

# CONTRACT INTERPRETATION MANUAL

## Article 32 OCCUPATIONAL HEALTH AND SAFETY PROGRAM

### Interpretation Guidelines

#### Preamble

The preamble outlines a commitment by both the Employer and the Union to cooperate in the promotion of a safe work habits and safe working conditions. In addition, the parties agree to adhere to the provisions of the Workers' Compensation Act and related Health and Safety Regulations (Regulations).

Employers are required to ensure that copies of the Regulations are readily available to employees, to advise employees of the location of the Regulations at each worksite and to provide employees with the contact information for the Workers' Compensation Board operating as WorkSafe BC and how to obtain more copies ([www.worksafebc.com](http://www.worksafebc.com)).

Courses identified by the joint OH&S Committee to promote a safe and healthy workplace and approved by the Employer are to be treated like Employer Requested Leave (Article 35.03 (A)).

Please contact your regional OH&S executive or the provincial OH&S Prevention and Advocacy Officer for your region for assistance.

#### Article 32.01 - Joint Occupational Health and Safety Committee (JOH&S)

All Employers are required to establish an OH&S Program and an OH&S Committee.

The function of the JOH&S Committee includes recommending actions which improve the effectiveness of the worksite's safety program.

Rules governing the program and the committee are found in Part 3 of the WorkSafe Regulations.

The Committee is made up of equal representation between the Employer and the Unions. The BCNU JOH&S representative is chosen or appointed by the Union.

Most of the OH&S committees are made up of representatives from all the Unions at the worksite. However, there may be additional committees at some Employer worksite to better address issues unique to the type of work done at a number of worksites and areas.

The Regulations require the Employer and the Union to provide adequate training and orientation for each of their members of the committee within 6 months of the Committee members taking office.

Under the PCA, OH&S Stewards receive the appropriate overtime rate for time spent at Committee meetings during their off-duty hours (Campbell River and District Hospital and BCNU, March 18, 1985 (Munroe)). Due to the fact that this Committee is required by the Regulations and therefore came under Article 3 of the PCA – Employer Business.

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Minutes of Committee meetings are required to be recorded in a “mutually agreed” format and sent to the Union Head Office. OH&S Resources can be accessed through the BCNU website (www.bcnu.org) or by contacting the OH&S department.

At the worksite level the JOH&S Committee has broad duties and responsibilities under the Workers’ Compensation Act and the Occupational Health & Safety Regulation. These duties and responsibilities encompass all types of workplace hazards including violence.

## Article 32.02 - Medical Examinations

The Employer can require an employee to take a medical examination, however certain conditions apply:

1. The Employer should have policies addressing the circumstances in which a medical exam might be required, outlining the reasons for such a requirement and other related matters;
2. This policy should be available for employees to read;
3. The Employer needs to be able to provide substantive reasons why they require the employee to take an exam;
4. The employee gets to choose the physician to conduct the exam;
5. The Employer is required to pay any costs associated with taking the exam;
6. Employers do not have to pay for the cost of obtaining “proof of sickness” (Article 42.03). In Richmond Lions Manor and BCNU, January 21, 1997 (Kelleher), the Arbitrator determined that this was not a “medical exam” as per this provision; and
7. If a member is being asked to take a medical exam, please refer to your LRO and EDMP representative.

The Employer can require employees to take the following:

1. Skin tests;
2. X-ray examinations;
3. Vaccinations;
4. Inoculations; and
5. Other immunizations (The Employer cannot request a Rubella vaccination when the employee thinks they are pregnant).

Employees can refuse these tests, but they usually need to provide a note from their Doctor outlining the medical reasons for their refusal.

## Article 32.03 - Safe Workplace

There is an onus on the Employer under the PCA, the WCB Act and the Regulations to provide a safe and healthy workplace and to take appropriate measures to eliminate and minimize risks of accidents or occupational disease.

WorkSafe BC introduced regulations (4.27 - 4.31) that address “Protection of Workers from Violence in the Workplace. Employers must implement the requirements of this section of the Regulations.

In addition to the existing language in Article 32.03 (A) an increased onus has been placed on health Employers to take all reasonable steps to eliminate, reduce or minimize threats to the safety of employees.

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This means that Employers are required to have violence policies and procedures that promote a culture of safety or “zero tolerance” for violence in the workplace.

Violence means the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk for injury. The BC Ministry of Health defines Aggression and Violence as “a person’s use of physical, verbal, or emotional force, either threatened or actual, which is intended to cause injury to another person.”

