

Naloxone Kit Requirement Proclaimed into Force – June 1, 2023

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Bill 88, the *Working for Workers Act, 2022* (the Act) became law on April 11, 2022. The Act made key changes to the *Employment Standards Act, 2000*, enacted a *Digital Platform Workers Right Act, 2022*, and amended the *Occupational Health and Safety Act* (OHSA). These changes continue to have implications for employers.

Beginning June 1, 2023, new requirements under OHSA come into effect, requiring certain Ontario workplaces to provide naloxone kits and training to workers on how to administer naloxone. Naloxone is a drug that can temporarily reverse the effects of an opioid overdose. It can either be injected in a muscle or provided as a nasal spray.

Naloxone Kit in the Workplace and Training

An employer that becomes aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at a workplace where that worker performs work for the employer, will be required to provide naloxone kit(s), maintain kit(s), and ensure training is provided. An employer who is required to have a naloxone kit in their workplace must provide at least one naloxone kit in each workplace. O. Reg. 599/22 (Naloxone Regulation) specifies the contents of the naloxone kit.

Employers are also required to ensure that the naloxone kit is in the charge of a worker who has been trained on recognizing an opioid overdose, how to administer naloxone, and to acquaint the worker with the hazards related to the administration of naloxone.

The OHSA does not specify the number of workers who must receive the required training. Rather, if an employer is required to provide a naloxone kit in the workplace, the employer is required to determine how to ensure that at any time when there are workers in the workplace, that there is a worker present who has been trained and works in the vicinity of the naloxone kit.

Determining Whether a Kit and Training May be Required

The Ministry of Labour, Immigration, Training and Skills Development has provided guidance to assist

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employers in determining whether naloxone kits and training may be required in the workplace.

Some of these questions and guidance include:

1. Is the employer aware of the risk of a worker opioid overdose?

An employer may become aware of a risk of an opioid overdose if: (i) there has already been an overdose at the workplace; (ii) an employer observes opioid use, or discovers discarded drug paraphernalia, such as needles; (iii) the Joint Health and Safety Committee, the health and safety representative, a union representative, or human resources staff brings this risk to the employer's attention; or the worker who uses opioids may voluntarily disclose this risk to their employer.

2. Is the risk of a worker opioid overdose happening in the workplace where the worker performs work for the employer?

In order for the new requirements to apply, there must be a risk of a worker having an opioid overdose while at the workplace where the worker performs work for the employer.

The requirements do not apply if there is a risk of it happening outside of the workplace.

3. Is the risk posed by a worker who performs work for the employer?

The risk of overdose must be in relation to a worker who performs work for the employer.

"Worker" is defined in OHSA as a (i) person who performs work or supplies services for monetary compensation; (ii) a secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled; (iii) a person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, private career college or other post-secondary institution; and (iv) other persons prescribed who perform work or supply services to an employer for no monetary compensation.

The requirements regarding naloxone kits do not apply where the risk of an opioid overdose is to a non-worker, such as a client, a patient, a member of the public, or to a non-worker.

In short, an employer must provide a naloxone kit where an employer becomes aware, or ought reasonably to be aware, of the following scenarios: (i) there is a risk of a worker opioid overdose; (ii) there is a risk that the worker overdoses while in a workplace where they perform work for the employer; and (iii) the risk is posed by a worker who performs work for the employer. If all of these scenarios are present, an employer must comply with the OHSA requirement to provide naloxone in the workplace.

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Compliance and Enforcement

As of July 1, 2022, the fines for a contravention of the OHSA by a person were increased to a maximum of \$500,000 (previously \$100,000). On conviction, directors or officers of a corporation who do not take reasonable care to ensure that the corporation complies with the OHSA and related orders are liable to a fine of not more than \$1.5 million for a corporation or to imprisonment for a term of not more than twelve months, or to both.

Key Takeaways

Under the OHSA, all employers have a duty to take every reasonable precaution to ensure the workplace is safe. Employers should review the guidance above and assess whether the new requirements apply. If so, employers must comply with these new requirements by June 1, 2023.

Please note that as of the date of publication, the Government of Ontario is providing naloxone kits, as well as training need to help employees with the tools to respond to an opioid overdose through the following resources: Ontario's Workplace Naloxone Program, the Canadian Red Cross, and St. John Ambulance.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.