

Working **Alone**

A look at legislation in Canada

By Norm Keith

The subject of working alone raises many concerns with respect to worker occupational safety and health risk and exposure. The range of risk to a person working alone may include a convenience store/gas station attendant or bar owner facing a late-night robbery or the lack of a coworker to notice that a worker has suffered a health episode such as a heart attack, stroke or epileptic seizure. Regardless of the nature of the hazard to which a worker may be exposed, working alone inherently adds risk to the employee.

In Canada, the approach to dealing with this risk has not been consistent across its 10 provinces and three territories. Although each province and territory, and the federal government has its own occupational safety and health statute, only five jurisdictions specifically address the issue of working alone by legislation or regulation: Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan.

Other jurisdictions may address the issue indirectly through general duty clauses. For example, the general duty clause for Ontario, Canada's most populous province, requires employers to take every precaution reasonable in the circumstances for worker protection and safety. However, absent specific legal requirements, the legislation does not clearly require employers to take steps to protect those who work alone. The general duty clause is often used after the fact to issue orders or to commence regulatory charges to blame the employer and senior management if an incident occurs involving an individual working alone.

This article analyzes the five jurisdictions in Canada that deal with the issue of working alone. This analysis reveals similarities as well as distinct differences. It also offers comments regarding the situation in Ontario and about the federal Canada Labor Code with respect to working alone. The ad-

visability of a uniform code or regulation for all Canadian jurisdictions to either follow or draw upon is addressed as well.

Analysis of Applicable Legislation

There is no prohibition on working alone in Canada at the federal, provincial or territorial levels.

Alberta

The Alberta Occupational Health and Safety Code 2009 (the OHS Code) provides working alone legislation, specifically under Part 28. Section 393(1) of Part 28 applies to a worker if that individual is working alone at a site and assistance is not readily available should an emergency occur or a worker be injured or become ill.

The explanation guide to the OHS Code (Government of Alberta, 2009) delineates five broad categories of employees who work alone:

- 1) workers who handle cash (e.g., store clerks, taxi drivers);
- 2) workers who travel away from their base of office to meet clients (e.g., homecare workers, social service workers);
- 3) workers who perform hazardous work but have no routine interaction with customers or the public (e.g., workers in forestry, and the oil and gas industry);
- 4) workers who travel alone, but have no routine interaction with customers or the public (e.g., truck drivers, business people in transit);
- 5) workers who are at risk of violent attack because their worksite is isolated from public view (e.g., security guards) (p. 28-2).

It should be noted that if two employees are working together, the working alone requirements of the OHS Code no longer apply.

Three factors are used to determine whether assistance is "readily available" in the assessment of whether an individual is working alone: awareness; willingness; and timeliness. Awareness asks whether others who are capable of providing assistance, should it be necessary, are aware of the worker's needs. Willingness asks whether it is reasonable to expect those people to provide assistance. Timeliness asks whether assistance will be provided within a reasonable time frame (Government of Alberta, 2009, p. 28-2).

The remaining sections in Part 28 of the OHS Code discuss the requirements of the employer should an employee be in a situation where s/he

IN BRIEF

- People working alone face a range of risks, from late-night robbery to the danger of being alone during a health episode such as a heart attack, stroke or epileptic seizure.
- Five jurisdictions in Canada have legislation that deals with the issue of working alone.
- Given the risks involved, the issue deserves greater public and legislative attention.

Norm Keith, B.A., LL.B., CRSP, is a partner at Gowling Lafleur Henderson LLP, a full-service national law firm. He leads the occupational safety and health workers' compensation practice. Keith is the author of numerous texts, including *Canadian Health and Safety Law*, and coauthor of *Human Resources Guide to Preventing Workplace Violence*. Keith is the first practicing lawyer in Canada to achieve the Canadian Registered Safety Professional designation. He is an international member of ASSE and a member of the Society's Consultants and International practice specialties.

is working alone. Under the OHS Code [§ 394(1)], an employer must provide “an effective communication system” that consists of: radio communication; landline or cell phone communication; or some other effective means of communication. Regular contact with the employee is necessary to consider the communication effective.

In addition, the OHS Code requires employers to conduct a hazard assessment. This assessment is a “common sense look at the workplace to identify existing hazards for workers working alone.” Employers need to review records and past incidents, and identify measures or actions required to correct any hazards (Government of Alberta, p. 28-6).

