

PART 3: RIGHTS AND RESPONSIBILITIES

JOINT HEALTH AND SAFETY COMMITTEES

Evaluation of joint committees

- 3.26**
- (1) In this section, a reference to a joint committee does not include a joint committee established and maintained under section 126 of the *Workers Compensation Act*, if
 - (a) an order under section 126 (1) of the *Workers Compensation Act* respecting the joint committee provides for a variation as set out in subsection (2) (b) of that section of the *Act*, and
 - (b) the variation is in regards to evaluating the joint committee.
 - (2) An employer must ensure that, with respect to each of the employer's joint committees, a written evaluation is conducted annually by
 - (a) the co-chairs of the joint committee or, with respect to each co-chair, the member or members of the joint committee designated by the co-chair, or
 - (b) the employer or a person retained by the employer.
 - (3) The evaluation must contain, but is not limited to, the following information:
 - (a) whether or not, throughout the period of time that is the subject of the evaluation,
 - (i) the joint committee met the membership requirements under section 127 (a) to (d) of the *Workers Compensation Act*,
 - (ii) worker representatives on the joint committee were selected in accordance with section 128 of the *Workers Compensation Act*,
 - (iii) employer representatives on the joint committee were selected in accordance with section 129 of the *Workers Compensation Act*,
 - (iv) the joint committee fulfilled each of its duties and functions under section 130 of the *Workers Compensation Act*,
 - (v) the joint committee met regularly as required under section 131 (2) of the *Workers Compensation Act*,
 - (vi) the employer met the requirements under section 133 of the *Workers Compensation Act* in respect of the written recommendations sent to the employer by the joint committee with a written request for a response from the employer, if any,
 - (vii) each member of the joint committee received the time off from work the member was entitled to receive under section 134 of the *Workers Compensation Act*,
 - (viii) each member of the joint committee attended the occupational health and safety training courses the member was entitled to attend under section 135 of the *Workers Compensation Act*,
 - (ix) the employer provided to the joint committee the equipment,

premises, clerical personnel and information the employer was required to provide under section 136 of the *Workers Compensation Act*,

- (x) the joint committee prepared reports of its meetings and provided copies to the employer as required under section 137 (1) of the *Workers Compensation Act*,
 - (xi) the employer met the requirements of posting and keeping posted committee information as set out in section 138 of the *Workers Compensation Act*, and
 - (xii) each member of the joint committee received the instruction and training the employer was required to ensure was provided to the member under section 3.27 of this regulation;
- (b) an assessment of the effectiveness of the joint committee's rules of procedures as established under section 131 (1) of the *Workers Compensation Act*;
 - (c) an assessment of the overall effectiveness of the joint committee.
- (4) If the employer, or a person retained by the employer, conducts the evaluation, the employer or the person retained by the employer, as the case may be, must, as part of the evaluation, obtain and consider the input of the co-chairs of the joint committee or, with respect to each co-chair, the member or members of the joint committee designated by the co-chair, on the matters listed in subsection (3).
- (5) The employer and the joint committee must each provide to the other a copy of the evaluation if the other does not have a copy.
- (6) The joint committee must
- (a) discuss the evaluation at the joint committee meeting immediately following
 - (i) receipt of the evaluation, if the employer or a person retained by the employer conducts the evaluation, or
 - (ii) the completion of the evaluation, if members of the joint committee conduct the evaluation, and
 - (b) ensure that the evaluation and a summary of the discussion referred to in paragraph (a) are included in the report of that meeting.

EXPLANATORY NOTES TO THE AMENDMENT:

This amendment is in response to the Coroner's inquest recommendations ("Coroner's Recommendations") into the deaths of Glenn Roche and Alan Little as the result of the 2012 Prince George mill explosion ("Lakeland Inquest"). Recommendation #17 of the Lakeland Inquest recommended an "audit tool" be implemented to measure the effectiveness of joint committees.

Section 125 of the *Workers Compensation Act* ("Act") requires employers to have a joint committee in each workplace where 20 or more workers are regularly employed, or where it is

required by order. A joint committee is made up of worker and employer representatives working together to identify and resolve health and safety problems in the workplace.

