

WELCOME

OCCUPATIONAL HEALTH
& SAFETY SEMINAR

April 11, 2014



NEW OHSA REGULATION: TIPS FOR COMPLIANCE AND PITFALLS TO AVOID



Presenter:
Meghan Ferguson

TRAIN TOP DOWN

- Start with Senior Executives
- Tell them why the training is necessary

1. TRAIN THE TOP

- It's the law – new OHSA Regulation
- OHSA Section 32 - *Every director and every officer of a corporation shall take all reasonable care to ensure that the corporation complies with, (a) this Act and the regulations;*
- Directors, officers and managers can be fined up to \$25,000 and/or jailed for up to 12 months

2. TRAIN THE MANAGERS & SUPERVISORS

- Rights and responsibilities
- How to handle work refusals
- WHMIS – Workplace hazardous Materials Information Systems

2. TRAIN THE MANAGERS & SUPERVISORS

- Common workplaces hazards
- How to recognize, assess and control hazards...
and reassess hazards and controls

3. TRAIN THE WORKERS

- Rights and Responsibilities
 - Work in compliance with OHSA and its regulations
 - Report hazards
 - Report injuries
 - Work refusal

3. TRAIN THE WORKERS

- Roles of JHSC, MOL, WSIB, and designated entities
- Occupational illness, including latency

3. TRAIN THE WORKERS

- WHMIS
- Common workplace hazards

BE SPECIFIC...

- Common workplace hazards for your workplace
- Not simply industry standard training

BE SPECIFIC...

“This training must be ***specific to ensuring the health of the employee and not generic training.*** The Crown relies on *R. v. Falconbridge Limited* (unreported, May 6, 2004, at para. 3, ... to illustrate this point. In *Falconbridge* the court found that the employer had to provide training ***specific to that workplace.***”

Ontario v. Sunrise Propane Energy Group Inc. et al. 2013 ONCJ 358.

BE SPECIFIC...



		HAZARD SEVERITY				
		Negligible (1)	Slight (2)	Moderate (3)	High (4)	Very high (5)
LIKELIHOOD OF OCCURRENCE	Very Unlikely (A)	LOW	LOW	LOW	LOW	MEDIUM
	Unlikely (B)	LOW	LOW	LOW	MEDIUM	MEDIUM
	Possible (C)	LOW	LOW	MEDIUM	MEDIUM	HIGH
	Likely (D)	LOW	MEDIUM	MEDIUM	HIGH	HIGH
	Very Likely (E)	LOW	MEDIUM	HIGH	HIGH	HIGH

Common hazards

- Violence from a customer/outsider
- Ladder safety
- Safe Lifting
- Ergonomics
- Electrical lockout
- Overhead cranes
- Reversing vehicles

WHO ARE YOUR WORKERS

- *“worker” means a person who performs work or supplies services for monetary compensation but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program;”*

WHAT IS THE WORKPLACE?

“workplace” means any land, premises, location or thing at, upon, in or near which a worker works;”

OCCUPATIONAL ILLNESS

- Train on occupational illness including latency
- *“occupational illness” means a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits under the Workplace Safety and Insurance Act, 1997;”*

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Lawyers & Mediators

DSF



OHSA CASE LAW AND FINES UPDATE



Presenter:
Marty Rabinovitch

OVERVIEW

- *Occupational Health and Safety Act (OHSA)*
- Bill 168 (workplace violence and harassment – amendments to OHSA)
- Bill C-45 (liability of organizations – amendments to *Criminal Code*)



THE OHSA

- Applies to:
 - Workplaces under provincial jurisdiction
- Does not apply to:
 - Work for which no monetary compensation is provided
 - Federal workplaces (ex. banks and airlines – *Canada Labour Code* would apply)



BILL 168 - WORKPLACE HARASSMENT

- Came into force on June 15, 2010
- Main features:
 - Expanded definition of workplace violence;
 - Mandatory workplace violence and harassment policies;
 - Program to implement the policies (including employer response to incidents and complaints)

BILL C-45

- Came into force on March 31, 2004
- New laws to attribute criminal liability to organizations (including corporations) and their representatives
- Imposes penalties for violations that result in injury or death

2011-2012 DECISIONS – NO “TEETH”?

- *United Steelworkers v. Weyerhaeuser* (2011, BC)
- *R. v. Millennium Crane* (2011, ON)
- *R. v. Peck* (2011, MB)
- *Conforti v. Investia Financial Services* (2011, ON)
- *R. v. Hritchuk* (2012, Quebec)

CASELAW

Conforti v Investia Financial Services, 2011 CanLII 60897 (ON LRB)

- Worker's employment was terminated shortly after he made a workplace harassment complaint
- The worker brought an application to the Ontario Labour Relations Board alleging that the employer's actions violated section 50 of the OHSA (which protects workers from reprisals from the employer)

CASELAW

Conforti v Investia Financial Services, 2011 CanLII 60897 (ON LRB) (cont'd)

- The OHSA “does not specifically give the Board the power to enquire into the situation where an employee is fired for complaining about harassment.”
- “In the case of an employee who complains that he has been harassed, there is no provision in the OHSA that says an employer has an obligation to keep the workplace harassment free.”

