

## Ontario Labour Relations Board has jurisdiction to hear claim arising from safety issues in B.C.

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In a recent decision (*Escudero v Diversified Transportation Ltd./Pacific Western Group of Companies*) the Ontario Labour Relations Board confirmed an Ontario-based employer must take reasonable precautions to protect its workers even when those workers are temporarily assigned to work outside the province.

Daniel Escudero, an employee of Diversified Transportation/Pacific Western Group of Companies, filed an application under section 50 of the Ontario Occupational Health and Safety Act (OHSA), which prohibits an employer from repriming against a worker because the worker has acted in compliance with or sought enforcement of the act.

Though he lived in Ontario, throughout the course of his first year of employment with Diversified, Escudero worked in both Ontario and British Columbia. He was then permanently transferred to Ontario before being temporarily assigned to work in British Columbia as a warehouse supervisor.

While working in British Columbia, Escudero allegedly observed several serious health and safety violations including forklifts operated by untrained volunteers at high speeds, no mirrors or marked pedestrian walkways, no first-aid kits, and obstructed exits. He reported this to his mentor in B.C., allegedly to no avail. Shortly thereafter, Escudero was contacted by his operations manager in Ontario and asked to return to his home province. Roughly two weeks later his employment was terminated.

Escudero claimed Diversified violated section 50 of the Ontario OHSA by terminating his employment as a reprisal for having raised health and safety concerns relating to the warehouse in B.C.

In a preliminary motion, Diversified argued that because the alleged safety matters occurred in British Columbia, the board had no jurisdiction to inquire into them; the matters could only be dealt with under the British Columbia Workers Compensation Act.

Escudero disagreed. He argued that because he was employed by Diversified in Ontario and reported to Diversified's Ontario operations manager, Escudero's temporary assignment to B.C. did not relieve Diversified from its duty to protect its workers under the Ontario OHSA.

The board agreed with Escudero, holding it had the authority to adjudicate the reprisal complaint even though the workplace was in B.C. The basis for the board's decision was as follows:

- Section 25(2)(h) of the Ontario act provides that an employer shall take every precaution reasonable in the circumstances for the protection of a worker. The application of the Ontario act is not restricted Ontario workplaces, but rather to employers governed by the Ontario OHSA.
- An Ontario-based employee has a right to require his or her employer to take reasonable precautions to

protect him or her regardless where he or she works. By contrast, a safety standard applicable to a non-Ontario workplace (for example, whether a first-aid kit is required on-site) is not within the board's jurisdiction.


Finally, section 28(1)(d) of the Ontario act requires a worker to report to his or her employer or supervisor any contravention of the Ontario act or the existence of any hazard. Escudero was therefore required to report the alleged hazards under the Ontario act. He was therefore entitled to do so without reprisal:

“The Ontario legislature does not have the authority to establish through the act or its regulations the substance of workplace health and safety standards applicable to work performed in British Columbia... Those standards and their enforcement — forklift training requirements and the speed at which forklifts may travel in a warehouse... are the responsibility of the legislature of the province of British Columbia,” the board said. “However, Mr. Escudero, as an employee of (Diversified) permanently based in Ontario, had the right, when he was temporarily assigned by (Diversified) to a workplace in (British Columbia), to require (Diversified) to ensure that every precaution reasonable in the circumstances had been taken to protect him. That right existed independently of the substance of any applicable health and safety standard establish by the legislature of British Columbia.”

### **Lessons learned for employers**

Although the substance of the reprisal complaint has not yet been determined, the board's decision on this preliminary issue confirms an Ontario-based employer must take reasonable precautions to protect its workers even when those workers are temporarily assigned to work outside the province. Practically speaking, this includes taking reasonable precautions to ensure the temporary workplace complies with relevant safety requirements, and any report of a hazard is taken as seriously as if it were made about an Ontario workplace.

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