February 13, 2024 |

Briefs

Submission to the WCB on Part 3, General Risk Management

A pdf of the complete submission can be found here(313 KB).

Introduction

The BC Federation of Labour (“BCFED,” “Federation”) appreciates the opportunity to provide our recommendations with respect to the proposed amendments for Part 3 Rights and Responsibilities, General Risk Management, Section 3.01.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals working in every aspect of the BC economy.

The Federation is recognized by the Workers’ Compensation Board (“WCB,” “Board”) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers.

The BCFED is pleased to have the opportunity to participate in the consultation on the proposed General Risk Management regulation.

We urge the Board of Directors to seriously consider our recommendations so we meet our goal to ensure that BC health and safety regulations set standards that will prevent workers from injury and

death.

This submission was prepared in consultation with our affiliates.

Submission

Part 3: Consultation on proposed General Risk Management regulation

General Risk Management

Section 3.01(1)

According to the Explanatory Notes, the intent of the proposed regulation is to provide a framework for hazards not currently in the *Occupational Health and Regulation* (“OHSR”), to bridge the gap between the *Workers Compensation Act* (“WCA”) and the OHSR. And to complement hazard-specific sections of the OHSR. The new regulation is not intended to replace existing hazard specific risk management requirements in other regulations.

The BCFED strongly supports the proposed regulation that will clearly mandate all employers to implement a robust and comprehensive plan to identify, assess and control workplace hazards.

The BCFED regularly hears from our affiliates that employers across the spectrum--large, medium and small, fail to develop a plan to conduct the basics of identification, assessment and control of workplace hazards.

This is hardly surprising. The WCB has failed to ensure this fundamental principle of health and safety: to conduct the proper identification, assessment and controlling of workplace hazards is required explicitly in all regulations in the OHSR. A quick scan of the OHSR found some regulations focus only on conducting a risk assessment (Avalanche Control, Emergency Procedures, Prevention of Workplace Violence), other regulations include requirements to conduct hazard assessment and risk control (Confined Space and Traffic Control) and the rare regulation mandates the full process of

hazard identification, assessment and control (Working Alone, Ergonomics). And some have no requirement at all (indoor air quality, fall protection, lockout).

All of this points to the critical need for the new general duty regulation.

The BCFED is concerned the proposed title “General Risk Management” of the regulation and the proposed title of Section 3.01 “Hazard identification and risk management” do not meet the intent of the proposed regulation. The primary purpose of the proposed language must be to establish the requirement for employers to implement a three-step process to control workplace hazards, as described in the Explanatory Notes:

1. Identifying hazards at the workplace;
2. Assessing the risk from the hazards; and
3. Controlling the risk from the hazards.

We agree with the BCGEU’s concern that the term “risk management” in not used in the WCA or the OHSR, nor is it defined in any OHS legislation or regulation. There are many definitions of “management” determined from the perspective of those doing the defining,

> It is very difficult to give a precise definition of the term **'management'**. Different scholars from different disciplines view and interpret management from their own angles. The economists consider management as a resource like land, labour, capital and organisation. The bureaucrats look upon it as a system of authority to achieve business goals. The sociologists consider managers as a part of the class elite in the society.[1]

What is clear from the many definitions is “management” is a term often used in the context of business, finance and politics. It is not used in the context of workplace occupational health and safety within our regulatory framework.

Risk Management used as the title emphasises a part of the process that is not only undefined but misses the three steps of hazard identification, assessment and control.

Alberta's description of the requirements in their OHS Code Part 2 as "Hazard Assessment, Elimination and Control Hazard assessment," is another option that more accurately describes the complete process. [2]

Introducing new and undefined terms does not improve the consistency and clarity the BCFED has supported over the years of our regulatory work. Our primary focus is to ensure that regulatory language is consistent throughout the OHSR, improving accessibility and understanding for workers, employers and WCB officers.

Recommendation

Therefore, the BCFED urges the WCB to further amend the title of the regulation "General Risk Management" and the title of Section 3.01 to "Hazard Identification, Assessment and Control" to elevate the importance of the whole process.

Section 3.01(1) (a) directs the employer to identify every known or reasonably foreseeable hazard at the workplace. The BCFED is pleased to see this language which refers to the requirement in the WCA, Part 2, Division 4, Section 21, General Duties of Employers, Subsection (21)(2)(b)(i).[3]

Section 3.01(1) directs employers to identify all workplace hazards, assess the hazard risk and either eliminate or control the hazard to minimize the risk. The BCFED strongly believes the effectiveness of this process can be improved by considering the principles of equity, diversity and inclusion. The prohibited grounds of Canada's *Charter of Human Rights*; age, gender, disability, race, religion and ethnicity can affect whether hazards are identified and assessed effectively and control measures are implemented in a way that works for all workers.

