
**Protections for
Retail Workers
Working Alone
During Late Night
Hours in Canada**

**A Jurisdictional
Comparison**

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Introduction

In December 2011, David Forbes, MLA for Saskatoon Centre and Saskatchewan's Official Opposition Labour Critic introduced Private Members Bill 601, Jimmy's Law, in the Legislative Assembly. Named in memory of Jimmy Ray Wiebe, a Yorkton service station attendant who was murdered while working alone on the night shift in June, 2011, Jimmy's Law would require retail outlets, principally service stations and convenience stores, to have more than one employee on staff between 11:00 p.m. and 6:00 a.m. or provide a barrier to prevent physical contact with an employee working alone during those hours.

The Jimmy's Law amendment to The Occupational Health and Safety Act is modeled on similar measures adopted by British Columbia in 2006. In B.C., Grant's Law, part of the Occupational Health and Safety Regulation under the *Workers Compensation Act* required the presence of two or more employees on staff during late night hours or the provision of a protective barrier. This measure, which has since been altered to include a controversial third option for employers, was introduced following the death of Grant De Patie in 2005.

In May 2012, the Legislative Assembly of Saskatchewan passed Bill 23, An Act to Amend the *Occupational Health and Safety Act 1993*. The bill introduced several new worker protections including some that would pertain to retail employees working alone during late night hours but stopped short of the provisions sought by Jimmy's Law. Jimmy's Law remains on the order table.

This paper will examine legislation and regulations pertaining to the safety of retail employees working alone during late night hours in each of Canada's provinces and territories. Employers in all Canadian jurisdictions have general obligations to protect the health and safety of their employees. However, as this paper will demonstrate, the specific provisions that exist for the safety of workers who are required to work alone late at night vary dramatically from jurisdiction to jurisdiction.

Summaries by Jurisdiction

Alberta

While not specifically addressing late night hours, Alberta's Occupational Health and Safety Code deals with working alone.

Working Alone

Under section 28 of the code, an employer who requires an employee to work alone must conduct a hazard assessment. The assessment must be in writing and communicated to all affected staff. Employers must also involve affected employees in conducting the hazard assessment.

Employers must take practical steps to eliminate or reduce any identified hazards.

Employers must provide an effective communication system for employees to contact other people who can respond to the employee's need. The system must be appropriate to the hazards involved and include regular contact by the employer or their designate at appropriate intervals.

Finally, employers must ensure their employees are trained and educated so they can perform their job safely.

Age of Employment

Regulations respecting the employment of young people in Alberta are found in the Government of Alberta Employment Standards Code.

Section 52 of the code prohibits employment of adolescents, defined as 12 years of age or older but under 15 years of age, from being employed between 9:00 p.m. and 6:00 a.m. of the following day.

Section 53 of the code states that during the period of time from 9:00 to the following 12:01 a.m., young persons, defined as 15 years of age or older but not yet 18 years of age from working in any retail business, service station or hotel/motel unless he or she is in the continuous presence of at least one other individual 18 years of age or older.

Section 53 also prohibits young persons from working in any employment from 12:01 a.m. to 6:00 a.m.

British Columbia

With respect to protections guaranteed to late night retail workers, British Columbia is unique among Canadian provinces and territories for several reasons, not the least of which is the fact that all pertinent provisions, including the highest minimum age for working the nightshift, are found in one place—Section 4 of the Occupational Health and Safety Regulation under the *Workers Compensation Act*, subsections of which are commonly referred to as Grant's Law.

Working Alone

Under Section 4, before a worker is assigned to work alone or in isolation, regardless of the time of day, the employer must identify any hazards to that worker and take measures to eliminate the hazard or, if not possible to eliminate the hazard, minimize the risk from the hazard.

The employer must develop and implement a written procedure for checking the well-being of a worker assigned to work alone or in isolation. The procedure must include the time interval between checks and the procedure to follow in case the worker cannot be contacted, including provisions for emergency rescue.