Sections 125-140 of the *Act* (Division 4) set out the legal requirements for and duties of joint committees. Building on the general provisions set out in the *Act*, additional provisions in the *Occupational Health and Safety Regulation* (“*OHSR*”) further set out employer obligations in respect of joint committees and the joint committee’s roles and responsibilities in certain circumstances (such as employer inspections and a worker’s right to refuse unsafe work).

Changes to the *OHSR*

Section 3.26 is intended to address the Coroner’s Recommendations. Although the Coroner’s Recommendations referred to an “audit” tool, the amendment uses the term “evaluation”. This is because “audit” is a specialized, technical term that would require the employer to retain an independent third-party to evaluate the joint committee in every case.

Section 3.26(2) requires the employer to ensure an evaluation of each of its joint committees is conducted annually. The purpose of the evaluation is to allow a joint committee, after a year of operation, to examine its effectiveness and think about how to improve in following years. This is not suited to employers who may be in operation for less than a year; however, WorkSafeBC’s evaluation tool will be available for them and their joint committees to use on a voluntary basis.

The evaluation must be conducted by either:

- the co-chairs of the joint committee or their designates, or
- the employer or a person retained by the employer.

As a result of feedback received at the public hearings, the order of these two options was switched in section 3.26(2), to reflect that in most cases the evaluation will likely be conducted by the co-chairs or their designates.

If the evaluation is done by the employer or someone retained by the employer, section 3.26(4) requires the input of the co-chairs, or their designates, to be obtained and considered.

The minimum topics the evaluation must include are set out in section 3.26(3). This is a non-exhaustive list – the evaluation may include additional topics. The items listed were chosen by the PRRD in consultation with an internal WorkSafeBC working group, which included WorkSafeBC prevention officers. The list encapsulates what were thought to be the most critical elements of Division 4 of the *Act* for the basic functioning of a joint committee. These were limited in order to ensure the evaluation would also be able to focus on effectiveness; the intent being the evaluation should determine whether the joint committee is generally in compliance with the *Act* and *OHSR*, and then go further to assess the joint committee’s overall effectiveness. There are many more provisions in the *Act* and *OHSR* that relate to joint committees, which will be listed in the joint committee training materials.

Section 3.26(6) requires the joint committee to discuss the finished evaluation at the joint committee’s next meeting. The joint committee may respond to the evaluation using the existing powers and procedures set out in the *Act* (such as making recommendations to the employer under sections 130(d) and 133). The joint committee’s discussion and the evaluation must be

incorporated into the joint committee's meeting report (the meeting "minutes"), which section 138 of the *Act* requires to be posted in the workplace.

WorkSafeBC Evaluation Tool

When the amendments become effective, WorkSafeBC will have an evaluation tool available online that can be used by joint committees to comply with section 3.26 of the *OHSR*. The evaluation tool will be a practice document like the OHS Guidelines.

Use of the tool will not be mandatory; other tools can be used as long as they meet or exceed all the requirements for an evaluation in the *OHSR*, including the requirement for input of the co-chairs or their designates.

PART 3: RIGHTS AND RESPONSIBILITIES

JOINT HEALTH AND SAFETY COMMITTEES

Minimum training requirements for new joint committee members or worker health and safety representatives

