

# Labour—Evaluating Occupational Health and Safety Systems Follow-up

## SUMMARY

Virtually all occupational injuries, diseases and fatalities are preventable. The *Occupational Health and Safety Act, Regulation and Code* exist to help employers in Alberta minimize occupational hazards at work. The Department of Labour is responsible for implementing occupational health and safety policies.

The Act requires employers to reasonably ensure the health and safety of workers and make workers aware of their responsibilities and duties. The department works with employers to deliver various occupational health and safety (OHS) programs to promote, monitor and enforce laws. The department is also responsible for setting goals and objectives for its programs, analyzing them to ensure they achieve the desired results, and reporting those results to the minister.

The department spent about \$42 million on OHS programs in fiscal 2016 and plans to spend \$47 million in fiscal 2017. If the department does not regularly evaluate, analyze and report on its OHS programs, the Minister of Labour cannot provide effective oversight or assure Albertans that OHS programs are achieving desired results and providing value.

## What we examined

We followed up for a second time on three outstanding recommendations from our April 2010 report,<sup>1</sup> in which we reported on how the department promotes, monitors, enforces and reports on its OHS goals and objectives. The outstanding recommendations were that the department:

- promote and enforce compliance with the law
- evaluate and report on whether its programs achieve the desired results
- obtain assurance over the work of auditors who issue certificates of recognition

## Overall conclusion

In the six years since our original audit, the department has made a number of recommended improvements to OHS systems. However, the department has still not fully implemented process improvements to enforce compliance for all OHS orders issued, and to evaluate and report on OHS program results analysis compared to desired results. The department is unable to demonstrate, with evidence, that it has a complete set of processes to apply department policies to keep Alberta's workers safe.

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<sup>1</sup> *Report of the Auditor General of Alberta—April 2010*, pages 31–52. Three recommendations repeated in the *Report of the Auditor General of Alberta—July 2012*, pages 81–90.

## What we found

The department has:

- obtained assurance that certificates of recognition<sup>2</sup> (CORs) are properly issued and maintained
- implemented controls over the quality of data in its computer system
- improved its processes to identify high-risk employers
- started issuing fines, tickets and administrative penalties to employers and workers who continue to break the law

The department does not regularly evaluate and report whether the programs it uses to improve worksite health and safety achieve set goals and objectives. The department has abandoned multiple attempts to complete a Work Safe Alberta strategy. The department will instead use the work previously completed on the strategy to guide the development of workplace health and safety programs. The lack of evaluation and reporting on OHS programs means the Minister of Labour cannot assure Albertans that programs are achieving desired results and providing value to Albertans.

The department lacks effective systems to document required managerial approval to give employers additional time to fix worksite problems. Some department staff provided employers with multiple time extensions to fix problems, contrary to departmental operating procedures.

## Why this is important to Albertans

The impact of workplace injuries, illnesses and fatalities reaches well beyond workers and their families and leads to broader negative economic and social consequences, which include:

- workers losing their level of income and health, and sometimes their lives
- employers facing costs such as legal expenses, additional hiring and training costs, loss of productivity and Workers' Compensation Board premium increases
- the healthcare system ultimately funding and treating unreported injuries and diseases
- pressures on government resources to inspect, investigate and prosecute

## AUDIT OBJECTIVE AND SCOPE

Our objective was to determine if the department implemented the three outstanding recommendations from our 2010 audit to improve its systems to promote, monitor, enforce and report on OHS goals and objectives.

We conducted our field work between May 1, 2015 and March 14, 2016. We substantially completed our audit on April 14, 2016. We conducted our audit in accordance with the *Auditor General Act* and the standards for assurance engagements set by the CPA Canada Handbook—Assurance.

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<sup>2</sup> A certificate of recognition is a voluntary program where employers with appropriate health and safety programs can receive WCB rebates of up to 20 per cent.

