities

1. WHAT ARE THE DUTIES OF THE SCHOOL BOARD AS EMPLOYER?

The school board must:

>> Take all reasonable precautions for the protection of teachers. This includes taking appropriate measures to protect susceptible or disabled workers.

Sec. 25 Sub. 2(h)

>> Provide information, instruction and supervision for the protection of workers.

Sec. 25 Sub. 2(a)

>> Ensure that all supervisors have a working knowledge of the Act and regulations as well as any actual or potential hazards at the workplace.

Sec. 25 Sub. 1(a)(b)(d)

>> Ensure that all equipment required by the Act or regulations is provided, maintained in good condition and used properly by workers.

Sec. 25 Sub. 1(a)(b)(d)

>> Develop and review annually a written health and safety policy, post it in the workplace, and maintain a program for its implementation.

Sec 25. Sub. 2(j)(k)

>> Ensure that work practices required by the Act and regulations are carried out.

Sec. 25 Sub. 1(c)(d)

>> Ensure that health and safety committees and representatives are selected as required.

Sec. 8 Sub. 1, Sec. 9 Sub. 4

>> Cooperate and afford assistance to the joint committee and its members, and health and safety representatives in

carrying out their duties.

Sec. 25 Sub. 2(e)

>> Give a written response to joint committee recommendations within 21 days. This must include a timetable for implementation or reasons for not agreeing with the recommendations.

Sec. 9 Sub. 20 and 21

>> Provide joint committees with any health and safety reports in its possession.

Sec. 25 Sub. 2(l)

>> Advise workers of the results of any health and safety tests in their possession and make copies available upon request.

Sec. 25 Sub. 2(m)

>> Provide a medical surveillance program for workers where required by regulation, pay for all medical tests and travel expenses, and provide paid time off work.

Sec. 26 Sub. 1(h)(i) and Sub. 3

>> Carry out training programs for workers, supervisors and committee members where required by regulation.

Sec. 26(l)

>> Provide written notices within 48 hours to the Ministry of Labour (MOL), joint committee, health and safety representative and the trade union when workers are killed or critically injured.

Sec. 51 Sub. 1

>> Provide written notice to the Ministry of Labour, joint committee, health and safety representative and the trade union when workers are disabled or require medical attention as a result of an accident, fire or explosion.

Sec. 52 Sub. 1

>> Give written notice of any occupational illness of current and former employees to the joint committee, the trade union and the director within four (4) days of being advised

of such an illness or where a WSIB claim has been filed for such an illness.

Sec. 52 Sub. 2 and 3

>> Post inspectors' orders in the workplace and provide joint committees and health and safety representatives with copies of the orders.

Sec. 57 Sub. 10

2. WHAT ARE THE DUTIES OF SUPERVISORS (PRINCIPALS AND VICE PRINCIPALS)?

A supervisor must:

>> Ensure that teachers and other workers comply with the Act and regulations.

Sec. 27 Sub. 1(a)

>> Ensure that teachers and other workers wear or use required protective equipment, and follow all required measures and procedures.

Sec. 27 Sub. 1(b)

>> Advise teachers and other workers of all existing and potential hazards.

Sec. 27 Sub. 2(a)

>> Provide written instruction to teachers and other workers on measures and procedures to be taken where required.

Sec. 27 Sub. 2(b)

>> Take all precautions reasonable in the circumstance for the protection of teachers and other workers.

Sec. 27 Sub. 2(c)

>> The supervisor is responsible to ensure that teachers and other workers follow all safety procedures. It is not enough to warn teachers and other workers about dangers or safety rules, and then turn a blind eye to violations. They must tell teachers and other workers about the hazards and ensure that they follow the safety procedures.

PART C

teachers' rights and duties

1. AS A TEACHER EMPLOYEE, HOW DO I HAVE A "SAY" IN HOW THINGS ARE DONE?

Under the Act you do have a "voice." The Act provides all workplace parties with three basic rights.

The Right To Know – You are entitled to receive information on issues that affect your health and safety or that of other persons in your workplace.

The Right To Refuse – You have the right to refuse work that you believe is unsafe or unhealthy.

The Right To Participate – You can participate on Joint Health and Safety Committees or be a Health and Safety Representative. You can report unsafe conditions, voice your concerns with respect to any issue that affects your health and safety, or that of the workplace.

2. HOW DO TEACHERS ACCESS THE HEALTH AND SAFETY INFORMATION THAT THEY NEED?

Communication is everyone's responsibility. Some of the items in the Act which facilitate good communication are outlined below.

