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# Prime Contractor Legislation in SK

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## CAGC INFORMATION ALERT

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## Information Alert

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**Purpose:** This document is to review requirements of OHS legislation in Saskatchewan, in relation to Prime Contractors. This document reviews what impact these changes have to companies in the seismic industry.

**Additional Resources:** Below is the link to The Saskatchewan Employment Act - An Act respecting Employment Standards, Occupational Health and Safety, Labour Relations and Related Matters and making consequential amendments to certain Acts.

- <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S15-1.pdf>

## OVERVIEW OF CHANGES

SK - Chapter S-15.1 of the Statutes of Saskatchewan, 2013 (effective April 29, 2014) as amended by the Statutes of Saskatchewan, 2014, c.E-13.1 and c.27; and 2015, c.31.

The changes included assigning specific duties to prime contractors, supervisors, subcontracted employers. The purpose was to clearly spell out the requirements instead of having them be inferred by catch-all phrases sometimes used in law such as “take all reasonable precautions.” It is entirely possible that seismic companies that have well established safety management systems, may experience no new obligations due to their safety program performing at a high level already.

Also changed is the definition for the term training. It now makes employers verify the training topic was correctly understood via a practical demonstration. Without that piece, a toolbox meeting attendance signatures plus written script of the training content fails to meet the due diligence standard because there is no documentation capturing the required practical demonstration. Employers may therefore be charged as they didn’t train their workers.

“Don’t Look At Me, I Just Work Here!” nicely captures the very sentiment that Saskatchewan is trying to bring to an end. Changes may also be made to who is actually supposed to be in charge. The default is always the project owner. They may hire a prime contractor to oversee all the various employers. Every work-site with more than one employer will have one employer acting as prime contractor. If no written agreement is in place, then responsibility reverts back to the owner. Depending on the terms of the written agreement, the prime may use their own safety management system or one from the owner as the written instructions of how the safety function is supposed to happen.

“What is a prime contractor supposed to do, anyways?”

### 1. DUTIES OF PRIME CONTRACTORS

All sites with more than one employer must have a prime contractor. If none is declared and communicated, then the owner is the prime contractor by default. Prime contractors must:

- a) **Conspicuously post contact information for the prime contractor’s representative throughout the work site.** This may be done via posters, or by including contact info within orientation handout packages to new site arrivals. A simple phone list will meet this requirement.
- b) **Coordinate all activities on site that may affect the health and safety of workers to be sure the activities on one group do not pose a risk to others.** Scheduling alternating exclusive access by each group to work in an area is a good way to ensure compliance. It gets more complicated when different employers must be in the same area simultaneously.
- c) **Verify that subcontractor employees are complying with the OHS Act, regulations, and instructions specific to the Prime Contractor.** This is best done by physical verification inspection tours conducted periodically. There are many levels of compliance. The Act and regulations will be the minimum, and typically the Prime Contractors will exceed those minimums for everyone’s protection, and expect all visitors, suppliers, new hires and subcontractors to comply.
- d) **Writes instructions for employees and subcontractors how/when items b and c will happen safely.** There are two documents that will satisfy this requirement. One is the Prime contractor’s Safety Manual. It provides a written framework specifying minimum safety standards for all site personnel to comply. They often are written to permit each subcontractor to work under their own safety system with which they are already familiar, provided each element meets the minimum standard specified by the Prime Contractor.

