

Occupational Health & Safety & Labour Standards

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OCCUPATIONAL EXPOSURE FOR BLOODBORNE PATHOGENS

Most workers are covered by either federal or provincial health and safety legislation and/or regulations with the goal of preventing accidents and injury to health arising out of, linked with, or occurring in the course of employment. Protection from occupational exposure to bloodborne pathogens is provided by a combination of acts and regulations in occupational health and safety. While specific legislation varies by jurisdiction, all jurisdictions have similar labour statutes in place.

For example, federal government employees are covered by legislation in the Canada Labour Code, Part II, Occupational Safety and Health. Duties of employers begin thus: "Every employer shall ensure that the safety and health at work of every person employed by the employer is protected." Duties of Employees include the following: "While at work, every employee shall (a) use such safety materials, equipment, devices and clothing as are intended for the employee's protection... (b) follow prescribed procedures with respect to the safety and health of employees... (c) take all reasonable and necessary precautions to ensure the safety and health of the employee, the other employees and any person likely to be affected by the employee's acts or omissions." The section regarding safety materials, equipment, devices and clothing in the legislation states that "Where (a) it is not reasonably practicable to eliminate or control a safety or health hazard in a work place within safe limits, and (b) the use of protection equipment may prevent or reduce injury from that hazard, every person granted access to the work place who is exposed to that hazard shall use the protection equipment prescribed by this Part" (of the legislation).

WASTE NEEDLES, ETC.

474(1) An employer shall provide readily accessible containers for waste needles, syringes, blades, clinical glass and any other clinical items that are capable of causing a cut or puncture and shall ensure that workers and self-employed persons use those containers.

(2) The containers required by subsection (1) must have a fill line and must be sturdy enough to resist puncture under normal conditions of use and handling until the containers are exposed of.

(3) An employer shall ensure that workers do not manually clip, bend, break or recap waste needles.

LAWS REGARDING UNIVERSAL PROTECTION

Occupational health and safety is regulated in Canada in each of the fourteen jurisdictions (provincial, territorial and federal). Some jurisdictions may have also developed specific modifications of infection control guidelines. For more information on these, you may wish to contact the departments responsible for occupational health and safety and public health in your province.

When it is difficult to identify the specific body fluid or when body fluids are visibly contaminated with blood, then universal precautions are ALWAYS to be applied.

EMPLOYER/MANAGER'S RESPONSIBILITY RELATED TO OCCUPATIONAL EXPOSURES

EDUCATION OF WORKERS

Educational programming concerning the prevention of bloodborne pathogen transmission should be based on the characteristics of bloodborne diseases and the practical situations faced by workers in the performance of their specific duties.

Recommendations

- All health care and public service workers must receive infection prevention and control education regarding bloodborne pathogens and safe practice in the workplace before beginning work and on an ongoing basis thereafter (e.g. annually). Educational programming should be based on practical situations faced by workers in the performance of their specific duties. Content should include general information about infection prevention and control (stressing the importance of hand washing), and information about bloodborne pathogen transmission; assessing risk of exposure; preventing exposures; immunization (HB vaccine); specific policies and procedures for individual work areas, including protocols following an exposure; and resources for further assistance. Workers need to know how to apply preventive techniques in routine practice and in unusual situations. Time must be given for workers to question, absorb and apply the information. It is critical that educational programs enable workers to express and work through their concerns about caring for individuals with a bloodborne infection. Records of participation should be maintained as needed to satisfy legal requirements.
- Employees must be trained so that they can practise safely in their specific areas, including learning when and how to use personal protective equipment and how to use equipment safely. All workers should be taught the principles of preventing injuries from needles and other sharp instruments (e.g. minimizing the use of needles; not recapping needles or deliberately bending, breaking or otherwise manipulating them by hand; handling scalpels and holding suture needles with instruments rather than fingers; avoiding blind suturing). Actively involving workers in infection prevention and problem solving may help motivate employees to continue examining their practice for safer approaches. Effective leadership and communication, regular feedback, peer support and reinforcement, proof of benefit to self, and involvement in research may help to motivate workers to comply with preventive protocols.
- Enhanced training and surveillance should be provided to personnel engaged in high-risk activities.
- Professional associations and occupational groups are also responsible for developing and promoting to their members continuing educational programs in infection prevention and control. Such training should become a compulsory component of a worker's preparatory (pre-licensure) education and continuing education. Training programs should be evaluated regularly to ensure that information is current and meets the changing needs of the worker and workplace.

