



A Guide for Employers

# The Essential Health and Safety Guide for Small Business Owners.

November 2018



PENINSULA



## About Peninsula

Peninsula is an employer resource for HR, workplace health and safety, and employment advice, offering guidance to small and medium-sized businesses. For more than three decades, we have supported over 50,000 businesses worldwide and across all industries.

All of our clients have immediate access to unlimited 24/7 employment advice, occupational health and safety support, legal expense insurance, on-site HR audits, a suite of employer documents and templates, online employee management tools and legislative updates, all of which are custom-tailored to their particular business. Simply put, Peninsula is the alternative solution to having your own in-house human resources team. We're here to help, however and whenever you need us.

For more information, visit [www.peninsulagrouplimited.com/ca](http://www.peninsulagrouplimited.com/ca).



# Who is this guide for?

**This is the essential health and safety guide for small business owners.**

If you are a small business owner or employer, this guide is for you.

This guide contains essential information regarding an employer's duties under provincial health and safety laws. It also provides answers to frequently asked questions concerning this topic.

You may use this guide as a reference point for:

- Health and safety standards
- Employer need-to-knows
- HR best practices
- Employment-related facts
- Legislative updates

If you have any questions regarding this guide or about how health and safety laws affect your business, please contact Peninsula to speak with our expert health and safety advisors. Our dedicated advice line is a complimentary service that's available 24/7 at **1(833) 247-3652**.

General Disclaimer: Peninsula is an employer resource for HR and employment advice. Employers are advised that this guide is for informational purposes only. Peninsula is not licensed to practice law in Ontario. The content in this guide is not intended to replace licensed services and the information is not intended to be legal advice.



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# Ontario's Occupational Health and Safety Act (OHSA)

**This guide explores some of the fundamental aspects of Ontario's Occupational Health and Safety Act (OHSA). As a small business owner, you should use this resource in order to avoid common pitfalls.**

The OHSA applies to virtually every workplace in Ontario. Failure to comply with the requirements set out in the Act can result in steep fines and even imprisonment. That's why it is critical for employers to understand and remain compliant with the many rules and regulations set out in the OHSA.

The OHSA prescribes numerous tasks that employers must complete on a regular basis, including maintaining a general workplace health and safety program, ensuring that mandatory workplace accident reporting protocols are being followed and completing regularly scheduled workplace risk assessments.

**As an employer, you literally have dozens of obligations under the Occupational Health and Safety Act that must be complied with and monitored on a monthly, and in some cases, a weekly basis. Failure to do so can leave your business exposed to highly disruptive compliance orders and fines.**

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# Understanding Health and Safety in the Workplace

## **Employer Duties Under the Occupational Health and Safety Act (OHSA)**

Employers, both big and small, literally have dozens of ongoing obligations under the OHSA. Complying with these obligations can be difficult and very time-consuming. An employer's duties and obligations under the OHSA include:

1. Implementing a general workplace health and safety policy and program;
2. Ensuring that every worker completes a health and safety general awareness program that has been approved by the Ontario Ministry of Labour;
3. Implementing a workplace violence and harassment program;
4. Performing monthly and annual workplace risk assessments; and
5. Having in place accident and illness reporting protocols.

## **Understanding the OHSA**

In addition to creating safe work environments for employees, the OHSA strives to facilitate a strong internal responsibility system (IRS) within every workplace. Simply put, an IRS means that everyone in the workplace has a role to play in keeping it safe and healthy.

## **Health and Safety Representatives / Joint Health and Safety Committee (JHSC)**

Under the OHSA, most employers are required to have either a health and safety representative or a joint health and safety committee (JHSC) installed in the workplace. The purpose of a HSR or JHSC is to identify workplace hazards, investigate workplace injuries and accidents and make recommendations to the employer, all with the aim of promoting a safe and healthy workplace.