- 3.27** (1) In this section, a reference to a joint committee does not include a joint committee established and maintained under section 126 of the *Workers Compensation Act*, if
- (a) an order under section 126 (1) of the *Workers Compensation Act* respecting the joint committee provides for a variation as set out in subsection (2) (b) of that section of the *Act*, and
 - (b) the variation is in regards to providing instruction and training to the members of the joint committee.
- (2) The employer must ensure that each member of the employer's joint committees who was selected on or after April 3, 2017 to be a member receives, as soon as practicable but no more than 6 months after becoming a member, a total of at least 8 hours of instruction and training, as set out in subsection (4).
- (3) The employer must ensure that the worker health and safety representative at each workplace who was selected on or after April 3, 2017 to be a representative receives, as soon as practicable but no more than 6 months after becoming a representative, a total of at least 4 hours of instruction and training, as set out in subsection (5).
- (4) The instruction and training referred to in subsection (2) must include the following topics:
- (a) the duties and functions of a joint committee under section 130 of the *Workers Compensation Act*;
 - (b) the rules of procedure of the joint committee as established under or set out in section 131 of the *Workers Compensation Act*;
 - (c) the requirements respecting investigations under sections 173 to 176 of the *Workers Compensation Act*;
 - (d) the requirements respecting inspections under sections 3.5, 3.7 and 3.8 of this regulation and how to make regular inspections under section 3.5 of regulation;
 - (e) the requirements respecting refusal of unsafe work under section 3.12 of this regulation;
 - (f) the requirements respecting the evaluation of joint committees under section 3.26 of this regulation.
- (5) The instruction and training referred to in subsection (3) must include the topics described in subsection (4)(a), (c), (d) and (e).

- (6) Subsection (2) does not apply in respect of a person who is a member of a joint committee if
 - (a) 2 years or less before becoming a member of the joint committee, the person was a member of that joint committee or a different joint committee, and
 - (b) the person, as a member of the joint committee or a different joint committee as set out in paragraph (a), received at least 8 hours of instruction and training on the topics described in subsection (4).
 - (7) Subsection (3) does not apply in respect of a person who is a worker health and safety representative at a workplace if
 - (a) 2 years or less before becoming a worker health and safety representative at a workplace, the person was
 - (i) a member of a joint committee, or
 - (ii) a worker health and safety representative at that workplace or a different workplace, and
 - (b) the person, as a member of a joint committee, or as a worker health and safety representative at the workplace or a different workplace, as set out in paragraph (a), has received at least 4 hours of instruction and training on the topics described in subsection (5).
 - (8) The employer must ensure that a person who receives instruction and training as set out in subsection (2) or (3) receives a copy of the person's training record as soon as practicable after the training is completed.
 - (9) The employer must, with respect to each person who receives instruction and training as set out in subsection (2) or (3), keep the person's training record until 2 years from the date the person ceases to be a member of the employer's joint committee or a worker health and safety representative, as applicable.
 - (10) For greater certainty, the instruction and training required under subsection (2) or (3) of this regulation is not educational leave as set out in section 135 of the *Workers Compensation Act*.
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EXPLANATORY NOTES TO THE AMENDMENT:

This amendment is in response to the Coroner's Recommendations from the Lakeland Inquest. Recommendation #20 of the Lakeland Inquest recommended WorkSafeBC establish minimum mandatory training and education for joint committee members.

Section 125 of the *Act* requires employers to have a joint committee in each workplace where 20 or more workers are regularly employed, or where it is required by order. A joint committee is made up of worker and employer representatives working together to identify and resolve health and safety problems in the workplace.

Section 139 of the *Act* requires employers to have a worker health and safety representative in each workplace where 10 to 19 workers are regularly employed, or where it is required by order. To the extent practicable, a worker health and safety representative has the same duties and functions as a joint committee.

Under section 135 of the *Act*, each member of a joint committee and each worker health and safety representative¹ is entitled to 8 hours of annual educational leave for the purposes of attending occupational health and safety training courses. This educational leave is an entitlement; it is not mandatory.

Changes to the *OHSR*

Although the Coroner's recommendation was limited to joint committee members, the amendment also includes worker health and safety representatives under this section.

Section 3.27 of the *OHSR* requires an employer to ensure new joint committee members and new worker health and safety representatives receive instruction and training, and sets out the minimum requirements for that instruction and training.

Since this training is the employer's obligation and will be a regular part of employment, the time to do the training is "work" and the employer must pay for the training under BC's *Employment Standards Act*.²

It is important to note the minimum training required by section 3.27 does not form part of the annual educational leave granted by section 135 of the *Act* – new joint committee members and worker health and safety representatives must receive the instruction and training required under section 3.27 of the *OHSR*, additionally, all joint committee members and worker health and safety representatives are entitled to 8 hours of educational leave each year under section 135 of the *Act*.

