

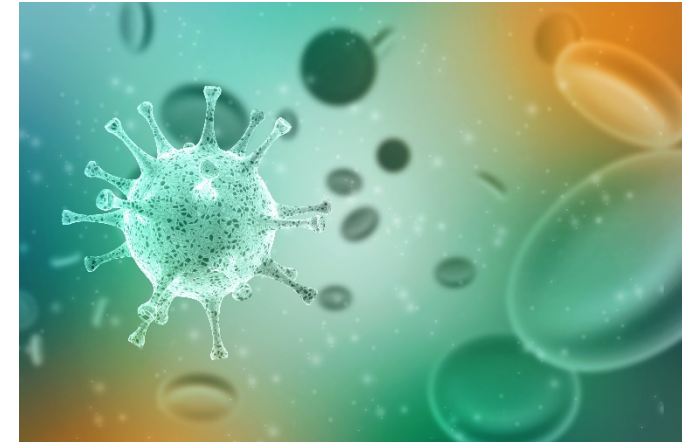
Preventing COVID-19: What JHSCs can do

Thursday, June 25, 2020

11:00 AM

Webinar Objectives

- Powers and functions of committees and representatives
- Inspecting the workplace for COVID-19 hazards
- Making recommendations regarding COVID-19
- Investigating and reporting incidence of COVID-19
- Assisting in work refusals
- Participating in MOL inspections
- Employer duty to assist committees and representatives
- Role of certified members
- A COVID-19 safety plan



Joint committees (JHSCs)

- Joint health and safety committees (JHSCs) ensure workers have a voice in workplace health and safety



Joint committee requirement

- Required in most workplaces where 20 or more workers are regularly employed
- If less than 50 workers, minimum two members
- If 50 or more workers, minimum four members
- At least half the joint committee must be workers with no management role

Worker trades committee

- In addition to JHSC requirement, construction site trade committee required to ensure all trades' concerns are heard



Joint committee meetings

- Must be co-chaired
- Meet at least once every three months



Worker Health & Safety Reps

- Required if between five and 19 workers are regularly employed



JHSC powers and functions

The Act sets out powers and functions of JHSC:

- identify workplace hazards
- make recommendations to control hazards
- get health and safety information from the employer

The joint committee is the place to discuss prevention, including preventing outbreaks of COVID-19.

Identifying hazards

- Act sets out powers and functions of
 - JHSCs in subsection 9(18)
 - H&S reps in subsections 8(10) and 8(11)
- JHSCs and reps have power to identify situations that may be a hazard to workers, including the hazard of the COVID-19 virus



Obtaining hazard information

- JHSCs and H&S reps have a right to information
 - hazard information related to any material, process or equipment [9(18)(d)(i), 8(11)(a)].
 - health and safety or work practices in other similar workplaces [9(18)(d)(ii), 8(11)(c)].
 - testing on equipment or processes or for any biological, chemical or physical hazard in the workplace [9(18)(f), 8(11)(a)].

Consultation and attendance at testing

- Before testing “equipment, machine, process and any biological, chemical or physical agent” JHSC must be consulted
- Worker JHSC member entitled to be present at beginning of testing



JHSC and worker H&S rep recommendations

- Making recommendations is a function of JHSCs and H&S reps
- Single co-chair may make recommendation to employer if good faith effort for consensus fails [9(19.1)]
- COVID-19 recommendations could include:
 - more distancing
 - more or better personal protective equipment
 - more cleaning and disinfection

Response required within 21 days

- Employer must respond within 21 days with either
 - timeline for implementation or
 - reasons to reject
- Employer must take legal duty to take “all precautions reasonable” in the circumstances [25(2)(h)]



Monthly inspections

- Right of worker JHSC member and H&S rep
- Focus on location and situations that may let COVID-19 spread
- New WHSC inspection tool at whsc.on.ca



Confronting COVID-19
Conducting effective WORKPLACE INSPECTIONS

Ontario's Ministry of Labour tells us, "While the COVID-19 situation is changing rapidly, the legislation and regulations used to govern the workplace are not. It is important, however, under Ontario's Occupational Health and Safety Act (OHS) employers must take every reasonable precaution to provide a safe and healthy workplace. The Ministry of Labour must ensure that they do, and workers have three basic workers' rights: the right to know about the hazards they face, the right to participate in solutions to eliminate hazards and/or control them when they cannot be eliminated, and the right to refuse unsafe work."

WORKER RIGHT TO PARTICIPATE
 When it comes to the worker right to participate, this right is best exercised collectively and through worker representation. To have a process for this, the workplace may need a representative (or more workers, or where a designated committee or a joint health and safety committee (JHSC) is required. All staff (all of the members in the committee must not wear managerial functions and not be chosen by workers, or where applicable, the trade union that represents the workers). In resolution readily emerging more than the workers and fewer than JHSC, the workers or their unions, where there is, may, instead choose a worker health and safety representative who also does not wear managerial functions.

AT LEAST MONTHLY INSPECTIONS
 Among the many legal rights and responsibilities of worker JHSC members or worker health and safety representatives is a requirement to inspect the workplace at least monthly. During the COVID-19 crisis, this requirement is especially important. In fact, given the evolving nature of this pandemic and what we know about the virus and its transmission, it may not be unreasonable to consider increasing the frequency of workplace inspections. However, with many other workloads piled to inspect, conducting an inspection prior to workers re-entering the workplace is equally reasonable.