Employees visiting clients in the community are entitled to request back-up to attend where there is a reasonable cause to expect a violent situation and have access to appropriate communication equipment. This means that an employee is entitled to request appropriate back-up which could range from having another employee attend to having security/police attend and is also entitled to ask for a communication device such as a cellphone where they believe that the situation may be unsafe (Article 57.02 (G)).

Employers must make every effort to identify and make information available to employees regarding potential violent behaviour of clients.

Critical incident support shall be provided to employees after any traumatic workplace incident. This support must be provided as soon after the incident as possible.

Employers must provide orientation and in-service for any procedures necessary for the safe performance of work. This includes universal precautions, safe patient handling and safe handling of materials and products. New employees hired into mental health programs will receive a minimum of 3 weeks orientation and in-service to ensure they have the tools and skills to be safe in the workplace.

Compulsory Violence Prevention training must be provided based on the program that was designed under the Provincial Violence Prevention Steering Group (Appendix G) and annual refreshers must be provided (Article 35.02).

Employers must provide compulsory OH&S supervisory training and annual refreshers to any employee who as part of their job description supervises or directs other employees (Article 35.02).

In addition to the above, the government and Employers also agreed to a Memorandum of Understanding (Appendix G).

The Violence Prevention Program requires each Health Authority to either establish of joint violence prevention program or review their existing program to ensure it includes:

1. A regional violence prevention sub-committee to develop control measures and provide guidelines to local JOH&S committees;
2. Risk assessments coordinated by the local JOH&S committees and reported to the regional violence prevention sub-committee; and
3. Ongoing employee education and training.

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## What is a Risk Assessment?

1. A process aimed at identifying all the possible situations that could lead to violence or the threat of violence in the workplace (or arising from the workplace) prior to a worker being exposed to that situation.
2. For employees this would incorporate virtually every job in every work situation.

## Risk Assessment Principles

1. A risk assessment must be performed in any workplace in which a risk to injury to workers from violence arising out of their employment may be present (Regulations, Section 4.28 (1)).
2. The risk assessment must include consideration of:
  - (a) previous experience in that workplace;
  - (b) occupational experience in similar workplaces; and
  - (c) the location and circumstances in which work will take place.
3. If a risk of injury is identified by an assessment performed under section 4.28 the employer must:
  - (a) establish procedures, policies and work environment arrangements to eliminate the risk of workers from violence; and
  - (b) if elimination of the risk to workers is not possible, establish procedures, policies and work environment arrangements to minimize the risk to workers.
4. See Part 3 (Occupational Health and Safety) of the Workers Compensation Act and Part 3 (Rights and Responsibilities) of the OH&S Regulation.

## When should a risk assessment be performed?

1. NOW! across all worksite units/departments and programs as part of the obligations under the new Violence and Respect language (Article 32, Appendices E & G).
2. As part of an investigation when incidents of workplace violence occur.
3. When the workload, level of service, or type of patient/client changes.
4. When the worksite changes.
5. At the planning stages of new facilities or service delivery.
6. At the planning stages of any changes to the work environment, such as building renovations and reorganization.

## Who should be involved in a risk assessment?

1. The front-line workers (employees in the work area)
2. Occupational health and safety stewards
3. Management
4. Identified experts in the work area
5. JOH&S
6. WorkSafeBC

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Risk would naturally vary by the type and location of the work the employee conducts; a proper assessment of the risks employees face must take into account:

Environmental Conditions	Situational Risk
Time of day	Policies & Procedures (do they exist)
Location	Client/patient/resident assessment (is it adequate / standardized)
Shifts	Nature of interaction with Patient / family
Client Characteristics	Job Characteristics
History of violence	Working alone
History of illness	Travel
Drug / addictions problems	New Procedures
	Change in census / work design
	Workload / inadequate staffing

The Ministry of Health has committed to spend \$1 million between 2006-2010 to support initiatives in the area of violence in the workplace coordinated by the Provincial Violence Education Task Group. This group is funded by the Ministry of Health with \$1M over four years. Its purpose is to:

1. Develop strategies for a provincial notification alert system for persons with a history of violent behaviour.
2. Develop standard programs on violence prevention and response.
3. Develop a consistent approach to investigation/prosecution for individuals who commit/threaten violent acts.
4. Develop a public campaign in collaboration with WorkSafe BC on violence in healthcare workplaces.
5. Examine and publish best practices in violence prevention.

The Employer is required to inform employees if their clients have a history of violent behaviour. This could be done through computerized charting records (where available), the charting system, an alert at the nursing station or at the bedside, or any other ways staff can be made aware of a potentially violent person or a person with a violent history toward a family member, visitor etc.