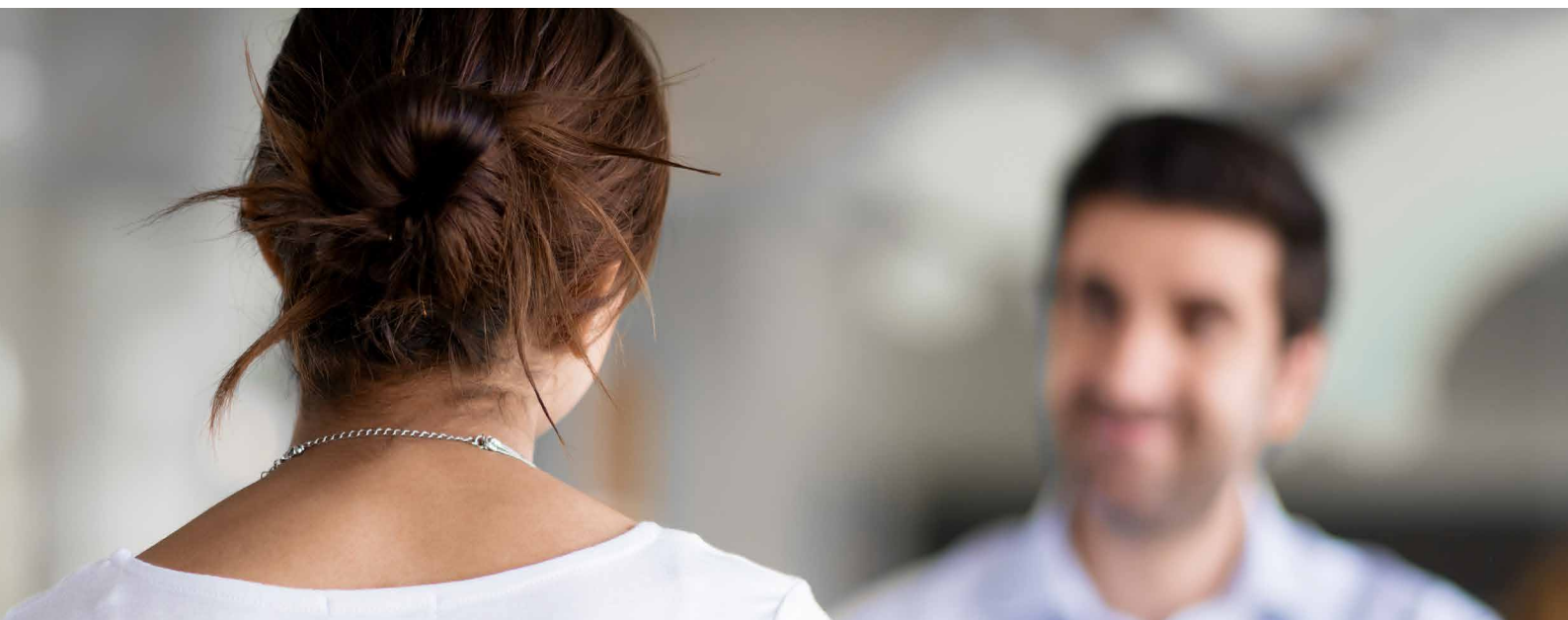


# Understanding Health and Safety in the Workplace

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## Does your business need an HSR or a JHSC?

No. of Workers	Legislative Requirement
1 to 5	1 to 5 A JHSC or health and safety representative is not required, unless a designated substance regulation applies to your business, or unless the Ministry of Labour orders otherwise.
6 to 19	A HSR is required. The rep must be selected by the workers he or she will represent.
20 to 49	A JHSC that consists of at least two (2) members is required.
50 plus	A JHSC that consists of at least four (4) members is required.



# Understanding Health and Safety in the Workplace

**...continued**

## **Appointing Supervisors and Their Responsibilities**

Employers must appoint supervisors that meet the following criteria:

1. He or she must be qualified to organize and delegate work and its performance;
2. He or she must be familiar with the OHSA and the regulations that apply to their work environment; and
3. He or she must be aware of actual or potential safety risks in the workplace.

Supervisors must also ensure that workers are aware of any risks and hazards in the workplace; ensure that they are working safely; and that proper procedures are being followed once a health and safety incident has been reported by a worker.

## **External Parties in Health and Safety**

1. Ministry of Labour – The Ontario Ministry of Labour is responsible for preventing workplace injuries and illnesses and promoting and enforcing employment standards and provincial health and safety legislation

Oversees the prevention of workplace hazards, enforces fair employment practices and standards,

2. Workplace Safety and Insurance Board – The Ontario Workplace Safety and Insurance Board is an independent trust agency that administers compensation and no-fault insurance for Ontario workplaces.
3. Ontario Labour Relations Board – The Ontario Labour Relations Board is an independent, adjudicative tribunal that mediates and adjudicates a variety of employment and labour-related matters, including appeals from orders made by Ministry of Labour health and safety inspectors.





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# Workplace Health and Safety Policy

## Do you have a policy in place for your employees to reference?

Having a health and safety policy is not only an essential resource to train your employees and prevent workplace accidents, it is a *legal requirement*.