## FINDINGS AND RECOMMENDATIONS

### Improve health and safety program planning and reporting—repeated

#### BACKGROUND

In our April 2010<sup>3</sup> and July 2012<sup>4</sup> reports we recommended that the department improve its planning and reporting systems for occupational health and safety by:

- obtaining data on chronic injuries and diseases to identify potential occupational health and safety risks
- completing the current update of the Work Safe Alberta Strategic Plan
- measuring and reporting the performance of occupational health and safety programs and initiatives that support key themes of the strategic plan

Our 2012 follow-up audit found:

- the department had still not developed a final Work Safe Alberta strategic plan
- the department had just initiated projects to obtain data on chronic injuries and diseases to report on the effectiveness of key OHS programs and initiatives

We repeat our recommendation as the department has still not implemented planning and reporting systems to measure the effectiveness of OHS program goals and objectives compared to desired results.

We focused our first two audits on the department's plans and expectations on implementing and communicating publicly a Work Safe Alberta strategic plan. As the department is no longer proceeding with that plan, we modified our repeated recommendation to remove specific reference to it.

#### **RECOMMENDATION 3: IMPROVE PLANNING AND REPORTING—REPEATED FROM 2010**

We again recommend that the Department of Labour improve its planning and reporting systems for occupational health and safety by evaluating and reporting on whether key OHS programs and initiatives achieve the desired results.

#### CRITERIA: THE STANDARDS FOR OUR AUDIT

The department should monitor, measure and report on its progress against OHS program goals and objectives, and assess the cost effectiveness of programs. To achieve this, the department should:

- obtain and analyze data to identify OHS risks, including a process to collaborate with other provincial and national OHS stakeholders
- measure and report on its progress in achieving its goals and objectives

#### OUR AUDIT FINDINGS

##### KEY FINDING

The department has identified key programs it will use to meet its goals and objectives, but it has not yet evaluated and reported whether those programs effectively achieve desired results.

The department developed Work Safe Alberta strategies for 2009–2012 and 2011–2014 and updated the strategy again in 2015. The strategy was to identify the department's OHS initiatives and its plans to report on how it is achieving them. No version of the strategy received minister approval.

<sup>3</sup> Report of the Auditor General of Alberta—April 2010, page 39.

<sup>4</sup> Report of the Auditor General of Alberta—July 2012, page 87.

The department indicated in 2016 that it would not proceed with a public release of the Work Safe Alberta strategy. The department will instead use the work previously completed on the strategy to guide the development of workplace health and safety programs.

Prior to 2015, the department met with more than one thousand Albertans throughout the province to identify workplace risks and needs. The department also communicated with other groups affected by OHS such as industry and employer groups, the Workers' Compensation Board and other governments.

Having safe, fair and healthy workplaces is one of the department's five desired outcomes in its 2015–2018 business plan. The department's publicly posted business plan identifies seven priority initiatives and three performance measures to help achieve the outcome.

The performance measures are:

- reducing the lost-time claim rate<sup>5</sup>
- reducing the disabling injury rate<sup>6</sup>
- percentage of employed Albertans who perceive Alberta workplaces are safe

The department's internal Occupational Health and Safety Joint Strategic Plan also identifies six internal goals to achieve the occupational health and safety vision of “healthy and safe is how Alberta works.”<sup>7</sup>

The department identified 10 key programs to achieve its vision, goals and objectives. However, the department has not yet clearly defined how it will regularly evaluate and report whether its programs achieved the desired results.

The department does some internal reporting on OHS programs or achieving specific parts of programs. However, only some of this information is published publicly. The department also annually reports on the achievement of reducing the lost-time claim rate, the disabling injury rate and the perception of Alberta as a safe workplace.

Three of the 10 OHS programs began in 2015 and therefore did not yet have annual evaluations. Two programs met specific objectives, such as reviewing and updating the *Occupational Health and Safety Regulation or Code*.

The remaining programs had defined goals or objectives to achieve. But the department did not analyze them using relevant performance measures and overall did not report to senior management or Albertans whether the programs were:

- effective in achieving the desired outcomes
- providing value for the money spent

## IMPLICATIONS AND RISKS IF RECOMMENDATION NOT IMPLEMENTED

Without appropriate and timely planning, performance measurement and reporting, the department cannot demonstrate that it achieves its objectives effectively and efficiently.

<sup>5</sup> Number of lost-time claims per 100 person-years worked.

<sup>6</sup> Number of disabling injuries per 100 person-years worked.

