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# Statutory Regulation of the Workplace

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# Agenda

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- General description of legislation
- Overview of
  - Employment Standards Act
  - Workplace Safety and Insurance Act
  - Occupational Health and Safety Act
  - Human Rights Code



# Types of Employment Legislation

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- Federal vs. provincial
- Main types of employment legislation
- Governing bodies



# Statutory Lingo

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- Different names for Act/Code
  
- Difference between the Act/Code and Regulations



# Reading Legislation

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- Section
- Regs/prescribed
- Definitions
- Ministry
  - Telephone
  - Online
  - Policy
- Cases



# Common Law

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- What is the common law
- Interplay between legislation and common law



# EMPLOYMENT STANDARDS ACT

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[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_00e41\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm)





# ESA: Who is covered

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- Employees but not independent contractors
  - Some employees excluded
  
- Probationary, part-time, elect to work (casual workers) and temporary workers
  
- Specific exclusions from various parts of the act
  - Professionals, sales people, managers/supervisors



# ESA: What is covered

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- Minimum standards of employment
  - Minimum wage
  - Hours of work
  - Overtime pay
  - Vacation time
  - Vacation pay
  - Statutory holidays
  - Statutory holiday pay
  - Termination of employment



# ESA: Leaves of Absence

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- ❑ Parental Leave
- ❑ Pregnancy Leave
- ❑ Family Medical Leave
- ❑ Emergency Leave
- ❑ Jury Leave
- ❑ Organ donor's Leave
- ❑ Reservist Leave



# ESA: Miscellaneous

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- Payment of wages
- Record keeping
- Lie Detectors



# ESA: Enforcement

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- Employment standards officer
- Ontario Labour Relations Board
- Divisional Court

# ESA: Applicable Regs.

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- Reg. 285 -- Exemptions Special Rules and Establishment of Minimum Wage
  - Special rule for emergency leave for registered under Schedule 1 OF Regulated Health Professions Act, 1991
  - [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_010285\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_010285_e.htm)
  
- Reg. 288 -- Termination and Severance of Employment
  - [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_010288\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_010288_e.htm)

# ESA: Liabilities

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- Order to pay
- Fines
  - For corporation
    - Up to \$100,000 for first conviction
    - Up to \$250,000 for second conviction
    - Up to \$500,000 for third conviction
  - For Director – up to \$50,000
  - For offending individual – up to \$50,000 and/or 12 months imprisonment
- Reinstatement



# Workplace Safety and Insurance Act

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[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_97w16\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97w16_e.htm)





# WSIA: 5 principles

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- ❑ No fault compensation
- ❑ Collective liability
- ❑ Security of payment
- ❑ Exclusive jurisdiction
- ❑ Independent jurisdiction



# WSIA: Who is covered

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- Employers

<http://www.wsib.on.ca/wsib/wecm.nsf/Public/H86103>

- Optional Coverage/Disability Insurance

- Employees/Independent Contractors



# WSIA: What is covered

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- Benefits
  
- Suitable Work
  - safe and within worker's (functional) physical capabilities
  - worker has the skills to do (or can acquire the skills to do)
  - Restores worker's pre-injury earnings as closely as possible
  
- Requirement to re-employ



# WSIA: Applicable Regs

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- Reg. 1101 – First Aid

- [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_901101\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_901101_e.htm)



# Occupational Health and Safety

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[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90o01\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm)





# Employer's Responsibilities

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- Prepare a written health and safety policy/program and review annually
- Take every precaution reasonable in the circumstances to protect workers
- Provide worker training



# Employer's Responsibilities

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- Inform workers about workplace hazards
- Provide personal protective equipment where necessary
- Appoint competent persons as supervisors
- Establish JHSC



# Workplace Violence & Harassment

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- Policy
- Program
- Violence Risk assessment
- Report results of violence risk assessment
- control measures
- Inform and instruct
- Review policies annually
- Violence risk re-assessment



# H/S Program

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- ❑ Worker training (e.g., new employees, WHMIS)
- ❑ Workplace inspections and hazard analysis
- ❑ Housekeeping
- ❑ Fire prevention
- ❑ Musculoskeletal Disorders (ergonomics)
- ❑ Needle stick injuries
- ❑ Protective equipment
- ❑ Emergency procedures
- ❑ First-aid and rescue procedures
- ❑ Hand hygiene





# Supervisor's Responsibilities

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- Ensure that a worker complies with the OHSA and regulations
- Ensure that workers use/wear personal protective equipment
- Advise a worker of any potential or actual health or safety dangers known by the supervisor
- Take every precaution reasonable in the circumstances for the protection of workers



# Worker's Rights

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- ***The Right to Participate***

- in process of identifying and resolving workplace health and safety concerns. (i.e. worker membership on JHSC/H/S Reps)

- ***The Right to Know***

- about any potential hazards to which they may be exposed
  - This means the right to be trained and to have information on machinery, equipment, working conditions, processes and hazardous substances.



