

Council of Construction Associations
#138 - 5751 Cedarbridge Way, Richmond, B.C. V6X 2A8
Telephone (604) 241-7667 Fax (604) 241-7678
email: grantmcmillan@shaw.ca
Grant McMillan, President

COCA WorkSafeBC Update #443 June 9, 2009

WorkSafeBC Seeks Input on Draft Labour Contractor Guideline

WorkSafeBC has requested input on a Draft Guideline that deals with Labour Contractors and Construction Employers.

Please send any comments or concerns to Grant McMillan at the above email address.

Thanks for your help.

G20.3 Labour Contractors and Construction Employers - Responsibilities

Issued _____

Regulatory excerpt

Responsibilities for worker health and safety are established by the *Workers Compensation Act* (“Act”) and the *OHS Regulation* (“Regulation”).

Section 115 of the *Act* states:

115 General duties of employers

- (1) Every employer must:
 - (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer’s work is being carried out, and
 - (b) comply with this Part, the regulations and any applicable orders.
- (2) Without limiting subsection (1), an employer must
 - (a) remedy any workplace conditions that are hazardous to the health or safety of the employer’s workers,
 - (b) ensure that the employer’s workers
 - (i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
 - (ii) comply with this Part, the regulations and any applicable orders, and
 - (iii) are made aware of their rights and duties under this Part and the regulations,
 - (c) establish occupational health and safety policies and programs in accordance with the regulations,
 - (d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer’s workers,
 - (e) provide to the employer’s workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,
 - (f) make a copy of this *Act* and the regulations readily available for review by the employer’s workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,
 - (g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and
 - (h) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

Section 20.3 of the *Regulation* states:

20.3 Coordination of multiple employer workplaces

- (1) If a construction project involves the work of 2 or more employers or their workers, each employer must notify the owner, or the person engaged by the owner to be the prime contractor, in advance of any undertaking likely to create a hazard for a worker of another employer.
- (2) If a work location has overlapping or adjoining work activities of 2 or more employers that create a hazard to workers, and the combined workforce at the workplace is more than 5,
 - (a) the owner, or if the owner engages another person to be the prime contractor, then that person must

- (i) appoint a qualified coordinator for the purpose of ensuring the coordination of health and safety activities for the location, and
 - (ii) provide up-to-date information as specified in subsection (4), readily available on site, and
- (b) each employer must give the coordinator appointed under paragraph (a)(i) the name of a qualified person designated to be responsible for that employer's site health and safety activities.
- (3) The duties of the qualified coordinator appointed under paragraph (2)(a)(i) include
 - (a) informing employers and workers of the hazards created, and
 - (b) ensuring that the hazards are addressed throughout the duration of the work activities.
- (4) The information required by subsection (2)(a)(ii) includes
 - (a) the name of the qualified coordinator appointed under subsection (2)(a)(i),
 - (b) a site drawing, which must be posted, showing project layout, first aid location, emergency transportation provisions, and the evacuation marshalling station, and
 - (c) a set of construction procedures designed to protect the health and safety of workers at the workplace, developed in accordance with the requirements of this Regulation.

Section 3.1 of the *Regulation* states:

3.1 When program required

- (1) An occupational health and safety program as outlined in section 3.3 must be initiated and maintained
 - (a) by each employer that has
 - (i) a workforce of 20 or more workers, and
 - (ii) at least one workplace that is determined under section 3.16 (2) (b) to create a moderate or high risk of injury, or
 - (b) by each employer that has a workforce of 50 or more workers.
- (1.1) If subsection (1) (a) or (b) applies to the employer, the occupational health and safety program applies to the whole of the employer's operations.
- (2) Despite subsection (1) an occupational health and safety program may be required in any workplace when, in the opinion of an officer, such a program is necessary.

Purpose of guideline

The purpose of this guideline is to

- Provide information regarding construction labour contractors and their role as employers of construction labourers
- Discuss the occupational health and safety responsibilities of employers who use labour supplied by construction labour contractors at their workplaces
- Discuss how the requirements for a health and safety program apply to workplaces where workers of labour contractors are present

Construction labour contractors and their responsibilities as employers

Construction firms often engage the services of labour contractors to supply labour at their workplaces. These labour contractors hire workers directly and arrange for them to work at their clients' workplaces.

Both the construction firm and the labour contractor have health and safety obligations with respect to these workers. The labour contractor is the direct employer of the workers, and therefore has the responsibilities of an employer with respect to these workers.

Under section 115(1) of the WCA, the labour contractor as the direct employer has the responsibility for to ensure the worker's health and safety. A key element of this will be evaluating the client firm's ability to adequately protect, instruct and supervise the worker. Engaging a less sophisticated client will necessarily entail more diligence from the labour contractor regarding the instruction and supervision it gives its workers.