Employers who “regularly” employ more than five (5) workers **must have** a(n):

1. Written occupational health and safety policy;
2. Have a program in place to implement the policy; and
3. Review the policy at least annually.

### Workplace Harassment and Workplace Violence Policies

Employers are also *required by law* to create, implement and maintain workplace violence and harassment policies and review them at least annually. The policies must include, among other things, workplace violence and harassment reporting procedures and mandatory workplace investigation protocols.

Employers are also *required by law* to:

- Post their occupational health and safety policies in a location in the workplace where they will be clearly visible and easily accessible by their employees;
- Ensure that they do not employ underage workers (the thresholds vary depending on an employer’s industry);
- Immediately report all fatal or critical injuries and occupational illnesses directly to the Ontario Ministry of Labour *in every instance*;
- Take every reasonable precaution to ensure the health and safety of their workers.



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# What are the Rights of your Employees?

## And how do employee rights impact you, as the employer?

Under the Occupational Health and Safety Act, workers have three (3) essential rights:

### 1. The Right to Know

Workers have the right to know and be aware of any actual or potential hazards in the workplace to which they may be exposed.

**What this means for an employer:** An employer must ensure that your workers are properly trained, are provided with proper personal protective equipment and that you have taken all reasonable steps to ensure that your workers are safe.

### 2. The Right to Participate

Workers have the right to be included and consulted in matters concerning workplace health and safety. This includes being involved in the process of identifying and resolving health and safety concerns and risks.

**What this means for an employer:** An employer must ensure that your business has the required level of worker representation prescribed by the Occupational Health and Safety Act. For example, employers who regularly employ six (6) but less than 20 workers must have a worker appointed health and safety representative present in the workplace at all times. Employers who regularly employ 20 or more workers must have a joint health and safety committee in place.

### 3. The Right to Refuse

Workers have the right to refuse work if they believe it poses a danger to themselves or someone else.

**What this means for an employer:** If one of your employees refuses to perform work on the basis that he or she believes the work to be unsafe (provided that the work is not inherently unsafe, such as firefighting), then, in most cases, you will be legally required to fully investigate the employee's complaint and determine whether it is reasonable in the circumstances. If your employee disagrees with your findings, then the employee may continue to refuse to do work and the matter will be investigated by a Ministry of Labour inspector.



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# Harassment and Violence in the Workplace

Everyone should feel safe at work. As an employer, you are responsible for creating and maintaining robust workplace violence and harassment policies. Employers are also **required by law** to fully investigate **any** incident **or** formal complaint of workplace harassment.

The Occupational Health and Safety Act defines workplace violence and harassment very broadly to include any course of comments or actions that are known, or ought reasonably to be known, to be unwelcome.

## Employers Must Create Policies

Employers are **required by law** to create and implement workplace violence and harassment programs and policies and to review them annually. In a workplace where six or more employees are regularly employed, the policies must be posted in a location where they will be clearly visible and easily accessible by the employees.

## Employers Must Implement Programs

A workplace harassment program has to describe procedures for employees to report incidents of workplace harassment and establish how an employer will investigate complaints.

A workplace violence program should show an employer's commitment to protecting employees from violence. The program should include procedures to:

- Assessing and controlling the risk of workplace violence;
- Report incidents of workplace violence;
- Obtain Get immediate assistance; and
- Investigating incidents or complaints of workplace violence .



# When are you Required to Notify the Ministry of Labour?



Employers are required to notify the Ontario Ministry of Labour in the event of serious workplace accidents and occupational illnesses.

## **Critical/Fatal Injury**

If an employee is critically injured or killed in the workplace, an employer must notify the Ministry of Labour immediately and submit a detailed written report of the incident within 48 hours.

## **Occupational Illness**

If an employer is told that a worker has an occupational illness or is filing a claim with the Workplace Safety and Insurance Board, the employer must notify the Ministry of Labour within four (4) days of being advised.

## **Accident at a Construction Site**

If an accident occurs at a construction site, such as an explosion or failure of any equipment, it must be reported to the Ministry of Labour within 48 hours of the occurrence.



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# What to Expect from Workplace Inspections

Occupational health and safety inspectors appointed by the Ontario Ministry of Labour enforce the Occupational Health and Safety Act. Inspectors have broad investigative powers under section 54 of the Act, as set out below.