# Workers' Rights

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- *The Right to Refuse Work*
  - they believe is dangerous to either their own health and safety or that of another worker
    - There is a set process for dealing with work refusals

# Qualifications on Right to Refuse Work

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- ❑ Used only for unsafe conditions, not for normal work conditions
- ❑ Not be the first line of defence against unsafe conditions
- ❑ Identifying hazards and finding solutions to reduce/eliminate the risk before they become an immediate danger is the best line of defense
- ❑ Therefore, when time permits and the danger is not immediate, first report health and safety concerns to a supervisor, the JHSC, and, if necessary, to the Ministry of Labour
- ❑ Workers are expected to take these steps, if possible, to protect themselves before refusing to work

*(ONA, Feb. 2008 - MY RIGHT TO REFUSE UNSAFE WORK: A Guide for ONA Members )*

# Qualifications on Right to Refuse Work

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- Professional obligations as set out by their regulatory bodies and professional associations (such as College of Nurses of Ontario and the Ontario Nurses Association)
  - Inform your employer of why you are refusing
  - Document your decision-making process,
  - Attempt to provide the employer with enough time to find a suitable replacement

*(ONA, Feb. 2008 - MY RIGHT TO REFUSE UNSAFE WORK: A Guide for ONA Members )*



# Workers' Responsibilities

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- Comply with OHSA
- Use/wear PPE that employer requires to be used/worn
- Report absence or defect in PPE
- Report any OHSA contravention to employer/supervisor

# Workers' Responsibilities

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- Workers must NOT:
  - Remove/make ineffective any protective device without providing an adequate temporary protective device
  - Use/operate any equipment/machine/device or endanger himself or any other worker
  - Engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct



# JHSC

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- 20 or more employees
- Overall role is to assist with general improvement of health and safety
  - through regular meetings
  - Inspections
  - discuss h/s concerns and make recommendations to management



# JHSC - Certification

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- One employee rep and one management rep must be certified if more than 20 workers employed
- Certification training offered at WSIB or community colleges



# JHSC - Meetings

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- ❑ Minimum once every 3 months
- ❑ Must be co-chaired by 2 members (1 rep workers and 1 from management)
- ❑ Minutes must be taken and kept on record
- ❑ Post minutes of meetings as soon as possible
- ❑ Members are entitled to 1 hour prep time before meeting and JHSC can determine more time is required



# JHSC- Responsibilities

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- Identify workplace hazards mainly by carrying out monthly inspections
- Investigate work refusals
- Investigate serious injuries
- Receive and deal with complaints relating to h/s
- Keep records of accidents, injuries and hazards



# JHSC - Powers

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- Make recommendations to employer re: improving health and safety (employer must respond within 21 days)
- Obtain information from employer about:
  - Workplace hazards
  - h/s experiences and work practices in other workplaces of which the employer is aware
  - Workplace testing for h/s reasons



# OHSA: Enforcement

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- Ministry of Labour
- Provincial offence ; Provincial Court

# OHSA: LIABILITIES

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- OHSA
  - Employer – Maximum \$500,000 fine
  - Directors/Officers and Supervisors – Maximum \$25,000 fine and maximum 12 months in prison
  
- Section 217.1 of Criminal Code (extraordinary reckless behavior causing death or serious injury)

# OHSA- Applicable Regs

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□ Reg. 474 – Needle Safety

- [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_070474\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070474_e.htm)

□ Reg. 860 – WHMIS

- [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_900860\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900860_e.htm)

□ Reg. 861 – X-Ray Safety

- [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_900861\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900861_e.htm)



# Ontario Human Rights Code

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[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h19\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm)



# Social Areas

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- Freedom from discrimination in 5 areas
  - Accommodation
  - Services
  - Employment
  - Contract
  - Vocational Associations



# Prohibited Grounds

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- Employment: Ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap



# Harassment

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- Prohibition against harassment – course of vexatious conduct
- Interplay between harassment under Human Rights Code vs. harassment under OHSA



# Types of Discrimination

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- Direct
  
- Indirect or Adverse



# Employer's duties

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- Accommodation
- Undue Hardship



# Human Rights: Enforcement

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- Human Rights Tribunal
- Divisional Court



# Human Rights: Remedies

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- Order the party to do anything or pay anything for any loss resulting from the infringement, including restitution or compensation for injury to dignity, feelings and self-respect

# QUESTIONS

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