

OCCUPATIONAL HEALTH & SAFETY ACT

Frequency of construction workplace injuries sign there is a lack of awareness of the Occupational Health and Safety Act

Workers on every construction project in Ontario are protected by the Occupational Health and Safety Act (OHSA).

All construction employers have a positive duty under the OHSA to ensure that all the measures and procedures prescribed by the act and its regulations are complied with. Officers and directors of employers are personally liable for ensuring compliance with the act.

Even owners of land where construction activity is taking place have obligations under the act.

Here are only some of the positive duties placed on all construction employers by the OHSA:

- duty to provide a safe work environment;
- duty to educate and train workers;
- duty to have an occupational health and safety policy;
- duty to appoint competent supervision;
- duty to ensure that workers and supervisors comply with the act;
- duty to immediately report accidents causing critical injury or death.

In addition to the construction employer, its officers and directors, each of the employer's supervisors and workers who breach the act can-be charged with an offence. Even "horseplay" on the job is prohibited by the act and can result in a charge if an accident occurs because of it.

Most construction workers are given the right under .the act to refuse dangerous work.

If a worker reasonably believes his health or safety is in jeopardy, he can stop work and demand that his concerns be addressed before he continues working. This is a very sensitive and complicated area and strict adherence to proper procedures is required by all involved.

Offenses under the OHSWA are regarded as quasi-criminal in nature. The Crown, like in all criminal cases, must prove all the elements of the alleged offence beyond a reasonable doubt.

The most usual defence is that of “due diligence.” For example, that the construction employer took all reasonable steps and precautions to avoid the happening of the event giving rise to the charge. Any accused relying on this defence to win an acquittal must demonstrate that there were internal safety practices and procedures consistently adhered to and that the accident happened notwithstanding everything reasonably possible having been done by the construction employer to prevent it.

An individual offender under the act can be fined as much as \$25,000. A corporation convicted under the act can be fined up to \$500,000.

A review of the regulations passed under the OHSWA demonstrates the scientific and technical complexity of the modern-day construction workplace and the many dangers to workers present in it. So many different things in a construction workplace can go wrong and cause an accident.

But this myriad complexity and the continued frequent happening of construction workplace accidents lead one to conclude that awareness of the act and its regulations is not as high as it should be, particularly with smaller employers and their workers.

Do you, as a construction employer, have, or even know whether you should have, a “health and safety representative”, or a “joint health and safety committee”?

Do you work with “designated substances” or “controlled products” in your construction workplace?

Are there “confined spaces” in your construction workplace?

Do you know all of the safety requirements relating to such things as chemicals, protective equipment, lifting devices, machine guards and scaffolding?

If you don't know the answers to any of the above, or aren't sure, your construction workplace might be in violation of the law and your employees, your most precious resource, might be at risk.

The Ministry of Labour administers the act. A call to one of their inspectors for detailed information about the administrative and safety requirements of your construction workplace might be just the caring and responsible thing needed in your situation.