

Business Bulletin

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Nous sommes fiers d'offrir nos services en français.

Employers can't afford to ignore health and safety

Every province and territory in Canada has legislation in place designed to protect the health and safety of all workers in the workplace.

In Ontario, the legislation is the *Ontario Health & Safety Act*, and the responsibility for workplace safety is shared by the employer, the supervisors and the employees.

When these responsibilities are not met, employers can face serious penalties. Gone are the days of nominal fines. Companies can be crippled by the consequences of a serious safety violation.

Occupational health and safety has become a very serious element of each business operation, large or small, and employers who take the Act lightly may find themselves in serious jeopardy.

Offences under the *Ontario Health & Safety Act* are referred to as "strict liability" offences. Once the Crown establishes, beyond a reasonable doubt, the Act was contravened, the onus shifts to the employer to establish beyond the balance of probabilities (ie. that it is more likely than not) that either the employer had a reasonable belief in a mistaken set of facts or it had done everything "reasonably possibly in the circumstances" to ensure the incident did not take place.

The second of those two defences, known as the Due Diligence Defence, is codified in the Act. Employers who practise Due Diligence must have written Occupational Health and

Safety policies, practices and procedures in place.

Employers must provide the appropriate training and education to their employees, be able to produce documentation confirming the completion of that training, monitor the workplace and ensure employers are following the policies, practices and procedures. Supervisors must be adequately trained to ensure the protection of the workers.

The courts have also found that even in situations where a worker was properly trained in the proper practice of any work task, the employer may be held responsible for not protecting the worker against himself in the event of injury.

The employer must be able to establish, through documentation, a progressive discipline program for breaches of safety rules.

These are only a few of the elements of Due Diligence an employer must be able to establish to avoid exposure to charges and fines under the Act.

All employers should give the *Ontario Health & Safety Act* and Due Diligence the highest priority and attention. Employers simply can't afford not to.

If you have any questions regarding the *Ontario Health & Safety Act*, feel free to contact Riopelle Griener.

Regards,

Gordon Conley
Litigation lawyer