Hazard assessments are only required to be completed once per job type. Therefore, if different workers rotate in and out of the same job, the assessment need only be completed one time (Government of Alberta, 2009, p. 28-7).

British Columbia

In British Columbia, the Workers’ Compensation Board is responsible for introducing amendments to the Occupational Health and Safety Regulation (BC Reg. 296/97; BC Reg), made under the British Columbia Workers’ Compensation Act (R.S.B.C. 1996 c. 492). Sections 4.20.1 to 4.23 discuss working alone as it pertains to workers in British Columbia. In § 4.20.1, working alone is defined as work in circumstances where assistance would not be readily available to the worker in the case of an emergency and in case the worker is injured or in ill health.

Similar to the legislation in Alberta, before an employee is assigned to work alone, the employer must identify the hazards to that worker (§ 4.20.2). Before the individual starts a work assignment, the employer must eliminate any identified hazards; if that is impossible or impracticable, the risk must be minimized using engineering or administrative controls or both [§ 4.20.2(2)-(3)].

In addition, the employer must develop and implement a written procedure for checking the well-being of a person assigned to work alone or in isolation (§ 4.21.1). The procedure includes several steps: 1) a designated time interval between checks and the procedure to follow in case the worker cannot be contacted, including provisions for emergency rescue; 2) a person designated to establish contact with the worker at predetermined intervals and the results recorded by that person; 3) a check at the end of the shift (in addition to checks made at regular intervals); and 4) consultation with the joint committee, or worker safety and health representative when determining the procedure and time intervals for checking a worker’s well-being [§ 4.21(2)-(6)].

This legislation also includes a section outlining procedures for working late at night in retail outlets. Late-night retail premises include gas stations, convenience stores or any other retail outlets where goods are sold directly to consumers and that are open to the public for late-night hours [§ 4.22.1(1)].

Should a person be working alone at one of the defined retail outlets, the employer must develop and implement a written procedure to ensure that

the worker is safe when handling money. Further, the employer must ensure that the worker is physically separated from the public via a locked door or barrier that prevents physical contact with the worker or assign another worker so the individual is no longer working alone [§ 4.22.1(2)].

The legislation also requires that all gas be pre-paid at gas stations where a person is working alone (§ 4.22.2). All procedures must be reviewed annually (§ 4.23). Lastly, a person working alone in a location that poses a risk of drowning must wear a life jacket (§ 8.28).

Manitoba

Working alone legislation in Manitoba is provided under Regulation 217/2006 Part 9: Workers Working Alone or in Isolation (Manitoba Regulation). SafeWork Manitoba (a division of the Workers’ Compensation Board, 2006) has created a code of practice for employers and employees looking for guidance about the regulation. Under the regulation, working alone is defined as “performance of any work function by a worker who: a) is the only worker for that employer at that workplace at any time; and b) is not directly supervised by the employer or another person designated as a supervisor by the employer, at any time” (§ 1.1).

The Manitoba Regulation has a separate definition for *working in isolation*. It defines this term as “working in circumstances where assistance is not readily available in the event of injury, ill health or emergency” (§ 1.1). The difference between working alone and working in isolation seems to focus on the frequency of the work; a person working in isolation is not always in that circumstance. Further, the code of practice states that an individual working alone may actually be in contact with employees of different employers and still be considered working alone (Workers’ Compensation Board of Manitoba, 2006, p. 8).

The Manitoba Regulation contains several requirements for employers that have employees working alone. For example, § 5.13 requires that a personal first-aid kit be provided to the worker if one is not readily accessible. Under § 6.17(5), if an employee is working alone on a boat, then the employer must ensure that a life jacket or personal floatation device is provided. The employer must instruct the employee to wear the life jacket at all times while working.

The general requirements for working alone are found in Part 9 of the Manitoba Regulation. Under § 9.2, an employer must identify the risks arising from the conditions and circumstances of the employee’s work in consultation with either the workplace safety committee, that committee’s representative or, if neither exist, the employee. Any risks identified must be reduced as far as practicable or steps taken toward their elimination by employer [§ 9.2(2)].

Under § 9.3(1), the employer must create a safe work procedure and train its employees in that procedure as well as ensure that employees comply with the procedure. A safe work procedure must

Working alone inherently adds risk to the employee. In Canada, the approach to dealing with this risk has not been consistent across its 10 provinces and three territories.

consist of an effective communication system; the provision of emergency supplies for use in travelling or working under conditions of extreme cold or other inclement weather conditions (where applicable); and any of the following: 1) a system of regular contact between the employer and lone worker; 2) limitations on or prohibitions of specified activities; or 3) establishment of training requirements [§ 9.3(2)]. The regulation also stipulates that an effective communication system should consist of either radio communication, telephone or cell phone communication, or any other means that provides effective communication [§ 9.3(2)].