>> The school board must respond to a written request regarding a recommendation from the Joint Health and Safety Committee within 21 calendar days. The response must state agreement and provide a timeline and a plan for implementation or must state the reasons for disagreement.

>> The school board must provide the reports on testing, inspections and other information to the JHSC.

>> The minutes of the JHSC meetings must be posted at each worksite along with the names of the JHSC members.

>> A copy of the Act must be posted in a designated location for health and safety information.

>> A worker member of the JHSC must inspect the worksite monthly or a portion of the worksite must be inspected monthly. The inspection reports must go to the JHSC for review.

>> The JHSC is entitled to information regarding testing for health and safety purposes. (e.g. testing for E-coli bacteria). The JHSC must be consulted about workplace testing and must be permitted to have a committee member of the workers in attendance at the beginning of the testing to validate the procedures and/or results if the worker members of the JHSC indicate such.

>> The JHSC can make recommendations for ways to improve health and safety such as training programs, testing that should be done, types of inspections that should take place.

3. WHAT ARE THE DUTIES OF WORKERS?

The *Occupational Health and Safety Act* sets out particular duties and responsibilities for the worker.

A teacher must:

>> Work in compliance of the Act and regulations.

Sec. 28 Sub. 1(a)

>> Use or wear any equipment, protective device or clothing and follow all procedures that the school Board requires.

Sec. 28 Sub. 1(a)

>> Report all safety defects in equipment or missing protective devices or workplace hazard to the school administration or the school board.

Sec. 28 Sub. 1(c)(d)

>> Report any known violation of the Act and regulations to the school administration or the school board.

Sec. 28 Sub. 1(d)

>> Not remove or make ineffective any required protective devices required by the school board or the regulations.

Sec. 28 Sub. 2(a)

>> Not use dangerous equipment or work in such a way that would endanger others. A teacher has a legal obligation to refuse work in such a situation.

Sec. 28 Sub. 2(b)(c)

PART D

joint health and safety committees

1. WHAT IS A JOINT HEALTH AND SAFETY COMMITTEE?

A Joint Health and Safety Committee is an advisory body that is required by law. The JHSC is made up of management and worker representatives.

- >> The number of management representatives *cannot* be greater than the number of worker representatives.
- >> The worker representatives are selected by their respective trade unions. If there is no organized trade union, the worker representative is selected by the workers in that work classification.
- >> A Joint Health and Safety Committee is required where there are twenty or more workers. All workers are counted including part-time workers.
- >> The school board is responsible for establishing the Joint Health and Safety Committee.
- >> Teachers can have separate JHSC from other workers if they so choose.
- >> The names and workplaces of the members of the JHSC must be posted in every worksite.
- >> The JHSC must have two co-chairs; one selected by the worker representatives and one appointed by the management representatives.
- >> The minimum size for the JHSC is four where there are more than fifty workers and two where there are less than fifty workers. As a general guide, the JHSC should be large enough so that all health and safety concerns can be addressed. All trade unions should be represented.

>> Each trade union has the right to have a separate Joint Health and Safety Committee unless ordered differently by the Minister of Labour.

2. HOW DOES THE JOINT HEALTH AND SAFETY COMMITTEE OPERATE?

>> The JHSC must meet at least once every three months. The JHSC can establish a different schedule as long as it meets this requirement. Larger jurisdictions with more workers and worksites should have more frequent meetings. Both the management and the worker representatives must agree upon an increase in the number of meetings on the JHSC.

Sec. 9 Sub. 33

>> Members of the Joint Health and Safety Committee are entitled to one (1) hour of paid time for preparation for the meeting. Usually the worker representatives use this time to review the minutes and discuss any health and safety issues that they may want to raise with the school board. The JHSC can decide that more paid time is required.

Sec. 9 Sub. 34(a)

>> Members of the JHSC are also paid for time spent in carrying out their duties regarding inspections, testing, training and other matters. The rate of pay is the regular rate, or, where applicable, their premium rate of pay. Teachers on health and safety committees should not perform any of these duties outside the instructional day. Any training for teachers such as WHMIS should be done during the instructional day.

Sec. 9 Sub. 34

>> The JHSC must keep a record of its meetings and make these available to a MOL inspector if requested.

Sec. 9 Sub. 22

>> At least two members of the JHSC must be certified; one

representative of the workers selected by the worker members of the JHSC and one management representative selected by management.

