

Safe and Successful: How to Avoid and Manage Workplace Health and Safety Issues



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Even the safest and most successful business can experience a workplace accident. And while the well-being of the worker is always of first concern, rarely is it the only concern. A workplace accident can hurt a business' reputation, brand and of course, its pocketbook.

Against this daunting backdrop, here are some ways to manage the potential for costly liability.

Get Educated – Know What You're Up Against

The most common occupational health and safety costs are associated with the following:

- An Order. A Ministry of Labour Inspector can issue a range of orders causing the workplace to stop working, either in whole or in part, and to incur costs associated with lost productivity and compliance. An order may include a stop-work order, an order that prevents certain equipment from being used, an order to correct an alleged safety hazard and an order that prevents workers from accessing certain parts of the workplace. Business as usual cannot resume until the Inspector's order is complied with and the order is lifted.
- A Charge. Even in the case of a routine inspection, an employer can be charged with an alleged violation of the Occupational Health and Safety Act and its associated regulations. Each charge carries a maximum penalty of \$500,000 for an employer and \$25,000 (or a 12-month jail term) for an owner, director and even a supervisor.
- Settlement or Trial. A trial will almost always be a costly endeavour financially, emotionally and physically. And unlike in a civil trial between private parties, the defendant in an occupational health and safety trial has no opportunity to ask for reimbursement of costs in the event of a favourable finding. Even a settlement or sentencing agreement can be costly, particularly when the accident is considered serious. The appropriate sentence will depend on the size of the organization, scope of the organization's economic activity, actual and potential harm to the public, and deterrence. However, in the case of a first offence resulting in a critical injury, it is not unusual for the sentence to be more than \$50,000. A fatality can be well over \$100,000.

Get Active – It's the Employer's Responsibility

Employers are not helpless. The following are everyday practices that will help keep workers safe and at the same time protect an employer's bottom line should an accident occur.

Training

A robust health and safety training program is an ongoing responsibility. Ensuring a worker has the requisite training certificate(s) is important but not sufficient to demonstrate the worker is appropriately trained. An employer must provide training specific to the hazards associated with the workplace, and must do so regardless whether the employer hires employees directly or through a subcontractor. In addition, the employer must ensure all workers undergo a comprehensive orientation program, including a review of the employer's occupational health and safety policy. Training sessions, tool-box talks, and quick safety tune-ups should be frequent. Finally, employers should retrain all workers when there has been a safety violation or accident.

For example, in one case an electrician was injured when he failed to shut down the power breaker panel before starting work. The electrician admitted he had not followed proper safety procedures. Regardless, the employer was charged under the Occupational

Health and Safety Act for failing to ensure the worker was appropriately trained. The employer argued the worker had a training certificate, experience, and had been trained on safety procedures during his apprenticeship. Nevertheless, the employer was found guilty because it did not take steps to provide ongoing safety training and ensure compliance with safety procedures.

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Due Diligence

Similar to traffic offence, a charge under the Occupational Health and Safety Act is a strict liability offence. This means once charged, innocence is not assumed – it must be proven. The most common type of defence is known as 'due diligence' – proof the employer took all reasonable precautions in the circumstances. However, within the scheme of occupational health and safety, there is an added twist. Because an Occupational Health and Safety Act charge is quasi-criminal, the defence of due diligence must be proven beyond a reasonable doubt. This is a very high standard.

For example, in one case a supervisor was charged with failing to take every precaution reasonable to ensure compliance with fall protection requirements. The Court found while a supervisor was not expected to “stand around all day watching workers”, general, unplanned, and coincidental surveillance of workers on his way to lunch was not sufficient for a successful due diligence defence. The supervision should be planned and deliberate.

Documentation

The best way to demonstrate training and due diligence is through

documentation. This should include:

- An occupational health and safety policy reviewed and updated on the regular basis.
- Records of all orientation, training and tool box talks. Keep binders on site or fax information to a central location to stay organized.
- Checklists of daily safety checks for workers and supervisors to use at the start of their shift. These will help make safety precautions routine, and can be useful evidence if needed.
- Records of regular maintenance and safety inspections for all tools and equipment.
- Records from the Joint Health and Safety Committee's monthly inspections, and copies of the company's own notes and checklists from regular workplace inspections.
- Records of every interaction with the Ministry of Labour.

- Records of the organization's own investigation after a workplace accident.

Always record the good and the bad – it's all relevant and can be used in the event of a charge to demonstrate a strong health and safety culture. However, if you record a health and safety violation, be sure to also record all remedial steps taken, including improvements made, and discipline issued.

Stay Positive

Interactions with the Ministry of Labour can be time-consuming, costly and stressful. However, if an organization has made a sincere and thoughtful effort to properly train its workers and prepare its workplace, it will have put itself in the best possible position to respond to an unfortunate accident.

So stay positive and keep focused. A safe workplace is in your hands. ☺

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