

LEGISLATIVE INTERPRETATIONS

Topic: Regularly Employed	Issued by: Director of Compliance and Regulatory Review
Statute: <i>Occupational Health and Safety Act</i>	Date Issued: Nov. 15, 2005
Subsections: 8(1), 8.1(1), 14(1), 17(1) & 17(2)	Date Revised: Jan. 14, 2015

8(1) Every employer with 20 or more employees regularly employed in the Province shall establish a written safety policy, in consultation with his or her employees.

8.1(1) Every employer with 20 or more employees regularly employed in the Province shall establish a written health and safety program, in consultation with the committee or the health and safety representative, that includes provisions with respect to the following matters:

- (a) the training and supervision of the employees in matters necessary to their health and safety;
- (b) the preparation of written work procedures and codes of practice for the implementation of health and safety work practices, required by this Act, the regulations or by any order made in accordance with this Act;
- (c) the identification of the types of work for which the work procedures are required at the places of employment of the employer;
- (d) a hazard identification system that includes
 - (i) evaluation of the place of employment to identify potential hazards,
 - (ii) procedures and schedules for inspections, and
 - (iii) procedures for ensuring the reporting of hazards, prompt follow-up and control of the hazards;
- (e) a system for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences;
- (f) a record management system that includes reports of employee training, accident statistics, work procedures and health and safety inspections, maintenance, follow-up and investigations; and
- (g) monitoring the implementation and effectiveness of the program.

14(1) Every employer with twenty or more employees regularly employed at a place of employment shall ensure the establishment of a joint health and safety committee.

17(1) Subject to subsection (2), every employer with not fewer than five and not more than nineteen employees regularly employed at a place of employment shall establish a safety policy in respect of that place of employment which may include provision for a health and safety representative.

17(2) Where the nature of employment at a place of employment presents a high risk to the health and safety of employees or where the accident record of a place of employment is higher than is normal for that place of employment or for similar places of employment, the Commission may require an employer to establish and file with the Commission a safety policy that includes provision for a health and safety representative.

Question

What does “regularly employed and regularly employed in the Province” mean?

Response

Regularly employed is not affected by full-time or part-time status. For example, if a business employs 10 full-time workers and 10 part-time workers, the business has 20 regularly employed workers. This includes seasonal employment, (excluding high hazard work), if employed for at least three consecutive months and it is expected to be recurring.

The number of hours is only a factor if the pattern of employment is not predictable, meaning not seasonal or repeated in a predictable fashion on a monthly basis. For example, if a worker works 10 hours a week, every week, then that worker is regularly employed.

Consideration must also be given to the reason for any person to be at a place of employment. For example, clients of an assistive employment agency may be employed by the agency itself, may be participating in training so they can be employed within the community, or may be low-functioning and are at the agency for life-skills training. People who are there for basic employment or life skills training are at that place of employment as a client more so than as an employee. When determining employee status, WorkSafeNB considers the totality of the circumstances, though in the example above, the latter two classes of clients are unlikely to be considered to be regularly employed under the *Occupational Health and Safety Act*.

Where high hazard work is carried out, an employer who has 20 or more workers employed for less than three consecutive months other than on a project site, must ensure the establishment of a joint health and safety committee (JHSC) and a written health and safety program for the duration of the work. Instead of a JHSC, workers may select a health and safety representative as a substitute for the JHSC. If the employer allows workers to select a representative, that person would require within two weeks of the start of the work or at the first available date for a WorkSafeNB training session, as stated in paragraph 14.1(2)(a). On a project site, joint health and safety committees shall be established in accordance with sections 14.3, 14.4 or 17.1.

High hazard work is defined as:

- (a) working at a project site¹ or mine;
- (b) working underground, in confined space or in isolated areas where emergency medical help is not close to the work area;
- (c) working on electrical transmission, generation and distribution systems;
- (d) working at foundries or machine shops;
- (e) working at gas, oil or chemical processing plants, steel or other base metal processing plants;

- (f) working at woodland operations, sawmills or lumber processing plants;
 - (g) working at brewery or beverage processing plants, meat or seafood packing or processing plants;
 - (h) working with explosives or heavy equipment.
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Where a worker is self-employed and working under contract for an employer, this worker would not be considered regularly employed for the contracting employer. Also, if the employer contracted out services to another employer, the employees working for the contracting employer would not be regularly employed for the contracting employer (for example, employer contracted out the cleaning of his building to another employer).

In addition, to determine the number of regularly employed at the workplace, for subsections 8(1) and 8.1(1), employers will also have to take into account all of their New Brunswick operations. If, for example, an employer has an operation in Saint John with 15 regularly employed workers and another five regularly employed workers in Edmundston, the employer must comply with subsections 8(1) and 8.1(1).

1. Only subsection 8(1) & 8.1(1) applies to a project site