Sec. 9 Sub. 12

>> The joint committee makes recommendations to the school board regarding health and safety concerns. These recommendations must be responded to within 21 days.

Sec. 9 Sub. 20 and 21

3. CAN THE SCHOOL BOARD HAVE MORE THAN ONE JOINT HEALTH AND SAFETY COMMITTEE?

>> The school board can have a JHSC for each trade union or a combination of trade unions can form a JHSC. Most of the school boards have only one JHSC with representatives from all of the bargaining agents and non-unionized worker groups. The trade unions must agree to only one JHSC unless ordered by the Minister of Labour otherwise.

4. CAN THE SCHOOL BOARD INTERFERE WITH OR OBSTRUCT THE JHSC?

>> No. The law clearly forbids anyone from interfering, obstructing or providing false information to members of the JHSC. Complaints should be filed immediately with the Ministry of Labour inspector should any obstruction occur.

Sec. 62 Sub. 5

>> If a teacher or a JHSC member or the trade union believes that the school board has acted in contravention to the Act in this regard, contact should be made to the Unit President or the Contract Management Department at the provincial office prior to filing the complaint with the Ministry of Labour.

PART E

multi-site boards and JHSC

1. CAN YOU HAVE ONE JOINT COMMITTEE OVER MULTIPLE WORKSITES WHERE A JOINT COMMITTEE IS REQUIRED AT EACH?

School boards have more than one worksite. Each school or building is a workplace under the Act and a Joint Health and Safety Committee is required at each workplace where there are twenty or more workers. However, Section 9 Subsection 3.1 gives the Minister of Labour the power to issue an order that permits the school board to establish one joint committee for more than one workplace. It is important to note the following:

>> A single joint committee for multiple worksites is illegal unless ordered by the minister under Section 9 (3.1).

>> A submission must be made by the workplace parties which includes a signed agreement between the union(s) and the school board which spells out the complete details on how the joint committee is to function.

>> The Minister will assess the submission based on the criteria set out in Section 9.5 as well as any additional criteria such as location and distance between worksites, travel and related costs, and the ability of the members to perform their duties.

>> The process is initiated with a letter and a submission to the Regional Director at the Ministry of Labour who has been delegated to consider the request and authorized to issue an order.

>> Any school board and any trade union that is not operating under these requirements are not in compliance with the Act.

PART F

right to refuse unsafe work

1. DO TEACHERS HAVE THE RIGHT TO REFUSE UNSAFE WORK UNDER THE ACT?

Teachers have the right to refuse work that they believe may endanger their health and safety or the health and safety of other workers.

>> Under Regulation 857, teachers must ensure that the life, health and safety of the students in their care are not in imminent jeopardy when the teacher exercises a work refusal. *Teachers can bring students to the office with them when the teacher informs the principal of the work refusal or can make arrangements for their supervision by another teacher or adult during this process. At no time should a teacher leave the students unsupervised.*

>> A teacher can refuse work:

- (i) if the physical condition of the workplace or the workstation (classroom) is likely to endanger the teacher;
- (ii) if any machinery or equipment or tool that the teacher is using or is told to use is likely to endanger the teacher or another worker;
- (iii) if any equipment, tool or machinery that the teacher is using or the physical condition of the workplace is in contravention of the Act or regulations and is likely to endanger the teacher or another worker.

>> Conditions do not have to be immediately life threatening for a worker to refuse.

>> While the language of the Act does not refer to a person, activity or biological agent that might endanger the worker, a teacher could refuse to work on these grounds since he or she can be considered as part of the physical condition or work process of the worksite. *If a teacher has encountered a*

situation where there is a fear for their safety due to violence or potential violence from students, workers, parents or other persons, the teacher should exercise their right to a work refusal. If the remedy is unsatisfactory to the teacher, the teacher should contact the Unit President or the Contract Management Department at the provincial office immediately. There is case law regarding this issue and concerns have been raised with the Workplace Safety and Insurance Board on the matter.

>> A teacher can also refuse if the unsafe condition is a result of the employer not taking all reasonable precautions for the protection of teachers and other workers. This would be a contravention of Section 25 Sub. 2(h) of the Act.

2. WHAT PROCEDURES MUST BE FOLLOWED WHEN A WORK REFUSAL IS INVOKED?

Under the Act, the following procedures must be followed if there is a work refusal:

Stage I

>> The teacher must report the work refusal and the circumstances immediately to the principal or the school board. The teacher must remain in a safe place at work ensuring that his or her students are supervised appropriately or with the teacher in the alternate location.