<sup>7</sup> Occupational Health and Safety Joint Strategic Plan May 2015.

## Promoting and enforcing compliance—repeated

### BACKGROUND

In our April 2010<sup>8</sup> report we recommended that the department ensure employers and workers comply with the *Occupational Health and Safety Act*, particularly those who were repeat offenders. In our July 2012<sup>9</sup> follow-up audit we re-emphasized that the department should enforce compliance with the law by high-risk employers and workers.

In our 2012 report we found the department:

- had implemented a new inspection reporting system, but some of the data was inaccurate and some approvals not documented
- had developed a policy to identify COR employers with poor health and safety systems, but did not implement the policy consistently
- had developed an escalating compliance policy, but had not sufficiently defined high-risk employers and workers
- was pursuing administrative penalties and fines for high-risk employers and workers

The department is responsible for implementing the government's occupational health and safety policy. The department's Occupational Health and Safety branch enforces compliance with provincial legislation through education, worksite inspections and other enforcement measures. OHS also works with industry to help prevent work-related injuries, illnesses and fatalities. The Alberta Workers' Compensation Board administers compensation programs and helps workers return to the workplace.

The department uses OHS officers to visit worksites throughout Alberta to promote and enforce workplace health and safety. When an OHS officer sees employers or workers not following the *Occupational Health and Safety Act, Regulation or Code*, the officer issues a compliance order.<sup>10</sup> Violations that are more serious result in a stop-work or stop-use order. Requirements for the three types of orders are defined in Sections 9, 10 and 11 of the *Occupational Health and Safety Act*.

The department fulfilled most of the requirements needed to implement the recommendation. However, we are repeating the recommendation specific to the department's processes to approve time extensions for employers to fix safety violations specified in compliance orders issued by the department. These processes are still not effective and occasionally do not follow department policy.

### RECOMMENDATION 4: ENFORCE COMPLIANCE—REPEATED FROM 2010

We again recommend that the Department of Labour clarify and enforce its procedures to approve giving employers extra time to fix worksite health and safety problems.

### CRITERIA: THE STANDARDS FOR OUR AUDIT

The department should have clear procedures for OHS officers when they give employers and workers extra time to fix worksite health and safety problems, specifically:

- obtaining and documenting a manager's approval
- documenting the number of times an extension can be given
- ensuring extensions are given only when necessary

<sup>8</sup> *Report of the Auditor General of Alberta—April 2010*, page 39.

<sup>9</sup> *Report of the Auditor General of Alberta—July 2012*, page 87.

<sup>10</sup> <https://work.alberta.ca/occupational-health-safety/compliance-orders.html>

## OUR AUDIT FINDINGS

### KEY FINDINGS

- The department implemented processes to improve the accuracy of data used in enforcement, training of officers, identification of employers with poor health and safety records, defining high-risk employers and performing employer reviews, and fining and penalizing OHS standard violators.
- The department still lacks effective processes to document manager approval of time extensions for employers to remediate compliance orders.
- Officers documented time extensions on stop-work and stop-use orders when none were required.

### Documenting a manager's approval

Department officers issue compliance orders under Section 9 of the *Occupational Health and Safety Act*. Compliance orders cite worksite problems such as inadequate health and safety program documentation or a lack of proper labelling of hazardous products.

The department's operating procedures are clear in allowing officers to give employers an initial 30-day period to fix a problem in a compliance order and an additional 30-day extension, to a maximum of 60 days, with a manager's approval. However, the operating procedures do not mandate how the officer should request or document that approval.

The department informed us that officers seek managerial approval for extensions. However, the documentation provided by the department lacked information on managerial approval for the majority of the second 30-day extensions. Documenting approval is a best practice to verify the procedure occurred. For the documented approvals we examined, the OHS officer and not the manager inputted the notes in the inspection reporting system about the manager's approval. Therefore, we could not confirm the authenticity of the approvals.

The department's quality training and operations unit implemented a new training program for OHS officers. As of 2016, OHS officers undergo training about the need for obtaining and documenting a manager's approval to give employers an additional 30 days to fix a problem. However, as of March 2016, the operating procedures still did not indicate managerial approval must be documented, how that approval should be documented or who should document it.

