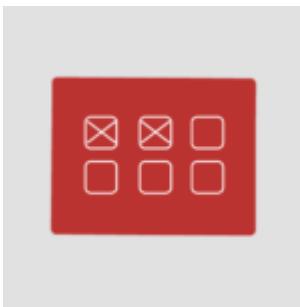


2025 Due Diligence, The 20th Annual Scorecard



Are you doing everything necessary to comply with the OHS laws of your jurisdiction?

The primary mission of the OHS coordinator is to prevent workplace injuries and ensure that the company complies with all laws. In an ideal world, every OHS coordinator would fully succeed in this mission. But in the real world made up of human beings, things inevitably go wrong. OHS rules get violated, accidents occur, and people get injured. And once government enforcement officials and prosecutors get involved, it's almost a pretty good bet that action will be taken to hold the employer legally responsible for these consequences.

But being charged isn't the same thing as being guilty. Companies cited for OHS violations can still avoid liability. One way to do this is to disprove the charge. But even if you do commit a violation, you can win exoneration by demonstrating that you took reasonable steps to comply with the law and prevent the violation. This is what's known as "due diligence."

While it's technically a legal defence used in the context of a prosecution or administrative monetary penalties (AMPs) proceeding, due diligence is also a measuring stick that OHS coordinators can use to assess whether their own OHS programs are legally adequate without actually having to go to

court and let a judge decide the question. The strategy: Look at the reported OHS due diligence cases involving other companies. Look at not only whether the company won or lost but how the judge determined whether it met the standard of due diligence. Then you can draw appropriate lessons and apply them to judge and improve your own OHS program.

How the Due Diligence Scorecard Helps You Comply

Of course, carrying out this exercise is easier said than done. Tracking down and analyzing cases from across the country requires time and specialized skills that you may not have; and hiring a lawyer to do it for you is pretty expensive. And that's where the Due Diligence Scorecard comes in handy. The Scorecard does the research and analysis heavy lifting for you.

OHS Insider has created and published an annual Due Diligence Scorecard every year since 2006. Here's an analysis of the [2025 due diligence cases](#) and how to use them to improve your own OHS compliance efforts.

What Due Diligence Is All About

Technically, "due diligence" is a legal defence against liability that comes into play if you're cited for an OHS violation. The defence comes from a 1978 Canadian Supreme Court case called [R. v. Sault Ste Marie](#) in which the Crown proved that municipal workers dumped garbage into waterways. By the letter of the law, the city violated the Ontario water protection law by "causing" or "permitting" water pollution. That's because, like OHS laws, environmental laws are what are called "strict liability" statutes. Simply committing an offence makes you

guilty regardless of whether you engaged in it deliberately, recklessly or negligently.

But the *Sault Ste. Marie* Court ruled that strict liability was too harsh and crafted a new rule. Once the prosecution proves, beyond a reasonable doubt, that the defendant committed the action the law forbids or omitted to perform the action the law requires (the so-called *actus reus*), the burden shifts to the defendant to prove, by a preponderance of the evidence, that it exercised “due diligence” to comply. Proof of due diligence, in other words, means the defendant isn’t liable for the violation. The defence consists of 2 branches:

- **Reasonable steps** applies when the defendant shows that it took reasonable steps to comply with the law and avoid the offence.
- **Reasonable mistake of fact** applies when the defendant proves that it reasonably relied on a set of facts that turned out to be wrong but had they been true would have made the act or omission legal.

Why the Court Cases Are So Critical

Most OHS cases involve the reasonable steps branch (including 19 of the 21 cases in this year’s Scorecard). The problem is that there’s no single definition of “reasonable steps.” As a result, courts and tribunals (which we’ll refer to collectively as “courts”) have to decide the issue one case at a time based on the specific facts and circumstances involved. **Exception:** The one cardinal rule that applies in every case is that you can’t prove due diligence unless you can show that you’ve created and implemented a system to ensure compliance with OHS laws.

The court cases are the key to compliance because they

illustrate how these legal principles play out in the real world. Each case is a tale of an actual company's OHS compliance experience and what it did right or, in the vast majority of cases, wrong. By emulating what companies did right and avoiding what they did wrong, you can use the cases to improve your own OHS program.

The 2025 Due Diligence Cases

Before getting into the 2025 cases, we need to explain the data. There are literally hundreds of AMPs and OHS fines imposed across Canada each year. The vast majority of these get settled. Basically, employers take their penalties and turn the page. But employers sometimes push back and assert a legal defence in a trial court or administrative appeals tribunal. Some of these cases get reported on public sites.

There are roughly 16 to 17 such cases in an average year. But case volume has grown in the past 5 years. There were 21 cases in 2025, one fewer than last year.

Table 1: Reported OHS Due Diligence Defence Case Numbers, 2019 to 2025

| 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
|------|------|------|------|------|------|------|
| 18 | 19 | 16 | 18 | 14 | 22 | 21 |

One of the first things that stands out about due diligence case data is how often employers lose. In the 20 years that we've been publishing the Due Diligence Scorecard, defendants have won slightly less than 20% of the time. The pattern was never more pronounced than in 2023 when, for the first time since we've been tracking the

cases, defendants lost every single case. Patterns returned to normal in 2024 with defendants prevailing in 4 of the 22 cases. In 2025, defendants won 5 of 21 cases, among the highest success levels in recent years. In addition, a few of the 16 cases listed in the loss column were actually mixed verdicts with the defendant making out a successful due diligence defence on some but not all of the OHS charges.

