



**Ministry of Labour,
Training and Skills
Development**

**Proposal to Modernize Regulatory
Requirements for Part VII - Notices under
the *Occupational Health and Safety Act***

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OHSA Incident Reporting Project
Health, Safety and Insurance Policy Branch
Ministry of Labour, Training and Skills
Development
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About

The **Durham Community Legal Clinic (DCLC)** is a Community Legal Clinic that provides legal services, information, education, and representation for historically marginalized and low-income residents of Durham Region. DCLC also engages in advocacy and law reform activities, in particular to ensure that our laws properly consider the perspectives of historically marginalized and low-income Ontarians. The main areas of services DCLC provides includes employment law and related services, housing and tenancy issues, and social benefits.

The **Durham Access to Justice Hub**[®] (the “Hub”) was established by the clinic in 2019 with the assistance of LAO. This inter-agency and inter-disciplinary initiative intended to provide legal services beyond the income thresholds and subject matter of LAO, and other social, financial, and psychological services. These cooperative relationships seek to foster better client-centered services, reduce administrative barriers and silos, and improve efficiency of services that are funded or subsidized by taxpayer dollars. Some techniques used to achieve these goals include recruitment of volunteers to contribute towards improving access to justice, and by embedding students into workflows and innovative projects through experiential education. Through the Hub, DCLC provides even broader services to focus on the root causes of poverty, and engages in deeper forms of poverty alleviation.

Omar Ha-Redeye is a lawyer and the Executive Director of DCLC. He holds a JD from Western University, and an LLM from Osgoode Hall. He has received numerous awards for his efforts in law reform and advocacy on behalf of historically marginalized and low-income populations, including the Queen Elizabeth II Diamond Jubilee Medal, and the OBA Foundation Award.

Reid Jackson is a Community Legal Worker and Paralegal with the Durham Community Legal Clinic. He focuses primarily on human rights law, employment law, and workers’ compensation law at the clinic. He was previously a Human Resources Specialist within the construction industry, with a focus in labour relations and workers’ compensation.

Leslie Wells is a Paralegal student at Durham College completing placement at the Durham Community Legal Clinic Access to Justice HUB.

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1. The Durham Community Legal Clinic is largely supportive of the proposal to consolidate the eight regulations currently in place¹ under the *Occupational Health and Safety Act (OHSA)*² into one universal regulation, albeit with some significant reservations. In spite of these concerns, it is our hope that the use of a singular reporting scheme will create additional accountability for employers to report all workplace accidents promptly and effectively. By simplifying the process for employers we are confident that this proposal could significantly decrease the underreporting of accidents to the Ministry of Labour (“MOL”), by removing redundancies and eliminating confusion and doubt in times of high stress after an accident has occurred. We are also encouraged by the potential this proposal has to benefit historically marginalized and low-income residents, who are more likely than other Ontarian’s to work in precarious and dangerous employment, and fall victim to workplace accidents.³
2. These low-income populations are often reluctant to report unsafe working conditions due to fears of reprisal, as they rely more heavily upon the income generated by their employment and do not have the ability to endure periods of unemployment in order to assert their workplace rights.⁴ We also acknowledge that just as a singular regulation will simplify reporting for employers, it will also make it easier for workers who have been injured in the workplace to apprise themselves of their rights, and their employer’s responsibilities under this simplified scheme. It is our belief that this proposal has the potential to spur greater engagement among Ontario’s workers, and will encourage greater compliance from among our employers. However, in spite of our broad support for the proposal, we do have a number of reservations and recommendations, which we have detailed below.

¹ O Reg 213/91 - Construction Projects (sections 8 - 12); O Reg 67/93 - Health Care and Residential Facilities (sections 5 and 6); O Reg 629/94 - Diving Operations (sections 10 and 11); Regulation 851 - Industrial Establishments (sections 5 and 6); Regulation 854 - Mines and Mining Plants (section 21); Regulation 855 - Oil and Gas – Offshore (sections 7 - 10); Regulation 861 - X-Ray Safety (sections 13 and 14); Regulation 859 - Window Cleaning (sections 5 and 6).

² RSO 1990, c O.1.

³ Institute for Work and Health, “Vulnerable workers and risk of work injury,” *issue briefing*, November 2016, available at:

<https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh_issue_briefing_vulnerable_workers_2016.pdf>.

⁴ Wayne Lewchuk et al., “It’s More than Poverty: Employment Precarity and Household Well-being,” United Way, February 2013, available at: <<https://www.unitedwaygt.org/document.doc?id=91>>.