### Stop-use and stop-work orders

Department officers issue a stop-work order under Section 10 of the *Occupational Health and Safety Act* when work is being done in an unhealthy or unsafe way. Officers issue a stop-use order under Section 11 of the *Occupational Health and Safety Act* when the use of a piece of equipment or tool is unsafe or being used in a way that may seriously injure an employee.

Safety violations specified in stop-use or stop-work orders must be fixed before the equipment can be used or work on the site can resume. OHS officers tag and monitor equipment or close worksites to ensure work does not continue in unsafe conditions.

OHS officers record the date that stop-work and stop-use orders are issued in the inspection reporting system. A stop-use or stop-work order remains in place until the employer demonstrates the equipment or worksite is safe and workers are not in danger. Therefore, there is no need to document a future date of compliance, or to use a time extension to fix the problem.

However, in the documentation the department provided, we found instances where stop-work and stop-use orders had time extensions unnecessarily entered in the compliance management information system. After discussing our findings with the department, the quality training and operations unit updated future OHS officer training to clarify proper documentation of stop-work and stop-use orders in the system.

## **Process improvements implemented by the department**

### **Three initiatives**

In our 2012 follow-up audit the department informed us it planned three projects to help implement the recommendation. Our current follow-up audit confirmed the department had implemented:

- a quality and training operations group
- effective systems to identify high-risk employers and workers
- effective systems to identify problems at worksites and to issue tickets, fines and administrative penalties

### **Inspection reporting systems**

The department's quality, training and operations unit created a quality assurance team in October 2014. The quality assurance team implemented new systems and processes to help ensure the data in the department's inspection reporting system used for compliance is complete and accurate.

The team implemented validation controls over data entering the computer system and conducted ongoing technical reviews of data and reports in the system. The quality, training and operations unit also developed new operational procedures for ongoing training for OHS officers to communicate the changes to, and improve the use of, the inspection reporting system.

We observed the new controls and tested the ongoing technical reviews the department uses to ensure the data in the inspection reporting system is complete and accurate. We also observed the processes the department uses to obtain data from the WCB, ensure it is accurate and combine it with its own data to create the OHS index. We found the department's systems and controls reasonably ensured the data in its inspection reporting system was complete and accurate.

### **Systems to identify high-risk employers and workers**

The department improved its systems and processes to identify employers and workers with poor health and safety records.

We assessed the processes and controls the department uses to ensure the data in the inspection reporting system is complete and accurate. We also assessed the processes the department uses to obtain worker incident data from the WCB and to combine the data with its own records of worksite inspections.

We also found the processes the department used to ensure it had complete and accurate data to identify high-risk employers worked reasonably. The improvement over the accuracy and completeness of data in its computer systems allowed the department to improve the criteria and measures it uses to create its OHS index. The OHS index identifies high-risk employers and workers who do not comply with the law, or have above average worksite problems and incidents over four-year periods.

The OHS index also identifies the employers and workers at a higher risk in different categories and industries. The department uses these indexes to put employers into proactive programs to prevent incidents before they happen or to conduct reviews of employers holding a certificate of recognition.

### **Proactive programs and employer reviews**

The department has multiple proactive programs to help higher-risk employers implement new or improve existing health and safety programs. Proactive employer programs are not optional and help promote health and safety in the workplace before additional or more serious incidents happen.

Employers that hold certificates of recognition and have had above average numbers of serious workplace related incidents go through an employer review process to identify and fix deficiencies in their health and safety management systems. In 2012 we found that this process was backlogged and that some employers had their WCB certificate of recognition rebates reinstated before their action plans to fix their deficiencies were completed and approved.

We confirmed that the employer review process is more effective and the backlog has been eliminated. We found the department regularly runs the OHS index to identify employers for the review process and that the process starts within a reasonable time after identification. The department also provided documentation showing that it now notifies the WCB monthly of all employers from which it needs to withhold rebates.

### **Tickets, fines and administrative penalties**

In June 2013 the *Alberta Provincial Offences Procedure Regulations* were updated. The updated regulations gave OHS officers the authority to issue tickets at a worksite for prescribed occupational health and safety Regulation and Code violations.

