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FAILING TO SUPERVISE YOUR CONTRACTORS CAN LEAD TO COSTLY PENALTIES

Do you have contractors in your workplace? If so, in certain cases you may owe a duty to protect their health and safety. This would include active supervision to ensure that the contractors operate in compliance with occupational health and safety legislation.

The Workers' Compensation Appeal Tribunal in British Columbia (the "Tribunal") recently explored this issue in the context of a "multi-employer" worksite.¹ In this case, the employer built residential homes and engaged various contractors at its jobsites. These contractors included a painting contractor responsible for the exterior and interior painting of the homes. While on the job, two employees of the painting subcontractor fell from a ladder and sustained minor injuries.

Following the incident, an occupational health and safety officer concluded that the employer had breached its safety obligations and issued an administrative penalty of over \$60,000. This finding was made despite the fact that the employer had generally reviewed its expectations with respect to health and safety with the contractor. The employer had also worked with the contractor on several other jobsites and conducted training on those sites without any problems.

The Tribunal agreed with this decision on appeal. The Tribunal noted that the employer's duty required that it do more than generally review its health and safety expectations and assume that prior satisfactory performance would translate to satisfactory performance at another site. The Tribunal found that the employer had a further duty to conduct site-specific oversight and training. Even though the incident was technically the painting contractor's fault, the Tribunal concluded that the employer breached its own health and safety obligations by failing to adequately supervise the contractor. That said, the Tribunal did reduce the original fine by 30% to \$38,000 after acknowledging that the employer had a generally safe workplace and demonstrated an overall commitment to safety.

We recommend that employers take an active role in monitoring and training their contractors with respect to health and safety. Providing general health and safety training or relying on previous experience with the contractor may not suffice. We recommend that, where practicable, employers confirm with contractors in writing (in the commercial agreement if possible) their commitment to compliance with occupational health and safety requirements, including all mandatory training. This is especially important in "riskier" workplaces.

Please contact e2r Solutions[®] should you have any questions regarding the foregoing.

¹ WCAT-2013-03358, 2013 CanLII 80101 (BC WCAT)

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