Also, the person designated to establish contact must record the results of each check. In addition to checks at regular intervals, a check at the end of the work shift must be done.

Intervals for checking a worker's well-being must be developed in consultation with that worker.

Finally, the worker and any person assigned to check on the worker must be trained in the written procedure for checking the worker's well-being.

Late Night Hours

Late night hours are defined in the regulation as any time between 11:00 p.m. and 6:00 a.m. and the late night retail premises to which the regulation applies are defined as a gas station or other retail fueling outlet, or a convenience store or any other retail store where goods are sold directly to the public that is open for business during late night hours.

In addition to the general obligations to eliminate or minimize risk to a workers and the requirements related to checking on a worker's well-being, if a worker is assigned to work alone or in isolation in late night retail premises and there is any risk of harm from a violent act to the worker, the employer must develop and implement a written procedure to ensure the worker's safety in handling money.

When that worker is assigned to work late night hours, the employer must also do one or more of the following:

1. Ensure that the worker is physically separated from the public by a locked door or barrier that prevents physical contact with or access to the worker.
2. Assign one or more workers to work with the worker during that worker's assignment.
3. Implement a violence prevention program.

The violence prevention program must include procedures, policies and work environment arrangements necessary to ensure that all of the following requirements are met:

- (a) There is a time lock safe on the premises that cannot be opened during late night hours.
- (b) Surplus cash and lottery tickets are stored in the time lock safe.
- (c) There is good visibility both into and out of the premises.
- (d) There is limited access to the inside of the premises.
- (e) The premises are monitored by video surveillance.
- (f) There are signs on the premises, visible to the public, indicating that the safe cannot be opened during late night hours, that there is a limited amount of accessible cash and lottery tickets on the premises, and that the premises is monitored by video surveillance.

By the end of the first year of the implementation of a violence prevention program and by the end of every second year after that first year, the employer must receive a security audit report, in writing, from an independent qualified person confirming that the program meets requirements.

The written security audit report must posted by the employer in the workplace.

Age of Employment

Section 4 of the regulation also stipulates that workers must be at least 19 years of age and provided with a personal emergency transmitter that is monitored by the employer, a security company or other person designated by the employer.

Pre-Payment of Fuel

Finally, in order to eliminate the hazards associated with "gas and dash" situations, an employer must require that customers prepay for fuel sold in gas stations and other retail fueling outlets at all hours of the day.

Manitoba

Manitoba has regulations in place that address working alone, violence prevention and transportation.

Working Alone

In Manitoba, Part 9 of the Workplace Safety and Health Regulation under the *Workplace Safety and Health Act* requires employers to identify risks arising from the conditions and circumstances of the work being done.

Employers must take steps to eliminate or reduce the identified risks.

Safe work procedures for workers working alone must be developed and implemented and workers must be trained.

Procedures must include the establishment of an effective communication system.

Procedures must be posted in a conspicuous location.

Procedures must be reviewed and revised every three years or sooner.

Violence Prevention

In Manitoba, Section 11 of the Workplace Safety and Health Regulation, under the *Workplace Safety and Health Act* provides for anti-violence protections for several types of workplaces including retail sales establishments which are open between the hours 11:00 p.m. and 6:00 a.m.

Employers must assess the risk of violence, develop and implement a violence prevention policy, train workers in the policy and ensure that workers comply with the policy.

Transportation

In Manitoba, transportation both to and from work are required during late night hours. When an employer's place of business and an employee's residence are located within the boundaries of a city or town, the employer is required by Part 21 of the Manitoba Employment Standards Regulation to provide the employee with adequate transportation between the residence and the work place when the employee's hours of work begin or end after 12 midnight and before 6:00 a.m.

Age of Employment

Regulations respecting the employment of young people in Manitoba are found in the Government of Manitoba *Employment Standards Code*. These regulations are not industry specific.

