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EXPECT THE BEST

Orange Alert: Occupational Health & Safety

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For the past year, we have issued a number of reminders that the Ontario Ministry of Labour is aggressively auditing industrial and construction workplaces to ensure the highest level of compliance under the *Occupational Health and Safety Act* ("*OHSA*"). Several high profile accidents have put mounting pressure on the provincial government and employers to see that all workplaces minimize risk to the health and safety of their employees.

There are four notable updates in this quest.

First, the Ontario provincial government is proposing that regulatory workplace accident prevention be consolidated within the Ministry of Labour. The Ministry would appoint a Chief Prevention Officer to co-ordinate and align the prevention system with the assistance of a new prevention council with representatives from labour, employers, and safety experts. These changes will introduce a new level of bureaucracy over workplace safety.

Second, there has now been a successful criminal prosecution against an employer for negligence in relation to a workplace accident. In *R. v Scrocca* the Cour du Québec found that Mr. Scrocca was criminally negligent in failing to properly maintain a backhoe which caused a fatal accident. The Court found that the employer showed a wanton or reckless disregard for the life or safety of another and violated section 217.1 of the *Criminal Code* which provides that everyone who undertakes or has the authority to direct how another person does work is under a legal duty to take reasonable steps to prevent bodily harm to that person.

Third, the Ontario Court of Appeal has found in *Ontario (the Ministry of Labour) v. The United Independent Operators Limited* that in certain circumstances independent contractors will be considered to be employees for the purpose of *OHSA*. Independent contractors are already typically considered to be workers for the purpose of *Act*. However, the Court of Appeal has now gone further and determined that independent contractors may also be "employed" for the purpose of *OHSA*. This determination will create greater health and safety obligations upon employers in respect of those workers. For example, employers who did not believe that they were obligated to strike a joint health and safety committee because they employed fewer than twenty workers may now find themselves obligated to ensure that a joint health and safety committee is properly formed and functioning within the workplace. Failure to have a joint health and safety committee, as prescribed, will expose an employer to liability for failing to show a reasonable standard of due diligence and compliance with the *OHSA*.

Lastly, employers should now be aware of their obligations and have introduced written policies with respect to harassment and violence in the workplace. As of June 15th, 2010 Ontario employers were required to undergo an analysis of risk of violence to their employees and develop a plan in order to minimize and safeguard their employees from violence. Cases are now making their way to the Ontario Labour Relations Board dealing with the parameters of these obligations. ■