

July 10, 2014

What is a supervisor's role when it comes to OH&S in Ontario?

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special to dcn

Consider this: An employer spends considerable time and money on a strong health and safety policy and program. It provides workers with health and safety orientation, regular training and hires highly recommended supervisors.

However, upon attending at the workplace for an unscheduled field visit, a Ministry of Labour inspector concludes a worker is working in an unsafe manner and there has been a violation of the Occupational Health and Safety Act (the "Act"). Both employer and supervisor are charged with failing to ensure "every precaution reasonable in the circumstances for the protection of a worker" was taken.

What, if anything, could the employer have done differently to have protected itself, its supervisor and its worker?

Defining "Reasonable" Supervision

Every employer is required to do what is reasonable to ensure a safe work environment. To satisfy this duty employers often hire supervisors whose mandate it is to monitor and enforce health and safety. However, hiring a supervisor does not relieve an employer of its own duty to ensure a safe workplace.

Reasonable supervision is about consistency, deliberate observation, detection and correction. Supervisors should be present at a workplace or job site often enough to detect hazards or unsafe behaviour, and where hazards are detected, to take immediate steps to rectify them.

Case law suggests that a robust health and safety program including orientation, training and morning safety meetings, accompanied by frequent, systemic spot checks are likely demonstrate a reasonable level of supervision.

Practical Tips for Employers

The proper use of a supervisor in a workplace can be the cornerstone to a strong health and safety program. And while the meaning of every precaution reasonable may differ among workplaces, the following best practices will apply to supervisors in most if not every workplace:

- **Training:** Every supervisor must be sufficiently and consistently trained to understand and implement the workplace's health and safety policies and programs.
- **Observation:** The mandate of a supervisor should be regular, consistent and systemic observation of the workplace and workers to ensure health and safety compliance.

Supervisors should therefore not be made so busy with other workplace responsibilities they are unable to appropriately 'supervise' workers. Nor should supervision be ad hoc or sporadic.

- **Record Keeping:** Supervisors should keep detailed notes of their observations and any remedial or follow-up steps taken with workers to ensure compliance.
- **Communication:** Supervisors should regularly and consistently communicate with workers, other supervisors and senior managers to identify issues and ensure prompt safety compliance.

— **Enforcement:** Supervisors, together with employers, must consistently and transparently enforce all health and safety requirements.

— **Zero Tolerance:** While it may seem harsh, supervisors and employers should have a “zero tolerance” policy for health and safety violations.

If a worker violates the Act or the employer’s policy and procedures, immediate and progressive discipline should be considered up to and including termination depending on the severity and consistency of the infraction.

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To learn more or for assistance with your organization’s health and safety program, contact a member of the Sherrard Kuzz LLP team or visit www.sherrardkuzz.com.