

Legislative Change: A Primer on Injunctions and Due Diligence

Changes to the *Workers Compensation Act*

Bill 9 received Royal Assent on May 14 and contains a number of changes to Part 3 of the *Workers Compensation Act* (the Act). Some of the changes are effective May 14 while others will follow later in the year or in 2016. Accordingly, four amendments to the Act are now in effect. These are:

- Expanded stop work order powers
- Changes to employer incident investigations
- Expanded injunction powers
- Changes to penalty due diligence

Here's a summary of the Act and Policy changes for injunctions and penalty due diligence:

1. Court Injunctions

The amendment provides a mechanism to deal with individuals who fail to comply with the Act or Regulation after WorkSafeBC has exhausted other appropriate enforcement methods.

Section 198 of the Act currently allows the Board to apply to the British Columbia Supreme Court for an injunction to either restrain a person (which includes corporate and individual employers, owners,

supervisors, suppliers, workers, etc.) from continuing or committing a contravention or require a person to comply with the Act, Regulation, or an order.

The amendments to the injunction provisions will enable the Court to also grant an injunction restraining a person from carrying on in an industry, or an activity in an industry, indefinitely or until further order of the Court.

An injunction is an exceptional remedy that's handled by the WorkSafeBC's Legal Services Department in consultation with the relevant Prevention officers and managers. There likely will be no change to the current Prevention practice with respect to injunctions.

2. Due Diligence

Section 196 of the Act deals with administrative penalties. Currently, the Board has the obligation, before imposing a penalty, of determining that an employer failed to exercise due diligence. The amendment clearly places the onus of due diligence on the employer. This shift has already been reflected in part by the use of the due diligence letter in the new 90-day penalty process. These legislative changes are not expected to impact this practice.