

## **ACT REVIEW SUBMISSION**

It was recently brought to my attention that legislation is being reviewed this year, and I have a few topics that I think need to be addressed:

### **CONFINED SPACES:**

In my place of employment we have lots of confined spaces and hire lots of outside contractors. It is very disturbing to see that almost all contractors hired have no understanding of the confined space requirements. There is one company that provides training and is telling people that crawl spaces are not confined spaces so those employers don't have to follow the legislation. It is also scary to see employers that have provided their staff with an online course and nothing else. They have had no hands on training or rescue training or training with any of the equipment or have been given no equipment. There needs to be some consistency in training. Consistency needs to include theory, hand on, equipment, and testing to ensure competency.

Enforcement officers are also not properly trained in the requirements of confined space or what to look for. Most have no experience with CSE and are not looking or asking questions about the companies confined space when conducting inspections.

The code of practice references the old legislation and not the updated definition of a confined space in the regulation. The current code of practice for confined spaces is not helpful. If you don't understand what a confined space is and what to do, the guideline offers absolutely no help and most find it confusing. I know of several companies that are using other provinces guidelines instead.

It's time to update. The code of practice is dated 2006 but closely resembles the previous one. At the very least – form a committee to help write the new code of practice/regulation so they are in-line with other provinces and are applicable to what employers are actually seeing/doing in the workplace. It's one thing to have a regulation but if application of the regulation is impossible – said regulation is useless.

Make codes of practices useful and applicable to all. You can tell the current code of practice was written by an experienced person for experienced people to use – hence the reason there isn't a lot of detailed information it just jumps around with pictures. These codes are meant for all to use not just the experienced!

In Manitoba's current legislation, the definition for confined space reads:

*"confined space" means an enclosed or partially enclosed space that  
(a) except for the purpose of performing work, is not primarily  
designed for human occupancy; and  
(b) has restricted means of access or egress.*

This is a very vague definition and is not the same definition given by the code of practice. I do understand that the code of practice is still part of the legislation however most people don't know about the code of practice and are going strictly by the regulation.

The code of practice definition is:

M.R. 217/ 2006 – Sec. 15

Confined space means an enclosed or partially enclosed space that:

- (a) except for the purpose of performing work, is not primarily designed nor intended for human occupancy
- (b) has restricted means of access or egress
- (c) is or may become hazardous to a worker entering it (within it) because of:
  - (i) its design, construction or atmosphere
  - (ii) the materials or substances in it
  - (iii) the work activities to be performed in it or processes used in it, or
  - (iv) any other conditions or hazards relating to it

Too much is left for interpretation, and everyone tends to interpret it differently. Other provinces have taken further measures in confined space designation and allow for "restricted access areas," as well as "confined spaces." They have included information that clearly outlines whether a space is a restricted access space or a confined space. I have also seen some companies separating their confined spaces into different levels. They've used their hazard assessment to help identify what a Level 1, 2, 3, etc. is, with level 1 meeting the current definition of a confined space but an extremely low hazard one and the higher levels being an IDLH type of space. Everyone is all over the map with what they are doing. It needs to be defined in the code of practice /regulation– what is acceptable and what isn't and exactly what everyone should be doing.

#### **EDUCATIONAL FACILITIES IN MANITOBA:**

I am specifically addressing these comments at the lack of legislation and enforcement in educational facilities. I am a parent and have several children that are currently in school and college/university in Manitoba. Some of the things I have seen and heard about are very concerning. Currently there have been no prosecutions against educational facilities in Manitoba, while other provinces have prosecuted these employers. School divisions/colleges/universities are one of the biggest employers in the province and one of the biggest violators of safety practices. I have heard of many student/staff that have been seriously injured due to safety violations (lack of guarding/fall protection/PPE/confined spaces/etc.) and no one has been prosecuted. But if the same incident had occurred in a non-educational business those individuals would have been charged.

Staff (teachers/professors/instructors/principals/superintendents/deans/boards of trustees) in educational facilities know they won't be prosecuted and therefore have the attitude that the legislation does not apply to them. Some go out of their way not to comply with the legislation and still others simply choose to ignore the requirements altogether. Most of the educational facilities in Manitoba have not been inspected by WSH Officers. I have heard of Officers have walked into vocational programs in high schools with no guarding in place and walked out without writing one order.

Under the WSH Act the employer has a duty to:

“Conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons who are not in his service are not exposed to risks to their safety or health arising out of, or in connection with activities in his workplace”

This duty that employers are charged with, which is the same duty as workers, applies to all visitors/volunteers/students/public/etc. but is not being used to enforce compliance of educational facilities. Manitoba has a much publicized champagne aimed at young workers yet fails to enforce the very safe guards that would apply to the young workers....which starts with educational facilities before they even get into the workplace.

The regulation should have a section included specific to educational facilities, the same as healthcare facilities have.

I believe the section of the act mentioned above, “that persons who are not in his service,” also needs to be amended so it identifies specifically who the other groups of “persons” are that it applies to.

I would also like to see the following section amended:

Further duties of employer

4(2) Without limiting the generality of an employer’s duty under subsection (1), every employer shall  
(a) provide and maintain a workplace, necessary equipment, systems and tools that are safe and without risks to health, so far as is reasonably practicable;

After “necessary equipment” the following needs to be reworded and amended to include: “tools, **guards** and systems”. Simply saying that the employer has to provide necessary equipment that is safe – is open to interpretation. Most feel that if they buy a piece of equipment it is safe. If it wasn’t manufactured with a guard it doesn’t need one. It’s very sad to see a student loose fingers or worse and there are no repercussions for the teachers/schools/colleges/etc.

Thank you,