## **Powers and Abilities of Inspectors**

Ministry of Labour inspectors have the ability to, among other things:

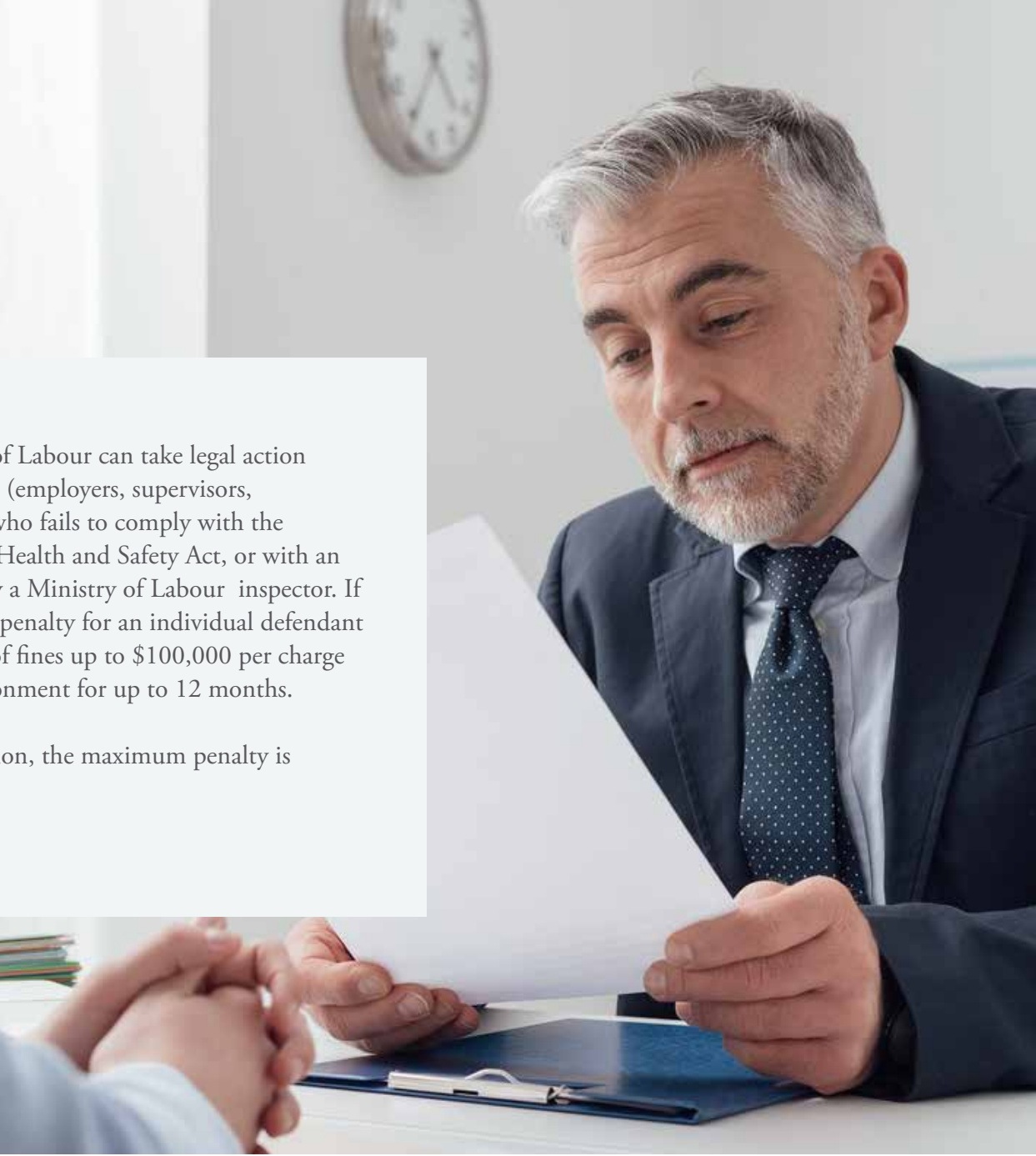
- Enter your workplace at any time without warrant or notice;
- Question anyone connected to an inspection;
- Handle any equipment or machinery and take samples;
- Take photos;
- Look at worker training program materials or attend training sessions;
- Require an employer to have equipment tested at its own expense;
- Require that machines or processes relevant to the inspection be operated or started; and
- Direct a joint health and safety committee or health and safety representative to conduct regular inspections of the workplace at specific intervals

It is illegal to interfere in any way with an inspector's investigation.



# Compliance Penalties

What will happen if your business is not compliant?



The Ministry of Labour can take legal action against anyone (employers, supervisors, and workers) who fails to comply with the Occupational Health and Safety Act, or with an order issued by a Ministry of Labour inspector. If convicted, the penalty for an individual defendant could consist of fines up to \$100,000 per charge and/or imprisonment for up to 12 months.