PERSONAL PROTECTIVE EQUIPMENT – WHO PAYS?

Universal precautions should be followed in all dental offices. Because of the exposure to blood contaminated saliva there is a risk of transmission of bloodborne diseases such as AIDS and various strains of Hepatitis.

Universal precautions stress the use of barriers, also known as personal protective equipment (PPE), to reduce the risk of infection to dental assistants. Personal Protective Equipment is designed to create an effective barrier between exposed workers and blood and bodily fluid. Effective PPE prevents contact of blood and bodily fluids with dental assistant's skin, mucous membranes or personal clothing.

PPE recommended by universal precautions include: gloves to protect the hands and skin, masks and eye protection together or a face shield to protect the eyes, nose and mouth in situations where splattering of saliva occurs, and gowns or aprons to protect the skin and clothing from splatters.

The Occupational Health and Safety Regulations outline the following responsibilities of employers regarding PPE:

"87(1) Where an employer is required by these regulations or any other regulations made pursuant to the Act to provide personal protective equipment, the employer shall:

- (a) supply approved personal protective equipment to the workers at no cost to the workers;
- (b) ensure that the personal protective equipment is used by the workers;
- (c) ensure that the personal protective equipment is at the worksite before work begins;
- (d) ensure that the personal protective equipment is stored in a clean, secure location that is readily accessible to workers;
- (e) ensure that each worker is aware of the location of the personal protective equipment and trained in its use;
- (f) inform the workers of the reasons why the personal protective equipment is required to be used and of the limitations of its protection; and
- (g) ensure that personal protective equipment provided to a worker:
 - (i) is suitable and adequate and a proper fit for that worker;
 - (ii) is maintained and kept in a sanitary condition; and
 - (iii) is removed from use or service when damaged."

It is the responsibility of the dentist/employer to provide effective PPE at no cost to the dental assistant. It is the responsibility of the dental assistant to use the provided equipment, take reasonable care to prevent damage to the personal protective equipment and report and return damaged or defective PPE.

OVERTIME

Yes, overtime (time and one-half) must be paid to dental assistants who work more than 8 hours in a day or 40 hours in a week.

Labour Standards states:

Hours of work and overtime pay

6(1) Subject to sections 7, 9 and 12, no employer shall, unless he complies with subsection (2), require or permit any employee to work or to be at his disposal for more than eight hours in any day or 40 hours in any week.

(2) Subject to sections 7 and 9, an employer who requires or permits an employee to work or to be as his disposal for more than eight hours in any day or 40 hours in any week shall pay to that employee wages at

the rate of time and one-half for each hour or part of an hour in excess of eight hours in any day, or 40 hours in any week, during which he requires or permits the employed to work or to be at his disposal

10-hour day

7 (1) Section 7 allows an employer to operate a 4 day week (10 hour day) with written authorization from director of Labour Standards. No overtime is payable unless the ten hour day or 40 hour week is exceeded.

Averaging

9 (1) With written permission from the director of Labour Standards, employers may exceed daily and weekly work limits and not pay overtime so long as the hours do not exceed limits over the average of several weeks. (*see Averaging permits*)

Employer not to require employee to work overtime

12 (1) ..., no employer shall, without the consent of the employee, require an employee to work or to be at his disposal for more than 44 hours in any week ... except in the case of emergency circumstances.

Clearly, dental assistants must receive overtime at the rate of one and one half of their hourly rate when the daily and weekly limits are exceeded.

There is an exemption in the Labour Standards regulations for "professional practitioners", and dental assistants have reported that they are not receiving overtime because of this exemption. However, on May 25, 1999 the SDAA received a ruling from Saskatchewan Labour which indicates that dental assistants do not fall into the professional practitioner category and therefore can expect to receive overtime payment.

The letter states, "Section 25(2) of The Dental Disciplines Act requires dental assistants to be employed by, or practice under a contract with, a dentist or an employer who employs a dentist or has a formal consultation process with a dentist. This section indicates that dental assistants do not have the option of setting up independent practices. The ability to practice independently is one of the criteria used by the branch to determine whether an occupation is a profession. As a result, it is our position that the overtime exemption in s.7 (2) (a) of the regulations does not apply to dental assistants."

This is great news for dental assistants. If you have worked overtime and not received remuneration it is important that you notify your employer of this ruling. Should you require resource information, please contact the SDAA office and a copy of the ruling will be forwarded to you.

OVERTIME AND AVERAGING PERMITS

The Labour Standards Act and Regulations identify the minimum employment standards for the Saskatchewan workplace. On occasion variations from the rules are allowed, provided the proper permission is obtained.