In Manitoba, these procedures must be reviewed and revised every 3 years. It should also be noted that § 84(1) of the Manitoba Employment Standards Code (C.C.S.M. c. E110) prohibits employees under age 18 from working alone between 11:00 p.m. and 6:00 a.m.

New Brunswick

In New Brunswick, working alone legislation exists under New Brunswick Regulation 92-133: Code of Practice for Working Alone Regulation—Occupational Health and Safety Act.

This regulation is similar in nature to the aforementioned provinces. However, this regulation was enacted in 1992, well in advance of some other provinces. Requirements under Regulation 92-133 are straightforward. An employer must develop a code of practice to protect an employee who works alone from risks associated with the work being performed.

The code of practice must include the following:

- 1) name, address, location and phone number of the place of employment;
- 2) name, address, location and phone number of the employer;
- 3) nature of the business conducted at the place of employment;
- 4) identification of possible risks to each employee who works alone that arise from or occur in connection with the work assigned;
- 5) procedures to be followed to minimize the risks identified in paragraph 4;
- 6) details of the means by which a lone employee can secure emergency assistance and the employer can provide emergency assistance in the event of injury or other circumstances that may endanger employee safety and health [§ 3(a)-(f)].

The code of practice must be adhered to at all times by the employee while s/he is working alone. Any equipment necessary under the established code of practice must be provided by the employer (§ 4). Further, the employer must provide employees with adequate training on the code of practice (§ 6). A copy of the code of practice also must be readily available (§ 7).

Saskatchewan

In Saskatchewan, working alone legislation is provided under the Occupational Health and Safety Regulations, 1996 (c. O-1.1 Reg. 1). This regulation provides the same requirements as other provinces.

Working alone in Saskatchewan means to “work at a worksite as the only worker of the employer or contractor at that worksite, in circumstances where assistance is not readily available to the worker in event of injury, ill health or emergency” [§ 35(1)].

For example, under § 35(4), employers must assess the risks associated with working alone in the worker’s particular occupation. The employer must then take all practicable steps to reduce the risks identified. Again, this must include an effective means of communication and may include any of the following:

- regular contact by the employer or contractor with the employee working alone or at an isolated place of employment;
- limiting or prohibiting specific activities;
- establishment of minimum training or experience, or other standards of competency;
- provision of PPE;
- establishment of safe work practices/procedures;
- provision of emergency supplies for use in travelling under conditions of extreme cold or other inclement weather conditions.

Ontario

Ontario has no broad working alone legislation. However, it has two different regulations that describe protection afforded to individuals working alone in specific scenarios. The first applies to construction sites (O. Reg. 213/91; Construction Regulation); the second to mines and mining plants (R.R.O. 1990, Reg. 854; Mining Regulation).

Under the Construction Regulation, no person may work in a trench (an excavation where the excavation depth exceeds its width) unless another employee is working above ground or in a location that is easily accessible to that trench (§ 225). Similarly, no person can work in a shaft, tunnel caisson [defined as 1) casing below ground or water level that may/may not be designed to contain air at a pressure greater than atmospheric pressure; or 2) an excavation, including a waterwell but not a well within the meaning of the Petroleum Resources Act, drilled by an auger and into which a person may enter] or cofferdam (a structure constructed entirely or partially below water level or below the level of the groundwater table and intended to provide a workplace that is free of water) unless another employee is working above ground or in a location that is easily accessible to the trench (§ 246). The regulation also contains requirements for the construction of a caisson and the attire of the worker entering the caisson.

The Mining Regulation contains specific rules for people working alone in an underground mine. The regulation explicitly defines when a worker is not working alone [§ 16(2)]. Curiously, if a worker has “ready access” to two-way communication, then s/he is not considered to be working alone [§ 16(2)]. This is different from other working alone legislation that requires effective communication for lone workers. In this case, one is not considered to be a lone worker if effective communication exists.

Other portions of the regulation require that a lone worker be competent and be visited by another

competent worker or supervisor at least three times during a shift. However, the number of visits can be changed depending on the work conditions and the communication system that is present [§ 16(5)-(6)].

