

Employers must protect the health and safety of workers...and visitors!

A recent Ontario Ministry of Labour decision serves as a stark reminder that an employer's duty to ensure the health and safety of its employees can, in certain circumstances, extend to other individuals including visitors.

A self-storage facility in North Bay, Ontario learned this lesson the hard way. Seavale Incorporated ("Seavale") renovated a former Bomarc missile site and converted the building into self-storage units. Upon renovating one of the units, an opening was left in the floor measuring approximately four feet by nine feet in anticipation of adding stairs leading to the basement at a later date. The hole was not protected by a guardrail or a covering.

On June 4, 2014, an individual who was not an employee of Seavale visited the unit to examine a truck that was being stored there by its owner. Upon inspecting the truck's rear wheels which were directly adjacent to the hole, the visitor fell into the hole. The visitor fell six feet and died as a result of the injuries he sustained in the accident.

Seavale pleaded guilty to contravening Section 25(2)(h) of the Ontario *Occupational Health and Safety Act* ("Act") which specifies that employers must take every precaution reasonable in the circumstances for the protection of a worker. By failing to ensure the hole was covered or guarded, Seavale breached its duty as an employer under the Act.

Although the facts of this case deal specifically with a visitor as opposed to a "worker" who is afforded health and safety rights and protections under the Act, since there were workers at the site who were similarly exposed to the same hazard, the Act applied.

This case serves as a reminder to employers that its legislative health and safety obligations may apply more broadly than one would assume. Employers must take the necessary precautions to ensure that employees, visitors and other third parties on its premises are protected from health and safety hazards.

Please contact e2r to speak with an Advisor about how this decision impacts your workplace.