



Ontario Health Care Health and Safety Committee
Under Section 21 of the Occupational Health and Safety Act

Guidance Note for Workplace Parties #6
Occupational Injury and Illness Reporting Requirements

March, 2014



About This Guidance Note

This Guidance Note has been prepared to assist the workplace parties in understanding their obligations under the *Occupational Health and Safety Act* (OHSA) and the regulations. It is not intended to replace the OHSA or the regulations and reference should always be made to the official version of the legislation.

It is the responsibility of the workplace parties to ensure compliance with the legislation. This Guidance Note does not constitute legal advice. If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, please contact your legal counsel.

While this Guidance Note will also be available to Ministry of Labour inspectors, they will apply and enforce the OHSA and its regulations based on the facts as they may find them in the workplace. This Guidance Note does not affect their enforcement discretion in any way.



Health Care Section 21 Committee¹
Guidance Note for Workplace Parties #6
Occupational Injury and Illness Notification/Reporting Requirements

Purpose of this Guidance Note

To assist the workplace parties understand the employer's obligations under the Occupational Health and Safety Act (OHSA) and relevant regulations to report workplace injuries and illnesses.

Introduction

There are legal requirements in Ontario under the OHSA for employers to report where a person is killed or critically injured at a workplace, where a person is disabled from performing his or her work or requires medical attention because of an accident, explosion, fire or incident of workplace violence or if an employer is told that a worker has an occupational illness or that a claim for an occupational illness has been filed with the Workplace Safety and Insurance Board (WSIB) at the workplace where there is no fatality or critical injury. In workplaces, this requirement could apply to infections acquired by workers in the workplace.

The Ontario Ministry of Labour (MOL) actively enforces these requirements and regularly includes a focus on compliance with these requirements as part of its Health Care Sector Plan.

In this Guidance Note the following topics will be discussed:

- Reporting requirements for workplace fatalities and critical injuries
- Reporting requirements for workplace non-critical injuries (including workplace violence)
- Reporting requirements for occupational disease or illness

Work-related injury or illness may be acute, but may also include illnesses or injuries with delayed, gradual or cumulative onset, such as musculoskeletal disorders (MSDs) e.g. lower back pain, tendonitis, bursitis, carpal tunnel syndrome or rashes.

While it is generally straightforward to understand an employer's reporting requirements when there has been a sudden or traumatic event resulting in a workplace injury, other circumstances may lead to questions about whether or not an injury or illness needs to be reported. Following the section below describing the legal requirements, are examples of situations which frequently give rise to questions about reporting obligations under the OHSA.

¹ The Ontario Health Care Health and Safety Committee under Section 21 of the *Occupational Health and Safety Act* (the "Health Care Section 21 Committee") was announced by the Minister of Labour on September 18, 2006. The July 11, 2006 Terms of Reference set out the mandate of the Health Care Section 21 Committee. The Objective of the Health Care Section 21 Committee is to advise and make recommendations to the Minister of Labour on matters relating to occupational health and safety of all health care workers in Ontario. The Scope of the Health Care Section 21 Committee is to review occupational health and safety issues related to health care workers that have provincial impact.

Relevant Legislation

Occupational Health and Safety Act

R.S.O. 1990, CHAPTER O.1

Notice of death or injury

51. (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe. R.S.O. 1990, c. O.1, s. 51 (1); 2011, c. 1, Sched. 7, s. 2 (7).

Preservation of wreckage

- (2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,
- (a) saving life or relieving human suffering;
 - (b) maintaining an essential public utility service or a public transportation system; or
 - (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1990, c. O.1, s. 51 (2).

Notice of accident, explosion, fire or violence causing injury

52. (1) If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:

1. The committee, the health and safety representative and the trade union, if any.
2. The Director, if an inspector requires notification of the Director. 2001, c. 9, Sched. I, s. 3 (12); 2009, c. 23, s. 5.

Notice of occupational illness

(2) If an employer is advised by or on behalf of a worker that the worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker, the employer shall give notice in writing, within four days of being so advised, to a Director, to the committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed. R.S.O. 1990, c. O.1, s. 52 (2); 1997, c. 16, s. 2 (12).

