

WorkSafeNB Legislative Change Update

CSSE – Feb 12, 2020

Evan Campbell - Engineer

Anne Lise Albert - Learning & Regulatory Review

Michael McGovern – Legal Counsel

Agenda

- Supervision legislation - Evan
 - Enacted Jan 1, 2020
- Harmonization of select PPE standards and First Aid kits – Anne Lise
 - Expected enactment April 1, 2020
- Administrative penalties – Michael
 - Possible enactment 2021
- Regulation 91-191 (logging & silviculture, occupational hygiene & construction) – Michael
 - Possible enactment 2021



Why the Changes?



What Changed?

Employer

“employer” means a person who employs one or more employees or the person’s agent;

Supervisor

“supervisor” means a person who is authorized by an employer to supervise or direct the work of the employer’s employees;



9(1) Duties of Employer

~~9(1)(c.3) provide the supervision that is necessary to ensure an employee's health and safety;~~

9(1)(c.3) ensure that work at the place of employment is **competently supervised** and that supervisors have sufficient knowledge of all of the following with respect to matters that are within the scope of the supervisor's duties:

- (i) this Act and any regulations under this Act that apply to the place of employment;
- (ii) any safety policy for the place of employment
- (iii) any health and safety program for the place of employment
- (iv) any health and safety procedures with respect to hazards in connection with the use, handling, storage, disposal and transport of any tool, equipment, machine, device or biological, chemical or physical agent by employees who work under the supervisor's supervision and direction;

9(1) Duties of Employer cont'd...

- (v) any protective equipment required to ensure the health and safety of the employees who work under the supervisor's supervision and direction; and
- (vi) any other matters that are necessary to ensure the health and safety of the employees who work under the supervisor's supervision and direction;
- (c.4) ensure that work at the place of employment is ***sufficiently supervised***;



9.1(1) Duties of supervisors

9.1(1) Every supervisor shall

- (a) take every reasonable precaution to ensure the health and safety of the employees who work under the supervisor's supervision and direction;
- (b) comply with this Act, the regulations and any order made in accordance with this Act or the regulations;
- (c) ensure that the employees under the supervisor's supervision and direction comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and

9.1(1) Duties of Supervisors cont'd...

- (d) co-operate with
 - (i) a committee, if a committee has been established,;
 - (ii) a health and safety representative, if a representative has been elected or designated, and
 - (iii) any person responsible for the enforcement of this Act and the regulations.

9.1(2) Duties of Supervisors cont'd...

9.1(2) Without limiting the generality of the duties under subsection (1), every supervisor shall

- (a) acquaint the employees under the supervisor's supervision and direction with any hazard in connection with the use, handling, storage, disposal and transport of any tool, equipment, machine, device or biological, chemical or physical agent;
- (b) provide the information that is necessary to ensure the health and safety of the employees under the supervisor's supervision and direction; and
- (c) provide the instruction that is necessary to ensure the health and safety of the employees under the supervisor's supervision and direction.

Supervision Recap

What is a Supervisor?

The OHS Act defines a supervisor as a person who is **authorized** by an employer to supervise or direct the work of the employer's employees. They may include the following



Owners, Managers



Superintendents,
Overseers



Lead hands, Foremen



Department heads &
Experienced employees

EVERY supervisor must:

- 1 Inform employees of the **hazards** associated with their work
- 2 Provide the necessary **information** to ensure the health and safety of their employees
- 3 Provide the **instruction** that is necessary to ensure safety of their employees
- 4 Ensure that employees under their supervision and direction **comply** with the OHS Act and regulations





Requirements for Supervision

Competently

- Has proper **training** and /or **experience**
- Knowledgeable of **OHS Act & Regs**
- Knows the company **safety policy**
- Knows the **hazards** associated to the type of work
- Knows required PPE for the task and ensure **PPE** is being used by employees

Sufficiently

- **The type of work being supervised** - the greater complexity, the closer the supervision needed
- **The availability of detailed, written instructions** : The more detail instructions less supervision required
- **The employees that are being supervised** skills and experience with the task
- **The (potential) consequences and outcomes of the work being performed** - likelihood of an incident and the greater the need for direct supervision

Why harmonize?