Minimum Training for Joint Committee Members

Section 3.27(2) requires new joint committee members – those selected on or after the effective date of the amendments, April 3, 2017 – receive at least 8 hours of instruction and training as soon as practicable but no more than 6 months after being selected. Section 3.27(4) specifies the six topics the training must include. The requirements allow flexibility regarding delivery methods and do not require the training occur in one session.

"Practicable" is defined in the *OHSR* as "reasonably capable of being done". Therefore, the training must be done as soon as it is reasonably capable of being done; the 6 months is an outer time limit that should only be reached in limited circumstances.

Eight hours was chosen because the internal subject matter experts on the WorkSafeBC working group advised 8 hours is required to cover all of the topics listed.

¹ Section 139(4) of the *Act* provides that section 135 also applies to worker health and safety representatives.

² Employment Standards Branch Interpretation Guidelines Manual, Act Part 1, Section 1, Definitions, Work, <http://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/igm/esa-definitions/esa-def-work>.

WorkSafeBC will be developing a guideline to provide further guidance on the time frames for training as well as outlining training options.

Minimum Training for Worker Health and Safety Representatives

Section 3.27(3) requires new worker representatives – those selected on or after the effective date of the amendments, April 3, 2017 – receive at least 4 hours of instruction and training as soon as practicable but no more than 6 months after being selected. As stated above, this means the training must be completed as soon as it is reasonably capable of being done, and in all cases, within 6 months. Section 3.27(5) specifies the four topics the training must include.

As a result of feedback received at the public hearings, section 3.27(3) was reworded to remove the suggestion that a workplace could have more than one worker health and safety representative.

Prior to the public hearings, the required instruction and training hours for worker health and safety representatives was reduced from 8 to 4 hours. WorkSafeBC's internal subject matter experts determined the training could be completed in less than 8 hours for worker health and safety representatives, and were satisfied it would be necessary to spend at least 4 hours to cover the four required topics for worker health and safety representatives. Joint committee member training requires covering six topics and how to apply them and work within a group setting, whereas the worker health and safety representative training only requires covering four topics for the individual worker health and safety representative.

Like joint committee members, worker health and safety representatives also have an annual entitlement to eight hours of training under section 135 of the *Act*, which they could use for additional topics.

Date Instruction and Training is required

Since public hearings, April 3, 2017 has replaced the previous date on or after which newly appointed joint committee members and worker representatives are required to obtain the minimum instruction and training. As a result of feedback received at the public hearings, WorkSafeBC eliminated the proposed additional two months' transition time between the effective date of the amendments and the required training. April 3, 2017 is the earliest date the training can be required as it corresponds to the effective date of these amendments, due to the requirement that changes approved by WorkSafeBC's Board of Directors be deposited for 90 days before they take effect.

Required Training Topics

As noted, the mandatory training under section 3.27 must cover certain topics. The topics set out in sections 3.27(4) and (5) are the minimum requirements; the instruction and training provided to new joint committee members and worker representatives may go beyond the topics listed. These topics are specific to the duties and functions of a joint committee or worker representative, as opposed to general safety training. General safety training is addressed in section 115(2) of the *Act*, which requires employers to ensure their workers are made aware of likely hazards and their rights and duties under Part 3 of the *Act* and the *OHSR*, and more

specifically requires employers to provide their workers with the information, instruction, training and supervision necessary to ensure worker health and safety.

“Boomerang” clause

Sections 3.27(6) and (7) create exceptions to these requirements for “boomerang” committee members and worker health and safety representatives.

For joint committees, the minimum training is not required for new members if:

- they used to be on a joint committee in the past,
- they have already received the joint committee training, and
- it has been two years or less since they left the joint committee.

For worker health and safety representatives, the minimum training is not required if:

- they used to be a worker health and safety representative or on a joint committee in the past,
- they have already received the training, and
- it has been two years or less since they stopped being a representative or left the committee.

New worker representatives who used to be on a joint committee are given the benefit of this clause because the 8 hours of joint committee training required under section 3.27(4) would satisfy the requirements of the 4 hours of worker representative training required under section 3.27(5).

