

Article 32

Article 32 - Occupational Health and Safety Program

Related Articles: 6.03, 6.04, 27.05, 35.03 (A), 42.07, Appendix E, Appendix F, Appendix V, MOU - Addressing Workplace Violence and Respect in the Workplace

Interpretation Guidelines

Article 32 - Preamble

1. 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 Industrial Health and Safety Regulations (Regulations).
2. 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 (or Work Safe BC as it's now called) and how to obtain more copies. The website for Work Safe BC is: www.worksafebc.com
3. 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 [See Article 35.03 (A)].
4. OH&S Stewards need to review the appropriate sections of the Workers' Compensation Act and related Industrial Health and Safety Regulations (Regulations).
5. To assist in educating employees, the worksite OH&S committee can obtain videos, posters, pamphlets and other materials from Work Safe BC.
6. BCNU has also developed education materials for OH&S Stewards that include the "Workplace Violence Prevention Toolkit" that includes the following documents:
 - Preventing Violence in Health Care - Five Steps to an Effective Program developed by WorkSafe
 - Guidelines Code White Response - joint document developed in partnership with HEABC, OHSAA and WorkSafe
 - Workplace Violence Prevention Toolkit - updated June 2006 - developed by BCNU
 - OH&S and Contracted Services Toolkit - April 2005 -developed by BCNU

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

1. All Employers are required to establish an OH&S Program and an OH&S Committee.
2. The function of the OH&S Committee includes recommending actions which improve the effectiveness of the worksite's safety program.
3. Rules governing the program and the committee are found in Part 3 of the Regulations.
4. The Committee is made up of equal representation between the Employer and the Unions. The BCNU representative is elected as per the BCNU Steward Election Process.
5. 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 in order to better address issues unique to the type of work done at a number of worksites and areas.
6. 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. At a minimum, each committee member should be aware of the Workers' Compensation Act and related Industrial Health and Safety Regulations (Regulations) including requirements for a Health and Safety Program.
7. Under the PCA, OH&S Stewards receive the appropriate overtime rate for time spent at Committee meetings during their off-duty hours. This issue was addressed by the Arbitration Award: *Campbell River and District Hospital and BCNU*, March 18, 1985 (Munroe) based on the fact that this Committee is required by the Regulations and therefore came under Article 3 of the collective agreement - Employer Business.
8. Minutes of Committee meetings are required to be recorded in a "mutually agreed" format and sent to the Union Office. Please see BCNU's OH&S Manual for a sample format for OH&S minutes and make sure the name of your worksite is on every set of minutes sent to the BCNU office. OH&S Resources can be accessed through the BCNU website: www.bcnu.org or by contacting the OH&S department or the Education department at the BCNU office. For example the Education department has an information package "So you'll be functioning on a committee?"
9. Appendix F outlines HEABC's commitment to encourage effective OH&S committees. In addition Appendix V outlines the Provincial Government's commitment to encourage effective health and safety programs and practices through the work of the Health Care Occupational Health and Safety Agency (OHSA).

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10. Check "Tips for a Meeting" found at Article 8 in this manual.

New in 2006:

At the worksite level the Joint Occupational Safety and Health (JOSH) 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.

The Memorandum of Understanding *Addressing Workplace Violence and Respect in the Health Workplace* provides additional duties and responsibilities for JOSH committees and requires each Health Authority to create a Regional Violence Prevention Sub-committee. Under the Policy Discussions the NBA and the employer agreed to the creation of a Provincial Violence Education Task Group.

JOSH Committees

In addition to the duties under the Act and OH&S Regulation the MOU provides that JOSH committees will:

- Coordinate risk assessments
- Report to the Regional Violence Prevention Sub-committee

Regional Violence Prevention Subcommittees

These new sub-committees are being established in each Health Authority. They will:

- Review violence prevention policies
- Develop control measures to eliminate, reduce and/or minimize the risk of violence
- Provide guidelines to JOSH committees
- Ensure that ongoing education and training is carried out
- Compile an annual report of violence prevention activities to local JOSH committees

Note: The new language in the MOU - *Addressing Workplace Violence and Respect in the Health Workplace* is only binding on the Health Authorities so the Affiliates (including Providence, St. Joseph's Comox) are not part of the regional sub-committees unless there is a voluntary agreement to include them at the Health Authority level.

Please contact your LRO to find out whether a voluntary agreement to include affiliates within your Health Authority has been concluded.

