



Employment Update

EMPLOYMENT AND LABOUR GROUP:

Maria Kotsopoulos
(Editor)
Direct 416.593.2987
mkotsopoulos@blaney.com

William D. Anderson, Chair
Direct 416.593.3901
banderson@blaney.com

Elizabeth J. Forster
Direct 416.593.3919
eforster@blaney.com

Melanie I. Francis
Direct 416.597.4895
mifrancis@blaney.com

Mark E. Geiger
Direct 416.593.3926
mgeiger@blaney.com

David E. Greenwood
Direct 416.596.2879
dgreenwood@blaney.com

Christopher McClelland
Direct 416.597.4882
cmcclelland@blaney.com

Michael J. Penman
Direct 416.593.3966
mpenman@blaney.com

D. Barry Prentice
Direct 416.593.3953
bprentice@blaney.com

Jack B. Siegel
Direct 416.593.2958
jsiegel@blaney.com

“New Developments [highlight] significant increases in fines being levied in OHSAs cases over the last several months, and the increased vigilance on the part of OHSAs inspectors bringing charges under the Act.”

OHSAs PROSECUTIONS: THE COURT AND NEW REGULATIONS UP THE ANTE

Mark E. Geiger

New developments from the court and new regulations significantly increase the risks associated with non-compliance with Ontario’s *Occupational Health and Safety Act* (the “OHSAs”).

In recent articles and posts, we have reported on both the significant increases in fines being levied in OHSAs cases over the last several months, and the increased vigilance on the part of OHSAs inspectors bringing charges under the Act. Two recent developments further this trend with respect to potential liability, while also increasing what is at risk when there is non-compliance.

The Court Case: J.R. Contracting Property Services Ltd.

In this recent case, a company involved in garbage removal and hauling was engaged to remove shingles from a one storey bungalow. The company hired workers on an on-call, cash basis. One of its workers was seriously injured after he slipped and fell off the roof while tossing shingles from the roof into a bin, resulting in permanent paralysis of his lower body. Tina

Lootawan worked for J.R. She was responsible for directing workers to the job, authorizing the work in question, paying them or providing them with cash advances if needed. Based upon these factors, the court found that she was a supervisor within the meaning of the OHSAs. The court also found that the injured worker had not been trained in fall protection and that no fall protection equipment had been provided in the truck that was used for transportation to the job site.

The Company was charged and fined \$75,000, plus the usual 25% surcharge. Ms. Lootawan however was sentenced to forty-five days in jail. The court ruled she had failed as a supervisor to ensure workers used protective devices required by the OHSAs and Regulations and failed to take the reasonable precaution of ensuring fall protection was provided. Jail time is, to say the least, highly unusual in OHSAs prosecutions. This case is further evidence that courts are taking a far more serious approach to the failure by companies and individuals to abide by the OHSAs and its Regulations.

New Regulations

Two further recent changes bring this point home forcibly.

EMPLOYMENT UPDATE



Mark E. Geiger is a member of the Employment and Labour group at Blaney McMurtry and the Labour Section executive of the OBA. Mark acts for a wide variety of employers and individuals in many sectors of the economy with respect to employment and labour relations.

Mark may be reached directly at 416.593.3926 or mgeiger@blaney.com.

First, the Ministry has recently distributed proposed new training requirements for employees working at heights - as in the case above. This new training protocol will require training by an 'approved' trainer and will apply to all construction projects once implemented. This is only part of a complete overhaul of the Health and Safety strategy of the provincial government. That includes a new Chief Prevention Officer appointed last year to oversee the new 'strategy'; increased inspections at night and on weekends; targeting with respect to the most vulnerable workers, small businesses and the highest hazards; and new regulations.

Second, Regulation 297/13, published on November 15, 2013, *will come into effect on July 1, 2014*. This Regulation requires OHS training to be provided by Ontario employers for every 'worker.' Recall, that 'worker' has a broader definition than 'employee' in other employment-related legislation. In addition, supervisors must complete a basic OHS awareness training program within *one week* of performing work as a supervisor.

The Regulation spells out the training that must be received by both workers and supervisors and requires that records be kept of when such

training was received. Workers and supervisors do not require such training *if* they can prove to the employer they have received training that complies with the requirements prior to the Regulation coming into effect. In addition, where an employer is required to have a health and safety committee, the employer is required to 'carry out' the training program required for a committee member to become 'certified,' and 'carry out' includes paying for the training.

The new Regulation will affect every employer in the Province. In our view, the risk of not complying with this new Regulation may be substantial, especially in a case where a worker is injured and that worker or his/her supervisor has not received the training required.

In our view, the government has not taken sufficient steps to bring these requirements to the attention of every employer in the Province. There do not appear to be any exceptions, so even the employer with one or two workers appears to be caught.

With the recent trend in fines and now imprisonment, non-compliance has become very risky to say the least! ■

EXPECT THE BEST

**Blaney
McMurtry**
BARRISTERS & SOLICITORS LLP

2 Queen St. East, Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

Employment Update is a publication of the Employment and Labour Law Group of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The views and comments contained in this newsletter are those of the author alone, and do not necessarily reflect the views of Blaney McMurtry LLP or other members of the firm. The information and views expressed are not intended to provide legal advice. For specific advice, please contact us.

We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Kelly MacNeil at 416 593.7221 ext. 3600 or by email to kmacneil@blaney.com. Legal questions should be addressed to the specified author.