One of the standards set out is a maximum number of hours of work that can be expected from an employee. The Canadian Labour Code and Regulations state that the standard hours of work are eight in a day – 40 in a week, to a maximum of 48 in a week. In some situations, employers want to set out different hours of work for their employees than are allowed by the Labour Standards Act.

In many dental offices, in order to accommodate clients, dentists require their employees to work for more than eight hours a day or forty hours a week. These employers, who desire a different schedule of hours to be worked by their employees have an option, they can obtain an 'Averaging of Hours Permit'. This permit

allows the employer to average the hours of work of an employee (or group of employees) over a period of weeks, rather than be limited to eight hours per day or forty hours per week.

Employers must apply to the Director of Labour Standards for an Averaging of Hours Permit. In situations where there is a trade union representing the affected employees the written agreement of the union can be obtained as an alternative. Because there is no union representing the interests of dental assistants, the employer is required to obtain authorization from the Director of Labour Standards.

Upon being granted a permit from the director, and subject to any conditions described in the permit, an employer may then require any employee to work or be at his disposal for more than eight hours in any day, or forty hours in any week. Not only are extended hours then required of the employees, but the employer is not usually required to pay overtime (time and a half). Upon awarding the permit, the director determines when, if at all the employer is required to pay the affected employees overtime. Permits authorized by the Director of Labour Standards may be granted for periods up to three years at a time.

Before a permit is granted they require approval of the majority of employees affected. The employees must show their approval by signing the application form, (this can be organized as a secret ballot vote). Because permits expire after three years, every time a new permit is applied for the majority of employees must agree to it. This means if a new employee is hired he/she must follow the guidelines of the existing permit, but when it expires, they can choose whether or not to support the application of a new one.

The Director of Labour Standards can revoke any permit at any time and employees can request that the authorization be cancelled or withdrawn. The employees must request the cancellation in writing and should outline their reason for the request. On receipt of the complaint an investigation will be conducted to determine if the permit should be revoked.

For more information, or questions regarding labour standards in Saskatchewan, call:
1-800-667-1783 (Toll Free)

RIGHTS OF SASKATCHEWAN DENTAL ASSISTANTS WHEN A SALE OF PRACTICE OCCURS

When the sale of a dental practice occurs it is a disconcerting and chaotic time under the best of circumstances and even more so when the employees are unsure of the rights guaranteed them by the Labour Standards Act.

An employer has the right to include or not include staff members with the sale of a practice. If staff is not to be included with the sale, the employer must give proper notice to employee of discharge and issue a record of employment. Even when staff are included with a sale of a practice, with proper notice an employees hours of work, salary and benefits can be adjusted or employment terminated by the new employer.

The rights of the employees in relation to the sale of a practice are specifically stated in The *Labour Standards Act* as follows;

43 Except for just cause other than shortage of work, no employer shall discharge or lay off an employee who has been in his service for at least three continuous months without giving that employee at least:

- (a) one week's written notice, if his period of employment is less than one year;*
- (b) two week's written notice, if his period of employment is one year or more but less than three years;*

(c) four week's written notice, if his period of employment is three years or more but less than five years;

(d) six week's written notice, if his period of employment is five years or more but less than 10 years;

(e) eight week's written notice, if his period of employment is 10 years or more.

Should the new employer agree to retain the current employees the following would apply;

83 For the purposes of this Act, where a business or part thereof is sold, leased, transferred or otherwise disposed of, the service of the employees affected shall be deemed to be continuous and uninterrupted by the sale, lease, transfer or other disposition.

Though the preceding portion of the Act is most specific to the sale of a practice there are other portions which also guarantee rights to employees in this situation. If the employee is concerned that a contract or agreement entered into with the former or current employer will affect the terms of their employment the following portion should answer any concerns;

75(1) No Agreement, whether heretofore or heretofore entered into, has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this act.

Generally speaking, this provides employees with the rights guaranteed them by the Act regardless of any other contract or agreement they enter into. No contract or agreement can deprive an employee of any rights provided by the Act and under the law no contract or agreement can be contradictory to the *Labour Standards Act* in relation to rights of the employee. Any contract or agreement entered into by the employee with either the present or future employer must provide the employee with rights in accordance to the Act.

If you are concerned with your rights in the event of a sale of practice contact the Labour Standards Branch of Saskatchewan Labour.

All information from *The Labour Standards Act and Rights and Responsibilities – A Guide to Labour Standards in Saskatchewan*.