To simplify regulatory requirements for organizations working across multiple jurisdictions



Harmonization of standards

1. Eye and Face Protection
2. Head Protection
3. Foot Protection
4. Hearing Protection
5. Life Jackets and Personal Flotation Devices
6. First Aid Kits

Harmonization of select PPE standards Eye and Face Protection – Section 39 of Reg. 91-191

39 Where an employee is exposed to a hazard that may irritate or injure the eyes, face, ears or front of the neck, the employee shall use protective equipment that is appropriate to the hazard and that conforms to CSA standard CSA Z94.3-15, “Eye and Face Protectors” or a standard offering equivalent protection.

Harmonization of select PPE standards

Eye and Face Protection – Section 39 of Reg. 91-191

- Types of hazards expanded to include
 - Lasers
 - Electric arc flashes
- Requires class 1 (spectacles) or class 2 protectors (goggles) to be used in conjunction to a welding helmet
- Refers to CSA Z94.3.1 “Guideline for selection, use and care of eye and face protectors”
- Side shields for safety glasses and prescription safety glasses must be integrated or permanently attached to the frame



Harmonization of select PPE standards Head Protection – section 40 of Reg. 91-191

40(1) On a project site, an employee shall use a Type 2 Class E protective headwear that conforms to CSA Z94.1-15 “ Industrial protective headwear – Performance, selection, care, and use” or a standard offering equivalent or better protection.

40(2) At a place of employment, other than project site, where an employee is exposed to a hazard that may injure the employee’s head, the employee shall use protective equipment that is appropriate to the hazard and that conforms to “CSA standard CSA Z94.1-15, “Industrial protective headwear – Performance, selection, care, and use” or a standard offering equivalent or better protection.

Harmonization of standards

Head Protection – section 40 of Reg. 91-191

Type 2 - Intended to protect the user against impact to and penetration of the crown and laterally.

Class E - non-conducting up to 20,000 volts – no change
Standard requires hazard assessment

- Conducted by a qualified person

Default is Type 2, Class E when no hazard assessment is conducted

Harmonization of standards

Foot Protection – section 41 of Reg. 91-191

41(1) On a project site, an employee shall use Grade 1 footwear with sole protection that conforms to CSA standard CSA Z195-14, “Protective Footwear” or a standard offering equivalent protection.

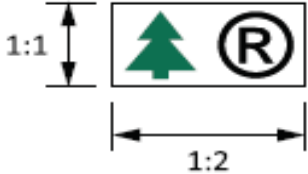
41(2) At a place of employment, other than a project site, where an employee is exposed to a hazard that may injure the employee’s foot, the employee shall use protective equipment that is appropriate to the hazard and that conforms to CSA standard CSA Z195-14, “Protective Footwear” or a standard offering equivalent protection.

Harmonization of standards

Foot Protection – section 41 of Reg. 91-191

No change except for forestry workers and others exposed to hand-held chainsaws or other cutting tools

Figure 23
Protective footwear marking
(See Clause 7.8.)
Chainsaw protective footwear

Label	Criteria	Intended application
	<p>White rectangle with green fir tree symbol indicates chainsaw protective footwear.</p>	<p>For forestry workers and others exposed to hand-held chainsaws or other cutting tools.</p>

Harmonization of standards

Hearing protective equipment – section 48 of 91-191

32 Where necessary, an employer shall provide, and an employee shall use, adequate hearing protective equipment so that the exposure of an employee to noise is kept within the limits prescribed by section 30.

48(1) An employer shall ensure that hearing protective equipment conforms to CSA Z94.2-14, “Hearing protection devices – Performance, selection, care, and use”.