Idem

(3) Subsection (2) applies with all necessary modifications if an employer is advised by or on behalf of a former worker that the worker has or had an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker. R.S.O. 1990, c. O.1, s. 52 (3); 1997, c. 16, s. 2 (13).

Occupational Health and Safety Act
ONTARIO REGULATION 67/93
HEALTH CARE AND RESIDENTIAL FACILITIES

NOTICE OF ACCIDENTS

5. (1) If a worker is killed or critically injured at a facility, the written report required by subsection 51 (1) of the Act shall include,

- (a) the name and address of the employer;
- (b) the nature and circumstances of the occurrence and of the bodily injury sustained;
- (c) a description of the machinery or thing involved, if any;
- (d) the time and place of the occurrence;
- (e) the name and address of the person who was critically injured or killed;
- (f) the names and addresses of all witnesses to the occurrence;
- (g) the name and address of the physician or surgeon, if any, who is attending to or attended to the injured or deceased person; and
- (h) the steps taken to prevent a recurrence. O. Reg. 67/93, s. 5 (1).

(2) If an accident, explosion or fire causes injury to a worker at a facility that disables the worker from performing his or her usual work, the written notice required by subsection 52 (1) of the Act shall include,

- (a) the name and address of the employer;
- (b) the nature and circumstances of the occurrence and of the bodily injury sustained by the worker;
- (c) a description of the machinery or thing involved, if any;
- (d) the time and place of the occurrence;
- (e) the name and address of the worker who was injured;
- (f) the names and addresses of all witnesses to the occurrence;
- (g) the name and address of the physician or surgeon, if any, who is attending to or attended to the worker for the injury; and
- (h) the steps taken to prevent a recurrence. O. Reg. 67/93, s. 5 (2).

(3) If an accident, explosion or fire at a facility causes injury requiring medical attention but does not disable a worker from performing his or her usual work, the employer shall keep a record of that occurrence and the record shall include,

- (a) the nature and circumstances of the occurrence and of the injury sustained;
- (b) the time and place of the occurrence;
- (c) the name and address of the injured worker; and
- (d) the steps taken to prevent a recurrence. O. Reg. 67/93, s. 5 (3).

(4) The record kept by the employer under subsection (3) for inspection by an inspector shall be notice to a Director. O. Reg. 67/93, s. 5 (4).

(5) The written notice required under subsection 52 (2) of the Act if an employer is advised that a worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board shall include,

- (a) the name and address of the employer;
- (b) the nature of the occupational illness and the circumstances which gave rise to such illness;
- (c) a description of the cause or the suspected cause of the occupational illness;
- (d) the period when the worker was affected;
- (e) the name and address of the worker who is suffering from the occupational illness;
- (f) the name and address of the physician, if any, who is attending to or attended to the worker for the illness; and
- (g) the steps taken to prevent further illness. O. Reg. 67/93, s. 5 (5); O. Reg. 25/09, s. 2.

The above applies to workplaces covered by the *Health Care and Residential Facilities Regulation* and includes hospitals, long-term care facilities, developmental services, laboratories, psychiatric facilities (for a complete list of facilities see section Ontario Regulation 67/93.)

Occupational Health and Safety Act
R.R.O. 1990, REGULATION 834
CRITICAL INJURY — DEFINED

1. For the purposes of the Act and the Regulations,
“critically injured” means an injury of a serious nature that,
- (a) places life in jeopardy,
 - (b) produces unconsciousness,
 - (c) results in substantial loss of blood,
 - (d) involves the fracture of a leg or arm but not a finger or toe,
 - (e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,
 - (f) consists of burns to a major portion of the body, or
 - (g) causes the loss of sight in an eye. R.R.O. 1990, Reg. 834, s. 1.

Critical Injury/Fatality Reporting

To understand reporting requirements for critical injuries it is necessary to look at the OHSA subsection 51 (1) in conjunction with the critical injury regulation which defines “critically injured”. Reporting obligations require immediate notification by telephone or other direct means to an MOL inspector², Joint Health and Safety Committee (JHSC)/ Health and Safety Representative (HSR) and the trade union, and within 48 hours, the employer shall send to a Director of the Ministry of Labour a written report of the circumstances of the occurrence containing prescribed particulars and information.