Section 83 of the code prohibits anyone under 16 years old from being employed between 11:00 p.m. and 6:00 a.m.

Section 84 prevents anyone under 18 years of age working alone between 11:00 p.m. and 6:00 a.m. but does not specifically state that at least one employee present must be 18 years of age or older.

New Brunswick

While not specifically addressing late night hours, New Brunswick regulates working alone.

Working Alone

In New Brunswick, Regulation 92-133 under the *Occupational Health and Safety Act* requires employers to establish a code of practice to ensure, so far as is reasonably practicable, the health and safety of an employee who works alone at any time.

Employers must ensure that the code of practice includes identification of the possible risks to each employee who works alone, the procedures to be followed in order to minimize the risks identified and details of the means by which an employee who works alone can secure emergency assistance.

Employers must provide any equipment required in an established code of practice and must ensure that the code of practice is adhered to.

Employees who work alone at any time must adhere to the code of practice.

Employers must implement a training program for each employee who works alone at any time and for each supervisor who is responsible for an employee who works alone at any time.

Employers must ensure that a copy of their code of practice is readily available to an investigator upon request.

Age of Employment

Section 39 of New Brunswick's Employment Standards Act prohibits employment of children under the age of 16 between the hours of 10:00 p.m. and 6:00 a.m.

Newfoundland and Labrador

In Newfoundland and Labrador, no direct legislation or regulations concerning late night shift work exist. However, provisions are made for working alone and violence prevention.

Working Alone

Section 15 of the Occupational Health and Safety Regulations under the *Occupational Health and Safety Act* states that an employer shall conduct a risk assessment where a worker is assigned to work alone or in isolation. Where a risk assessment identifies a hazard, appropriate controls shall be implemented to eliminate or minimize the risk.

An employer shall develop and implement a written procedure for checking the well-being of a worker assigned to work alone or in isolation which must include the time interval between checks and the procedure to follow in case the worker cannot be contacted, including provisions for emergency response.

The person designated to establish contact with the worker at predetermined intervals must record the results of each check.

The procedure to check on a worker working alone must be developed in consultation with the worker assigned to work alone or in isolation.

The procedure must be reviewed at least annually or more frequently if there is a change in work arrangements that may adversely affect a worker's well-being or safety, or a report that procedures are not working effectively.

Violence Prevention

Under Section 22 of the regulation an employer must conduct a risk assessment in a workplace in where a risk of injury to workers from violence may be present.

The risk assessment must include the consideration of previous experience in the workplace, occupational experience in similar workplaces, and the location and circumstances in which the work takes place.

Section 23 stipulates that where a risk of injury to workers from violence is identified by an assessment, the employer must establish procedures, policies and work environment arrangements to eliminate or minimize that risk.

Age of Employment

In Newfoundland, Section 46 of the *Labour Standards Act* forbids employment of a child, defined in the Act as a person under the age of sixteen, between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

Northwest Territories

While not specifically addressing late night hours, the Northwest Territories *Safety Act* deals with working alone.

Working Alone

In the Northwest Territories, section 14 of the General Safety Regulations under the *Safety Act*, states that where a worker is employed under conditions where he or she, if injured, might not be able to secure assistance, the employer shall provide a means of checking the well-being of that worker at intervals that, under the circumstances, provide adequate protection.

Age of Employment

Section 47 of the Northwest Territories *Employment Standards Act* prohibits a youth, defined in the Act as a person under 16 years of age, from being employed between the hours of 11 p.m. and 6:00 a.m. of the next day without the written approval of the Employment Standards Officer.

Nova Scotia

While there are no specific legal provisions in Nova Scotia for working alone, violence prevention is addressed in regulation.

Violence Prevention

Section 4 of the Violence in the Workplace Regulations under the *Occupational Health and Safety Act* includes retail establishments among workplaces to which the regulations apply.

Section 5 requires employers to conduct a violence risk assessment which takes into account past violent occurrences at the workplace, violent occurrences that have taken place at similar workplaces as well as the physical location and layout of the workplace.

