

# LEGAL ENFORCEMENT

## Who can call an inspector?

- Anyone can call an inspector. **Sec. 43, Sub. 6**

## Do workers have a right to accompany an inspector?

- Yes. The Act requires that a designated worker (a worker JHSC member, or another worker chosen by the union because of knowledge and training) accompany an inspector during a routine inspection. **Sec. 54, Sub. 3**
- In addition, worker representatives are required to be present during an inspector's investigation of a work refusal. **Sec. 43, Sub. 7**

## What are the powers of Ministry of Labour inspectors?

### Inspectors have the power to:

- Enter any workplace at any time without a warrant. **Sec. 54, Sub. 1(a)**
- Must investigate all work refusals and give a written decision. **Sec. 43, Sub. 7, 8**
- Be accompanied by a person with specialized knowledge during an inspection. **Sec. 54, Sub. 1(g)**
- Request any drawings, documents, records, etc, and take these away to copy. **Sec. 54, Sub. 1(c)**
- Determine compliance with orders. **Sec. 59, Sub. 4**
- Order tests by qualified persons at the employer's expense. **Sec. 54, Sub. 1(f)(k)**
- As of September 2016, and the Bill 132 changes, order an employer to cause an investigation of workplace harassment to be conducted by a third-party person. The inspector can also specify the knowledge, experience, or qualifications of the person. Also, that a written report be

provided by that person at the expense of the employer. (The report is not a report a type of report that must be shared with the JHSC). **Sec. 55, Sub. 3(1)(2)**

- Order that equipment not be used until it is tested. **Sec. 54, Sub. 1(l)**
- Alter the frequency of inspections by worker members or health and safety representatives. **Sec. 55**
- Examine and copy training materials and attend training programs provided by the employer. **Sec. 54, Sub. 1(p)**
- Seize documents or objects as evidence of a contravention. **Sec. 56**
- Require a compliance plan. **Sec. 57, Sub. 4 and 5**
- Order that work not resume under a stop work order until the operation is re-inspected and the stop work order is withdrawn. **Sec. 57, Sub. 8**

## What can an inspector do if unsafe or unhealthy conditions are found?

- The inspector can issue orders to comply, issue stop work orders and/or initiate a prosecution.

## Who has the power to determine compliance with an order?

- Compliance with an order can only be determined by an inspector. **Sec. 59, Sub. 4**
- Work placed under a stop work order cannot resume until an inspector re-inspects, unless the worker member or a health and safety representative advises the inspector that he or she agrees with the employer's notice of compliance. **Sec. 57, Sub. 7**
- The employer's notice of compliance with an order must be accompanied by a statement of agreement or

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disagreement signed by the committee member or the health and safety representative. **Sec. 59**

## How should workers deal with work orders, stop work orders and compliance notices?

- According to Ministry of Labour policy, the inspector can accept that compliance has been met without re-inspection, if the worker representative agrees with the employer's notice of compliance. If the worker disagrees, then an inspector will re-inspect. If the worker declines to sign the employer's notice, then the inspector might re-inspect.

## Worker representatives are well advised to take the following measures:

- Insist that inspectors issue an order for a compliance plan. This gives you an opportunity to review how the employer will correct the hazard, and a means of monitoring the progress. It is absolutely essential that worker representatives carefully assess an employer's notice of compliance. In most cases, it would be wise to insist on a re-inspection by the inspector before endorsing the notice of compliance.

## What can be done if an inspector's order or decision does not address the hazard or violation of the Act?

- Either a worker or Union can initiate an appeal under section 61(1) of OHSa contesting the inspector's refusal to write an order.
- See Ontario Labour Relations Board information bulletin No. 21 "Occupational health and safety act appeals of an inspector's order. <http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-21-EN.pdf>

## What can happen if someone violates the Act and its regulations, or fails to comply with an order?

- Anyone can be charged and prosecuted for these violations. If found guilty, they are subject to a fine of up to \$25,000 or one year in prison or both. **Sec. 66, Sub. 1**
- If found guilty, a corporation can be fined up to \$500,000. **Sec. 66, Sub. 2**

- The Attorney General can require that a case be tried by a provincial judge instead of a justice of the peace. **Sec. 68, Sub. 2**

## What can be done if the government refuses to prosecute an employer for violating the Act?

- In addition to putting public pressure on the government, an individual or a union can bring a private prosecution by filing information with a justice of the peace indicating that there is evidence that an employer violated the law.
- Unless the government decides to assume the prosecution, the individual or the union is responsible for conducting the prosecution and paying the legal bills.