The Employer is required to “make every reasonable effort” to identify the potential for aggressive behaviour on admission or transfer of a client.

The Employer is also required to provide in-service education, on how to safely provide care to potentially violent or abusive patients. The Regulations also include a requirement for training employees.

The Employer is required to provide orientation and in-service necessary for the safe performance of work including:

1. Universal precautions;
2. The safe use of equipment;
3. Safe techniques for lifting and supporting clients;

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4. The safe handling of materials and products.

In addition, the Employer is required to make readily available information, manuals and procedures on these issues.

The Employer must provide appropriate safety clothing and equipment to employees.

### Respectful Workplace

In addition, there is language where Health Authorities are committed to promoting a work environment in which employees, students, medical staff, physicians, residents, fellows, volunteers, contractors, visitors, patients and clients are expected to conduct themselves in a civil, respectful and cooperative manner. As a result:

1. Each Health Authority is required to publish a clear policy for promoting and maintaining a working environment in which all persons are treated with respect and dignity.
2. These policies are required to be easily accessible to staff and users of the health system regarding the expectations and consequences of inappropriate behaviour. The intent in bargaining is that the policy statements including the consequences of bad behaviour be prominently posted in the worksites in areas visible to everyone who enters the worksite.

These policies are expected to address issues such as bullying and harassment and will apply to everyone involved in the health system including management, employees, physicians and users of the health system.

Stewards need to ensure that Employer policies for promoting a respectful working environment are followed, communicated, and enforced. Incidents that are in violation of a respectful workplace, such as bullying and personal harassment, need to be documented and grievances filed where necessary.

When a Respectful Workplace complaint is filed employees are entitled to have a Steward present at any meeting (Article 6).

Please see additional resources on risk assessment, violence prevention and respectful workplace in the Steward Toolkit and Appendix G.

E&OE

### HEABC-NBA Provincial Collective Agreement - Joint Interpretation

#### ARTICLE 32.04 – TRANSFER OF PREGNANT EMPLOYEES

HEABC and the NBA agreed to delete the previous Article 32.04. The impact of deleting this language is summarized below:

Under the previous 32.04, a pregnant employee was required to take an unpaid leave if her physician determined that continuing to work in her current position was a risk to her pregnancy. With the deletion of this provision, a pregnant employee incapable of working leading up to her maternity leave will now be treated like any other situation where an employee has a medical condition or requires a medical accommodation. A pregnant employee may choose to draw from her sick leave bank or request an

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accommodation. Where a pregnant employee seeks an accommodation, her request should be treated in the same manner as any other accommodation request.

## Article 32.04 - Provision for Immunization

The Employer must:

1. Identify high risk areas of the organization that could expose employees to infectious or communicable disease;
2. The Employer needs to determine if there are protective immunizations available; and
3. If protective immunizations are available, the Employer is required to provide them at no cost to the employees.

It is the Union's position that any employee providing "hands on" care "may be exposed" to Hepatitis B and must be provided with the vaccine at no charge if the employee requests it (Regulations, Section 6.39 and 6.40).

## Managing OH&S Grievances

BCNU lost a grievance in 2019, related to N-95 fit testing as the arbitrator found that the grievance was outside the jurisdiction of the grievance process as it was a matter for WSBC regulations. In order to ensure grievances are dealt with through the grievance process please consult your LRO and/or BCNU OH&S Officer around which Articles to cite and how to craft your remedy.

## Arbitration Awards

1. Campbell River and District Hospital and BCNU, March 18, 1985 (Munroe). Stewards are entitled to the appropriate overtime pay for attendance at OH&S Committee meetings during their off-duty time.
2. Richmond Lions Manor and BCNU, January 21, 1997 (Kelleher). Employers are not required to pay for "proof of sickness" certificates (Article 42.03) as they do not meet the definition of a medical exam as set out in Article 32.02.

## Additional Resources

Legislation

1. Workers' Compensation Act and related Industrial Health and Safety Regulations (Regulations) ([www.worksafebc.com](http://www.worksafebc.com)).

BCNU Resources

1. Educational materials, videos, pamphlets, stickers etc. are all available from the BCNU office. In addition, information can be accessed at [www.bcnu.org](http://www.bcnu.org).
2. Steward Toolkit.

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## Footnotes

<b>Article</b>	32
<b>Sub-Article</b>	32.01, 32.02, 32.03, 32.04
<b>Last Update</b>	31-03-21
<b>Related Articles</b>	6, 27, 32, 35, 42, Appendix D, Appendix D.1, Appendix F, Appendix G, Appendix E, MOU addressing Workplace Violence and Respect in the Health Workplace