Where the assessment reveals a significant risk of violence occurring, Section 7 of the regulations requires the establishment of workplace violence prevention plan. The plan must be reviewed at least every five years and revised if necessary.

Employers are also required to prepare and post a workplace violence prevention statement.

Employers are required to establish and document the procedures for training employees.

Age of Employment

Section 68 of Nova Scotia's Labour Standards Code prohibits employment of children under the age of 16 between the hours of 10:00 p.m. and 6:00 a.m.

Note:

In 2007, Keith Colwell, MLA for Preston, introduced Bill 18, an act to amend the *Occupational Health and Safety Act*. Bill 18 is clearly modeled on British Columbia's regulations. General provisions for risk assessment, procedures for checking on workers at intervals and the training of workers working alone are addressed.

Bill 18 made special provisions as well for retail workers working alone during late night hours, defined in the bill as ten o'clock in the afternoon of a day and six o'clock in the forenoon of the following day. These included implementation of a procedure to ensure the worker's safety in handling money.

Bill 18 would have further required an employer to ensure that an employee be physically separated from the public by a locked door or barrier or assign two or more employees to be on duty during the late-night hours.

Bill 18 also included a provision for pre-payment for fuel during late night hours.

Bill 18 did not pass Second Reading.

Nunavut

While not specifically addressing late night hours, Nunavut addresses working alone in regulation.

Working Alone

Nunavut employs exactly the same language as the Northwest Territories in section 14 of the General Safety Regulations under the *Safety Act*, stating that where a worker is employed under conditions where he or she, if injured, might not be able to secure assistance, the employer shall provide a means of checking the well-being of that worker at intervals that, under the circumstances, provide adequate protection.

Age of Employment

Section 4 of the Employment of Young Persons Regulations under the *Labour Standards Act* prohibits a young person, defined in the Act as a person who has not attained 17 years of age, from being employed between the hours of 11 p.m. and 6:00 of the next day without the written approval of the Labour Standards Officer.

Ontario

Ontario has no specific legislation or regulation governing working alone at any time, but violence prevention is addressed in legislation.

Violence Prevention

Under Section 32 of Ontario's *Occupational Health and Safety Act*, an employer must assess the risks of workplace violence that may arise from the nature of the workplace, the type of work being done and the conditions in which the work is done. The assessment must take into account circumstances specific to the workplace and circumstances that would be common to similar workplaces.

An employer must prepare a policy with respect to workplace violence.

An employer must develop and maintain a program to implement the policy. The program must include measures and procedures to control the risks identified in the assessment as well as the measures and procedures for summoning immediate assistance when violence occurs or is likely to occur.

Age of Employment

Minimum working age in Ontario varies by industry. Regulation 851 of the *Occupational Health and Safety Act* governs industrial establishments and sets the minimum age of employment in any industrial establishment other than a logging operation or a factory at age 14.

Prince Edward Island

Prince Edward Island has regulations in place that address working alone and violence prevention.

Working Alone

Prince Edward Island's Occupational Health and Safety Act General Regulations addresses working alone.

Part 53 of the general regulations requires employers to develop and implement written procedures to ensure, as far as is reasonably practicable, the health and safety of the workers working alone.

Written procedures must include the nature of the business conducted at the workplace, identification of possible risks, the steps to be followed to minimize risk, details of the means by which a worker who is working alone can secure assistance in the event of injury or other circumstances that may endanger the health or safety of the worker.

Procedures must specify the time intervals for checking on the worker, identify the person responsible for contacting the worker, outline the process to be followed if the worker cannot be contacted including provisions for an emergency rescue and provide for checking with the worker at the end of the worker's shift.

Employers and workers must comply with the procedures established.

The employer must implement a training program for each worker who is working alone and for each supervisor who is responsible for a worker working alone.

The employer shall ensure that a copy of the procedures established is available to investigators upon request.