Aspects of fulfilling this obligation should include:

- Assessing the capacity of the client to protect, instruct and supervise the worker
- Clarifying with the client the tasks the worker will be performing and ensuring the worker is limited to tasks for which he or she is qualified
- Ensuring the worker is adequately qualified, experienced and trained for the tasks that the client firm will have the worker perform
- Providing general safety orientation and training
- Monitoring the work on an ongoing basis to ensure the worker is performing work in a safe environment within his or her capabilities.

Under s. 115(2) of the WCA, the labour contractor's obligation includes

- Making the worker aware of reasonably foreseeable hazards that the worker will be exposed to at the client's workplace,
- Ensuring the worker is provided with appropriate personal protective equipment
- Providing information, instruction and supervision necessary for the worker to ensure the health and safety of that worker and other workers at the client's workplace

The labour contractor employer may rely to a greater or lesser degree on the client firm to carry out aspects of these obligations. However, the labour contractor is expected to confirm that these elements of its compliance will be carried out by the client by communicating clearly its expectations in advance and following up with the client. Failure of the client to carry out these elements will result in the labour contractor's non-compliance.

The client construction firms and their responsibilities as employers

As a practical matter workplace conditions, site specific matters, and the direct supervision of the worker are necessarily beyond the direct control of the labour contractor and within the control of its construction firm client. The client firm also has health and safety obligations with respect to the labour contractor's workers.

Section 115(1)(a)(ii) of the WCA sets out that every employer must ensure the health and safety not only of its own workers, but "any other workers present at a workplace at which that employer's work is being carried out". The scope of this duty depends on the employer's knowledge of and control over the workplace, its hazards and the workers in question. Though it may depend on the type of work and the sophistication of the client employer, in many situations the role of the client employer should be nearly identical to that of the direct employer. That is, the client employer should ensure the health and safety of the labour contractor's worker to the same extent that it should be ensuring its own worker's health and safety.

The client firm should:

- Accurately detail the tasks that it requires the worker to perform,
- Ensure the labour contractor is supplying an adequately qualified worker for those tasks
- Limit the worker to the tasks it has communicated to the labour contractor

- Provide personal protective equipment not already supplied by the worker or the labour contractor
- Provide site orientation, and instruction to the worker regarding the task and associated hazards, and confirm the worker's ability to perform those tasks safely

The following clarifies how some specific requirements in the OHS Regulation should be approached where workers of labour contractors are present at client firm workplaces

- *Impact on the client firm's OHS program requirements*

OHS Guideline G3.1 (Occupational health and safety program) provides detailed information on the application of section 3.1 of the *Regulation*. It discusses how to count workers for the purposes of determining whether a formal occupational health and safety (OHS) program is required, and outlines considerations that will be used by WorkSafeBC prevention officers when exercising their discretion to require a formal OHS program under section 3.2 of the *Regulation*. A brief summary of the main points from the guideline is provided below.

Workers are included in the count if they are employed for more than a month. In addition they are included if they have currently worked for less than a month but have previously worked periodically for the employer.

As noted in section 3.1(1) of the *Regulation*, if an employer employs workers in at least one moderate or high risk operation there must be a formal OHS program if the total workforce in all operations is 20 workers or more. Construction workplaces should be considered moderate to high risk workplaces.

- *First aid*

Under the requirements for first aid in Part 3 (Rights and Responsibilities) of the *Regulation*, the labour contractor, as the employer, is responsible for ensuring that first aid is provided for its workers. In complying with this obligation, typically the labour contractor will need to confirm with its client that first aid is being supplied at the workplace.

The client employer is expected to include the labour contractor's workers in its first aid planning, and adjust the first aid services to take account of the total number of workers on site.

- *Protection from hazardous materials / WHMIS*

Under their responsibilities as employers, the client firms are required to maintain a safe workplace.

Information requirements on hazardous materials are covered primarily in Part 5 (Chemical and Biological Substances) of the *Regulation*. Most substances to which a worker might be exposed in are covered by the Workplace Hazardous Materials Information System (WHMIS), which is addressed in sections 5.3 to 5.19. For hazardous substances covered by WHMIS, the worker must receive the education and training required by sections 5.6 and 5.7 of the *Regulation*. Section 5.6 deals with general (generic) requirements to ensure workers know among other things the elements of the WHMIS program, and the content required on labels and material safety data sheets (MSDS). Section 5.7 addresses site-specific requirements for training in the safe procedures for controlled products in the workplace.

The labour contractor and the client firm may, depending on the arrangements between them, share in the responsibilities for both generic instruction and site-specific training. It may be a typical scenario for

the labour contractor to ensure generic instruction is given, and the client firm to cover site-specific training.

- *New Worker Orientation*

Sections 3.22 to 3.25 of the *Regulation* require all young and new workers to receive orientation and training specific to the workplace. New workers include workers who are relocated to a new workplace if the hazards in that workplace are different from the hazards in their previous workplace. Again, responsibilities may be shared between the client firm and the labour contractor on how the various specified training and orientation elements are addressed. It may, for example, be reasonable to expect that the labour contractor take the lead on providing generic instruction on topics that are not site specific, with the client firm taking responsibility for site-specific topics. Records must be kept of the orientation and training provided.

DRAFT