e2r Alert!

WHEN IS 20 ACTUALLY 20 … COUNTING THE MINISTRY OF LABOUR WAY!

Ontario (Labour) v. United Independent Operators Limited

In July of 2004, Amrik Singh, a truck driver, was crushed between his own truck and that of a co-worker while working at a client worksite. Fortunately, the accident was not fatal, but Singh did suffer a broken pelvis and two broken legs. While this accident was indeed deemed to be "critical", neither Singh nor his employer understood the proverbial "can of worms" that would be opened as a result of the accident.

When a critical workplace accident occurs, the Ministry of Labour ("Ministry") will typically investigate the matter. In this case, the Ministry determined that United Independent Operators Ltd. ("Employer") had violated the Ontario *Occupational Health and Safety Act, 1990* ("*OSHA*"). The specific violation under *OSHA* that was deemed to have been violated was with respect to the Employer's failure to establish a joint health and safety committee. In particular, an employer is required to establish and maintain a joint health and safety committee where twenty or more workers are "regularly employed". The Employer disagreed with the Ministry, arguing that its truck drivers, of which Mr. Singh was one (and which constituted the majority of its workforce) were "independent contractors", and as a result, were not "regularly employed" pursuant to *OSHA*. Interestingly, these same truck drivers had been previously held to be independent contractors by the Workplace Safety and Insurance Board, Canada Revenue Agency, and the Ministry of Labour's Employment Standards Branch.

The issue eventually reached the Ontario Court of Appeal ("Court"), where the Court sided with the Ministry. According to the Court, *OSHA* should be interpreted "generously", therefore the independent contractors should be counted for the purposes of establishing a joint health and safety committee.

Lessons?

There are a couple of important lessons to learn from this case. Firstly, for purposes of occupational health and safety (at least in Ontario), independent contractors will be counted as **regularly employed** for the purposes of determining whether a joint health and safety committee should be formed.

Secondly, employers cannot assume that a decision by one particular government agency will be adopted by other government agencies. As an employer, you simply cannot take comfort in relying on the determination of one agency when under the scrutiny of another.

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