

Legal Issues in Sun Safety for Workplaces in New Brunswick

This fact sheet provides an overview of legal issues in sun safety for workplaces in New Brunswick. This covers jurisdiction-specific occupational health and safety (OHS) legislation for both solar UV radiation and heat stress. The focus is on OHS legislation, workers compensation legislation has not been covered. The purpose of the fact sheet is to provide an overview of the OHS laws as they apply to sun safety at the time of writing (August 2016), the purpose is not to provide legal advice or opinion. This jurisdiction-specific information should be read with our fact sheet on *Legal Issues in Sun Safety for Canadian Workplaces* which provides an introduction to legal issues associated with implementing a sun safety program.

The New Brunswick *Occupational Health and Safety Act* (NB OHSA), SNB 1983, c O-0.2, has a general duty for employers. A health and safety committee will be involved with the development of a sun safety program. The primary regulation, *General Regulation*, NB Reg 91-191, has requirements for thermal stress. There are provisions for infrared radiation and ultraviolet radiation although they appear to be intended to cover equipment as sources of radiation. There is a requirement for supplying drinking water.

Key terms in the NB OHSA:

- “employee”, but it is defined to include non-employees;
- an “employer” includes a supervisor or manager;
- contractors and sub-contractors;
- officer;
- health and safety committee;
- “protective equipment” means any piece of equipment or clothing designed to be used to protect the health or safety of an employee;
- an “occupational disease” means any disease or illness or departure from normal health arising out of employment, and includes an industrial disease as defined by the Workers’ Compensation Act; and
- “place of employment” rather than “workplace”.

The employer has a general duty which uses the phrase “take every reasonable precaution”. Contractors, sub-contractors, and owners have similarly worded general duties. The employer has a duty to do inspections. There are specific requirements in the Act for the training of new employees. Employees do not have a broad general duty. The closest duty is to conduct himself to ensure his own health and safety and that of other persons at, in, or near his place of employment.

A health and safety committee is required where there are 20 or more employees. A health and safety representative is required where there are 5-19 employees. Neither are required at a project site.

An employer with 20 or more employees regularly employed in the Province shall establish a

written safety policy which shall set out the responsibilities of the employer and the employees. Such an employer shall also have a written health and safety program. The NB OHSA sets out the requirements for the program.

An employee may refuse to do any act where he has reasonable grounds for believing that the act is likely to endanger his health or safety or the health or safety of any other employee.

The employer shall notify the Workplace Health, Safety and Compensation Commission immediately if an employee suffers an injury resulting in a loss of consciousness, a burn that requires medical attention, a loss of vision in one or both eyes, admission to a hospital facility as an in-patient, or death.

In the primary regulation under the NB OHSA, there are specific requirements for drinking water (s.4). Where an employee may be exposed to high levels of heat or humidity so that the health of the employee may be adversely affected, an employer shall provide a shower facility (s. 10). Under certain circumstances the employer may have to establish an occupational health service.

Extremes of Temperature

22. Where an employee is exposed to work conditions that may present a hazard because of extreme heat or extreme cold, an employer shall ensure that

- (a) a competent person measures and records the thermal conditions at frequent intervals and makes the findings available to a committee, if any, and to an officer on request, and
- (b) the threshold limit values for protection against heat stress and cold stress are followed as well as the work-rest regimen for heat and the work-warming regimen for cold and other advice found from pages 125 to 140 of the ACGIH publication “1997 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices”.

23(1) Where an employee is exposed to work conditions that may present a hazard because of excessive heat, an employer shall ensure that a competent person instructs the employee in the significance of symptoms of heat stress such as heat exhaustion, dehydration, heat cramps, prickly heat and heat stroke and in the precautions to be taken to avoid injury from heat stress.

42. Where an employee is exposed to a hazard that may injure the skin, the employee shall use, as necessary,

- (a) adequate protective gloves,
- (b) adequate protective boots or wooden clogs,
- (c) adequate body covering,
- (d) adequate eye protection,
- (e) a barrier cream or oil to prevent irritation to exposed parts of the body, or
- (f) other protective equipment sufficient to provide protection from the hazard.

44. Where an employee is exposed to a hazard from extreme heat or extreme cold, the employee shall use adequate protective clothing.

The following provisions do not appear to contemplate the sun as a source of emissions.

Infra-red Radiation

35(1) An employer shall ensure that all sources of intense infra-red radiation are shielded as near the source as possible by heat absorbing screens, water screens or other suitable devices.

35(2) An employer shall ensure that employees are provided with and wear properly fitting goggles, face shields or other adequate eye protective equipment when entering an area where they may be subjected to infra-red radiation liable to injure or irritate the eyes.

35(3) An employee shall wear the eye protective equipment referred to in subsection (2) when entering an area where the employee may be subjected to infra-red radiation liable to injure or irritate the eyes.

Ultraviolet Radiation

36. Where emissions of ultraviolet radiation are in the spectral region between 180 nm and 400 nm, an employer shall ensure that

- (a) access to areas where equipment emits ultraviolet radiation is limited to those persons directly concerned with its use,
- (b) users of such equipment are trained in the hazards and need for precautions,
- (c) warning signs or devices are used to indicate the presence of ultraviolet radiation hazard,
- (d) protective cabinets or screens are placed around the source of emission, with observation ports made of suitable absorbent materials such as certain grades of acrylics, polyvinyl chloride or window glass,
- (e) protective clothing is used by an employee as required,
- (f) eye protective equipment such as ultraviolet absorbing goggles, spectacles or face shields are used by an employee whenever there is a potential eye hazard, and
- (g) exposure of an employee to ultraviolet radiation does not exceed the threshold limit value.

Under the NB OHSA a “mine” includes pits and quarries. There is a regulation under the OHSA that is specific to mines. It has some relevant provisions.

Visit sunsafetyatwork.ca for more information. This fact sheet was correct as of August 2016. Production of this resource has been made possible through financial support from Health Canada through the Canadian Partnership Against Cancer.