Harmonization of standards

Hearing protective equipment – section 48 of 91-191

CSA Standard also contains guidance regarding

- Proper fit
- Proper seal
- Training
- Selection...how to comply with section 32 (Reg 91-191)

Harmonization of standards

Life Jackets & PFDs – section 51(2) of Reg. 91-191

51(2) If an employee is exposed to a risk of drowning, an owner of a place of employment, an employer and a contractor shall each ensure the employee uses one of the following:

- a) a fall-protection system;
- b) **a life jacket that is approved by Transport Canada or an agency permitted by Transport Canada to approve it**
- c) **a personal flotation device that is approved by Transport Canada or an agency permitted by Transport Canada to approve it**
- d) **an automatically inflatable personal flotation device that is approved by Transport Canada or an agency permitted by Transport Canada to approve it; or**
- e) a personal safety net that conforms to the requirements of section 49.8.

Harmonization of standards

Life Jackets & PFDs – section 51(2) of Reg. 91-191

Life jackets - three Canadian-approved types

1. Safety of Life at Sea (SOLAS) lifejackets meet high performance standards - for all vessels
2. Standard Type lifejackets are approved - for all vessels, except [SOLAS vessels](#).
3. Small Vessel lifejackets are approved for small vessels

PFDs come in many types, sizes, and colours

Inflatable PFDs - two styles

1. Vest type
2. Pouch type



Harmonization of Standards

First Aid kits – section 11 of Reg. 2004-130

11 An employer shall ensure that each first aid kit required to be provided by the employer is equipped as set out in “CSA standard CSA Z1220-17: First aid kits for the workplace”.



- Kits selection can now be found in CSA standard referenced in regulation
- 3 types of kits that employer can choose from
 - Type 1 - Personal Kit
 - Type 2 - Basic Kit – For most workplaces
 - Type 3 – Intermediate Kit – High Hazard workplace*

* Low risk workplaces – activities with a small likelihood of harm and a low severity of injury

High risk workplaces - activities with a higher likelihood of harm and a greater severity of injury

Harmonization of Standards

First Aid Kits – section 11 of Reg. 2004-130

First Aid Kit Classification	1 employee or work in isolation	2-25 workers per shift	26-50 workers per shift	51-100 workers per shift
Kit selection table Type 1: Personal	1	NA	NA	NA
Type 2: Basic		1 small	2 small or 1 medium	4 small, 2 medium, 2 small & 1 medium or 1 large
Type 3: Intermediate		1 small	2 small or 1 medium	4 small, 2 medium, 2 small & 1 medium or 1 large

Administrative Penalties - Overview

- WorkSafeNB & GNB are preparing options regarding administrative penalties
- Administrative penalties are financial charges that WorkSafeNB can impose for contraventions of the Act & Regs.
- Admin penalties are intended to supplement and not replace charges in Provincial Court.

Administrative Penalties - Comparison

Provincial Court (OHS charges)	Administrative Penalties
Slow process (~ 2 years)	Able to react more quickly
Charges laid in court	Similar to a "ticket"
Limited control by all parties	More internal and external controls
Administration costs are high	Relatively low administration costs
Costly to defend	Less defence costs
Funds paid into general provincial revenues	Funds will go to Public H&S Education Trust Fund
Maximum fine of \$250,000	Employers – \$500, \$1000, \$2000 Supervisors - \$250, \$500, \$1000 Employees – \$100, \$200, \$500
Imprisonment for up to six months	No imprisonment option

Administrative Penalties - Process

- HSO will have the authority to impose penalties
- Appeal mechanism similar to appealing orders
 - Chief Compliance Officer (first level)
 - Workers' Compensation Appeals Tribunal hears appeals of CCO's rulings
- OHS charges prohibited if administrative penalty issued for same contravention
- Government has stated its preference to have program in place in 2021

Amendments to General Regulation (91-191)

- WorkSafeNB GNB working on amendments to Regulation 91-191
- Proposed amendments to sections dealing with logging/silviculture, construction and occupational hygiene
- These proposed amendments were recommended by stakeholder technical committees over the past several years
- Changes are evolutionary, many are simply updating to newer versions of cited standards
- When proposed changes are drafted they will be posted for public comment on the GNB website