

Ontario Health and Safety Act

Everything you wanted to know about OHSA but were afraid to ask

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Who is covered by Ontario's OHSA?

- A “worker” means a person who performs work or supplies services for monetary compensation
- An “employer” means a person who employs one or more workers or contracts for the services of one or more workers and *includes a contractor or subcontractor who performs work or supplies services* and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services
- A worker includes an independent contractor and a dependant contractor
- OHSA does not currently apply to work for which no monetary compensation is provided
- However under Bill 146 there are proposed amendments to the definition of “worker” that would extend OHSA to co-op students, trainees and other unpaid learners


Certain health and safety information that must be posted in the workplace

- Copy of OHSA
- As of October 1, 2012 → a mandatory poster: "Health and Safety at Work – Prevention Starts Here"
- A Health and Safety Policy
- A Workplace Harassment Policy for employers with 6 or more workers
- A Workplace Violence Policy for employers with 6 or more workers



Health & Safety Program

- An employer must develop and maintain a program to implement its health and safety policy
- The content of this program is not prescribed will vary, depending upon the hazards encountered in a particular workplace.



Program elements may include all or some of the following:

- Worker training (e.g., new workers, WHMIS)
- Workplace inspections and hazard analysis
- Confined space entry procedure
- Lock out procedure
- Machine guarding
- Material handling practices and procedures
- Protective equipment
- Emergency procedures
- First aid and rescue procedures
- Fire prevention

An employer shall assess the risks of workplace violence

A number of activities or circumstances may increase the risk of workplace violence including:

- handling cash;
- protecting or securing valuables;
- public or community contact;
- working with unstable or volatile people;
- working alone or with just a few people; and
- working late nights or very early mornings.

Numerous obligations are imposed on employers including

- appointing a “competent person” as a supervisor
 - a competent person is defined in OHSA as someone who is qualified because of knowledge, training and experience to organize the work and its performance, is familiar with this Act and the regulations that apply to the work, and has knowledge of any potential or actual danger to health or safety in the workplace
- ensuring a health and safety representative is elected if there are 6 to 19 employees, or establishing a joint health and safety committee (JHSC) if there are 20 or more employees

Numerous obligations are imposed on employers (continued)

- unless exempted, at least two members of the JHSC (one representing workers and one representing persons who exercise managerial functions) must be certified
 - In order to be certified, a person must complete the Parts 1 and 2 of mandatory training; that is; Basic Certification, and Workplace-Specific Hazard Training
- complying with the WHMIS regulation (i.e. an employer must provide an employee who works with or in proximity to a controlled product with prescribed information and instruction)

New mandatory health and safety awareness training (Effective July 1, 2014)

Training must include:

1. The duties and rights of workers under OHSA
2. The duties of employers and supervisors under OHSA
3. The roles of health and safety representatives and joint health and safety committees under OHSA
4. The roles of the Ministry, the Workplace and Insurance Board (WSIB), and entities designated under section 22.5 of the Act with respect to occupational health and safety
5. Common workplace hazards
6. The requirements set out in Regulation 860 (Workplace Hazard Materials Information System) with respect to information and instruction on controlled products
7. Occupational illness, including latency

Note: There are some exceptions to this general obligation

Ministry of Labour (MOL) Safety Blitzes

For example from May 1 to August 31, 2013, MOL inspectors conducted an enforcement blitz

The top nine most frequently issued OHS orders in the industrial sector involved a failure to:


- take reasonable precautions to protect the health and safety of workers
- maintain equipment in good condition
- post a copy of the OHS in the workplace
- prepare and review a health and safety policy and develop a program to implement that policy
- provide information, instruction and supervision to protect workers' health and safety
- have a workplace health and safety representative (HSR)
- conduct workplace inspections by an HSR or Joint Health and Safety Committee (JHSC) member
- assess workplace violence risk
- have a workplace violence and harassment policy in place

An employer must immediately notify an inspector at the nearest Ministry of Labour office, and the worker health and safety representative or joint health and safety committee (if any) if there is a “critical injury”

A “critical injury” is an injury of a serious nature that

1. places life in jeopardy;
2. produces unconsciousness;
3. results in substantial loss of blood;
4. involves the fracture of a leg or arm but not a finger or toe;
5. involves the amputation of a leg, arm, hand or foot but not a finger or toe;
6. consists of burns to a major portion of the body; or
7. causes the loss of sight in an eye. [Regulation 834]

Within 48 hours, the employer must also notify, in writing, a Regional Director of the Ministry of Labour, giving the circumstances of the occurrence.



Owners, constructors, employers, directors, officers, supervisors and workers can be prosecuted under OHSA

- a corporation can be fined up to \$ 500 000 plus a 25% victim surcharge
- individuals can be fined up to \$ 25 000 plus a 25% victim surcharge and/or imprisoned up to 12 months

Prosecutions under OHSA (Two December 2013 cases)

Case 1

- The employer, which supplied engineering and maintenance services, was working at the plant, which was in the process of being decommissioned. In order to gain access to a piece of equipment, sections of an overhead conveyor had to be removed. Workers cut and separated a section of the conveyor and began removing the anchoring bolts on the base of the conveyor. As the last bolt was loosened, the conveyor section toppled over, hitting a worker and causing vertebrae in the worker's back and a bone in one leg to be broken.
- A Ministry of Labour inspection found that no blocking had been installed to prevent the collapse or movement of the conveyor section being dismantled.
- After a trial, the employer was fined \$ 110 000 plus a 25% victim surcharge.

Prosecutions under OHSA (Two December 2013 cases) Case 2

- A bakery was processing dough on the bagel production line when the line stopped; however, the conveyor system was left running. A worker reached into the conveyor from below to clean dough that had become stuck. The worker was using a metal scraper, which broke under the force the worker was using. The worker's arm was drawn into the unprotected pinch point between the conveyor belt and the bottom of the machine's idler pulley.
- The worker suffered a broken arm and required surgery.
- Employer plead guilty and was fined \$ 60 000 plus a 25% victim surcharge

What to do if there is a critical workplace accident

- Notify the Ministry of Labour, and the health & safety rep (or JHSC) if there has been a “critical” injury
- Do not obstruct, hinder or interfere with the MOL inspector
- A member of the JHSC must inspect the place where the accident occurred and disclose the findings to MOL
- Assume the MOL will file charges under the OHSA. The MOL may complete an investigation within a week or two but the MOL often waits a year before charging the employer
- Consider the potential charges that could be filed under OHSA in connection with the accident (i.e. an employer must provide instruction to a worker, and take every precaution reasonable in the circumstances for the protection of a worker.)
- Interview all eye witnesses ASAP. If the interviews are not conducted by a lawyer who has been retained to defend possible OHSA charges then any statements may have to be disclosed to the MOL
- Provide the MOL with documents which show the employer was duly diligent. (ie. training records, safety manuals, prior discipline for safety violations) This information should be taken into account by the MOL when deciding whether or not to charge the employer



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