The challenge sometimes facing an employer is whether a workplace injury fits the description of a critical injury as defined in Regulation 834 and whether consequently the employer must report it to the MOL inspector, the JHSC/ HSR and trade union. For example, sometimes it is not clear if a worker was “unconscious” or there are questions about whether a person has incurred a “substantial loss of blood”. If the employer is wrong in his/her determination and does not report a critical injury, it risks being in contravention of s. 51(1) of the OHSA. When in doubt, report to the MOL, the JHSC and the trade union as described above.

A Good Practice

When in doubt it is always better to report than to delay reporting a critical injury or not report at all.

² Telephone notification of a Ministry Labour inspector may be made at the Ministry of Labour Health & Safety Contact Centre at: Toll-free: 1-877-202-0008 or TTY: 1-855-653-9260 or Fax: 905-577-1316. Call any time to report critical injuries, fatalities or work refusals.

Questions also arise whether critical injuries or fatalities to persons other than workers in workplaces need to be reported under s.51 of the OHSA. This section of the Act requires an employer to report, “Where a person is killed or critically injured from any cause at a workplace” rather than referring to a “worker” who is killed or critically injured.

The Court of Appeal for Ontario has made it clear that in respect of this requirement “a proper interpretation of the Act requires that there be some reasonable nexus between the hazard giving rise to the death or critical injury and a realistic risk to worker safety at the site of the incident.”³

A Good Practice

When in doubt, report to the MOL, the JHSC/HSR and the Union.

Reporting Accidents and Incidents including incidents of Workplace Violence causing injury

An accident, explosion, fire or incident of workplace violence that results in a person being disabled from performing his or her usual work or requires medical attention and where no fatal or critical injury has resulted, must be reported in writing within four days of the occurrence to the JHSC/HSR and the Trade Union (as per the OHSA subsection 52 (1)). A Director may also have to be notified if an MOL inspector requires such notification.

The OHSA does not define “medical attention.” If a worker is accommodated with modified work and does not perform all of their usual work, this injury must be reported according to OHSA requirements.

Note: For WSIB reporting obligations refer to the Workplace Safety and Insurance Act (WSIA)

When in doubt, report the accident, explosion, fire or incident of workplace violence resulting in a person being disabled from performing his or her usual work or requires medical attention, and where no fatal or critical injury has resulted, to the JHSC/HSR and Trade Union.

Reporting Gradual Onset Injuries

It is often difficult to immediately determine if an injury is work-related when the symptoms of the injury gradually appear (such as MSDs). These injuries shall be reported to the JHSC/HSR and the Trade Union (as per the OHSA) four days from the occurrence of when the worker was disabled from performing their usual work or required medical attention and the worker believes or indicates it is related to their work.

Often employers wait to report these injuries while awaiting medical information from the worker’s physician. If the employer does not report the gradual onset injury once it is reported, it risks being in contravention of subsection 52(1) of the OHSA. When in doubt, report to the JHSC and the Union as required by the OHSA and regulations.

³ *Blue Mountain Resorts Ltd. v. Den Bok*, [2013] O.J. No. 520

Reporting Occupational Illness

As defined by OHSA, an “occupational illness” means a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits under the *Workplace Safety and Insurance Act, 1997*.

Infectious Disease

Some infections, such as hepatitis B virus (HBV), hepatitis C virus (HCV), tuberculosis, measles, scabies and noro-virus, may be acquired by workers in the workplace. Regardless of the type of infection, if an employer is advised by or on behalf of a worker that the worker has a workplace acquired infection it should be reported in accordance with subsection 52(2) of the OHSA and applicable regulations. The employer is required to report in writing to the Ministry of Labour-Director, JHSC/HSR and trade union within four days of being advised of the illness or symptoms. It is also a good practice to report when a worker has developed an illness or symptoms similar to those of a patient/resident/client or patients/residents/clients the worker has been exposed to.

OHSA subsection 52(2) references the WSIB as another way the employer may learn a worker has an occupationally acquired illness. A WSIB claim with respect to an occupational illness results in a requirement for the employer to provide notification to the Ministry of Labour Director, JHSC/HSR and Union.

