

Opioid Crisis – Implications on the Workplace

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A little known amendment to the *Ontario Health & Safety Act (OHSA)* will be requiring employers to keep naloxone kits in the workplace. The bill, otherwise known as Bill 88 (*Working for Workers Act, 2022*) received royal assent in April 2022. Despite the date of royal assent, the statutory requirements will become effective June 1, 2023.

According to Bill 88, employers who become aware or ought reasonably to be aware that there may be a risk of a worker having an opioid overdose at a workplace must provide and maintain in good working condition a naloxone kit. The Bill also requires such employers to provide training to an administration of naloxone to a worker working in the vicinity of the kit.

For those not familiar with naloxone, it is important to provide you with a brief overview of what this drug is and what are its primary use. **Naloxone** is an opioid antidote and can reverse the potentially fatal effects of an overdose. Naloxone is effective against all opioids including: codeine, morphine, hydromorphone (Dilaudid®), meperidine (Demerol®), oxycodone (OxyContin®), fentanyl, heroin, methadone, buprenorphine and others.

It is important to note that the Ontario government, through its filing of O. Reg. 559/22: Naloxone Kits under the *OHSA*, defines what constitutes a naloxone kit in good working condition, as well as its maintenance obligation. In a nutshell, the latter provisions include the following:

- Every naloxone kit shall be used, stored and maintained in accordance with the manufacturer's instructions.

- The contents of each naloxone kit must be kept in a hard case.
- The contents of each naloxone kit must be for a single use and promptly replaced after its use.
- The contents of each naloxone kit cannot go beyond the expiration indicated on the contents.
- The names and workplace locations of the workers, who are in charge of the naloxone kits and who have been trained for their use, shall be posted in a visible place in the vicinity of the kits.

In terms of the naloxone kits, the regulation prescribes its contents as follows:

- A nasal spray naloxone kit must include two (2) doses of intra-nasal spray, with each dose containing 4 mg/0.1 ml of naloxone hydrochloride, one rescue breathing barrier, and one pair of non-latex gloves; and,
- An injectable naloxone kit must include two (2) vials/ampoules, containing a 0.4 mg/0.1 ml dose of naloxone, one device for each ampoule to safely open the ampoule (such as a breaker, snapper or opener), two (2) syringes attached to 25 gauge safety-engineered needles measuring 1 inch in length, two (2) alcohol swabs, one rescue breathing barrier and one pair of non-latex gloves.

The Ontario government has also published guidelines for employers in regard to determining whether they are required to have the kits in their workplace, and to obtaining these kits for free and to provide training on how to use the kits once in the workplace. Employers are encouraged to visit participating program providers, such as St. John Ambulance and/or the Canadian Red Cross, for more

information on how to access free naloxone kits and training. These same guidelines may prove to helpful to employers on how to prepare itself for this new workplace naloxone kit requirement.

The guidelines provide clarity on determining whether an employer must provide a naloxone kit when the employer becomes aware, or ought reasonably to be aware, of the following situations in their workplace:

- There is a risk of a worker opioid overdose.
- There is a risk that the worker overdoses while in a workplace where they perform work for the employer.
- The risk is posed by a worker who performs work for the employer.

In addition to the above, the guidelines also provide examples of situation when an employer may become aware that there may be a risk of its employees having an opioid overdose in the workplace. They are addressed as follows:

- An opioid overdose of a worker may have already occurred in the workplace.
- An opioid-addicted worker voluntarily discloses this risk to their employer.
- An employee is observed using opioids in the workplace or the use of opioids in the workplace is discovered pursuant to a in their workplace investigation.
- Discovery of discarded opioid paraphernalia, such as used needles, in the workplace.
- The joint health and safety committee (JHSC), health and safety representative (HSR), a union representative, human resources (HR) staff, and/or someone else in the workplace may bring this risk to the employer's attention.

An exception to the above would include a situation in which an employer is or becomes aware that one of its employees uses opioids as prescribed by a medical practitioner. In this circumstance, it is unlikely that this would, in and of itself, prompt an awareness of the potential risk of a workplace opioid

overdose since the use of the opioid is under medical supervision. Moreover, should an employer not be or has not become aware of a risk of one of their employees having an opioid overdose at the workplace, the employer in question would not be required to comply with the *OHSA* requirements to provide naloxone in the workplace. In other words, if there is no risk of a employee opioid overdose, an employer would not have to comply with the *OHSA* requirements.

The *OHSA* requirements do not apply to workplaces where the risk of an opioid overdose is created by a **non-employee**. This exemption includes the following individuals:

- a customer
- a client
- a patient
- other members of the public who may be present in or near the workplace.

It is also particularly important that employers who are subject to the new requirements under Bill 88 take the necessary steps in preparing themselves in advance of the compliance date of June 1, 2023. Failure to comply may results possible fines for convictions under the *OHSA* from \$100,000 to \$1.5 M for directors/officers of corporations, and to \$500,000 for other individuals.

In our experience, this change in the *OHSA* will likely have a greater impact in workplaces that are predominantly composed of blue-collar workers; however, it is important for employers of all sectors truly assess their particular situation in making a determination as to whether they are affected by Bill 88. The opioid crisis has insidiously crept into various aspects of our society and we can't simply standby and tell ourselves that it is not going to affect us.