>> The principal must make the joint committee member, the health and safety representative or the union representative available and investigate the circumstances in the presence of the teacher and the representative.

>> The principal must make a determination that the work is safe or unsafe. If the teacher is satisfied that the work is safe, the teacher should return to work and the matter is considered resolved.

Stage II

>> If the teacher has reasonable grounds to continue to believe that the work is unsafe despite the answer of the

principal or the corrective measures, then the teacher can continue to refuse and a Ministry of Labour inspector must be called in to investigate.

Sec. 43 Sub. 6

>> The MOL inspector must investigate in the presence of the teacher, the principal and the union representative.

Sec. 43 Sub. 7

>> After the inspection, the MOL inspector must give a written decision as to whether the work is likely to endanger.

Sec. 43 Sub. 8 and 9

>> If the teacher disagrees with the MOL decision, an appeal can be filed within 30 days with the Ontario Labour Relations Board.

Sec. 61

3. WHAT HAPPENS TO THE TEACHER WHILE THE PARTIES ARE WAITING FOR THE MINISTRY OF LABOUR INSPECTOR?

>> While waiting for the MOL inspector, the teacher must remain in a safe place near the worksite unless the employer assigns some other reasonable work during normal working hours. If no such other work exists, the school board can give other directions to the teacher. The provisions of the collective agreement may cover this. *For teachers, this usually means a reassigned classroom in the school. Any other reassignment should be discussed with the Unit President and the Contract Management Department at the provincial office.*

4. CAN THE WORK THAT WAS REFUSED BE ASSIGNED TO ANOTHER TEACHER?

>> Yes. The school board may ask another teacher to do the work while waiting for the MOL inspector. The second teacher must be told in the presence of a joint committee

member that there was a work refusal and the reasons for the refusal. The second worker has the same right as the first worker. *Your collective agreement may contain additional clauses that deal with the assignment of such work for either the first or second worker. Make sure that you have spoken to your union.*

5. IS THE TEACHER PAID DURING THE WORK REFUSAL?

>> Yes. Both the teacher who has exercised their right under the Act and the committee or union representative who attends to the work refusal must be paid.

PART G

freedom from discipline

1. CAN THE SCHOOL BOARD DISCIPLINE A TEACHER FOR REFUSING TO WORK?

>> No. The teacher has a right to the provisions of the Act. The school board cannot penalize, dismiss, suspend, or threaten to do any of these things to a teacher who has exercised his or her rights and followed the provisions of the Act. This also applies if a teacher is required to give evidence at an inquest or a prosecution under the Act.

2. WHAT CAN A TEACHER DO IF THERE WAS A REPRISAL?

>> The teacher should contact the Unit President or the Contract Management Department immediately. This is not an obligation in the Act.

>> The Association can assist the teacher in determining whether to proceed with a complaint to the Ontario Labour Relations Board (OLRB) or to file a grievance under the collective agreement.

Sec. 50 Sub. 2

>> There is no obligation to notify the Ministry of Labour. However, prior to acting on either of the above options, the MOL inspector can assist the parties in a role of a conciliator. The MOL cannot issue an order concerning an alleged reprisal.

>> If the complaint proceeds to the OLRB, the school board must prove that the discipline that was imposed on the teacher was the result of an improper refusal. The OLRB has the power to remove or change the penalty imposed on the worker.

Sec. 50 Sub. 5 and 7

PART H

hazardous substances

1. DOES A TEACHER HAVE A RIGHT TO KNOW ABOUT TOXIC SUBSTANCES AND HAZARDOUS MATERIALS?

>> The school board must give the teachers information on the hazards of any chemical, biological or physical agent.

Sec. 25 Sub. 2(a) and (d)

>> The school board must provide specific information on chemical and biological agents by labeling containers and providing material systems data sheets (MSDS) to the teachers under Regulation 860 Workplace Hazardous Materials Information System (WHMIS).

>> The school board must maintain an inventory of hazardous material with a floor plan showing the location and names of the hazardous materials set out in the Act.

>> The school board must ensure that teachers are trained to have a working knowledge of the information on MSDS and labels and on how to handle any of the hazardous materials.

summary

The contents of this guide do not provide you, the teacher, with all the requirements of the Act. It does give you a working knowledge and provides with a basic understanding. Further questions on health and safety issues can be directed to your Unit President or to the Contract Management Department.

Contract Management Department
Telephone: 416-925-2493/1-800-268-7230