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Article 32.02 - Medical Examinations

Related Articles: 32.03, 32.05, 42.03

1. The Employer can require an employee to take a medical examination. However certain conditions apply:
 - 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.
 - This policy should be available for employees to read.
 - The Employer needs to be able to provide substantive reasons why they require the employee to take an exam.
 - The employee gets to choose the physician to conduct the exam.
 - the Employer is required to pay any costs associated with taking the exam
 - However Employers do not have to pay for the cost of obtaining "proof of sickness" pursuant to Article 42.03. See **Arbitration Award: *Richmond Lions Manor and BCNU, January 21, 1997 (Kelleher)*** - the arbitrator determined that this was not a "medical exam" as per this provision.

2. The Employer can require employees to take the following:
 - Skin tests;
 - X-ray examinations;
 - Vaccinations;
 - Inoculations; and
 - Other immunizations (The Employer cannot request a Rubella vaccination when the employee thinks she's pregnant)

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

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Article 32.03 - Safe Workplace

Related Articles: 32.01, 32.06, Appendix E, Appendix V, MOU addressing Workplace Violence and Respect in the Health Workplace

- A. There is an onus on the Employer under the PCA, the WCB Act and the Regulations 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.

New in 2006: 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 and/or minimize threats to the safety of employees.

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."

While there is an onus on the Employer to implement safety measures to protect employees from violence in the workplace, the Union recommends that employees also file assault charges with the Police if attacked or threatened in the workplace. There was also a commitment in bargaining that the Deputy Minister of Health would work with the Ministry of the Attorney General to develop a process to support the filing of charges by the Health Authority where necessary.

- B. **New in 2006:** 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 a nurse is entitled to request appropriate back-up which could range from having another nurse attend to having security/police attend and is also entitled to ask for a communication device such as a cell-phone where they believe from either reading the file, knowledge of the location of this client that the situation may be unsafe.

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New in 2006: In addition to the above, the government and employers also agreed to a Memorandum of Understanding - Addressing Workplace Violence and Respect in the Health Workplace that includes a Violence Prevention Program.

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:

- A regional violence prevention sub-committee to develop control measures and provide guidelines to local JOSH committees
- Risk assessments coordinated by the local JOSH committees and reported to the regional violence prevention subcommittee. Further information regarding risk assessments can be found below.
- Ongoing employee education and training.

Risk Assessment

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 [WorkSafe BC OH&S 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.See Part 3 (Occupational Health and Safety) of the Workers Compensation Act and Part 3 (Rights and Responsibilities) of the OH&S Regulation.

What is a Risk Assessment?

- 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.
- For nurses this would incorporate virtually every job in every work situation.

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When should a risk assessment be performed?

- ***NOW!*** across all worksite units/departments and programs as part of the obligations under the new Violence and Respect language (Article 32 and related MOU).
- as part of an investigation when incidents of workplace violence occur
- when the workload, level of service, or type of patient/client changes
- when the worksite changes
- at the planning stages of new facilities or service delivery
- 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?

- the front line workers (nurses and all other staff in the work area)
- occupational health and safety stewards
- management
- experts in area
- JOSH (Joint Occupational Safety & Health committees)
- WorkSafeBC (sometimes, as warranted)

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

<p><u>Environmental Conditions</u></p> <ul style="list-style-type: none"> ▪ Time of day ▪ Location ▪ Shifts 	<p><u>Situational Risk</u></p> <ul style="list-style-type: none"> ▪ Policies and procedures (do they exist?) ▪ Client/patient/resident assessment (is it adequate/standardized?) ▪ Nature of interaction with patient/family
<p><u>Client Characteristics</u></p> <ul style="list-style-type: none"> ▪ History of violence ▪ History of illness ▪ Drug/addictions problems 	<p><u>Job Characteristics</u></p> <ul style="list-style-type: none"> ▪ Working alone ▪ Travel ▪ 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**.

Provincial Violence Education Task Group

This group is funded by the Ministry of Health with \$1M over four years. Its purpose is to:

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

The Employer is required to inform employees if their patients/clients/residents 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.

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- C. The Employer is required to "make every reasonable effort" to identify the potential for aggressive behaviour on admission or transfer of a client/resident/patient.

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.

1. The Employer is required to provide orientation and/or in-service necessary for the safe performance of work including:
 - Universal precautions;
 - The safe use of equipment;
 - Safe techniques for lifting and supporting patients/clients/residents;
 - The safe handling of materials and products.
2. In addition the Employer is required to make readily available information, manuals and procedures on these issues.
3. 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:

- **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.
- **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, 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 implemented, communicated and enforced.

Incidents that are in violation of a respectful workplace, such as bullying, personal harassment need to be documented and grievances filed where necessary.

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Do You Have A Respectful Workplace?

To assess workplace respect in your organization, take a few moments to answer the following questions.

