

ONTARIO BILL 88

How to Protect Your Construction Business



Construction firms and contractors face more risk than ever, with continued supply chain delays, fluctuating inflation and interest rates and labor shortages contributing to the woes. Firms in Ontario are confronting a new burden: Bill 88, the Working for Workers Act.

The legislation, which received Royal Assent on April 11, 2022, includes several amendments to the Occupational Health & Safety Administration (OHSA) regulations, such as new requirements for overdose prevention on worksites and broadening the penalties and scope for OHSA violations. While these changes are intended to improve workplace safety, the new penalties may make it even more challenging for construction firms to hire competent construction site supervisors.

CHANGES IN THE REGULATIONS

Although the Working for Workers Act includes changes that cover a wide range of employers, two sections will have the greatest effect on the construction industry:

- **Opioid overdose treatment.** Approximately 30% of opioid-related deaths occur among construction workers.¹ The new regulation requires at-risk workplaces, such as construction sites, to keep a naloxone kit in good condition on site and train a staff member to administer it. Naloxone is a nasal spray that reverses the effects of an opioid overdose and allows the victim to continue breathing until the paramedics arrive to provide further treatment.

30%

OF OPIOID-RELATED DEATHS
OCCUR AMONG
CONSTRUCTION
WORKERS

\$2M

MAXIMUM FINE IF
A CONSTRUCTION
FIRM IS FOUND
GUILTY OF OHSA
DEFIANCE

¹ Ontario Newsroom, "Ontario Mandating Naloxone Kits in High-Risk Workplaces," March 1, 2022.

- **Increased Fines.** Workplace fatalities number in the hundreds, but experts suspect that the real numbers are 10 times higher than that.² To prioritize safety across the industry, the new regulation introduced significant increases to fines for health and safety violations — impacting not only organizations but also individuals in supervisory roles, such as site supervisors and foremen.

Under the new law, corporations found guilty of contravening OHSA requirements can be fined as much as \$2 million. Workers in supervisory roles who defy provincial health and safety rules can be personally fined up to \$500,000, and directors, officers or other executives can individually be fined as much as \$1.5 million and/or face up to 12 months in prison if a failure to provide a safe work environment leads to a worker's death or severe injury.

Even owners can be on the hook. In the Supreme Court of Canada's November 2023 split decision in *R. v. Greater Sudbury (City)*,³ the court upheld an appellate court's ruling that a construction project owner can be considered an employer and bear responsibility for following OHSA rules and regulations for projects even if the owner does not employ the workers performing work on the project.

In addition, the limitation period for prosecuting OHSA violations has been extended from one year to two years.

The law also discloses "aggravating" factors for determining penalties, which includes a reckless disregard for safety or failure to follow the order of an inspector, previous OHSA offenses, a record of noncompliance with OHSA regulations and a lack of remorse. And the risk of criminal charges filed against contractors, executives and supervisors remains if a workplace fatality or severe injury occurs allegedly due to a negligent disregard for workers' health and safety.

STRATEGIES TO MANAGE THE RISK

With high stakes for both the company and its supervisors, it's imperative for construction firms to take steps to prepare their teams — and especially their supervisors and foremen — for this era of greater accountability.

Consider these best practices for managing risk:

- **Ramp up employee training.** Introduce training to help employees and managers recognize signs of an opioid overdose as well as the proper way to administer naloxone treatment. Increase health and safety training for other common risks to raise awareness of various exposures and reduce the number of workplace accidents.

\$500K

AMOUNT SUPERVISORS
CAN BE PERSONALLY
FINED FOR VIOLATING
SAFETY RULES

2 YEARS

THE STATUTE
OF LIMITATIONS FOR
PROSECUTING OHSA
VIOLATORS

² Canadian Occupational Safety, "Worker deaths in 2022 '10 times higher' than what WSIB reported," May 1, 2023.

³ Hicks Morley, "Owners of Construction Projects Are Employers Under Ontario's OHSA: More on a Recent Ruling of the Supreme Court of Canada," November 14, 2023.

- **Consider COR certification.** For many construction firms, completing the Canadian Federation of Construction Safety Associates' Certificate of Recognition (COR) opens doors. Voluntarily seeking COR certification — a prescriptive health and safety management program that independently audits and certifies that the employer has implemented the program — will show your company's commitment to safety. COR-certified businesses typically see a 28% reduction in lost-time injuries after training, and these businesses will have a layer of defense if a serious accident or death occurs.
- **Improve recordkeeping.** Managing documentation and reporting procedures is critically important, especially when health and safety violations can be filed up to two years after an event. Ensure workers understand the importance of reporting all incidents properly, so if a claim appears, the company and its supervisors have all the information they need to defend themselves.
- **Review insurance options.** Although improved safety is the best defense, insurance can protect the construction firm, supervisors and foreman if the worst occurs. Legal expense insurance covers the cost of defending your business — including foremen and supervisors — in the event of a health and safety charge, leaving your leaders free to get back to work.

28%

REDUCTION
IN LOST-TIME
INJURIES AFTER
COR CERTIFICATION

57%

AVERAGE TURNOVER
RATE FOR
CONSTRUCTION
INDUSTRY IN
CANADA

Contact **HUB International's construction insurance specialists** in Ontario to learn more about protecting your construction firm and its supervisors from OHSA litigation and fines.