The challenge sometimes facing an employer is whether or not to report a worker’s suspected workplace acquired infection to the MOL without laboratory confirmation which can take longer than four days. In these situations it should be noted that subsection 52(2) of the OHSA does not require laboratory confirmation of an occupational illness. Also, the requirement in section 5 of the Health Care and Residential Facilities Regulation (O. Reg. 67/93) made under the OHSA is to report “the **nature** of the occupational illness...” This should be interpreted to mean that a specific or confirmed diagnosis is not required before reporting to the MOL.

Another concern that can face a health care workplace is when an infectious disease outbreak involves a large number of workers. The question then arises whether all the ill workers have workplace-acquired infections or if there is a mixture of workplace-acquired and community-acquired disease. Given the seasonal prevalence of illnesses such the stomach-flu virus it can be difficult to determine community versus workplace (occupational) acquired disease.

It is always a good practice to do a thorough investigation in collaboration with your Infection Prevention and Control practitioner and the JHSC/HSR to determine if there was worker exposure to a patient/resident/client with a similar illness or infection, and the worker’s possible routes of transmission.

Some organizations are reluctant to report such worker illnesses to the MOL unless they have laboratory proof that the worker’s illness or other healthcare associated infection was acquired in the workplace. However, as laboratory confirmation of specific viral strains usually takes longer than four days, the employer may risk being in contravention of s.52 (2) if it waits for laboratory confirmation.

A Good Practice

Report suspected cases of occupationally acquired illness to the MOL Director, JHSC/HSR and Trade Union and follow-up with laboratory confirmation, elimination, or additional evidence as appropriate.

Occupational illness with long latency periods

It is often difficult to immediately determine if a worker's illness is work-related when the symptoms appear long after an exposure to a physical, chemical or biological agent. For example, a worker may develop an asbestos-related cancer years after a workplace exposure to asbestos.

These illnesses must be reported to the JHSC/HSR, the trade union and the Ministry of Labour Director (as required by ss.52(2) or (3) of the OHSA) when the worker or former worker or someone on their behalf advises the employer that they have an occupational illness or that a claim in respect of an occupational illness has been filed with the WSIB. The employer is required to report in writing to the Director, JHSC/HSR and trade union within four days of being advised of the illness or symptoms.

Often employers wait to report these illnesses while awaiting WSIB approval of the claim or because they do not have enough evidence of the worker's exposure to a particular physical, chemical or biological agent from years ago that could have caused the illness. If the employer does not report the illness once it is reported to them, it risks being in contravention of subsection 52 (2) or (3) of the OHSA. When in doubt, report to the Director, JHSC and the Union as required by the OHSA and its regulations.

Note: For WSIB reporting obligations refer to the Workplace Safety and Insurance Act (WSIA)

Motor Vehicle Accidents

To comply with OHSA ss.51(1), *any* motor vehicle accident fatally or critically injuring a worker: as a driver, passenger or pedestrian, while in the course of their employment, should be reported immediately to an MOL Inspector, the JHSC/HSR and the Trade Union (as required by the OHSA) when the employer learns of the incident. If the worker required medical attention or was disabled from performing their usual work because of the incident, the employer shall comply with the reporting requirements in ss.52(1) and must report in writing within four days of the occurrence to the JHSC/HSR and the Trade Union (as per the OHSA subsection 52 (1)).

If the employer does not report the injury caused by the motor vehicle accident, it risks being in contravention of sections 51 or 52 of the OHSA. When in doubt, report to the MOL, the JHSC and the Union as per the OHSA.

Reporting needlestick/medical sharps injuries and illnesses

OHSA requires employers to report workers' needlestick/medical sharps injuries to the JHSC/HSR and trade union (as required by subsection 52(1) of the OHSA) when a worker has sought medical attention or is disabled from performing their usual work. Note the OHSA distinction between injury and illness. When a worker experiences a needlestick/medical sharps injury, it is not known whether an

occupational illness will result. It may be weeks or months, before the worker knows that they have or have not developed an illness from the injury.

If a worker advises their employer that they have developed an occupational illness as a result of the needlestick/ medical sharps injury, the employer must report it according to the occupational illness reporting requirements of OHSA (subsection 52(2)). The employer must report the illness to the JHSC/HSR, trade union and the Director when the worker advises the employer of the occupational illness or that a claim in respect of an occupational illness has been filed with the WSIB (it does not depend on the WSIB's acceptance of the claim).