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Medical Attention

3. *OHS*A requires employers under s. 52(1) to give written notice within 4 days of any person who is disabled from performing their usual work, or requires medical attention, if no person dies or is critically injured from the incident. Currently, the term “medical attention” is not defined under s. 52(1) of the *OHS*A, leaving the term open to interpretation, with the onus on employers to determine whether they are legally obligated to report injuries following any medical attention.⁵ For example, this could be interpreted to include first aid.
4. The Ministry of Labour, Training and Skills Development (“MLTSD”) is proposing to define medical attention as, “requiring an assessment or treatment from a legally qualified medical practitioner.” While we support a more precise definition of medical attention, DCLC is not in support of the proposal to define medical attention narrowly in this way without further refinement. While this may seem like a common-sense definition, it fails to recognise some of the nuances of employment relationships as they currently exist in Ontario. We know that in many cases employers are reluctant to report accidents, and it would be unwise to generally promote the treatment of workers by first-aid on site without proper medical intervention by a qualified medical professional.
5. By requiring reporting only when “medical intervention” occurs, employers could be incentivised to attempt on-site treatment of employees, even when more serious medical attention is warranted.⁶ We would instead propose a number of alternatives to this approach. First, this new regulation could adopt a definition of medical attention that includes the provision of first aid on-site, or requires reporting when first aid is administered. Alternatively, the use of the term “basic

⁵ Conversely, “critical injury” is defined in RRO 1990, Reg 834, and is intended to be included in the proposed amendments.

⁶ See, for example, *Decision NO 635/19*, 2019 ONWSIAT 1792 (CanLII); *Decision NO 1932/18*, 2018 ONWSIAT 2437 (CanLII).

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first aid” could be properly refined, to include injuries that are more serious but do not reach the definition of “critical injury.” Third, the employer could be required to maintain proper documentation related to non-critical injuries where simply first aid is used, which can be made available to an inspector, or the parties otherwise enunciated under s. 52(1).

6. The term “legally qualified medical practitioner” is also not defined in *OHSA* itself, but allows for the creation of regulations to prescribe specific persons to whom the employer shall provide information for the purposes of diagnosis and treatment.⁷ A similar obligation exists in the *Workplace Hazardous Materials Information System (WHMIS)*,⁸ but the term “legally qualified medical practitioner” is used as a separate but interchangeable definition as a “medical professional” who is a “registered nurse.”⁹ Furthermore, the term “legally qualified medical practitioner” used to be used in the Mines and Mining Plants regulation¹⁰ until amendments on Jan. 1, 2012, which substituted the term for “physician,”¹¹ before being revoked entirely and still using the term physician elsewhere in the same regulation.¹² The conflicting and contradictory use of the same term in different regulations under the same statutory scheme gives unnecessary rise to confusion, especially when contemplating the different significance of a medical injury requiring attention from practitioners who have varying scopes of practice.¹³
7. While the requirements of our first proposal may seem overly onerous, they would not only encourage more honest and accurate reporting of injuries, but would promote the development of “near miss” tracking, and encourage a more proactive health and safety culture in Ontario by requiring employers to keep more detailed records of incidents that have caused only minor injuries. It is our hope that this would lead to a culture of increased awareness, and subsequent reductions to injuries in Ontario. This would also be in keeping with the findings of studies which have shown that the implementation of near miss programs can significantly reduce workplace

⁷ See *OHSA*, supra note 2, s. 25(2)(b).

⁸ RRO 1990, Reg 860, s. 24.

⁹ *Ibid*, s. 1.

¹⁰ RRO 1990, Reg 854.

¹¹ O Reg 296/11, ss. 18, 22.

¹² *Supra* note 10, ss. 21(1)(g),(2)(i), 195(13)(b)-(c), 238(2)(a),(b)(iii).

¹³ *Regulated Health Professions Act, 1991*, SO 1991, c 18, ss. 30, 42; *Controlled Acts*, O Reg 107/96.

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injuries and recordable incidents.¹⁴ We believe these proposals also in keeping with the spirit and intent of this proposed regulation, especially as it concerns reporting requirements for non-injury incidents. The least onerous of these options, which is the third approach, could be a viable option that still promotes a culture of safety.

Written Reporting Requirements

8. We are encouraged by the possibility that streamlining written reporting requirements into one regulation has the potential to make the process more accessible, and will allow workers, family members, representatives, and employers to be confident that obligations have been met when an accident is reported. The only change we would suggest in this area would be the addition of a single line item for employers to complete, detailing whether a claim is required and has been filed with the Workplace Safety and Insurance Board (WSIB).
9. While we recognize the WSIB is a process that is distinct from the accident reporting process, and not all employers in Ontario are required to have WSIB coverage, we believe it is important to reinforce to employers the importance of reporting incidents to the WSIB. We would expect that the inclusion of this section would lead to a higher level of reporting at the WSIB, and would also encourage timely reporting. We can see the far-reaching implications of a failure to report in some of the reported decisions, such as *In Decision No. 3287/17, 2017*.¹⁵ In this matter, a newly hired 24-year-old worker was reluctant to report his injury in 1998, fearing the resultant loss of income if he were unable to work. He had been struck on the head by a 700-pound piece of aluminum, resulting in confusion and disorientation. Both he and the employer failed to report the injury, and the worker was off work for only two days before returning to modified duties. In this case, the failure to report meant that it was not until March 2016 that he was properly treated for the neurological injury he sustained.
10. Workers who receive prompt and effective medical treatment are more likely to be able to return to their pre-injury jobs, and less likely to require ongoing costly medical intervention, at