Violence Prevention

Part 52 of Prince Edward Island's Occupational Health and Safety General Regulations addresses violence in the workplace. It requires an employer to conduct a risk assessment of the workplace to determine whether or not a risk of injury to workers from violence arising out of their employment may be present. The risk assessment must include a consideration of previous experience of violence in that workplace and occupational experience of violence in similar workplaces.

If a risk of injury to a worker from violence in a workplace is identified by an assessment, the employer must establish procedures, policies and work environment arrangements to either eliminate or minimize the risk of violence in that workplace. Also, an employer shall inform workers who may be exposed to the risk of violence in the workplace of the nature and extent of the risk.

Age of Employment

In Prince Edward Island, Section 6 of the *Youth Employment Act* forbids the employment of a young person, defined in the act as a person under 16 years of age, between the hours of 11:00 p.m. and 7:00 a.m. of the following day.

Quebec

Other than the general obligations of an employer, outlined in Section 51 of the *Occupational Health and Safety Act*, to protect the health and ensure the safety of a worker, Quebec has no legislation or regulations in place that address working alone at any hour, or violence in the workplace. However, restrictions on the employment of young people are stricter than in most other jurisdictions.

Age of Employment

Chapter 4 of *An Act Respecting Labour Standards* prohibits employment of children, defined as persons under 18 years of age, between 11:00 p.m. on any given day and 6:00 a.m. on the following day, except in the case of a child no longer subject to compulsory school attendance, in the case of newspaper deliveries, or in any other case determined by regulation of the government, an example of which would be children engaged in artistic performances such as plays.

Further, Chapter 4 requires an employer who has work performed by a child to take into consideration the location of the child's family residence so that the child may be at home between 11 p.m. on any given day and 6 a.m. on the following day, except in the case of a child no longer subject to compulsory school attendance or in cases determined by regulation of the government.

Saskatchewan

Saskatchewan legislation and regulations address working alone, violence prevention and, to a limited extent, transportation.

Working Alone

In Saskatchewan the Occupational Health and Safety Regulations address working alone.

Section 35 of the regulations stipulates that where a worker is required to work alone or at an isolated place employers must identify the risks arising from the conditions and circumstances of the work being done or the isolation of the place of employment.

Employers must also take all reasonably practicable steps to eliminate or reduce identified risks.

Employers must provide an effective communications system.

Violence Prevention

In Saskatchewan, Bill 23 recently amended section 14 of the *Occupational Health and Safety Act* to require employers at workplaces where violent situations have occurred or may reasonably be expected to occur to develop and implement written policy statements and prevention plans to deal with potentially violent situations.

Also of interest, Bill 23 amended the general duties of employers outlined in section 3 of the act to ensure that workers are trained in all matters that are necessary to protect their health, safety and welfare.

Transportation

In Saskatchewan, Section 7 of the Minimum Wage Regulations under the *Labour Standards Act* requires an employer to provide certain employees who are required or permitted to finish work between the hours of 12:30 a.m. and 7:00 a.m. local time with free transportation to the employee's place of residence. However, Section 5 of the regulations, entitled "Application of Sections 6 to 9", restricts this requirement to employers of workers in hotels, restaurants, educational institutions, hospitals and nursing homes. Retail workers are not specified.

Age of Employment

In Saskatchewan, the general minimum age of employment is 16. The Minimum Wage Regulations under the *Labour Standards Act* sets the absolute minimum age of employment at 14 years old but imposes several conditions on the employment of persons 14 years old or older but less than 16 years old, including prohibition in Section 9 of the regulations of working past 10:00 p.m. on a school night.

Note:

Private Members Bill 601, Jimmy's Law, specifically addresses the safety of employees working in retail premises during late night hours. It defines retail premises as a gas station or other retail fueling outlet, convenience store or any other retail store where goods are sold directly to consumers that is open to the public during late night hours. It defines late night hours as any time between 11:00 p.m. and 6:00 a.m.

