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Heat, Storms, Hazardous Plants and Insects -

What Employers Need to Know and Do to Keep Outdoor Workers Safe this Summer and Fall

With the *dog days of summer* here at last, an employer with outdoor operations or a hot indoor work environment must take into account exposure to additional seasonal health and safety risks. Occupational health and safety legislation across Canada imposes some form of duty on an employer to take precautions reasonable in the circumstances for the protection of a worker. That includes taking precautions to guard against harm from extreme heat, dangerous weather conditions, and contact with harmful plants or insects. While not all seasonal risks can be eliminated providing education, training, protective equipment and appropriate supervision can help keep workers safe this summer.

Heat Stress

A worker required to work in an environment with high heat or humidity is at risk of heat-related illness, disability or, in severe cases, death. This includes a worker working outdoors but also indoors in a foundry, refinery, bakery, commercial kitchen, processing plant, or other similar environment. Heat stress occurs when a worker is not able to effectively regulate and maintain internal body temperature. Physical exertion in a high heat environment increases the risk of experiencing heat stress. Other factors such as physical condition, age, existing medical conditions or medication can also make a worker more vulnerable to heat stress.

An employer with a high heat work environment should develop policies and procedures to protect workers from heat stress including monitoring workplace temperature, training workers and supervisors to identify signs of heat-related illness, and adjusting working conditions as necessary and appropriate for the business.

Hazardous Insects

Risk of illness caused by insect bites is not just a concern for an employer operating in a remote or rural area. Ticks infected with Lyme disease and mosquitoes carrying West Nile virus are now common in many urban environments. An employer with an outdoor operation or site located in an area in which a worker may come into contact with ticks or mosquitoes should take steps to minimize risk by informing workers of the signs and symptoms of Lyme disease and West Nile

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virus, encouraging workers to seek medical attention in the case of a suspected infection and eliminating (to the extent possible) potential insect breeding sites and habitats. Proactive steps may also include wearing closed-toe shoes and light-coloured clothes that fully cover the body, use of insect repellent, and showering or bathing within two hours of being outdoors.

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Poisonous Plants

Exposure to hazardous plants can pose a serious risk to a worker working outdoors during the summer months. Workers in construction, landscaping, road building, maintenance, wildlife management, parks and recreation, *etc.* may be exposed to harmful plants growing at or near job sites. To protect workers, outdoor work sites should be inspected for possible hazardous plants before work begins, and workers should be instructed about how to identify, handle, and dispose of hazardous plants.

Many people are familiar with poison ivy, but may not be aware of other more toxic plants such as giant hogweed, wild parsnip, stinging nettle and poison sumac, which can be found in many Canadian localities:

- Giant hogweed contains photosensitizing sap which sensitizes skin to ultraviolet light. Skin contact with the sap from this plant, combined with exposure to sunlight

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can cause severe blisters, burns, and if sap enters the eye, blindness.

- Wild parsnip contains photosensitizing sap with effects on contact similar to giant hogweed.
- Stinging nettle is a flowering plant that has tiny hairs containing acid and other chemicals on its leaves and stems. When touched, the hairs from the leaves and stems imbed in a worker's skin causing redness and swelling.
- Native to southern Ontario, poison sumac is a shrub or small tree containing sap similar to poison ivy. Most people who come into contact with sap from the leaves or stems experience an itchy rash.

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Dangerous Weather

Summer storms are a significant safety risk for a worker working outdoors. Each year, Environment Canada reports 60-70 people are injured from lightning strikes in Canada. An electrical shock from lightning can cause death or severe burns. Agricultural, construction, plumbing, forestry, telecommunication, recreation, utility and other workers required to work outdoors in open spaces, near tall objects, or with conductive materials (*i.e.*, metal) are particularly vulnerable to injury from lightning. To help minimize risk of electrical shock from lightning, an employer should monitor approaching weather conditions and educate supervisors and workers about what to do if a storm approaches.

Concluding Thoughts

Seasonal hazards are a challenge for many employers. Developing and implementing written policies and procedures to minimize these risks is an important part of an employer's due diligence.

To learn more and for assistance preparing appropriate workplace policies, and training your team, contact the employment law experts at Sherrard Kuzz LLP.

DID YOU KNOW?

In recognition of International Women's Day (March 8, 2016), the Ontario Human Rights Commission introduced its policy position on gender-specific dress codes. The policy is aimed at discouraging employers, particularly in the hospitality industry, from requiring female employees to dress in a sexualized way as a requirement of the job.

