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NALOXONE KITS AND THE CONSTRUCTION INDUSTRY

ONTARIO'S NEW HEALTH AND SAFETY OBLIGATIONS IN EFFECT AS OF JUNE 1, 2023

Death by opioid overdose is an epidemic throughout many communities and, in some cases, workplaces. Effective June 1, 2023, Ontario's *Occupational Health and Safety Act* ("OHSA") requires certain workplaces to have a Naloxone kit in the workplace. Ontario is the first and, thus far, only jurisdiction in Canada to require this.

What is Naloxone?

Naloxone is a drug that temporarily reverses the effects of an opioid overdose. It can be administered intravenously or through a nasal spray and restores breathing within 2 to 5 minutes. Naloxone is only active in the body for 20 to 90 minutes,¹ so it is a temporary measure to buy time until medical assistance arrives.

Which workplaces must have a Naloxone kit?

Not every workplace in Ontario is required to have a Naloxone kit. **Only a workplace in which the employer becomes aware, or ought reasonably to be aware, there may be a risk of a worker having an opioid overdose at the workplace.**

Whether an employer “ought reasonably to be aware” depends on the circumstances of each workplace. That said, an employer cannot be **wilfully blind** to the fact an employee may be at risk of an opioid overdose. Wilful blindness has been described as “a state of deliberate ignorance”² in which an individual’s “suspicion is aroused to the point where he or she see the need for further inquiries, but deliberately choose not to make those inquiries”.³ Therefore, if an employer suspects an employee may be at risk of having an opioid overdose at the workplace and does not take steps to confirm or deny its suspicion, the employer may be wilfully blind and in violation of the **OHSA**.

Ontario’s Ministry of Labour, Immigration, Training and Skills Development has published a guide to help employers determine if their workplace is at risk.⁴ Factors include:

- Has a worker already had an overdose in the workplace?
- Has a worker voluntarily disclosed they use opioids and are at risk of overdose at work?
- Has the employer observed opioid use in the workplace or become aware of it (e.g., through a workplace investigation or by observing drug-use paraphernalia in the workplace, **etc.**)?
- Has someone in the workplace brought this to the employer’s attention?

How does this apply to the construction industry?

When the Naloxone requirement was announced, the Government of Ontario identified certain industries as being at heightened risk, including the construction industry. A recent study found that workers employed, or formerly employed, in the construction industry comprise 7.9% of all opioid-related deaths in Ontario, despite representing only 3.6% of Ontario’s total population.⁵ As well, approximately thirty percent of Ontario’s workplace overdose-deaths occur in the construction industry.⁶

Multiple worksites

If an employer has several worksites, but only one at which a worker may be at risk of overdose, the legislation requires there be a kit at the worksite where a worker may be at risk. The risk of a worker overdosing on their own time, not at work, does not necessarily trigger the Naloxone requirement. That said, if an employer is aware an employee uses opioids outside of the workplace and is concerned the worker may also overdose at work, the employer ought to have a Naloxone kit on site.

Multiple employers

If work is performed at a worksite by multiple employers, only the employer which has identified one of its workers to be at risk is required to provide a Naloxone kit. The legislation does not require an employer to provide a Naloxone kit if an identified risk is created by a worker who does not perform work for the employer.

Example: A general contractor has engaged a subcontractor to perform work on a worksite. The subcontractor is made aware one of its employees is at risk of an overdose at work. The subcontractor, as the employer of the at-risk employee, must ensure it has a Naloxone kit and all corresponding requirements are met.

Technical and training requirements

If a workplace is required to have a Naloxone kit, the following requirements must be satisfied:

- The kit must be in good working condition and kept in a hard case
- The contents of the kit must be for single use, replaced if used, and not expired
- The kit must be in the charge of a worker who works in the area, trained on how to use it including how to recognize an opioid overdose

- At least one worker, who is in charge and trained, must be on-site for all hours of operation at the workplace
- The names and location in the workplace of those trained to use the kit must be posted where they are most likely to come to the attention of workers

Storage and maintenance

To satisfy the requirement a kit be in good working condition, an employer should follow the manufacturer's instructions for use, storage and maintenance of the kit. Generally, Naloxone should be:

- Stored at room temperature (between 15° and 25° Celsius)
- Kept in the kit until ready for use
- Protected from light

If a kit has been damaged due to exposure or has expired, it should be replaced immediately.

Next steps for employers

The amendments to the OHSA came into force on June 1, 2023, so compliance is required now.

For a limited time (2 years) the Government of Ontario will offer free kits and training. For more information please visit:

- John Ambulance: [Ontario Workplace Naloxone Training Program](#)
- Red Cross: [Ontario Workplace Naloxone Program](#)

Finally, it is important to remember that a workplace is like a living organism. Just because a Naloxone kit may not be required today, does not mean it may never be required in the workplace. Employers should remain alert and continue to assess their workplaces to identify risk and comply with the law.

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¹ Government of Canada "Naloxone" online: <https://www.canada.ca/en/health-canada/services/opioids/naloxone.html>.

² R v Manickam, 2021 ONCA 668.

³ R v Briscoe, 2010 SCC 13.

⁴ Ministry of Labour, Immigration, Training and Skills Development "Naloxone in the Workplace" <https://www.ontario.ca/page/naloxone-workplace#overdose>.

⁵ Public Health Ontario "Report on lives lost to opioid toxicity among Ontarians who worked in the construction industry": <https://www.publichealthontario.ca/en/Data-and-Analysis/Substance-Use/Opioid-Mortality>.

⁶ Public Health Ontario "Changing circumstances surrounding opioid-related deaths in Ontario during the COVID-19 pandemic": <https://www.publichealthontario.ca/-/media/documents/c/2021/changing-circumstances-surrounding-opioid-related-deaths.pdf?la=en>