

LAW

Protect workers while successfully responding to MOL inquiries.

BY MICHAEL SHERRARD AND MATTHEW BADROV

Maintaining a safe workplace is a team effort. Under Ontario's Occupational Health and Safety Act (OHSA) workers, supervisors, constructors, management and site owners all have a role to play. Employers, in particular, have a duty to advise workers of potential or actual hazards and dangers in the workplace and take every reasonable precaution.

Yet despite best efforts, workplace accidents do happen. A charge under the OHSA exposes an employer to liability including a fine, and in extreme circumstances, imprisonment, not to mention negative publicity. But an employer can take steps that will put it in the best position to protect workers and successfully respond to a Ministry of Labour (MOL) investigation and/or charge.

Be proactive. The OHSA requires an employer 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 its obligations under the OHSA, notably sections 25 and 27, which set out responsibilities for employers and supervisors.
- Conduct an honest and thorough workplace self-audit to identify areas of risk.
- Document all efforts to comply with health and safety requirements.
- Enforce a "zero tolerance"



The OHSA requires an employer to ensure employees are protected.

PHOTO: FOTOLIA

Managing the OHSA

BEST PRACTICES FOR MANUFACTURERS

policy for health and safety violations.

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.

Strong supervision

The proper use of a supervisor is a cornerstone of 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 and consistently enough to detect hazards or unsafe behaviours in both routine and non-routine activities. Where hazards or unsafe behaviour are detected, a supervisor should take steps to rectify them and develop preventive measures.

Supervision should not be ad hoc or sporadic, and supervisors should meet frequently with staff to discuss health and safety matters.

Just as important as being safe is having the documentation to prove it. Maintain good record keeping that includes:

- 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.

In the event of a workplace accident, an 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 within a year of the accident and face a penalty. If an accident occurs, consider following the Sherrard Kuzz 12-Step Accident Checklist:

- 1. Provide medical assistance.** Immediately call for, or assist the injured worker with, appropriate medical aid.
- 2. Preserve the scene.** Other than to preserve life or prevent unnecessary damage to equipment or other property, do not touch anything until the provincial labour regulator arrives or releases the scene.
- 3. Contact your lawyer.** This is to help 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, submit the report within the timeframe specified (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, do so without delay.

8. Collect information. Begin to gather factual information including the circumstances of the incident. This includes recording the full name, telephone number, e-mail ad-

dress and home address of each witness and individual providing first aid. It may be important to reach these people in the future. In addition, consider taking photographs, measurements and records of site conditions at the time of incident.

9. Protect the investigation from disclosure. Take steps to protect the results of

an internal investigation from disclosure to a provincial labour regulator. A lawyer can assist with the investigation, which helps to ensure the results of the investigation remain confidential and "privileged".

10. Co-operate. Co-operation with a provincial labour inspector is required by law. However, employers have rights too. To the extent possible, ensure a representative of the employer accompanies the inspector to record questions asked, answers given and documents produced. Do not hesitate to correct misinformation where necessary.


11. Obtain independent expert advice. Depending on the nature of the incident, it may benefit an employer to retain an expert (such as an engineer or health and safety consultant) to comment on the conditions at the time of the accident.

12. Take preventative steps. Consider undertaking a workplace health and safety audit to review policies, practices, training and inspection schedules. An audit may enhance worker protection and reduce whatever penalty (if any) is ordered against the workplace and/or management.

Manufacturers have a duty to ensure workplaces are safe and workers are protected but if an accident does occur, be prepared for what follows when the MOL investigates.

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