CASELAW

Conforti v Investia Financial Services, 2011 CanLII 60897 (ON LRB) (cont'd)

- While the Board did not dismiss the claim on this basis, a number of subsequent decisions adopted this reasoning and it seemed as though the Board did not have jurisdiction to hear reprisal complaints for workplace harassment

CASELAW

Ljuboja v Aim Group Inc, 2013 CanLII 76529 (ON LRB)

- A worker's employment was terminated shortly after he complained of workplace harassment
- He brought an application to the OLRB under section 50 of the OHSA
- Aim Group relied on *Investia* and argued that the Board lacked jurisdiction to adjudicate the complaint

CASELAW

Ljuboja v Aim Group Inc, 2013 CanLII 76529 (ON LRB) (cont'd)

- The Board clarifies that *Investia* does not stand for the proposition that the Board does not have jurisdiction over reprisals for harassment complaints
- The OHSA prohibits employers from penalizing workers for making a complaint about workplace harassment under the employer's mandatory policy

CASELAW

Ljuboja v Aim Group Inc, 2013 CanLII 76529 (ON LRB) (cont'd)

- “The Board is not the appropriate forum to adjudicate upon the issues that lead to the filing of the harassment complaint of the substantive outcome of the employer’s investigation.”

HOWEVER...

- “[...] remedies for complaints about workplace harassment and the harm caused by that harassment will have to be found elsewhere, such as at common law, or if the harassment is based upon a protected ground of discrimination, at the Human Rights Tribunal of Ontario.”

Murphy v The Carpenters' District Council of Ontario, 2014 CanLII 2304 (ON LRB)

- Follows decision in *Ljuboja*, with respect to whether making a complaint under employer's harassment policy constitutes seeking enforcement of OHSA (it does)
- "While I have some difficulty with the reasoning in [*Ljuboja*], I recognize that it is within a range of possible results and in the interests of consistent decision making regarding the Board's interpretation of the OHSA, I accept it."

WHAT THIS MEANS FOR EMPLOYERS

- Employers must have a procedure to address allegations of harassment
- Jurisdiction of OLRB is more procedurally focused than jurisdiction of civil courts and Human Rights Tribunal of Ontario
- Damages for harm caused by harassment must be addressed at common law or at the HRTTO (if harassment is based on a prohibited ground of discrimination)

BILL C-45 – AMENDMENTS TO THE CRIMINAL CODE

- Bill C-45 amended the Criminal Code and became law on March 31, 2004
- "**217.1** Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

CASELAW

R. v Metron Construction Corporation, 2013 ONCA 541

- 4 employees fell to their deaths from a swing-stage platform
- The supervisor had recently consumed marijuana; the swing-stage normally supported 2 workers at a time
- Director of accused pleaded guilty to 4 OHSA offences - \$90,000 fine

CASELAW

- At the criminal sentencing hearing, the accused corporation plead guilty to criminal negligence causing death – admitting the supervisor had failed to take reasonable steps to prevent bodily harm or death

CASELAW

R v Metron Construction Corporation, 2013 ONCA
541 (cont'd)

- The sentencing judge used the range developed under the *OHSA*
 - The maximum penalty for an individual is \$25,000 per count – here, it would be $\$25,000 \times 4 = \$100,000$
 - + a 25% victim surcharge = \$125,000
 - Or maximum of \$500,000 for a corporation

CASELAW

R v Metron Construction Corporation, 2013 ONCA
541 (cont'd)

- The sentencing judge imposed a fine of \$200,000 + victim fine surcharge of \$30,000

CASELAW

R v Metron Construction Corporation, 2013 ONCA
541 (cont'd)

- The Crown appealed the sentence
- The Court of Appeal found the sentencing judge erred as he failed to take into account the accused's wanton disregard for lives and safety of others and high degree of moral blameworthiness
- The Court of Appeal increased the fine to \$750,000

CASE LAW

- *R. v. Lilgert* (2013, BC)
- accused charged under criminal negligence provisions (not Bill C-45)
- navigation officer of a ferry was sentenced to 4 years of imprisonment for his role in the ferry's sinking and loss of 2 passengers who were presumed to have drowned

WHAT THIS MEANS FOR EMPLOYERS

- Police officers may investigate OHSA offences, as with the new Criminal Code provisions it is within their jurisdiction
- If criminal liability is found, the fines imposed can be significantly higher than the OHSA jurisprudence outlines
- While the legislation has existed for 10 years, Bill C-45 may have finally found its “teeth”

DEALING WITH WORKPLACE ACCIDENTS

Presenter:
Michael Farace



HOW IS OHSA ENFORCED?

INSPECTION POWERS

SEARCH WARRANT POWER

LAYING OF CHARGES

STEPS TO BE TAKEN BY A CONSTRUCTOR

CONDUCTING AN INTERNAL INVESTIGATION THAT IS PRIVILEGED

POST ACCIDENT STEPS

CONCLUSION

QUESTIONS



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