

Legislative Change: A Primer on Employer Incident Investigations

Changes to the *Workers Compensation Act*

Bill 9 received Royal Assent on May 14 and contains a number of changes to Part 3 of the *Workers Compensation Act* (the Act). Some of the changes are effective May 14 while others will follow later in the year or in 2016. Accordingly, four amendments to the Act are now in effect. These are:

- Expanded stop work order powers
- Changes to employer incident investigations
- Expanded injunction powers
- Changes to penalty due diligence

The rest of this document focuses on the changes to employer incident investigations.

1. Overview of Changes

There are two major changes to the requirements for employer incident investigations. First, section 175 of the Act has been amended to require an employer to undertake a preliminary investigation within 48 hours of the incident. Second, section 176 of the Act is amended to require an employer to submit a full investigation report to WorkSafeBC within 30 days of an incident, unless we grant an extension.

There are no changes to the types of incidents that employers are required to investigate. They must continue to investigate all the incidents they're currently required to (e.g., fatalities, serious injuries, near-misses, etc.), including diving- and blasting-related incidents.

2. Preliminary Investigation, Report and Follow-up Action

Incident Investigation

Employers must immediately undertake a preliminary investigation into an incident. As far as possible, they must identify any unsafe conditions, acts, or procedures that significantly contributed to the incident.

Employers must identify what interim corrective action they plan to take between the date of the incident and the time the full investigation report is due, which is 30 days from the incident. During that interim period, they must take all actions reasonably necessary to prevent a recurrence of the incident. If an employer is only able to identify some, or only able to identify in more broader or more general terms, the unsafe conditions, acts or procedures that significantly contributed to the incident, the interim corrective action may include a full or partial shutdown of a workplace, removing equipment, or reassigning workers.

Preliminary Incident Investigation Reports

Employer must prepare a report of their preliminary investigations. That report must be prepared and completed within 48 hours of the occurrence of the incident. Upon request, the employer must provide a copy of the preliminary report to WorkSafeBC.

If the employer takes interim corrective action, a report is required. The employer's corrective action

report must include information such as the unsafe conditions, acts, or procedures that resulted in the corrective action, the interim corrective action taken, and the date that corrective action was completed. The report must be provided to the joint committee, worker rep, or posted in the workplace, as applicable.

3. Full Investigation, Report and Follow-up Action

Incident Investigation Process

The employer must undertake a full investigation immediately following the completion of the preliminary investigation. Employers must determine the cause or causes, and identify unsafe conditions, acts, or procedures that significantly contributed to the incident.

Incident Investigation Report

There are no material changes to the content of the required reports, however the preliminary investigation report focuses on corrective action during the interim period until the full investigation is completed.

Employers are required to submit their full investigation report to WorkSafeBC within 30 days of the incident. An initial extension and additional extensions to that time period may be granted by WorkSafeBC where the employer can demonstrate that delays in its ability to complete the investigation by the deadline are due to factors outside its control.

Final Corrective Action Requirements

Employers must provide a copy of the report that outlines their full investigation's corrective action to the joint committee, worker health and safety representative, or post the report at the workplace, as applicable. This report must also include the following:

- The unsafe conditions, acts, or procedures that made the corrective action necessary
- The corrective action taken to prevent the recurrence of similar incidents
- The names and job titles of the persons responsible for implementing the corrective action following the full investigation
- The date the corrective action was taken

WorkSafeBC may request a copy of either of the corrective action reports from the employer.

The flowchart on the following page illustrates the overall investigation process.

Workplace Incident Occurs

- Example: serious injury, fatality, diving or blasting incident, near-miss involving potential for serious injury, major structural failure

Within 48 hours, employer conducts preliminary investigation and report

If unsafe conditions, acts or procedures are identified:

Employer determines corrective action and implements without undue delay

Employer implements interim Corrective Actions Report and, as applicable, distributes or posts at the workplace

Employer undertakes full investigation

- Determine cause, unsafe conditions, acts or procedures, and any further corrective action required

Employer prepares full investigation report and submits to WorkSafeBC within 30 days of incident occurrence

- Employer may request to WorkSafeBC for an extension beyond 30 days

Employer undertakes any further corrective action identified in the investigation and prepares Corrective Action Report

Employer distributes Corrective Action Report or posts at workplace as applicable