Bill 601 would require employers to either assign two or more workers during any late night hours or ensure that an individual worker is physically separated from the public by a locked door or barrier that prevents physical contact with or direct access to the worker.

Bill 601 would also require an employer operating a late night retail premises to develop and implement a written procedure to ensure a worker's safety in handling money as well as the training of that worker in the procedure.

Finally, Bill 601 would require that customers prepay for fuel sold during late night hours.

Bill 601 remains on the order table.

Yukon

An examination of all pertinent labour legislation reveals that Yukon has no provisions for working alone or for violence prevention, and very little restriction on minimum working age.

Age of Employment

Section 6 of the *Employment Standards Act* prohibits employment of persons 17 years of age in occupations prescribed in the regulations. However, the only occupation so regulated is mining.

Note:

In 2008, Steve Cardiff, MLA for Mount Lorne introduced Bill 109, the Young Worker Protection Act.

Bill 109 would have prohibited the employment of an adolescent, defined as an individual 12 years old or older but less than 16 years old in any employment during the period of time from 9:00 p.m. to the following 6:00 a.m.

The bill would have prohibited the employment of a young person, defined as 16 years old or older but less than 18 years old, in any retail establishment, service station, hotel or motel during the period of time from 9:00 p.m. to the following 12:01 a.m. unless the young person worked with and was in the continuous presence of at least one other individual 18 years old or older.

The bill would have also prohibited outright the employment of a young person in any retail establishment, service station, hotel or motel during the period of time from 12:01 a.m. to the following 6:00 a.m.

While prompting much discussion and debate, like Bill 18 in Nova Scotia, Bill 109 was unsuccessful.

Summary of Findings

As indicated in the introduction, protection for workers who work alone during late night hours varies dramatically across Canada. While similarities exist between neighbouring jurisdictions with respect to certain aspects of worker protection, such as transportation on the prairies or working alone provisions in Atlantic Canada, neighbouring provinces and territories can also have wildly divergent approaches.

It should be noted that, in addition to legislative and regulatory differences, there will be inevitable differences in interpretation and enforcement of existing protections. That said, any objective assessment of the protections which are currently in place would identify British Columbia as the jurisdiction which offers the best protections for late night retail employees.

British Columbia has also clearly served as a model for jurisdictions, like Saskatchewan, wrestling with how best to protect workers working alone during late night hours. Even so, passage of Jimmy's Law would result in Saskatchewan meeting or even exceeding British Columbia in the protections guaranteed to these vulnerable workers.

Cited Statutes and Regulations

Alberta

The *Occupational Health and Safety Act* Occupational Health and Safety Code

The *Employment Standards Code*

British Columbia

The *Workers Compensation Act* Occupational Health and Safety Regulation

Manitoba

The *Workplace Safety and Health Act* Workplace Safety and Health Regulation

The *Employment Standards Code*

The *Employment Standards Code* Employment Standards Regulation

New Brunswick

The *Occupational Health and Safety Act* Occupational Health and Safety Regulation

The *Employment Standards Act*

Newfoundland and Labrador

The *Occupational Health and Safety Act* Occupational Health and Safety Regulation

The *Labour Standards Act*

Northwest Territories

The *Safety Act* General Safety Regulations

The *Employment Standards Act*

Nova Scotia

The *Occupational Health and Safety Act* Violence in the Workplace
Regulations

The Labour Standards Code

Nunavut

The *Safety Act* General Safety Regulations

The *Labour Standards Act*

Ontario

The *Occupational Health and Safety Act*

The *Occupational Health and Safety Act* Regulation 851

Prince Edward Island

The Occupational Health and Safety Act General Regulations

The *Youth Employment Act*

Quebec

The *Occupational Health and Safety Act*

An Act Respecting Labour Standards

Saskatchewan

The Occupational Health and Safety Regulations

The *Labour Standards Act* Minimum Wage Regulations

Yukon

The *Employment Standards Act*