

# Law and Policy Bulletin



A Bulletin by the Employers' Advisers Office, Ministry of Jobs, Tourism and Skills Training and Responsible for Labour, B.C. Government.

The Employers' Advisers Office provides advice, assistance, representation and training on all aspects of workers' compensation.

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## Bill 9 Policies Regarding Employer Duties for Incident Investigations

**May 27, 2015:** WorkSafeBC's Board of Directors has approved [Interim Incident Investigation Policies D10-175-1 and D10-176-1](#) to govern the responsibilities of employers in fulfilling new investigation requirements brought into force by [Bill 9](#), which received Royal Assent on May 14 (for a summary of the amendments, see [Law and Policy Bulletin, March 2015](#)). It is anticipated that final policies will be in place by December 31, 2015, following public consultation.

### What Wasn't Changed by Bill 9: When an Investigation is Required

Section 173 of the *Workers Compensation Act* ("Act") requires an employer to investigate the following accidents or other incidents:

- Serious injury or death
- Major structural failure or collapse
- Major release of hazardous substance
- Blasting accident that causes personal injury
- Dangerous incident involving explosives
- Diving accident
- Any accident or other incident that resulted in injury to a worker requiring medical treatment
- Near misses

### What's New in the Act: Investigation Procedures, Corrective Actions, and Reporting

Investigating incidents, taking corrective action and reporting both the findings and the corrective action taken are not new for employers. What is new is that these activities now form part of a two-phase process. As set out in our March Law and Policy Bulletin referenced above, employers must now conduct a preliminary investigation and a full investigation. Corrective action must be identified and implemented and reporting requirements fulfilled for both phases within specified time frames. The legislative requirements and the new interim policies are set out below.

#### WorkSafeBC's New Interim Policies:

**Interim Policy D10-175-1- PRELIMINARY INVESTIGATION REQUIREMENTS:** *The policy recognizes that, depending on the complexity of the accident or incident investigation, an employer may complete its Full Investigation requirements under s. 176 (discussed below) within 48 hours, which would meet the requirements of both s. 175 and s. 176.*

Section 175	Policy - D10-175-1
(1) Employers must immediately <b>identify unsafe conditions, acts, procedures</b> that significantly contributed to the s. 173 incident as far as possible.	Policy provides examples of some of the circumstances outside the employer's control which may limit its ability to identify all unsafe conditions, acts and procedures, (including lack of witnesses or awaiting medical information). Employers are to note any limitations in their preliminary investigation (PI) report.
(2) Complete a preliminary investigation (PI) report in accordance with policy within <b>48 hours</b> of the s. 173 incident and provide this to WorkSafeBC if requested.	Sets out elements which must, as far as possible, be included in the PI. These elements are similar to what is found in WorkSafeBC's Incident Investigation Report (Form 52E40), but policy adds the requirement of identifying what interim corrective actions have or will be undertaken to prevent recurrence during the full investigation process. Employers <u>may</u> provide Joint Committee/Worker Rep with a copy, removing elements that may compromise the protection of personal information.

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(3) Undertake any corrective action determined to be necessary <b>without undue delay</b> following the PI.	Corrective action taken must remain in place until either modified during or after the completion of the full investigation (see below), or indefinitely if it is determined that it will prevent recurrence.
(4) Prepare a report of the corrective action taken, which report is to be provided to the Joint Committee or worker representative, or posted, as applicable.	<p>WorkSafeBC may also request a copy of the PI corrective action report which must identify:</p> <ul style="list-style-type: none"> <li>• unsafe conditions, acts or procedures that required the corrective action;</li> <li>• interim corrective action taken or to be taken and when; and</li> <li>• names and job titles of those responsible for implementing them.</li> </ul> <p>If the employer completes the full investigation within 48 hours, a single corrective action report may be prepared.</p>

**Interim Policy D10-176-1- FULL INVESTIGATION REQUIREMENTS:** *The policy recognizes that, depending on the complexity of the accident or incident investigation, an employer may complete its Full Investigation requirements under s. 176 within 48 hours, which would meet the requirements of both s. 175 (discussed above) and s. 176.*

Section 176	Policy – D10-176-1
(1) After completing the PI and while taking interim corrective action, employers must undertake a full investigation (FI) to <b>determine cause</b> , identify unsafe conditions, acts or procedures that significantly contributed to the incident, and determine corrective action.	Employers will need to analyze the facts and circumstances of the incident to identify the underlying factors that led to it. This analysis to determine cause(s) is what was required prior to Bill 9 and is described in WorkSafeBC's <a href="#">Incident Investigation Reference Guide</a> .
(2) Complete a full investigation report in accordance with policy and provide this to WorkSafeBC within <b>30 days</b> of the s. 173 incident.	Sets out the elements which must, as far as possible, be included in the FI. These elements are the same or similar to what is required for the PI (see above), with the exception that the FI must contain the findings regarding cause(s), and a detailed description of the incident. The FI report must be submitted to WorkSafeBC within 30 days of the s. 173 incident. Employers <u>may</u> provide Joint Committee/Worker Rep with a copy, removing elements that may compromise the protection of personal information.
(3) WorkSafeBC may extend the time for submitting a FI report.	Recognizes that there are a number of factors outside the employer's control that may prevent the completion of the full investigation within 30 days, and provides a list of some examples. Included in the list are situations where the employer does not know about the incident as the worker delayed seeking medical attention, and "any other circumstances where WorkSafeBC considers it reasonable". Policy also provides that more than one extension may be granted for further delays outside of the employer's control.
(4) Undertake corrective action <b>without undue delay</b> , and (5) prepare a report of same which is to be provided to the Joint Committee or worker representative, or posted, as applicable.	<p>WorkSafeBC may also request a copy of the FI corrective action report which must identify:</p> <ul style="list-style-type: none"> <li>• unsafe conditions, acts or procedures that required the corrective action;</li> <li>• FI corrective action taken or to be taken and when; and</li> <li>• names and job titles of those responsible for implementing them.</li> </ul> <p>If the employer completes the full investigation within 48 hours, a single corrective action report may be prepared.</p>

**For more information, please contact the Employers' Advisers Office.**