

Industry Perspectives

Workplace safety due diligence vital to everyone, says expert

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SPECIAL TO DCN

Maintaining a safe workplace requires a team effort. Under Ontario's Occupational Health and Safety Act (the "Act") everyone has an important role to play — employees, supervisors, constructors, management and site owners. Employers, in particular, have a duty to advise workers of potential or actual hazards and dangers in the workplace and to take every reasonable precaution for the protection of workers.

Unfortunately, despite best efforts, workplace accidents can happen. When they do, the well-being of workers is of principal concern, however it is not an employer's only concern.

A successful charge under the Act can expose an employer to liability including a fine, and in extreme circumstances, imprisonment; as well unwanted, negative publicity.

Fortunately, there are steps an employer can take proactively to put itself in the best position to protect employees and successfully respond to a Ministry of Labour ("MOL") investigation and/or charge.

Following a workplace accident, a MOL inspector is likely to attend at the workplace and conduct an inspection and/or investigation into the circumstances of the incident. Within a year of the accident, an employer can be charged under the Act and face a penalty.

A proactive approach to health and safety can help reduce a penalty in two main ways.

First, it can form part of a "due diligence" defence which is proof that the employer took all reasonable precautions in the circumstances.

The defence of due diligence must be proven beyond a

reasonable doubt — a very high standard. Second, even if an employer cannot meet this standard, a proactive approach can create evidence that can be used to help reduce a fine; either as a factor considered by a Court or as part of settlement discussions with Crown counsel.

In order to put itself in a position where it can demonstrate that it took the steps necessary to provide its employees with a safe workplace, employers should consider the following and ensure its efforts are well documented:

- Develop and maintain an ongoing robust health and safety program. This includes the implementation of an occupational health and safety policy that is reviewed and updated on a regular basis.

- Provide regular and ongoing training particularly with respect to work sites and/or equipment.

- Maintain records of all orientation and training.

- Maintain checklists of daily safety checks for workers and supervisors to use at the beginning of their shift.

- Maintain records of regular maintenance and safety inspections for all tools and equipment.

- Maintain records from the joint health and safety committee's monthly inspections, and copies of the employer's own notes and checklists from regular workplace and site inspections.

- If an accident does occur, an employer should consider taking the following steps:

- Immediately call for the appropriate medical aid for the injured worker.

- Other than to preserve life or prevent unnecessary damage to equipment, do not touch anything and preserve the scene.

- Determine whether the injury meets the criteria for a

critical injury and if so, contact the MOL.

Begin to gather factual information including the circumstances of the incident. This includes taking down the full names, telephone numbers, email address and home addresses of witnesses and those providing first aid. In addition, consider taking photographs, measurements and records of site conditions at the time of incident.

Co-operate with the MOL's inspection and/or investigation and to the extent possible, ensure a representative of the employer accompanies the investigator to record questions asked, answers given and documents produced. Co-operation is important, but do not be hesitant to correct misinformation where necessary.

As soon as possible after the incident, it may be appropriate for a representative of the workplace to conduct an internal investigation.

The factual information gathered will assist in your investigation.

A lawyer can assist with the investigation which in turn can help ensure the results of the investigation remain confidential and "privileged".

Depending on the nature of the incident, it may benefit an employer to retain an expert to comment on the conditions that existed at the time of the accident, for example an engineer.

To learn more and/or for assistance designing and implementing health and safety related policies and training tailored to your workplace or in responding to a Ministry of Labour matter, visit www.sherrardkuzz.com or call 416-603-0700.

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