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Retirement Home Injury Reporting



Tuesday, 17 May 2011 20:28

The Obligation to Report a Critical Injury of a *Non-Worker*

By Lisa Bolton LL.B.

Despite a controversial 2009 decision by the Ontario Labour Relations Board (“Board”) against Blue Mountain Resorts Limited, many employers operating in Ontario are still not aware of the obligation under the *Occupational Health and Safety Act* (“*OHSA*”) to report a critical injury suffered by any person, including a non-worker, which occurs in a workplace.

The requirement to report all injuries has far reaching implications for a retirement home, where falls and injuries may occur more frequently than in other workplaces. For example, if a resident or visitor falls and loses consciousness or breaks an arm, under the OHSA the retirement home operator must immediately notify a Ministry of Labour Inspector of the injury and secure the scene until it is cleared for release.

What Happened at Blue Mountain?

The Ministry of Labour issued an Order against Blue Mountain when it failed to report to the Ministry the death of a guest found in an unsupervised swimming pool. The Resort appealed the Order to the Board because the Resort did not believe it was required to report the death of a non-worker who appeared to die of natural causes in a recreational facility.

The Board held the reporting obligation in s. 51(1) of the *OHSA* should not be interpreted to apply only to a worker. Section 51(1) states:

Where a **person** is killed or critically injured from any cause at a workplace... the ...employer **shall** notify an inspector ... and ... within forty-eight hours after the occurrence, send to a director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.

“Critical injury”, as set out in the regulations, means:

“...an injury of a serious nature that,

- places life in jeopardy,
- produces unconsciousness,
- results in substantial loss of blood,
- involves the fracture of a leg or arm but not a finger or toe,
- involves the amputation of a leg, arm, hand, or foot but not a finger or toe,
- consists of burns to a major portion of the body, or
- causes the loss of sight in an eye.

The Board also held the term “workplace”, which is defined in the *OHSA* as “*any land, premises, location or thing at, upon in or near which a worker works*”, should not be restricted only to areas where workers

are present at the time of the injury. It should include all areas in or near where workers perform work, regardless whether workers are present at the time an injury occurs. In a retirement home setting, this broad definition captures resident rooms if they are accessed by workers to provide care or custodial services.

Following the release of the Board's decision, the Resort brought an application for judicial review, which is still before the Courts. However, unless the Board's decision is overturned – which does not appear to be likely – a retirement home operator must comply with the accident reporting obligations under the *OHS*A, even if the person injured is a resident or visitor and no matter how the injury occurred. This means, for example (as noted earlier), if a resident or visitor falls and loses consciousness or breaks an arm, the retirement home operator must immediately notify a Ministry Inspector of the injury and secure the scene until it is cleared for release.

Best Practices – A 12 Step Critical Injury Checklist

Although reporting requirements differ from jurisdiction to jurisdiction we offer this basic 12 Step Checklist to help guide retirement home operators through the critical injury reporting process. Every home operator should discuss these obligations with their lawyer to ensure their home is in a position to and does comply with whatever laws apply in the jurisdiction in which the home operates:

1. Provide medical assistance.
2. Preserve the scene.
3. Contact your lawyer who will explain the process and help you through these steps.
4. Determine whether reporting is required.
5. Comply with reporting requirements.
6. Gather factual information.
7. Complete required reports.
8. Co-operate with any provincial labour investigation.
9. Conduct an internal investigation.
10. Protect the results of the internal investigation from disclosure.
11. Obtain independent expert advice.
12. Take steps to prevent a reoccurrence.

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