For a corporation, the maximum penalty is **\$1,500,000.**



# Summary

## The Essential Health and Safety Guide for Small Business Owners

As an employer, it is important to know your obligations under the Occupational Health and Safety Act. It is your responsibility to maintain a safe work environment for your employees and create a culture of accountability throughout your organization. Finally, it is crucial to the success of your business to have a constant dialogue with your employees and designated health and safety representatives about workplace hazards.

### Learn More

If you have questions about the Occupational Health and Safety Act, contact Peninsula. We are dedicated to providing small business owners with HR support. Call us today.

**1(833) 247-3652**

**We've got you covered.**

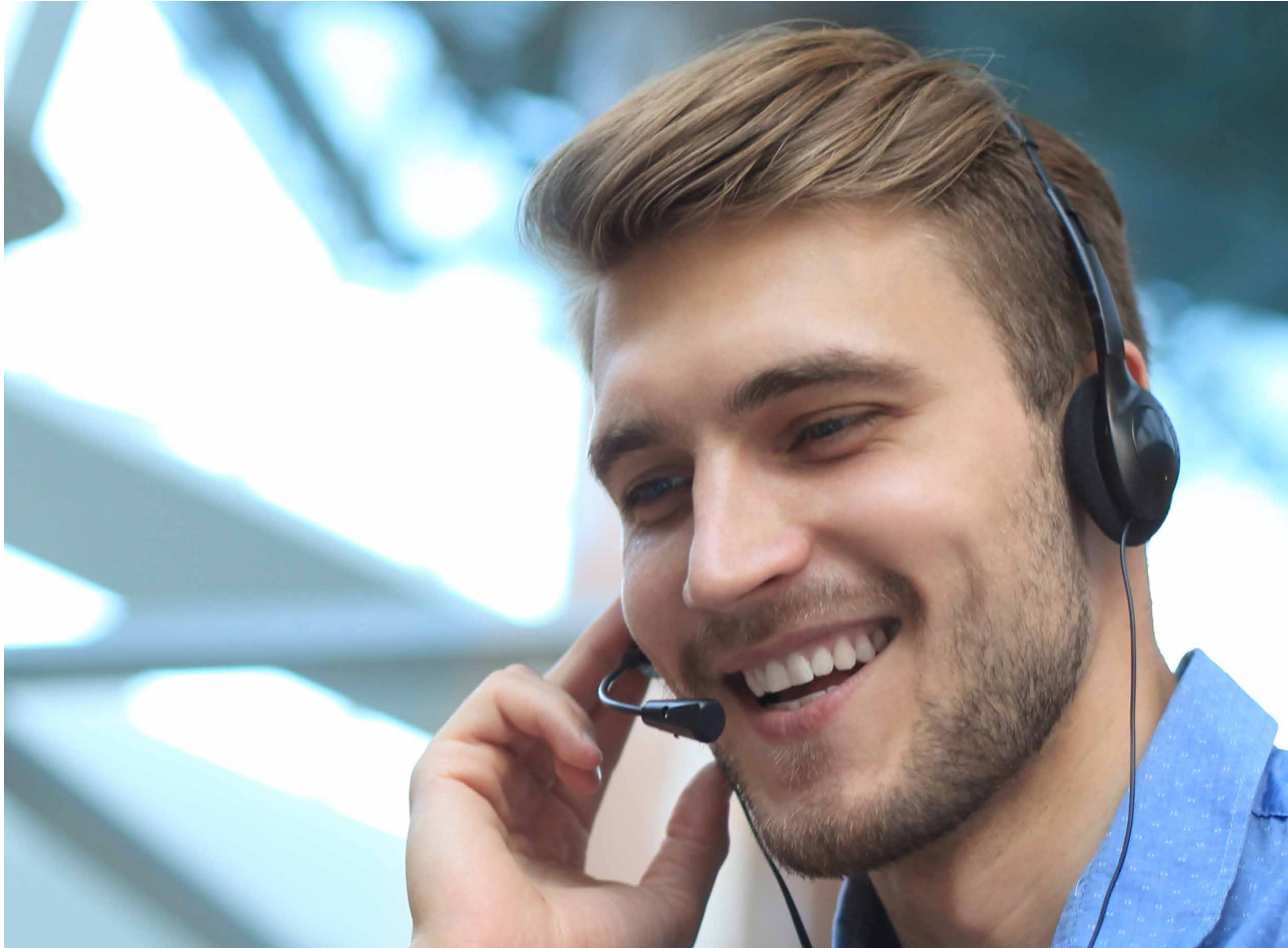






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