

LABOR AND EMPLOYMENT

NEW ONTARIO MANDATORY HEALTH AND SAFETY AWARENESS TRAINING FOR WORKERS AND SUPERVISORS: DEADLINE JULY 1, 2014

by W. Eric Kay and Andrew J. Skinner

The safety and wellbeing of employees in the workplace is a concern in respect of employers of all sizes and across all sectors. This concern was magnified in Ontario after a quadruple fatality involving a scaffolding accident at a construction site on December 24, 2009. Subsequently, an expert advisory panel reviewed Ontario's occupational health and safety system and concluded that employees were not receiving sufficient training about workplace roles, rights and responsibilities. The panel recommended compulsory health and safety awareness training for all workers and supervisors in Ontario. In response, the Ontario government has introduced a new regulation that creates additional obligations on employers to provide training in the workplace.

Application of the Regulation

Ontario Regulation 297/13 *Occupational Health and Safety Awareness and Training* (the "**Regulation**") is the new regulation under the *Occupational Health and Safety Act* (the "**Act**"). Filed on November 14, 2013, the Regulation requires all Ontario employers in all workplaces, including those that are not considered to be high-risk, to provide their employees with basic occupational health and safety awareness training by July 1, 2014. The training's two streams focus on supervisor and worker training.

The Regulation has broad application. It applies to all workers and supervisors in the Province who are covered by the Act. "Worker" is defined in the Act to include "a person who performs work or supplies services for monetary compensation". This definition can include, for example, third-party contractors. To comply, businesses should confirm that contractors, including their employees, have completed the safety awareness training. "Supervisor" under the Act is defined as "a person who has charge of a workplace or authority over a worker." Consequently, "supervisors" will include managers within a workplace, and also likely would include others with a lesser degree of authority or control. For example, a lead hand would be included in this definition. A lead hand might be in charge of a small group of employees but is not strictly what one would consider to be part of management.

Content of the Training

The Regulation sets out the content that the training must include. Specifically, the Regulation requires that workers complete training on the following:

1. the duties and rights of workers under the Act;
2. the duties of employers and supervisors under the Act;
3. the roles of health and safety representatives and joint health and safety committees under the Act;

4. the roles of the Ministry, the Workplace Safety and Insurance Board and entities designated under section 22.5 of the Act with respect to occupational health and safety;
5. common workplace hazards;
6. the requirements set out in Regulation 860 (Workplace Hazardous Materials Information System (WHMIS) with respect to information and instruction on controlled products; and
7. occupational illness, including latency. (Latency describes a circumstance in which employees are exposed to hazardous or harmful substances and a significant amount of time elapses before related symptoms arise. The effects of exposure may not be identified until much later, possibly long after employment.)

In addition to these requirements, supervisors must also be trained on:

1. how to recognize, assess and control workplace hazards, and evaluate those controls; and
2. sources of information on occupational health and safety.

Exemptions

The Regulation provides for certain compliance exceptions. Where a worker or supervisor previously completed a "basic" occupational health and safety awareness training program and provides the employer with proof of completion of the training, this may constitute an exemption to the new mandatory training. However, the employer must be able to verify that the previous training meets the Regulation's requirements as set out above.

Notwithstanding these exemptions, employers may choose to implement the new training using the Ministry of Labour's training materials so as to avoid future disputes regarding the level of training of workers and supervisors. Some of the information to be described during the course of training mandated by the Regulation has recently been modified. For example, the roles of the Ministry of Labour, Workplace Safety and Insurance Board, and Health and Safety Associations have been modified, such that employers may not have covered this information accurately in their existing safety awareness programs.

Training Materials

Training may be provided using the Ministry of Labour's online "e-learning" modules which are typically 60 minutes in length, or by face-to-face sessions (group or individual) with the employees, which may vary in length at the discretion of the employer. The Ministry of Labour has made several resources available to employers to assist with compliance. These resources include printed workbooks and e-learning training modules that are free of charge. They are available through ServiceOntario or the Ministry of Labour website.

Employers may choose to use their own training materials; however, these materials must include the mandated topics.

Record-Keeping

Once the required training is complete, employers must maintain a record of the training and documentation addressing proper exemptions. Employers must provide workers or supervisors with written proof of completion of the training or exemptions upon request. This obligation continues for six months after the worker or supervisor no longer performs work for the employer.

Deadlines and Penalties

The deadline for training current workers and supervisors according to the Regulation is July 1, 2014. For new workers hired after July 1, 2014, the training deadline is "as soon as practicable" after they begin work. For supervisors appointed to a supervisory position after July 1, 2014, their training must be completed within one week of starting work as a supervisor.

The mandatory training is valid for the employee's working career. It is prudent for employers, however, to implement a policy that maintains a high standard of employee training and knowledge for a safe workplace.

After July 1, 2014, failure to comply with the Regulation may be an offence under the Act. While non-compliance can result in a compliance order, penalties upon conviction under the Act can include a significant fine or imprisonment or both. Non-compliance can also serve as a notice to inspectors that a company is not current with its safety obligations.

Final Thoughts

It is important for all employers to be aware of these new obligations and to comply with the Regulation. It is clearly in the best interests of employers and employees alike to avoid workplace accidents and maintain a safe workplace.

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