

The Occupational Health and Safety Act: Best practices for employers



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Maintaining a safe workplace requires a team effort. Under Ontario's Occupational Health and Safety Act (OHSA) everyone has an important role. Employers, in particular, have a duty to advise workers of potential or actual hazards and dangers in the workplace. They are also required to take every reasonable precaution when it comes to the protection of workers.

Unfortunately, workplace accidents can happen. When they do, the well-being of workers is of principal concern, but it is not an employer's only concern. A charge under the OHSA can expose an employer to liability including a fine, and (in extreme circumstances) imprisonment, not to mention unwanted, negative publicity. Fortunately, there are steps an employer can take to proactively put itself in the best position to protect workers and successfully respond to a Ministry of Labour (MOL) investigation and/or charge.

Be proactive

There is a lot employers can do to meet the OHSA requirement to take every reasonable precaution to ensure the protection of workers. This includes ensuring equipment is well maintained and workers are provided proper instruction and supervision. Special care should be taken to ensure new or younger workers (who may be unfamiliar with the workplace and industry) are provided with safety information, instruction and supervision before starting a job.

Every employer should:

- Become familiar with their obligations under the OHSA, notably sections 25 and 27, which set out responsibilities for employers and supervisors.
- Conduct an honest and thorough workplace (or job site) self audit to identify areas of risk and how to handle hazards in the workplace or job site.
- Ensure all efforts to comply with health and safety (e.g., health and safety policy, orientation and training, etc.) is well documented.
- Enforce a zero tolerance policy for health and safety violations.

Be vigilant

A proactive approach to health and safety is the first step, but it doesn't end there. A robust health and safety program requires ongoing training and diligent supervision of workers.

Training should include the implementation of written occupational health and safety policies, practices, and procedures that are reviewed and updated on a regular basis, together with regular and ongoing training. This includes site specific training on any hazards or dangers

that may be present in a particular workplace or job site.

The proper use of a supervisor in a workplace can be the cornerstone to a strong health and safety program. Reasonable supervision is about consistency, deliberate observation, detection and correction. Supervisors should be present at a workplace or job site often enough to detect hazards or unsafe behaviour in both routine and non-routine activities. Where these concerns are detected, a supervisor should take immediate steps to rectify them and develop preventative measures. Supervision should not be ad hoc or sporadic. The best way to avoid this is for supervisors and staff to meet regularly and discuss health and safety matters.

Document, Document, Document!

Just as important as being safe is having the documentation to prove it. An employer should maintain good record keeping including:

- Daily safety checks at the beginning of each shift
- Regular maintenance and safety inspections of tools and equipment
- Regular workplace and site inspections
- Records from the Joint Health and Safety Committee's monthly inspections
- Records of supervisor safety meetings
- Reports of "near miss" incidents and investigations
- Written documentation of progressive discipline for breaches of safety rules

After a workplace accident

In the event of a workplace accident, a MOL inspector is likely to visit the workplace/job site and conduct an inspection and/or investigation into the circumstances of the incident. An employer can be charged under the OHSA and face a penalty within one year of the accident.

If an accident does occur, consider following the Sherrard Kuzz 12-Step Accident Checklist:

1. Provide medical assistance: Immediately call for the appropriate medical aid for the injured worker.
2. Preserve the scene: Other than to preserve life or prevent unnecessary damage to equipment, do not touch anything until the provincial labour regulator arrives or releases the scene.
3. Contact your lawyer: Call a Sherrard Kuzz LLP team member of the Sherrard Kuzz LLP 24 Hour Phone Line (416.420.0738) to protect your organization.
4. Consider the seriousness of the injury: Determine whether the injury meets the province's criteria for a critical injury, and if so, there may be notification, reporting and investigation requirements
5. Notify: If the injury triggers an obligation to notify, promptly contact the provincial labour regulator, workplace Joint Health and Safety Committee, and trade union (if applicable)

6. Report: If the injury triggers an obligation to report to the provincial labour regulator, submit the report within the timeframe specified (e.g., 48 hours for Ontario), and provide a copy to the workplace Joint Health and Safety Committee.
7. Investigate: If the injury triggers an obligation to investigate, or if an internal investigation is appropriate, this should be undertaken as soon as is practical.
8. Collect information: Begin to gather factual information including the circumstances of the incident. This includes taking down the full names, telephone numbers, e-mail addresses 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.
9. Protect the investigation from disclosure: Steps should be taken to protect the results of an internal investigation from disclosure to a provincial labour regulator. A lawyer can assist with the investigation which in turn can help ensure the results of the investigation remain confidential and privileged.
10. Co-operate: 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 when necessary.
11. Obtain expert advice: 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 or health and safety consultant.
12. Take preventative steps: Consider undertaking a workplace health and safety audit to review policies, practices, training, and inspection schedules, etc. An audit may enhance worker protection and reduce whatever penalty (if any) is ordered against the workplace and/or management.
Contact a member of Sherrard Kuzz LLP to learn more and for assistance with a full range of health and safety matters. ©

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