The Canadian Labour Congress survey report "Harassment and Violence in Canadian Workplaces: It's [Not] Part of the Job" showed that Indigenous people, women and gender-diverse individuals experienced a higher rate of workplace harassment and violence. [4] Many workers are at a higher risk of bullying and harassment than others and the employer must take these factors into consideration in the assessment of the hazard and the implementation of control measures.

Recommendation

The BCFED urges the WCB to include language in this section requiring employers to consider the diversity of workers in hazard identification, hazard assessment and controls. For reference see the proposed amendment to include equity, diversity and inclusion in the proposed amendments to the harassment and violence regulation.

Section (1)(c)

This section sets out the requirements for controlling the hazard, ideally by eliminating and if that is not practicable, controlling the hazard to minimize the risk to the lowest level practicable.

The BCFED strongly believes this section describing the critical process of controlling hazards to prevent workplace injuries, psychological and physical, occupational illness and death would benefit by including a reference to the hierarchy of controls. The hierarchy is a widely-accepted, national and international concept supporting an effective approach to ensuring workplaces are safe and healthy for workers, including the United States Occupational Safety and Health Association.[5]

The hierarchy of controls is a method of identifying and ranking safeguards to protect workers from hazards. They are arranged from the most to least effective and include elimination, substitution, engineering controls, administrative controls and personal protective equipment.

Our own OHSR provides an excellent template for including the hierarchy of controls in a regulation.

Part 5: Chemical agents and biological agents

Section 5.55 Type of controls

(1) If there is a risk to a worker from exposure to a hazardous substance by any route of exposure, the employer must eliminate the exposure, or otherwise control it below harmful levels and below the applicable exposure limit established under section 5.48 by

(a) substitution,

(b) engineering control,

(c) administrative control, or

(d) personal protective equipment.

(2) When selecting a suitable substitute, the employer must ensure that the hazards of the substitute are known, and that the risk to workers is reduced by its use.

(3) The use of personal protective equipment as the primary means to control exposure is permitted only when

(a) substitution, or engineering or administrative controls are not practicable, or

(b) additional protection is required because engineering or administrative controls are insufficient to reduce exposure below the applicable exposure limits, or

(c) the exposure results from temporary or emergency conditions only.[6]

Appropriate examples of each of the options in the hierarchy can be included in the guidelines: assisting, workers and employers with choosing and implementing the most effective way of controlling the hazard.

Recommendation

The BCFED strongly urges the WCB to further amend Section 3.01(1) (c) to include specific language and reference to the hierarchy of controls, and to include examples of each of the options in the hierarchy in the guidelines.

Section 3.01(2)

The BCFED strongly supports this section which lays out the requirements for the employer to keep current a record of the hazard identification, hazard assessment and control measures. The employer must ensure a copy of the record is readily available to workers at the workplace.

Section 3.01(3)

The BCFED supports this last section of the proposed regulation that requires employers to consult with the joint health and safety committee or worker representative on the activities in Sections 1 and 2.

Subsection 3.01 (3) (a)

Subsection (3)(a) states the employer must consult with the committee or worker health and safety representative, as applicable. We have concerns with the word “applicable.” WCA, Part 2, Division 4, Section 21 (2)(g) sets out the requirements for the employer to consult and cooperate with the joint OHS committee.[7]

> (g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and

Additionally, the committee has broad duties and functions under WCA, Division 5, Section 36.[8]

The Explanatory Notes provide no explanation or examples of when the WCB considers consultation with the joint committee and the worker representative would not be applicable.

We believe inserting the word “applicable” limits the consultation process that is in the WCA legislation. And who determines what is “applicable?”

Recommendation

Therefore, the BCFED recommends a further amendment to the proposed regulation removing reference to “applicable.” The term “applicable” in this context is arbitrary and open to interpretation and will not benefit workers.

Section 3.01 (3) (b)

The inclusion of consultation with workers who are knowledgeable about the workplace, the work to be carried out and the associated hazards is welcome.

We strongly believe including joint committees, worker representatives and workers who are knowledgeable about the workplace and the work will ensure the process of hazard identification, hazard assessment and control measure activities are most effective.

Conclusion

The BCFED thanks the WCB for their commitment and work on the new regulation. And we urge the WCB to develop and properly fund an effective implementation strategy with increased inspections to ensure employers are compliant.

[1] https://www.whatishumanresource.com/management-definitions-by-great-management-scholars

[2] https://kings-printer.alberta.ca/documents/OHS/OHSCode_March_2023.pdf

[3] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_02

[4] https://canadianlabour.ca/wp-content/uploads/2022/08/HV_Summary_EN.pdf

[5] https://www.osha.gov/sites/default/files/Hierarchy_of_Controls_02.01.23_form_508_2.pdf

[6] https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-05-chemical-and-biological-substances#SectionNumber:5.55

[7] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_02

[8] IBID.