	Yes	No	Don't know	
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is the Workplace Respect policy readily available to managers? And employees?
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is management trained in dealing with issues of occupational violence, harassment and bullying?
3.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is this policy reviewed with employees at orientation and/or at any other times?
4.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do employees receive training to enable them to recognize incidents of lack of respect in the workplace?
5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do employees know how or who to contact with questions or in the event incidents of this nature occur?
6.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Does the organization have processes in place to deal with incidents of bullying, harassment or occupational violence?
7.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is your workplace reasonably free from incidents of harassment, discrimination or occupational violence?
8.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever completed a risk assessment to safeguard workers against the possibility of injury due to an incident of workplace violence?

(If you answer no or don't know to any of the questions, you need to take action to implement or improve your workplace respect policy.)

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The following are some additional signs that there may be room for improvement in creating an environment of respect. Keep these points in mind when undertaking a risk or hazard assessment.

- Your worksite has been the subject of formal harassment charges or has received notices of complaints being investigated by the Human Rights Commission.
- Your worksite experiences a disproportionate turnover rate, particularly for women or visible minorities.
- Employees request transfers more often from particular units/programs than from others
- Some units/programs, more than others, experience poor productivity, low morale, chronic absenteeism, elevated use of sick leave or workers compensation or disability insurance claims.
- Employees at your workplace/in your unit accept a poor work environment by excusing people who bully or harass co-workers as, "That's just the way her or she is".

Please see additional resources on risk assessment, violence prevention and respectful workplace in the Tools Section of this CIM

Article 32.04 - Transfer of Pregnant Employees

Related Articles: 31, 37

1. **A pregnant employee may ask to be transferred** from her current duties, if her physician thinks the pregnancy may be at risk. If a transfer is not feasible, then she can take a leave of absence.
2. **There is a higher onus on the Employer to demonstrate why a transfer is not reasonable** in these circumstances given the temporary nature of the transfer. In looking at feasibility, a variety of factors can be considered such as:
 - Reasonableness;
 - Increased cost to the Employer;
 - Qualifications of the employee.

Recent decisions of the Supreme Court of Canada have further increased the onus on the Employer to accommodate the employee in these circumstances.

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Article 32.05 - Provision for Immunization

Related Articles: 32.03

1. The Employer must:
 - First, identify high risk areas of the organization that could expose employees to infectious or communicable disease;
 - Second, the Employer needs to determine if there are protective immunizations available; and
 - Third, if protective immunizations are available, the Employer is required to provide them at no cost to the employees.
2. The OH&S Committee was given authority in 1998 to identify high risk areas as set out in point 1 above. This strengthens employee rights to immunization, where the Employer refuses to acknowledge high risk areas and/or provide immunizations at no cost.
3. 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.
4. Also refer to the Regulations, Sections 6.39 and 6.40.

Article 32.06 - Workload

Related Articles: 32.03, 59, MOA - Standards for Measuring Nurse Workload and Application of Nurse Staffing Plans in BC

Excessive and unsafe workloads have been identified as one of the leading concerns for nurses.

In 1998, new language was negotiated at Article 59.12 to address short term, immediate workload issues where the in-charge nurse was authorized to call in additional staff for the existing shift or the next shift.

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In 2006 extensive new provisions were negotiated as part of a MOA (2006-2010) Standards for Measuring Nurse Workload and Application of Nurse Staffing Plans in BC - Please see Interpretation Guidelines on Workload in the Tools Section

1. Generally nurses are required to follow the "work now, grieve later" rule when it comes to dealing with workload issues. Exceptions to the "work now, grieve later" rule in dealing with the directives of management are:
 - Performance of an unlawful act;
 - Harm to the health and safety of the nurse or others;
 - A situation where the successful grievance against the order would not provide a remedy.

2. The Union recommends Stewards and members at the worksite attack problems with excessive workload by using a number of avenues and resources:
 - File grievances under Article 32.06;
 - Fill out a Professional Responsibility Forms under Article 59.
 - Track the usage of overtime and relief staff;
 - In the community, track the programs not delivered (e.g. refusal of client referrals);
 - Be prepared to document, on an ongoing basis, to show that workload is consistently excessive or unsafe (i.e. for up to 6 months);
 - Become familiar with licensing and quality assurance requirements;
 - Use the Standards for Registered Nursing Practice in British Columbia and other research material on nursing workload issues that can be accessed on the Internet. One source is: www.CRNBC.bc.ca
 - Mount a workload campaign at the worksite using the BCNU Campaigns Officers and Regional Executives as a resource.

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Additional References:

Legislation:

Workers' Compensation Act and related Industrial Health and Safety Regulations (Regulations) - can be accessed through the website for Work Safe BC: www.worksafebc.com

Arbitration Awards:

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.

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.

BCNU Resources:

Educational materials, videos, pamphlets, stickers etc are all available from the BCNU office. In addition information can be accessed through the BCNU website: www.bcnu.org