¹⁴ Kristen Templeton, "Effectiveness of the Near Miss Safety Program Relative to the Total Number of Recordable Accidents in a Manufacturing Facility," *OTS Master's Level Projects & Papers*, 2014, available at: https://digitalcommons.odu.edu/ots_masters_projects/4.

¹⁵ *Decision NO 3287/17, 2017 ONWSIAT 4004*.

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high cost to society as a whole.¹⁶ This type of early treatment is especially successful when used in conjunction with formalised return to work programs.¹⁷

Non-Injury Incidents Involving “Failure of any Equipment, Machine, Device, Article or Thing”

11. DCLC fully supports the proposal to require notification under section 53, where “the failure of any equipment, machine, device, article or thing that could have posed a risk to the life, health or safety of any worker.” We believe that this requirement is crucial to ensure that appropriate steps are taken to recognise near misses and issues which have the potential to cause accidents or injuries in the future.
12. Combining the existing notifiable incidents in different regulations¹⁸ into a single regulation may assist in greater compliance with this provision. The additional notices requirement under s. 53.1 require additional documentation in the form of a written opinion by a professional engineer or architect within 14 days,¹⁹ and need not be combined with the other notice requirements.
13. We believe this acknowledgement of the importance of documenting and reporting near miss incidents speaks to a desire to improve workplace safety culture that we hope to see reinforced further both in this proposal, and in future regulations.

Looking Ahead

14. The need for increased health and safety awareness and accessible reporting has been brought into sharp focus by the COVID-19 pandemic. As the province grapples with the effects of the

¹⁶ Iuliana Nastasia et al., “Strategies for Preventing Prolonged Disability in Workers Compensated for Work Related Musculoskeletal Disorders: A Systematic and Comprehensive Literature Review,” Institut de recherche Robert-Sauvé en santé et en sécurité du travail (IRSST), 2011, available at: <http://www.irsst.qc.ca/media/documents/PubIRSST/R-719.pdf>.

¹⁷ Christopher F. McLaren et al, “How Effective are Employer Return to Work Programs?,” RAND Institute for Civil Justice, March 1, 2010, available at: https://www.rand.org/content/dam/rand/pubs/working_papers/2010/RAND_WR745.pdf.

¹⁸ O Reg 213/91 - Construction Projects (section 11); O Reg 629/94 - Diving Operations (sections 10); Regulation 854 – Mines and Mining Plans (section 21); Regulation 861 - X-Ray Safety (sections 13 and 14).

¹⁹ O Reg 67/93 - Health Care and Residential Facilities (section 6); Regulation 859 - Window Cleaning (section 6); O Reg 231/91- Construction Projects (section 12).

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pandemic and subsequent reopening, we must remain cognizant of the fact that many essential positions in the province are staffed our most vulnerable workers and those living in poverty. Recent studies have shown that half of these essential workers surveyed reported their employers did not perform adequate infection control. Of even greater concern is that fact that of those workers with inadequate safety protections over 40 percent met the screening criteria for depression²¹. While we agree in broad strokes with the proposed changes, we believe that there is more still to be done if Ontario is committed to protecting the health and safety of its workforce.

15. As the need for a rapid response to the COVID-19 pandemic demonstrated, having appropriate safety measures in place before accidents or exposures occur is crucial to ensuring the safety of our workforce in Ontario. While this proposed amendment has the potential to benefit both employers and workers, it is of paramount importance to develop a health and safety framework which takes into account the current realities of Ontario, and in particular those conditions faced by the most vulnerable in our society. The ongoing effects of this pandemic has made clear that the stakes are high, and the onus is now on us to demonstrate a willingness to meet them. It is our hope that we will continue to see proposals which not only focus on standardizing and streamlining processes for employers, but also on protecting the health and safety of our most vulnerable, and most essential workers.

²¹ Sara Mojtehdzadeh, "Unsafe workplaces during COVID-19 taking huge toll on workers' mental health," Toronto Star, Dec. 14, 2020, available at: <<https://www.thestar.com/news/gta/2020/12/14/unsafe-workplaces-during-covid-19-taking-huge-toll-on-workers-mental-health.html>>; Institute for Work & Health, "Adequacy of COVID infection control and PPE linked to workers' mental health: study," *At Work 102* (Fall 2020), at 1, 8, available at: <https://www.iwh.on.ca/sites/iwh/files/iwh/at-work/at_work_102.pdf>.