

Provincial penalties on the rise



Higher OHSA fines make health and safety due diligence more important than ever.

Companies that violate Ontario's *Occupational Health and Safety Act* (OHSA) now face significantly higher fines, following the provincial government's passing of the Working for Workers Act, 2023.

On Oct. 26, 2023, maximum corporate fines for a single OHSA infraction increased by \$500,000 to \$2 million. To potentially avoid this financial penalty—the highest in Canada for a single offence—businesses should assess their occupational health and safety management systems (OHSMS) or health and safety plans.

Among its many goals, an effective OHSMS should drive a workplace to document all positive steps that it takes toward ensuring worker safety. Doing so can serve as a company's defence, should it ever be investigated by the Ministry of Labour, Immigration, Training, and Skills Development (MLITSD).

"If an employer can prove through documentation that they have a site-specific health and safety plan with rules that are implemented, enforced, and monitored on an ongoing basis, that's the best situation they can find themselves in," says Cheryl A. Edwards, senior partner at Matthews Dinsdale LLP and a former occupational health and safety prosecutor in Ontario. "It can help show the MLITSD that every reasonable step was taken to prevent an incident."

Edwards adds that smaller firms without dedicated health and safety specialists should have their health and safety plans audited by an external consultant. The upfront cost can help companies avoid hefty penalties—and most importantly, prevent injuries and fatalities—down the line.

To further offset the costs of investing in health and safety, businesses can earn thousands of dollars in Workplace Safety and Insurance Board (WSIB) rebates by building or improving their OHSMS with the Health and Safety Excellence program (HSEp). The program has companies work through a number of health and safety "topics"—most of which align with COR® 2020, the accredited, national OHSMS standard overseen by the Infrastructure Health and Safety Association (IHSA).

Build your health and safety system with COR®

Properly documenting and tracking health and safety efforts is key to continuously improving health and safety performance—and central to building an OHSMS based on the COR® standard. COR® requires companies to have a procedure to track, manage, and store documents and records, including policies, safe work procedures, safety talks, training records, hazard assessments, incident reports, and more.

"The key piece of due diligence is monitoring your health and safety plan, and demonstrating that you're identifying and actively working on areas requiring improvement," says Enzo Garritano, IHSA's President and CEO. "If the Ministry inquires, you can show that you have a plan that you are consistently reviewing, and they may be less likely to pursue a charge."

To achieve COR® certification, a company must internally audit its OHSMS once a year and have it reviewed by an accredited third-party auditor every three years. This guarantees the company is monitoring and assessing the application of its system in the workplace on a consistent basis—and improving it where necessary.

Since 2022, IHSA has helped to make COR® auditing easier with AuditSoft. This digital auditing and data-management solution gives COR® internal auditors the benefit of automated calculations, one-click report generation, easier cross-referencing of support materials, and more. Audits typically include interviews, documentation review, and observation techniques to evaluate how well an employer is able to identify, assess, and control risks to workers.

"The COR® tool is so valuable because of the level of detail it provides. Companies can use data gathered in AuditSoft to understand where they are performing strongly, what may be slipping, and what needs the greatest attention for improvement," Garritano says. "This level of assessment is made possible by firms diligently observing and documenting their health and safety efforts."