



Legal Corner

By
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Employer fined \$5M for workplace safety violations

The Ontario Court of Justice sent a dramatic signal to employers when it ordered a company and two of its officers to pay more than \$5 million in fines following guilty pleas on charges under the Workplace Safety and Insurance Act (WSIA).

Following an automobile accident that claimed the lives of five company employees, the Security and Investigations Branch of the Workplace Safety and Insurance Board (WSIB) commenced an investigation.

The investigation determined that the company had engaged in numerous violations of the WSIA. For example, the company had deliberately under-reported its monthly payroll in an effort to reduce its premiums and had filed false forms regarding workplace accidents by showing that injured workers had not missed work time. The investigation also revealed that following the accident the company's vice-president of operations had submitted fake invoices to the WSIB in an effort to disguise the fact that the driver of the vehicle was an independent contractor and not a company employee.

The investigation also determined that because at the time of the accident company employees were being transported to work locations, the employees were deemed to be "in the course of their employment" at the time of the accident.

The company pleaded guilty to five counts of submitting false or misleading information for which it was fined \$900,000.

The company's vice-president of operations was fined a further \$50,000 after pleading guilty to two counts of submitting false or misleading information in relation to employee claims for benefits. The president of the company also received a \$50,000 fine on a guilty plea to one count of submitting false payroll information and one count of submitting false and misleading information to the WSIB.

In addition to all of these fines, the company was ordered to pay \$4 million in restitution to the WSIB for under-reporting its monthly payroll.

Important lessons learned

There are a number of lessons learned as a result of the court's decision in this case.

First, the fact that very high penalties were imposed underscores the serious consequences an employer may face for deliberately violating the WSIA.

Second, as a result of the court's willingness to impose such high penalties the WSIB is likely to prosecute offenders more vigorously than ever. Indeed, our legal team has noticed a marked increase in WSIB audits throughout the past year.

Third, the court's decision underscores the importance of requiring and verifying that your subcontractors have provided WSIA coverage for their employees.

Finally, although in the case of a subcontractor the WSIA does not impose coverage obligations on the contracting employer, it is conceivable, if not inevitable, that a non-compliant subcontractor that comes under the scrutiny of the WSIB (or for that matter another agency such as Canada Customs and Revenue), will try to argue, in an effort to avoid its own liability, that the contracting employer is the "true employer" and as such responsible under the legislation.

How can an employer protect itself?

At the very least, before any work is performed we encourage contracting employers to ensure they have written agreements with their subcontractors that include the following:

An acknowledgement that the workers supplied by the subcontractor are the employees of the subcontractor and not, for any purpose, the employees of the con-

↪ **WSIB, Page 7**

WSIB Clearance Certificate

From Page 5

tracting employer.

☐ An acknowledgement that the subcontractor holds sole responsibility for the payment of all compensation to the workers supplied.

☐ An acknowledgement of the subcontractor's obligations to provide WSIA coverage for the supplied workers. Where possible, a WSIB Clearance Certificate should be required.

☐ A comprehensive, written indemnity from the subcontractor in relation to any

liability or costs incurred as a result of the subcontractor's failure to comply with its statutory obligations including those under the WSIA and Income Tax Act.

If you would like to learn more about how your Workplace Safety & Insurance Act rights and obligations can affect your business operations, we recommend seeking legal advice.

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