

On April 11, 2022, Bill 88, *Working for Workers Act, 2021* (“Bill 88”) received Royal Assent and became law. Bill 88 introduces key legislative changes to the *Occupational Health and Safety Act*, including in respect of fines applicable for convictions under the Act.

Changes to Maximum Fine Amounts

Effective July 1, 2022, penalties for convictions under OHSA will increase significantly as a result of Bill 88:

- the maximum fine under OHSA for **individuals** who contravene or fail to comply with the act has **increased from \$100,000 to \$500,000**; and
- there is a new penalty for **directors and officers** who contravene or fail to comply with their duty to take reasonable care to ensure that the corporation complies with OHSA. Directors and officers in breach of this duty are now liable for a **maximum fine of \$1,500,000, imprisonment for up to 12 months, or both.**

OHSA now also includes a list of aggravating factors which must be considered by the Ministry of Labour when determining a penalty including, for example, whether the individual disregarded the order of an inspector, has a prior record of non-compliance with OHSA, or the offence was committed recklessly, resulted in death or serious injury of a worker, or was motivated by a desire to increase revenue or decrease costs. Conduct following the offence may also be considered, such as whether the individual attempts to conceal the offence from the Ministry of Labour, Training and Skills Development or fails to cooperate with an investigation.

How can you address this?

- Company directors and officers of a corporation, along with managers and supervisors, should continue to ensure that their training is up to date and current in order that they may demonstrate that they are knowledgeable of workplace occupational health and safety policies and program.

Increase to Limitation Period

The limitation period for commencing a prosecution is also increased from one year to two years for a violation under *OHSA*. The changes to limitation period will be in force on July 1, 2022.

How can you address this?

- Company directors and officers of a corporation, along with managers and supervisors, should be made aware of the increase to the limitation period.

Provision of Naloxone Kits

Bill 88 amends the OHSA to require employers to provide naloxone kits if they become aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at a workplace where that worker performs work for the employer. In these circumstances (and such other circumstances as may be prescribed in the future), the employer must also comply with requirements regarding training and the use and maintenance of naloxone kits.

Naloxone is an opioid antidote which, if administered in response to an opioid overdose, may reverse the overdose.

The Ontario government has **identified construction sites, bars, and nightclubs** as high-risk settings which are being most impacted by the opioid epidemic. Employers in these sectors should be particularly aware of this elevated risk, monitor their workforce for any signs of opioid dependency, and be prepared to have naloxone kits available and training in place where/when required.

This OHSA amendment is not yet effective and will come into force on a date to be proclaimed.

How can you address this?

- Ensure there is a written emergency procedure outlining:
 - o where kits are stored
 - o what training is required
 - o who will administer the naloxone
 - o procedures to follow when administering naloxone
 - o who to contact externally and internally
 - o controls you have put in place to control identified hazards
 - o which personal protective equipment must be worn
 - o how you will support first aiders and other employees affected by the incident.
- Pick up a free kit or kits. The Ontario government is working to develop a program that distributes free naloxone kits and training to employers. In the meantime, free kits are available at many local pharmacies.
- Ensure workers receive training. The amendment says training should cover how to recognize an opioid overdose, how to administer naloxone, and hazards related to administering naloxone. Depending on the form in which it is administered, there may be additional hazards such as physical hazards (contact with sharps and strains), chemical hazards (inhalation or contact with drugs and products), biological hazards (contact with blood and body fluids) and psychological hazards (stress and violence).
- Ensure the kit is stored in close proximity to the person who will administer it, and is easily accessible. The logical place to store the naloxone kit is in your first aid kit or close to your automated external defibrillator (AED).