- e) **Ensure that the all work being done does not place a different group of workers at risk.** A project wide WHMIS controlled products inventory is an example of how one substance used by subcontractor “A” represents a risk that subcontractor “B” workers may be exposed, and will need additional precautions like training.
- f) **Ensure that the Prime Contractor representative or supervisor is competent.** The ingredients that define competency in SK include: possessing knowledge, experience and training to perform a specific duty. This definition was moved from the regulations to the Act itself, so it could be used broadly throughout the Act and its regulations.
- g) **Written Prime Contractor Plan is distributed to employers and self-employed persons before they start working on site.** There are many ways to meet this requirement. Some Prime Contractors conduct training classes on the project site. Others distribute training CD's and expect to be supplied training records. Entire safety management systems can be large and too bulky to effectively distribute so a summary document usually called a Project Safety Plan describes the requirements briefly.
- h) **Cooperate with any other person who is performing a duty required by the Act or regulations.** A fundamental element in dealing with people is that we seldom like being told what to do. The SK regulations provide reinforcement in the stated text by prohibiting obstructionist behaviour when the coaching is merely trying to comply with law.
- i) **Comply with the Act or Regulations.** It is the Prime Contractor's duty to ensure all work done on site meets the requirements of law. Modelling safe behaviours and demonstrating compliance when executing their duties is the best way to ensure this. .

## 2. DUTIES OF EMPLOYERS (INCLUDING SELF-EMPLOYED)

- a) **Ensure health and safety for all workers under their direction.** There are multiples sets of rules to comply with: Acts, regulations, internal safety manual, Prime Contractors written instructions. The best way to comply amongst different rule sets is to adopt the most stringent standard to remove any doubt as to what actions to take.
- b) **Cooperate with safety committees to promptly resolve safety issues brought forward.** Some sites are required by law to have safety committees, but most companies have already chosen to adopt this element. When the workers raise a concern, an employer is actually breaking the law if they show a repeated history of excessive delays before implementing every required safety improvement.
- c) **Make a reasonable attempt to resolve safety issues raised.** Since employers bear the risk and liability if their workers are injured, they have the right to decide what corrections they will pay for, and which ones are not feasible. This section compels employers to NOT unilaterally declare all requested corrections as “not feasible at this time.”
- d) **Ensure bullying and harassment does not occur.** This section compels employers to both take steps for prevention as well as intervene should bullying or harassment occur. A good way to comply with the requirement is to have written policies and procedure of how such complaints will be handled.
- e) **Cooperate with any other person who is performing a duty required by the Act or regulations.** Subcontractors sometimes observe non-compliance by representatives of the Prime Contractor, and ask themselves, “Should I bite the hand that feeds me by pointing this out?” Since people are fallible, we occasionally may need the observations of others if there

is a better way to do something. Neither Prime Contractors nor employers are immune to this. Constructive intervention is always helpful. Behaviour based safety programs rely on this very fact for their success.

- f) Ensure workers are trained in all matters that impact their safety.** The best plan for compliance here is to ask yourself if any worker can raise a safety issue about which they have never received any training how to identify, eliminate, or control the issue.
- g) Ensure all work is sufficiently supervised.** Although it is quite true that a supervisor cannot be everywhere and oversee every task, it is quite reasonable to expect the supervisor's time prioritizes the tasks containing the most risk.
- h) Document safety committee meetings and have the documentation readily available to OHS.** Should an OHS officer show up on site, they have the right to require employers to promptly produce the documentation.
- i) Ensure that the all work being done does not place a different group of workers at risk.** There are many ways to ensure work of one group does not spill over into to other workers. Precautions can include physical barriers like fencing/red tape, or administrative controls like scheduling exclusive access to sensitive areas.
- j) Comply with the Act or Regulations.** Modelling compliance and safe behaviours is the best way to meet legal requirements and win new clients.

### 3. DUTIES OF SUPERVISORS

Regardless whether the supervisors work for the Prime Contractor, subcontractor, or are self-employed, they must:

- a) Ensure health and safety for all workers under their direction
- b) All directions given comply with Act and regulations
- c) Ensure that workers under the supervisors direction also comply with Act and regulations
- d) Ensure workers are not exposed to bullying or harassment at the worksite
- e) Cooperate with any other person who is performing a duty required by the Act or regulations
- f) Comply with the Act or Regulations.

If the three most import aspects of real estate are location, location, and location, then the three most important compliance strategies for a supervisor are document, document and document. The field notes from a supervisor are invaluable in establishing a due diligence defense. Good field notes record date, time, circumstance, direction given, notifications/reports and outcome, planned follow-up.