



Legal Corner

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The Ministry of Labour could be coming for you

Sound the warning bells! The Ministry of Labour (MOL) is coming for you! The MOL is significantly increasing its enforcement of the Occupational Health and Safety Act (OHSA) and Employment Standards Act (ESA) exposing employers to considerably greater risk of conviction.

According to the MOL, there are almost 300,000 workplace-related injuries per year in Ontario.

With increased education, training and enforcement, the goal of the Ontario government is to reduce workplace injuries by 20 per cent or 60,000 by 2008.

CONVICTIONS UNDER OHSA

HAVE ALREADY INCREASED 50 PER CENT.

Even prior to the government's recent announcements, enforcement efforts have been significantly stepped-up.

Within the construction industry alone, within the past five years, orders issued under OHSA have increased by approximately 33 per cent. And, in the same time period, the number of employers charged and convicted under OHSA, in all industries, has increased by approximately 50 per cent.

Despite this dramatic increase in the level of enforcement, as of April 1, 2005, the MOL hired 100 new health and safety inspectors, and by March of 2006, the MOL will hire another 100 new inspectors bringing the total number to 430.

INSPECTIONS WILL BE UNANNOUNCED, UNEXPECTED AND TARGETED

Significantly, and unlike in the past, inspectors have been instructed to be proactive in their quest to ensure compliance with OHSA.

That is, health and safety inspectors will actively seek out workplaces and employers for inspections instead of waiting for a complaint or accident.

They will appear at the workplace unannounced, unexpected and uninvited. Indeed, our law firm has already seen a significant increase in the number of unannounced inspections and we expect this trend to continue.

The MOL has also selected a target for its proactive inspections — workplaces with high injury rates. Those workplaces with the worst records will be visited by inspectors at least four times a year — without warning.

Those with less serious records will be visited less often. In every case, employers that run afoul of OHSA are at increased risk of orders and convictions.

Apart from the human cost, the financial and negative publicity cost of a conviction under OHSA can be significant.

A fine of up to \$500,000 can be imposed upon a corporation while a fine of \$25,000 and/or 12 months in jail can be imposed upon an individual.

As well, convicted violators will have their names published on the MOL's Web site.

ENFORCEMENT UNDER THE ESA WILL ALSO INCREASE DRAMATICALLY

Not to be outdone, proactive inspections under the ESA will also increase significantly over the next months.

The ESA sets out minimum standards employers must meet and provide to their employees. For instance, the ESA sets out minimum standards for record keeping, hours of work, overtime pay, vacation, paid holiday, notice and severance pay, and leaves of absence.

Conviction under the ESA can result in a fine against a corporation of up to \$100,000 for a first offence, \$250,000 for a second offence and \$500,000 for a third or more offence.

An individual can be fined up to \$50,000 and/or 12 months in jail.

Negative publicity can be damaging for companies convicted of violations

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WHAT SHOULD EMPLOYERS DO TO PROTECT THEMSELVES?

Apart from the direct human and financial cost, prudent employers appreciate the indirect cost of running afoul of either OSHA or the ESA. Negative publicity can be damaging in a number of important ways:

- It can erode the relationship and confidence among the employer and its current group of employees.

- It can undercut the employer's credibility in the eyes of prospective employees.

- It can undermine the employer's business-worthiness in the eyes of prospective general contractors.

- It is likely to be the basis, in part, for increased future inspections and orders under the Acts.

While there is no iron-clad formula to protect an employer from scrutiny under OSHA or the ESA, there are steps an employer can and should take to ensure that all reasonable efforts have been made. They include:

1. Learning and understanding employer rights and obligations under OSHA and the ESA as they apply to the employer's specific industry or business and as they are amended from time to time.

2. Ensuring, where appropriate, that a health and safety representative is appropriately trained and/or an effective joint health and safety committee is meeting regularly.

3. Conducting regular employment standards and health and safety audits.

4. Identifying and acknowledging potential non-

compliance — honestly, objectively and swiftly.

5. Taking direct and focused action to remedy non-compliance.

6. Incorporating each of the above steps into a comprehensive employee relations strategy that enhances the employer's reputation and credibility both within the workplace and the business community at large.

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