Training Records

An employer must maintain the training records for two years from the date the person ceases to be a member of the employer’s joint committee or a worker health and safety representative. This is to place a reasonable limit on the record keeping requirement since the record would not be useful once the time for the boomerang clause is no longer applicable.

The person receiving the training must be provided with a copy of their training record as soon as practicable after the training is completed. This will assist if those receiving the training change jobs within the boomerang period.

WorkSafeBC Training Resources

There are free training materials available on worksafebc.com for the education and training of joint committee members, which will be revised to meet the requirements under section 3.27 by the effective date of the changes to the *OHSR*. As part of this, WorkSafeBC will have an online course available for the worker health and representative training. For the joint committee training, WorkSafeBC will have a course available with an online component and a classroom component. The classroom component could be conducted in-person, or remotely by webinar.

Employers will have access to download, print, and use these materials to train their joint committee members or worker representatives. Employers do not have to use these materials and may provide their own training as long as it meets the requirements of the *OHSR*.

PART 3: RIGHTS AND RESPONSIBILITIES

PARTICIPATION IN INVESTIGATIONS

Participation by employer or representative of employer and worker representative

- 3.28** For the purposes of section 174 (1.1) (c) of the *Workers Compensation Act*, the following activities are prescribed:
- (a) assisting the persons carrying out the investigation with gathering information relating to the investigation;
 - (b) assisting the persons carrying out the investigation with analyzing the information gathered during the investigation;
 - (c) assisting the persons carrying out the investigation with identifying any corrective actions necessary to prevent recurrence of similar incidents.
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EXPLANATORY NOTES TO THE AMENDMENT:

This amendment is in response to the Bill 35 and the Coroner's Recommendations from the Lakeland Inquest. Bill 35 amended the *Act*, with a number of the changes coming into effect January 1, 2016. Recommendation #9 of the Lakeland Inquest recommended the provincial government "clarify the meaning of the term 'participation' in section 174 of the *Act* to ensure full and meaningful participation in the investigative process by both the employer and the worker representative".

Division 10 of the *Act* deals with accident reporting and employer incident investigations. The *Act* requires an employer to conduct a preliminary investigation under section 175, and a full investigation under section 176, in respect of certain incidents listed in section 173.³ Section 174(1) specifies these investigations "must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative". "Worker representative" is defined in section 106 of the *Act* as

- (a) in relation to a workplace for which there is a joint committee, a worker representative on the committee, and
- (b) in relation to a workplace for which there is a worker health and safety representative, that representative.

Employer investigations at issue under sections 173 to 176 are distinct from WorkSafeBC investigations; WorkSafeBC inspections and investigations are covered under Division 11 of the *Act*.

³ See Guideline G-D10-175-1 for guidance on the incidents required to be investigated by an employer under section 173.

In response to recommendation #9 of the Lakeland Inquest, Bill 35 added a new subsection to section 174, subsection 174(1.1), effective January 1, 2016, which states:

174 (1.1) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:

- (a) viewing the scene of the incident with the persons carrying out the investigation;
- (b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation;
- (c) other activities, as prescribed by the Board.

Changes to the *OHSR*

Section 3.28 addresses the new section 174(1.1)(c) of the *Act*, listing additional activities included in “participation” by worker and employer representatives in employer preliminary and full investigations.

In addition to those items listed in section 174(1.1) of the *Act*, section 3.28 states participation by worker and employer representatives also includes:

- assisting the persons carrying out the investigation with gathering information relating to the investigation;
- assisting the persons carrying out the investigation with analyzing the information gathered; and
- assisting the persons carrying out the investigation with identifying any corrective actions necessary to prevent recurrence of similar incidents.

It is important to note section 174(1.1) of the *Act* and section 3.28 of the *OHSR* do not exhaustively define the meaning of “participation” for the purpose of employer and worker representative participation in employer incident investigations. These sections only set out some of the activities “participation” includes; the meaning of the term is not limited to the listed activities.⁴

WorkSafeBC is developing a guideline to more fully explain what participation means and how full participation in employer incident investigations plays an important part in workplace health and safety.

⁴ Section 174(1.1) of the *Act* states “... the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities: ...” (emphasis added).