

e2r Alert!

SAFETY FIRST: OCCUPATIONAL HEALTH AND SAFETY UPDATE

There have been some significant developments in the law recently that employers should be aware of as it relates to occupational health and safety in Alberta, Nova Scotia and Ontario. Health and safety is everyone's responsibility and the more you know, the better off (and safer) your workplace will be.

Alberta

On July 1st, 2011, the Alberta government instituted stricter guidelines for companies to maintain their Certificate of Recognition (the "Certificate"), which is necessary to receive rebates from the Alberta's Workers' Compensation Board or to bid on certain government projects. Specifically, employers in Alberta who experience workplace fatalities, serious injuries or multiple work stop orders could face an immediate review of their safety accreditation. When a review is underway, Workers' Compensation rebates are suspended. In addition, a company will be required to prepare an action plan focused on making improvements to safety. If a second incident happens within two (2) years, the company must conduct an external audit. Failing to prepare an adequate action plan or failure to score at least eighty percent (80%) on the audit will result in the company having their Certificate cancelled.

Nova Scotia

Due to amendments to the *Occupational Health and Safety Act* (Nova Scotia) (the "Act"), which came into effect on May 19th, 2011, serious breaches of the Act now carry heftier fines for employers. Specifically, employers will now face a maximum fine of \$250,000 for a first offence and \$500,000 for any subsequent offence occurring within five (5) years of a previous conviction. If a safety violation results in a fatality, the maximum fine is \$500,000, regardless of any prior violations.

Along with increased fines, employers may be required to repay monetary benefits which were gained by committing an offence. Prior to the amendments, these amounts were included within the fine.

Ontario

Two (2) recent court decisions have interpreted the *Occupational Health and Safety Act* (Ontario) (the "OHS Act") in a very broad manner, with possible widespread effects on employers.

In the first decision, the Ontario Divisional Court upheld an Ontario Labour Relations Board decision that held that all fatalities and critical injuries, not just those involving workers, occurring at a workplace must be reported to the Ministry of Labour. Therefore, even if a critical injury or fatality does not involve a worker or is not work related, it must be reported to the Ministry of Labour. This would likely require, for example, a ski hill to report (and maintain the integrity of the scene) every instance where a skier suffers a broken bone.

The second decision involved the Ontario Court of Appeal weighing in on the issue of whether “employment” was broad enough to capture the work performed by independent contractors. The specific question before the court was whether independent contractors should be considered “regularly employed” for the purposes of determining whether an employer was required to establish a joint health and safety committee. Under the OHS Act, employers are required to establish a joint health and safety committee where they regularly employ twenty (20) workers or more. While independent contractors are considered ‘workers’ for the purposes of the Act, the employer argued that they were not ‘regularly employed’ since they were not employees and therefore should not be included in the count. Referring to the remedial public welfare purpose underlying the OHS Act, the court concluded that independent contractors were considered ‘regularly employed’ and must be included when determining whether the obligation to establish a joint health and safety committee exists. In general terms, the decision signifies that courts are very prepared to interpret the OHS Act in ways that preserve its ultimate purpose, which is maintaining a high level of health and safety protection for workers (which includes independent contractors) in Ontario.

Please do not hesitate to contact us if you have any questions about these changes or an employer’s general obligations under health and safety legislation.

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