

DUE DILIGENCE AND THE ROLE OF A COMPETENT SUPERVISOR IN HEALTH AND SAFETY

By: Lisa Bolton | SHERRARD KUZZ LLP

Many employers spend considerable time and money developing and maintaining a workplace health and safety program. Programs typically focus on identifying and addressing workplace hazards, implementing safe work procedures and providing health and safety training for workers. But is this enough to demonstrate compliance with an employer's general due diligence obligation under the Ontario Occupational Health and Safety Act (the "OHS") to take "every precaution reasonable in the circumstances for the protection of a worker"? The answer is 'no, taking "every reasonable precaution" also requires competent supervision.

"COMPETENT" SUPERVISION

One of the most important responsibilities of a supervisor is to monitor and enforce health and safety protocols and practices. Competent supervision requires consistent, deliberate observation, monitoring, communication and correction. A supervisor should be present at a workplace or job site often enough to give direction, oversee work performed, identify hazards and unsafe work practices, and have the authority to take immediate corrective action. This can present a challenge for workers required to travel or perform work at different locations. Thus, remote monitoring methods may help supplement direct supervision.

The role of a supervisor has become even more important in light of a recent decision of the Court of Appeal for Ontario. In that decision, the court held it is possible for an employer to violate the general duty under the OHS to take every precaution reasonable for the protection of a worker even if the employer complies with all relevant regulations under the OHS. That means due diligence may require an employer to go beyond any applicable safety requirements in the regulations and implement additional safeguards to demonstrate compliance with the general obligation to take every precaution reasonable in the circumstances. The role of a competent onsite supervisor is therefore critical to ensure any additional safeguards are identified and implemented even if all regulatory requirements are met.

PRACTICAL TIPS FOR EMPLOYERS

The meaning of every precaution reasonable will differ from workplace to workplace and depend on the nature of the work performed. That said, the following best practices can help ensure competent supervision in most workplaces:

- **Train:** Every supervisor should have all required certifications and be trained to understand and implement the workplace's health and safety policies and programs.
- **Observe:** The supervisor's duties should include regular, consistent and systematic observation of the workplace and workers to ensure health and safety compliance. This should include random spot checks. A supervisor should not be so busy with other workplace responsibilities that he/she is unable to appropriately 'supervise' workers. Nor should supervision be ad hoc or sporadic.
- **Keep Records:** A supervisor should keep a daily log or notes detailing his/her observations and any remedial or follow-up steps taken with workers to ensure compliance.
- **Communicate:** A supervisor should regularly and consistently communicate with workers, other supervisors and senior managers to identify issues and ensure prompt safety compliance.
- **Enforce:** Together with the employer, a supervisor should consistently and transparently enforce all health and safety requirements including imposing discipline for a health and safety infraction.
- **Hold Supervisors Accountable:** Health and safety should be a key deliverable for every supervisor and considered when evaluating supervisor performance.



To learn more and for assistance with any health and safety matter contact Sherrard Kuzz LLP.

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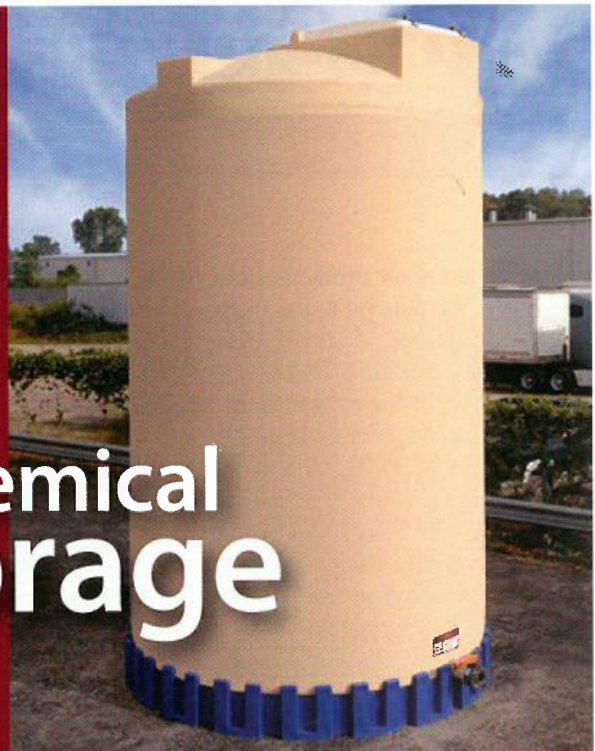
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