



Legal Corner

By
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Health and safety 'spot inspections'

Have you noticed an increased presence of Ministry of Labour health and safety inspectors on your jobsites lately? Get used to it.

As you may be aware, Ontario's new Minister of Labour has stated publicly that reducing workplace injuries is a top priority of his Ministry. This has resulted in several initiatives geared toward decreasing work related injuries.

In February 2004 the minister announced the establishment of the Minister's Health and Safety Action Groups for the construction, health and manufacturing sectors. These groups are designed to:

- Identify best practices and make them more widely available.
- Determine where there are gaps in policy, program and enforcement mechanisms, and locate the necessary expertise to identify solutions.
- Help develop a co-ordinated health and safety strategy through training, education regulation and enforcement.

The construction Health and Safety Action Group was first out of the gate, holding its initial meeting in February, 2004. Some of its members include representatives from the Ontario Home Builders' Association, the Residential Construction Council of Central Ontario, the Construction Safety Association of Ontario, the Toronto-Central Ontario Building and Construction Trades Council, the Provincial Building and Construction Trades Council of Ontario, Universal Workers Union, LIUNA Local 183 and the WSIB.

In addition, the Ministry of Labour has hired 25 new workplace health and safety inspectors, who are currently in training. The inspectors performed 494 proactive inspections on Toronto construction sites during the period mid-December 2003 to February 2004 and 8,777 field visits during the period April 2003 to March 2004.

One interesting development has been that, by all reports, we are seeing increased numbers of charges against workers. Workers have obligations under the Occupational Health and Safety Act (the "Act") not to engage in any activity that would put their health and safety, or the health and safety of another worker, at risk. However, many construction contractors and owners have expressed frustration that where an incident occurs, employees are rarely held accountable.

Whether this recent trend is coincidence, or the ministry's response to the frustration of construction contractors and owners is anyone's guess.

Either way, contractors must remember that this is not an "either/or" situation. Because the ministry appears more willing to enforce the Act's obligations against individual workers, this does not mean that workers are being charged instead of companies.

In addition, you may be aware that the federal government has recently bolstered its role in the health and safety arena.

Bill C-45, which adds new sections to the Criminal Code, became law on March 31, 2004. This means that now, in addition to any charges under provincial health and safety acts, certain members of an organization can be criminally charged. This includes a company representative who ignores the possibility of harm to a worker, or deliberately does something that may put workers in harm's way.

Finally, apart from the obvious human cost of a workplace accident, attention to the health and safety of workers makes good business sense. A workplace injury can result in:

- Fines for companies and individuals.
- Jail sentences for some company members.
- Increased WSIB premiums.
- Lost work time during investigations or stop work orders
- Lost productivity while injured workers are replaced, often with people less familiar with the work.

Safety policy a first step

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- Lost productivity as workers.
- Negative publicity when accident circumstances and fines are posted on the ministry's Web site and sent out in a press release.

The first step to protecting the workplace from an industrial accident is to put into place, post and annually review a written health and safety policy. The next step is to implement a program that carries out the policy, including providing all workers with a "competent" supervisor who is familiar with the workplace and its hazards, and is familiar with all applicable health and safety legislation.

For more information on fulfilling your organization's obligations and being ready to respond to a spot inspection by the Ministry of Labour, you may contact any member of our legal team. You can also visit our Web site at www.sherrardkuzz.com

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