

Are you Ready to Respond to a Workplace Accident?

Many organizations are not prepared if there is a workplace accident that results in injury to an employee. An accident is not just an accident, and especially not in the workplace. Rather, a host of legal obligations are immediately triggered with significant consequences in the event of non-compliance.

Picture this: You are a senior manager for a medium sized manufacturing company. It is Monday morning and you have just settled into your weekly management meeting. Suddenly, you hear a large “bang”. At first you think nothing of it, just the usual sounds from the shop floor. However, 5 minutes later, your floor supervisor comes into the room and says, “there’s been an accident and John has been hurt”. There is panic in the room (or, worse, there is a lack of urgency in the room!) and everyone is looking to you to figure out what to do.

You may not realize it, but a host of legal obligations have been triggered. Do you know what comes next?

When there is a workplace accident resulting in injury to an employee, there is a legal obligation under the *Occupational Health and Safety Act* (“OHS”) to notify the workplace

health and safety representative or joint health and safety committee. For a fatality or “critical injury” the Ministry of Labour (“MOL”) must also be notified.

The timing of the notice varies depending on the extent of the injury, but for fatalities or “critical injuries” (such as unconsciousness, certain fractures, a serious loss of blood, burns to a major portion of the body) OHS requires that employers immediately notify the MOL and provide details of the accident, machinery involved, time and location and the names and addresses of those injured and those who witnessed the accident. Even for non “critical injuries” OHS still requires that the circumstances be reported to the workplace health and safety representative or joint health and safety committee within 4 days. Any trade union must be notified as well.



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The workers' compensation regime also has notification obligations on employers. Under the *Workplace Safety and Insurance Act* ("WSIA"), employers must notify the Workplace Safety and Insurance Board ("WSIB") within 3 days of learning of a workplace accident if that accident necessitates health care, results in the worker not being able to earn full wages, or causes the employee to go on modified duties. This is done by filling out the WSIB's "Form 7". The employer must generally pay the employee's full day's wages on the date of the injury. The WSIB has a policy on the extent of the modified duties required in order to trigger the notification obligation. For minor injuries requiring first aid, there is no obligation to report.

In addition to this duty to notify, in the event of a fatality or "critical injury", subject to some limited exceptions, employers must "preserve the scene" under OHSA. In other words, employers must not interfere with or disturb anything connected with the scene of the accident until given permission to do so by the MOL.

It is important to note that the above OHSA obligations to notify and

"preserve the scene" are not just for accidents involving employees. Recent court cases have confirmed that these duties apply to any person injured at the workplace (whether that be a customer, supplier, employee or otherwise) as long as there is a connection or "nexus" between the accident and worker safety.

Once the MOL has been notified, the employer may get a visit from a MOL inspector. An inspector has extremely broad powers under OHSA to attend the premises, collect documents, take pictures and order the employer to create or review policies, test or fix machinery or even halt production (often called a "stop work order"). It is important to note that a visit from an inspector could result in charges being laid against the employer (or even individual supervisors or workers) under the *Provincial Offences Act* for breaching OHSA. Accordingly, besides understanding what to do in the immediate aftermath of an accident, it is vital that employers get legal advice on how to deal with the inspector and to strategize and engage in due diligence to prepare for potential charges.

While accidents are unavoidable sometimes, being prepared is something that all employers can do. This is not only important in ensuring the safety and well-being of staff, but it is critical in avoiding costly penalties under the OHSA, which could be as high as \$500,000 per charge. Further, health and safety incidents at work can lead to criminal charges against an individual. A supervisor was recently sentenced to 3.5 years in prison for criminal negligence in an incident where a swing stage collapsed on the 14th floor of a high-rise construction site causing 4 worker deaths in 2009. While that is an extreme example, it is important to note that the MOL has not hesitated to charge employers for "technical" breaches of OHSA, including failing to notify or preserve the scene as well as not having in place a joint health and safety committee.

The stakes are high when dealing with worker health and safety. It is vital that all employers understand their obligations and be prepared when there is a workplace accident.

If you have questions on health and safety matters, please contact us.