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OHS responsibilities when employees travel

What are my responsibilities when employees are out socially after hours?

QUESTION: What are my health and safety responsibilities when employees are travelling for business but are out socially after hours?

ANSWER: For many businesses, it is not unusual for a worker travelling for business to socialize with clients, colleagues and business prospects.

It may be encouraged or even expected.

In these cases, while the interactions may be after hours and social in nature, the worker is still “working.” Therefore, if that worker somehow finds himself injured, threatened or harassed, the employer may be liable under occupational health and safety legislation.

However, if the individual is merely out by himself or meeting with friends, he is not likely to be considered a “worker” pursuant to the relevant legislation.

What is the basis for our answer? And how can an employee best protect itself from liability?

Each Canadian jurisdiction has its own occupational health and safety legislation, the language and requirements of which vary to some extent. However, a constant among the jurisdictions is the requirement an employer take every “precaution reasonable in the circumstances” to protect the health and safety of its workers.

As well, most jurisdictions require an employer to ensure every worker is protected from violence and/or harassment in a workplace.

An employer that fails to take all reasonable precautions to protect the safety of a worker may be subject to a compliance order and/or charges and prosecution for an offence under the applicable occupational health and safety legislation.

To understand an employer’s potential liability in situations where a worker is travelling, it is important



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to first consider how courts define the terms “worker” and “workplace”. In Ontario, “worker” is defined as “a person who performs work or supplies services for monetary compensation.”

Employers should provide travelling workers with proper guidelines and tools so expectations are clear and workers are equipped to handle a variety of unexpected situations.

“Workplace” is defined as “any land, premises, location or thing at, upon, in or near which a worker works.”

Hence, the “workplace” effectively moves with a travelling worker.

This “moving workplace” creates additional challenges for employers. Whereas for most employers, the dangers inherent within its own place of business are readily apparent and predictable, the same cannot be said when a worker is travelling for business.

In the latter case, the worker is generally unsupervised and the dangers, if any, are unknown or unpredictable.

Therefore, the reality of the situation is employers do not have as much control over workers when they travel for business purposes.

So, how can an employer best protect itself and its workers?

Employers should provide travelling workers with proper guidelines and tools so expectations are clear and workers are equipped to handle a variety of unexpected situations.

This might include:

- creating policies and procedures specifically for travelling workers
- ensuring policies and procedures address the employer’s expectations regarding: standard working hours (even while travelling); whether dining and socializing with clients is expected or encouraged; what to do if the worker is not comfortable in a given circumstance and tips on what to do if the worker finds himself in a harassing, threatening or dangerous situation.
- carrying out ongoing and up-to-date training for travelling workers to ensure they can recognize risks and/or threats of violence; and know how to respond
- instituting a protocol whereby

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Check-in process helps ensure safety of employees when they travel

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each travelling worker has a direct contact he can reach 24 hours a day, or a “check in” system whereby the worker is required to contact the employer at certain times, even if by email

- making known an emergency number the worker can call if a threatening or violent situation occurs

In summary, an employer’s responsibility for a worker who travels for business and engages in after-hour

social activities related to business is no different than for a worker who remains in the workplace.

However, with proper policies, procedures and training, an employer can put itself in the best position to protect itself and its workers.

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