TRACKING ACTION
 The following checklist will help guide a COVID-19 workplace inspection. As every workplace is different, these questions are just some of the many issues to consider during a COVID-19-specific inspection. If proper measures are not taken, JHSC committee members or worker health and safety representatives will want to recommend a plan of immediate and specific action to the employer. It is equally important to track the implementation of recommended actions and assess their effectiveness over time.

N.B. Workers Health & Safety Centre (WHSC) now offers on-site COVID-19 training programs, delivered virtually in real time at scheduled dates and times. Participants engage with a highly qualified WHSC instructor and other participants. Like all WHSC programs, this program is approved and follows best practices to ensure learning is achieved.

To learn more:
 Visit: www.whsc.on.ca
 Check out: www.whsc.on.ca/resources
 Call: 1-888-869-7956 toll free
 Email: contact@whsc.on.ca

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Confronting COVID-19
A Workplace Inspection CHECKLIST

CHECK BOX	REQUIRED FOLLOW UP ACTION (IF ANY)
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable	Has a workplace COVID-19 policy and plan to implement the policy been prepared with the full participation of the joint health and safety committee (JHSC) or worker health and safety representative?
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable	Has the employee posted the full policy and plan in the workplace and communicated both to all workers, supervisors, vendors, contractors and subcontractors as appropriate, in writing and in electronic format?
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable	Is the hierarchy of controls driving these workplace efforts to eliminate or at least reduce the possibility of exposure to the COVID-19 virus to the lowest extent possible?
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable	As controls "At the Source" are the most effective, has the workplace considered and JHSC or worker health and safety rep been properly consulted as to whether to the degree possible: <ol style="list-style-type: none"> Workers can work from home or continue to work from home? The workplace can restrict access of others to the workplace (e.g., the public, clients/vendors, workers, contractors)? Non-essential work can be discontinued or reduced for the duration of the pandemic?
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable	Has the JHSC or worker health and safety rep been fully consulted in decisions regarding: <ol style="list-style-type: none"> All documentation that require Personal Protective Equipment (PPE) use for workers and others in the workplace? Type(s) of PPE? Where required have workers been fit tested for PPE (i.e., N95/mask)?

COVID-19 as an occupational illness

- If informed a WSIB occupational illness claim is filed, within four days employer must notify
 - JHSC
 - MOL
 - union, if there is one
- Over 4,500 COVID-19 claims submitted to WSIB



Reporting a COVID-19 case to public health



- Confirmed cases of COVID-19 must be reported to local public health unit
- Public health conducts contact tracing and advises those in contact to get tested and self-isolate

JHSC and H&S rep role in work refusal

- If a worker refuses work, supervisor must investigate in presence of worker JHSC member or H&S rep
- If work reassigned while awaiting MOL, refusal and reasons for it must be explained in presence of worker JHSC member or H&S rep
- Right to refuse flowchart checklist:
<https://www.whsc.on.ca/Resources/For-H-S-Reps/H-S-Documentation-Tools>

JHSC and H&S rep during MOL inspections

- Employer must give worker JHSC member or H&S rep opportunity to “accompany an inspector during their physical inspection of the workplace or any part thereof” [54(3)].



Employer duty to assist JHSCs and H&S reps

- Generally, assist them in carrying out their functions [25(2)(e)]
- Specifically,
 - inform and give health and safety report results [25(2)(l)]
 - allow to accompany MOL inspector [54(3)]
 - allow to be present for refusal investigation [43(4)].
- Post names of JHSC members [9(32)]

Certified member requirement

- Most workplaces with a joint committee must have two certified members
 - one worker, one manager
- Both must complete Part I (basic) and Part II (hazard specific) certification training



Preferred roles of worker certified member



- Monthly workplace inspection [9(24)]
- Be present for refused work reassignment [43(12)(a)]

Certified members and work stoppages

- Work stoppage is exclusive role of certified member
- Power to stop work in a “dangerous circumstance”
 - a provision of the Act or regulations being contravened
 - contravention poses danger or hazard to worker
 - delay could endanger worker
- Worker and management certified JHSC members jointly may direct work stoppage

Work stoppages during COVID-19

- Limited case law and board decisions, how power could be used during COVID-19 is unknown
- “Dangerous circumstance” could exist where workers in close contact with suspected or confirmed cases
- Can jointly stop work in “part of workplace” or with any “equipment, machine, article, device or thing” [45(4)]
- Work stoppage flowchart checklist:
<https://www.whsc.on.ca/Resources/For-H-S-Reps/H-S-Documentation-Tools>

COVID-19 safety plan

- Most employers required to have a health and safety policy and a program to implement that policy [25(2)(j)]
- Must include measures to protect workers from COVID-19
- If employer has no program, JHSC or H&S rep can recommend a plan [9(18)(c)].



WHSC virtual training

Now offering virtual classroom training, including:

- Hazards of COVID-19 (3 hour)
- GHS-WHMIS (2 hour)
- JHSC Certification I (3 days)
- JHSC Certification II – Generic (2 days)
- JHSC Refresher (1 day)



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