**Table 2: Total Reported OHS Cases
Ruling Based on Due Diligence
by Jurisdiction in 2025**

| Jurisdiction | Total Cases | Due Diligence Defence Succeeds | Due Diligence Defence Fails |
|------------------|-------------|--------------------------------|-----------------------------|
| British Columbia | 9 | 2 | 7 |
| Québec | 5 | 0 | 5 |
| Alberta | 2 | 0 | 2 |
| Ontario | 2 | 2 | 0 |
| Saskatchewan | 1 | 1 | 0 |
| Nova Scotia | 1 | 0 | 1 |
| Newfoundland | 1 | 0 | 1 |
| TOTAL | 21 | 5 | 16 |

Rulings by Industry Sector

Following the usual pattern, the construction sector, which generates the most fines, also accounted for the most due diligence cases. But the ratio was unusually high in 2025 with 2 of 3 reported cases (14 of 21). The specific forms of construction activity included building erection, framing, excavation, roofing and paving. In 3 of the construction cases, the defendant was charged not as an employer but prime contractor, aka constructor, in charge of overall safety at a

multiple employer site.

Only 2 other sectors reported multiple due diligence cases in 2025. Oil and gas companies accounted for 2 cases, including a BC case against an oil company charged as a prime contractor. Curiously, the government sector also had 2 cases, both acquittals of municipalities for traffic control regulations committed by their prime contractors.

Table 3: Total Reported OHS Cases Based on Due Diligence by Sector in 2025

| Industrial Sector | Total Cases | Due Diligence Defence Succeeds | Due Diligence Defence Fails |
|----------------------------------------------------|-------------|--------------------------------|-----------------------------|
| Construction, Roofing, Paving, Framing, Excavation | 12 | 2 | 10 |
| Oil/Gas | 2 | 0 | 2 |
| Government | 2 | 2 | 0 |
| Manufacturing | 1 | 0 | 1 |
| Auto & Tire Shop | 1 | 0 | 1 |
| Traffic Control Services | 1 | 0 | 1 |
| Equipment Provider | 1 | 0 | 1 |
| Individual Worker | 1 | 1 | 0 |
| TOTAL | 21 | 5 | 16 |

Due Diligence Rulings by

Hazard/Violation Type

After being edged out by PPE in 2024, fall protection resumed its normal place as the leading type of OHS fine involved in reported due diligence cases this year. Not surprisingly, the defendant employer lost 5 of these 6 cases. Powered Mobile Equipment was the second most frequent reported charge with 5, followed by traffic control and cranes violations with 4 apiece. Only 3 other forms of OHS offence were reported in more than one case – first aid, failure to guard floor openings, and general material handling.

Table 4: Total Reported OHS Rulings Based on Due Diligence by Type of Charge in 2025

| Hazard/Operation | Total OHS Charges | Due Diligence Succeeds | Due Diligence Fails |
|--------------------------|-------------------|------------------------|---------------------|
| Fall Protection | 6 | 1 | 5 |
| Powered Mobile Equipment | 5 | 1 | 4 |
| Traffic Control | 4 | 2 | 2 |
| Cranes | 4 | 1 | 3 |
| Floor Openings | 2 | 1 | 1 |
| Material Handling | 2 | 2 | 0 |
| First Aid | 2 | 0 | 2 |
| Electrical | 1 | 0 | 1 |
| Excavation Work | 1 | 0 | 1 |
| Asbestos | 1 | 0 | 1 |
| PPE | 1 | 0 | 1 |

| Hazard/Operation | Total OHS Charges | Due Diligence Succeeds | Due Diligence Fails |
|-------------------|-------------------|------------------------|---------------------|
| Ladders | 1 | 0 | 1 |
| Ventilation | 1 | 0 | 1 |
| Machine Guarding | 1 | 0 | 1 |
| Power Tools | 1 | 0 | 1 |
| Tire Explosion | 1 | 0 | 1 |
| Eye Wash Stations | 1 | 0 | 1 |
| TOTAL* | 35 | 8 | 27 |

*Charges exceed the number of cases because many cases involve multiple charges.

Due Diligence Losses by OHS Program Breakdown

If the Due Diligence Scorecard were on fire and you could rescue only one of its elements, it should be the analysis of why the companies that lose their due diligence defences fail. Remember the context: The OHS violation has already been proven. Now the question turns to whether the defendant exercised due diligence, that is, took all reasonable steps to prevent the violation and comply with the law. These "reasonable steps" are the make or break that determine whether the company will be liable. While each case is different, courts cite certain common OHS program flaws as the reason for ruling that defendants didn't take the required reasonable steps.

As is often the case, failure to provide adequate training was the leading OHS program breakdown in 2025. In most of these cases, the losing company did, in fact, have an active and robust OHS training program; the problem was that it didn't take adequate measures to verify that the training they

provided was actually effective, i.e., that workers understood and were competent of carrying out their training. The next most common breakdown was inadequate supervision, followed by faulty or missing safe work procedures and failure to enforce safety rules.

Takeaway

As OHS coordinator, you should conduct a "reasonable steps" audit of each of the listed problem areas at your own workplace.

Table 5: OHS Program Breakdowns that Caused an Employer to Lose a Due Diligence Defence in 2025

| OHS Program Defect: Failure to Provide Adequate: | Cases |
|--------------------------------------------------|-------|
| Safety Training/Instruction | 7 |
| Supervision | 5 |
| Safe Work Procedures | 3 |
| Enforcement of Safety Rules | 3 |
| Inspection | 2 |
| Communication | 2 |
| Maintenance | 1 |
| Required Safety Programs/Plans | 1 |

| OHS Program Defect: Failure to Provide Adequate: | Cases |
|-----------------------------------------------------------------------------|--------------|
| Any OHS System | 1 |
| Incident Reporting | 1 |