Note: For more information about WSIA reporting requirements refer to the WSIA and WSIB Policy #15-01-02 “Employer’s Initial Accident-Reporting Obligations.”

References

Workplace Safety and Insurance Act http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97w16_e.htm

Workplace safety and Insurance Board Policy 15-01-02
<http://www.wsib.on.ca/en/community/WSIB/230/PolicyLanding/24346?vnextoid=15cc8588e7a4e110VgnVCM1000000e18120aRCRD>



Appendix A

Legislation, Codes, Standards and Guidelines

Workplace parties when following this guidance note should consider existing legislation, codes, standards and good practices such as the following:

Ministry of Labour Publications

Readers are encouraged to review the OHSA and its applicable regulations, focusing particular attention on the duties of workplace parties, when developing training, measures and procedures using the best available information.

Current versions of the OHSA and its regulations are available for free download from the Government of Ontario e-Laws site:

<http://www.e-laws.gov.on.ca/navigation?file=home&lang=en>

Report an Incident

<http://www.labour.gov.on.ca/english/hs/incident.php>

[A Guide to the Occupational Health and Safety Act — Part III. Duties of Employers and Other Persons](#)

Guidance Notes

Pandemic H1N1 Influenza Recovery Section 21 GN2 (released January 18, 2010)

OHS Education and Training GN3 (released, October 26, 2010)

Effective Communications OHS Processes Section 21 GN1 (released January 07, 2010)

Other Information

Web sites of the various healthcare unions, employers, associations and Health and Safety Associations also have additional information, including documents that outline a step-by-step process to help joint health and safety committees and health and safety representatives ensure workplace compliance, and sample written recommendations that can be tailored to the needs of individual workplaces.



Health Care Section 21 Committee Process and Purpose of Guidance Notes Appendix B

Process

This document has been developed by the management and labour representatives of the Ontario Health Care Health and Safety Committee appointed under Section 21 of the Occupational Health and Safety Act (OHSA) to ensure that appropriate, consistent information is made available to health care workplaces, to support them in assessing practice against legislative requirements and recommended good practices.

Purpose

Health Care *Guidance Notes* are intended for all healthcare organizations, to provide advice to workplace parties related to legislative requirements and good practices applicable to the prevention of illness and injury to health care workers. Health Care *Guidance Notes* are applicable to all organizations that provide healthcare, treatment, diagnostic services, personal care and/or supportive services in either healthcare organizations, community service agencies and emergency medical services.

The intent of *Guidance Notes* is to assist the workplace parties in achieving compliance with the *Occupational Health and Safety Act* as well as sharing good practices. *Guidance Notes* are also intended to assist other parties who play decision-making roles that may impact occupational health and safety (OHS) in the health care sector.

Although the actual intent of *Guidance Notes* is to assist the workplace parties in achieving compliance with the *Occupational Health and Safety Act* and sharing good practices, Ministry of Labour inspectors may use *Guidance Notes* as an additional resource when conducting inspections and investigations.

Health Care *Guidance Notes* have been prepared and approved by the Members of the Health Care Section 21 Committee.

The Committee membership includes:

Members for Organized Labour:

- Unifor <http://www.unifor.org/>
- Canadian Union of Public Employees (CUPE) <http://cupe.ca>
- Ontario Federation of Labour (OFL) <http://www.ofl.ca>
- Ontario Nurses' Association (ONA) <http://www.ona.org>
- Ontario Public Service Employees Union (OPSEU) <http://www.opseu.org>
- Service Employees International Union (SEIU) <http://www.seiu.org>

Members for Employers:

- Ontario Association of Community Care Access Centres (OACCAC) <http://www.ccac-ont.ca>
- Ontario Association of Non-Profit Homes and Services for Seniors (OANHSS) <http://www.oanhss.org>
- Ontario Community Support Association (OCSA) <http://www.ocsa.on.ca>
- Ontario Home Care Association (OHCA) <http://www.homecareontario.ca>
- Ontario Hospital Association (OHA) <http://www.oha.com>
- Ontario Long Term Care Association (OLTCA) <http://www.oltca.com>

Additional resources include

Observers:

The Ministry of Health and Long-Term Care (MOHLTC),
The Ministry of Community and Social Services (MCSS), and the
Public Services Health and Safety Association (PSHSA)

Facilitator:

The Ministry of Labour