To learn more about how the Ontario Human Rights Commission's policy may impact on your organization's dress code, contact Sherrard Kuzz LLP.

Bill 132 Ontario's Anti-Sexual Harassment Bill Comes into Force this September *Is Your Business Ready?*

In March 2015, the Government of Ontario released an action plan entitled: *"It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment"* ("Action Plan"). Citing powerful statistics including that "one in three women will experience some form of sexual assault in her lifetime", the Action Plan is the stated starting point toward eradicating unwanted sexual contact and features specific measures relating to the workplace. As explained by Premier Kathleen Wynne, the Action Plan is a "roadmap to taking action to end sexual violence and harassment in Ontario - through raising public awareness, helping survivors, and strengthening laws to protect workplaces and campuses".

Bill 132

As part of the Action Plan, the government introduced Bill 132, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2015 ("Bill 132"), which becomes law on September 8, 2016. Bill 132 introduces significant changes to the *Occupational Health and Safety Act* ("OHSA") and highlights sexual harassment as a workplace health and safety issue.

Bill 132 expands the definition of "workplace harassment" in the OHSA to specifically include "workplace sexual harassment". This definition is very similar to the one currently found in the Ontario *Human Rights Code*. However, its inclusion in the OHSA creates a *proactive* obligation on an employer to take steps to prevent workplace sexual harassment *prior* to a complaint being made.

It is interesting to note that Bill 132 expressly addresses the concern of many employers that general management of the workplace, including issuing discipline, will be considered workplace harassment. Bill 132 provides that a reasonable action taken by an employer or supervisor relating to the management and direction of a worker or the workplace is not workplace harassment.

How Bill 132 Expands an Employer's Duties

Under the current law, an employer is required to develop and implement a written policy with respect to workplace harassment which:

- Includes measures and procedures for a worker to report an incident of workplace harassment to the employer.
- Sets out how the employer will investigate and address an incident and complaint of workplace harassment.

Bill 132 significantly expands these requirements by mandating that a workplace harassment policy be developed and reviewed annually, in consultation with the workplace joint health and safety committee or a health and safety representative. The policy must also:

- Include measures and procedures for a worker to report an incident of workplace harassment to a person other than the employer or supervisor if the alleged harasser is the employer or supervisor.
- Set out how an incident or complaint of workplace harassment will be investigated and addressed (Bill 132 requires an employer to conduct an investigation that is appropriate in the circumstances).
- Set out how information obtained during the investigation process will be safeguarded and that the information obtained will not be disclosed unless required for the purpose of investigating, taking corrective action or as required by law.
- Provide a process by which the complainant and the person complained about will be informed of the outcome. Bill 132 requires the parties be advised in writing of the results of the investigation and any corrective action that may be taken as a result.

Bill 132 also gives the Ministry of Labour the power to order an employer to conduct an investigation into a workplace harassment complaint using an independent third party (at the employer's expense), and cause the third party to produce a written report for the employer.

Getting Ready for Bill 132

What can an employer do now to ensure it is ready for the impact of Bill 132? We recommend the following:

1. Review your current workplace violence and harassment policy to ensure it addresses sexual harassment and sexual violence.
2. Ensure your workplace violence and harassment policy provides for a complaint mechanism that is accessible to all workers and includes a process for conducting an investigation, making findings and reporting the results to interested parties, as appropriate.
3. Ensure your workplace violence and harassment policy has procedural safeguards in place to protect sensitive or confidential information which may be received or uncovered during the complaint and investigative processes.
4. Develop training modules and provide training to all workers (including management) about harassment and violence in the workplace.
5. Ensure workers tasked with addressing/responding to a harassment incident or complaint are trained on how best to do this.
6. Revisit recent workplace complaints of violence or harassment (if any). How were they resolved? What lessons were learned? What changes could be made to your policies, investigation procedures and training protocols, to better serve your workforce?

The employment law experts at Sherrard Kuzz LLP can assist you to prepare for the enhanced employer obligations of Bill 132. To learn more give us a call.

HReview Seminar Series

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DATE: Wednesday September 28, 2016; 7:30 – 9:30 a.m. (breakfast at 7:30 a.m.; program at 8:00 a.m.)

VENUE: Hilton Garden Inn Toronto Vaughan - 3201 Hwy 7 West, Vaughan ON

COST: Complimentary

RSVP: By Friday September 16, 2016 at www.sherrardkuzz.com/seminars.php

Law Society of Upper Canada CPD Hours: This seminar may be applied toward general CPD hours.

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