

WorkSafe Services

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Services de travail sécuritaire

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May 5, 2005

"The Employer"

The Chief Compliance Officer is writing in response to the employer's letter dated January 31, 2005 in which the employer requests a deviation from N.B. *Occupational Health and Safety Act*, Regulation 91-191 Section 136.1(c) that states:

An employer shall ensure that a metal scaffold if 6 m or greater in height, is equipped with a continuous access stairway commencing at ground level.

The employer's letter indicates that the employer is preparing to undertake scaffolding services at the owner's premises. The employer is currently in the bidding stage for these services; however, it is clear that the type of structures required for work at this location will be unable to comply with Section 136.1(c) given the vertical and ground based obstructions.

The employer makes reference to a similar situation that occurred in late 2001. The worksite in this instance was a different owner's premises. A tour of the site was conducted at that time to review an interpretation decision on what the WHSCC considers to be metal scaffolds and, as a result of the tour and the information provided, a deviation from Regulation 91-191 Section 136.1(c) was granted with the condition that the owner "report to the Health and Safety Officer responsible for the site whenever such a situation arises". The employer indicates that the employer contacted WHSCC every time they had a scaffold structure that would not comply with the regulation. A Health and Safety Officer followed up on each request to ensure the request was valid. The employer reports that no issues arose as a result of the requests.

In previous correspondence from the employer, the employer had stated that the base of a typical stair access requires an area of 35 sq. ft. (Frames) 105 sq. ft. (Surelock) at the base and must be free of obstructions vertically. On an industrial site, this may be impossible to achieve in every circumstance.

The employer has stated that it is the employer's hope that a standard system for requesting deviations from Section 136.1(c) can be developed, similar to the one used at the previous owner's premises, for this owner's premises, and all of the employer's industrial projects in the province of New Brunswick, whenever a situation arises. The employer's proposed system would be as follows:

- When a scaffold cannot comply with Section 136.1(c) the employer would fax a formal Request for Deviation form to the area WHSCC Health & Safety Officer.
- When stair access cannot be installed on a scaffold greater than 6m in height, a continuous ladder system equal to or greater than the continuous stair system will be installed in its place.
- WHSCC can follow up on each request at their discretion.
- It is agreed that any breach by the employer or any of its representatives will result in a reconsideration of any deviation granted.

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The employer states that the employer's core business is industrial maintenance. As responsible industry leaders, the employer takes pride in providing safe, smart and efficient scaffolding solutions to industrial environments. The employer goes to great lengths to ensure that the employer's scaffolding services adhere to all Federal and Provincial regulations and the employer assures that the process the employer is proposing will not be abused. The employer feels that the employer's company has proven itself responsible in this regard.

The Chief Compliance Officer has reviewed the information the employer has provided and has conferred with a Health and Safety Officer. Based on the information, a deviation is granted as requested for scaffolding services to be provided at the owner's premises, with the understanding that the Health and Safety Officer is contacted before the work commences and advised of the employer's inability to comply with Section 136.1 (c) due to structural limitations only. In these instances, scaffold systems with the appropriate ladders will be allowed.

Please note that a breach by the employer of the conditions listed could result in a reconsideration of this decision.

By copy of this letter the Chief Compliance Officer has advised WHSCC staff of the decision.

Regards,

Chief Compliance Officer