The department provided documentation for all of the tickets its officers handed out at worksites since the start of the program in January 2014. We walked through the process with the department. We found OHS officers issued tickets consistently over the period and in accordance with the ticketing policy.

The department also provided us with data from its inspection reporting system of all stop-work, stop-use and regular orders given to employers. The *Administrative Penalty Regulation* was updated in October 2013 to allow OHS officers to give administrative penalties to employers with multiple OHS compliance orders. We reviewed the criteria for giving an administrative penalty.<sup>11</sup> We found that any employer that met the criteria of having three or more stop-work or stop-use orders in the prior year received an administrative penalty.

## **IMPLICATIONS AND RISKS IF RECOMMENDATION NOT IMPLEMENTED**

Without adequate systems to enforce compliance with occupational health and safety legislation for those employers and workers who persistently fail to comply, the health and safety of workers continue to be exposed to otherwise avoidable risks. Employers who choose not to comply with OHS orders may gain an unfair advantage over employers who spend the time and resources to deal with and avoid contraventions.

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<sup>11</sup> Section 40.3 of the *Occupational Health and Safety Act* provides for the issuance of administrative penalties for contraventions of the Act, Regulation or Code and of orders, acceptances or approvals issued under the Act.

## Certificate of recognition—implemented

### BACKGROUND

In our April 2010 report<sup>12</sup> we recommended that the department improve its systems to issue certificates of recognition<sup>13</sup> by:

- obtaining assurance on audit work done by COR auditors working for certifying partners
- consistently following up on recommendations the department made to certifying partners

In our 2012 follow-up audit we found the department had followed up on its recommendations to certifying partners, but it had not yet implemented quality reviews of COR auditors' work.<sup>14</sup>

The department's Partnerships in Injury Reduction unit works with 13 certifying partners<sup>15</sup> that issue certificates of recognition. The certifying partners train and certify auditors, who then conduct audits of an employer's occupational health and safety management system at the employer's worksite. The auditor determines whether the employer's health and safety management system meets the partnership's standards for certification, thereby qualifying the employer to hold a COR.

The department uses the voluntary COR program to help promote and support OHS goals for safe, fair and healthy workplaces. Employers that hold a COR and implement and maintain approved health and safety programs are eligible for WCB rebates of up to 20 per cent of their annual premiums. For 2014, as a group, COR holders had a 35.8 per cent lower loss ratio than non-COR holders, as measured by WCB.<sup>16</sup> The department is responsible for ensuring the certifying auditors follow partnership standards to issue CORs to employers.

### OUR AUDIT FINDINGS

The department implemented this recommendation by implementing effective processes to obtain assurance over the audit work done by certifying partners to issue CORs.

The PIR unit worked with the certifying partners to develop, approve and implement terms of reference, policies, procedures and a code of ethics for an on-site audit review program. The on-site audit review program sanctions the department to review and ensure that the field work of auditors performing COR audits on behalf of certifying partners meets all OHS standards and requirements.

<sup>12</sup> *Report of the Auditor General of Alberta—April 2010*, page 48.

<sup>13</sup> The WCB issues CORs and applicable rebates to participating COR employers under the WCB's Partnership in Injury Reduction (PIR) program.

<sup>14</sup> *Report of the Auditor General of Alberta—July 2012*, page 89.

<sup>15</sup> Certifying partners are non-governmental organizations responsible for assessing COR employers' health and safety management systems.

<sup>16</sup> The WCB calculates a loss ratio annually. It compares the claims costs of a group of employers to the WCB premiums that they pay. As a group, COR holders consistently out-performed non-COR holders. This performance is especially significant as most COR holders operate in industries with greater risk than non-COR holders.

We obtained the lists of the COR audits conducted by the certifying partners and the on-site audit reviews conducted by the department for 2015. Through review of the documentation obtained, interviews with staff and walk-throughs of the department's processes, we found the department selected an appropriate number and variety of certifying partners, industries and auditors to review.

We selected a representative sample of the on-site audit reviews completed by the department.

Our testing of the samples found:

- the department followed its on-site audit review policies, procedures and code of ethics
- on-site audit reviews provided assurance and supported a conclusion on the work of auditors employed by the certifying partners
- the department followed up on recommendations it had made to certifying partners