Federal Legislation

No provisions in the Canada Labor Code (R.S., 1985, c. L-2; CLC) specifically address the situation of employees who work alone. Under section 124, CLC states that “every employer shall ensure that the safety and health at work of every person employed by the employer is protected.” Therefore, employees who work alone are afforded the same protection.

It should be noted, however, that in certain scenarios employees cannot work alone. These are discussed in the Canada Occupational Health and Safety Regulations (SOR/86-304):

- certain types of electrical work require a safety watcher or a first-aid representative [§ 8.8 and § 16.3(3)];
- entry into confined spaces under specified hazardous conditions [§ 11.5(1)(c)];
- where drowning is possible [§ 12.11(2)(b)];
- repairs/maintenance work on a machine that cannot reasonably be locked out [§ 13.16(2)(b)(ii)];
- operation of materials handling equipment with an obstructed view [§ 14.25(1)(b)];

Other Provinces & Territories

Currently, the remaining provinces and territories have no legislation specifically focused on working alone. However, Newfoundland has released a guideline for employers and employees in working alone situations (Government of Newfoundland and Labrador, 2010). This guideline provides suggestions on how to deal with several different scenarios such as workers who handle cash; meet clients away from the office; perform hazardous work; travel alone; or are at risk of violence due to isolation.

Conclusion

The five jurisdictions in Canada that have addressed the issue of working alone by legislation or regulations have several similarities as well as some differences. The general response and obligations on employers by law is usually the use of a risk/hazard assessment to determine exposures to the lone workers and how to remedy or mitigate the risk.

Since Canada has no uniform legal standard with respect to conducting a risk/hazard assessment, this process will vary among employers. More sophisticated employers will have a more effective process, whereas smaller and less sophisticated employers will likely have a less effective process.

Following the risk/hazard assessment, employers are usually required by the legislation to take steps to either remove or reduce the risks associated with working alone. Communication and access to emergency services are critical to the effective protection of lone workers. However, the legislation is not consistent with respect to what is

actually required as a best practice for dealing with issues of employees working alone. Effective communication and worker training are essential, yet these elements are not always required by the Canadian jurisdictions that have provided legislative direction on this matter.

The issue of working alone has not, in the author’s view, been adequately addressed by Canadian regulators. Ontario and Quebec, Canada’s two largest jurisdictions by working population, do not address the issue of employees working alone, which creates a large gap in the attention given to this critical issue. Although workers’ compensation injury statistics in Canada do not track or identify workers who are injured while working alone, the issue arises periodically in the media and in the author’s professional practice.

Further, given the inherent risks of working alone, no good rationale can explain why some jurisdictions have addressed the issue while others have not. This failure to adequately prioritize the issue of working alone as a significant risk for workers across Canada should be addressed.

In a federal state, with both the federal and provincial governments having a measure of jurisdiction over occupational safety and health matters (provinces have the predominant responsibility for approximately 90% of workers in Canada), one can point to political and systemic challenges to developing a uniform standard for working alone.

However, this would not preclude one or more jurisdictions from taking the lead in offering their legislative model as a best practice for other jurisdictions to follow. The absence of a national regulator in Canada setting national standards for occupational safety and health matters is a further impediment to the development of a national standard.

The Canadian Standards Association, a nonlegislative, nonprofit standards-development organization, is a logical organization to take the lead on this issue. However, since stakeholders have not identified this as a priority, it appears that no current action is being taken.

The lack of action on this issue in no way diminishes its importance. Unfortunately, the political will and media attention needed to effect legislative change will likely only occur if a high-profile workplace injury or death arises from a working alone situation. **PS**

References

- Government of Alberta.** (2009). Occupational health and safety guide 2009. Edmonton, AB: Author, Ministry of Employment and Immigration. Retrieved Jan. 5, 2011, from <http://employment.alberta.ca/SFW/3969.html>.
- Government of Newfoundland and Labrador.** (2010). Working alone safely: Guidelines for employers and employees. Retrieved Jan. 5, 2011, from www.gs.gov.nl.ca/ohs/safety_info/si_working_alone.html.
- Workers’ Compensation Board of Manitoba.** (2006). Code of practice for working alone or in isolation. Winnipeg, MB: SafeManitoba. Retrieved Jan. 5, 2011, from www.safemanitoba.com/uploads/guidelines/workingalone.pdf.

More sophisticated employers will have a more effective risk/hazard assessment process, whereas smaller and less sophisticated employers will likely have a less effective process.