

# 9 Common OHS Program Compliance Mistakes to Avoid



While saving lives and preventing work injuries is the paramount objective, safety coordinators are also charged with ensuring that their company's OHS program complies with regulatory requirements. But what exactly does compliance mean?

**Answer:** Boiled down to its essence, compliance means exercising "due diligence," that is, taking all reasonable steps to prevent OHS violations and the injuries and penalties they lead to.

Since due diligence is the standard by which you'll ultimately be judged if you're ever charged with an OHS offence, it's important to look at actual court cases to understand what those "reasonable steps" you're supposed to take are. While each case is different, there are certain common mistakes that companies make. Based on the [actual 2024 due diligence cases](#), here are 9 mistakes that can cause your own OHS program to fall short of due diligence.

## Mistake 1. Assuming Experienced Workers Don't Need Safety Training

Failure to provide the [training OHS laws require](#) is perennially perhaps the most common safety violation. Of course, employers who deliberately expose untrained workers to

hazards deserve whatever penalties they get. But for the vast majority of employers that care about safety and want to comply, the problem is in understanding what adequate training means. One common mistake is believing that experienced workers who've received training from previous employers don't need training **from you**.

**Example:** A BC manufacturer got hit with a stop-work order and [administrative monetary penalty \(AMP\)](#) of \$23,386 for failing to train a worker on its [lockout procedure](#) after a worker injured his hand on a radial saw. The fact that the worker had 22 years of experience in operating the saw from previous companies was no substitute for training him in the company's own lockout procedure, reasoned the tribunal in upholding the order and AMP [[A2301304 \(Re\)](#), 2024 CanLII 121757 (BC WCAT)].

## Mistake 2. Not Providing Specific Enough Safety Training

OHS laws require employers to ensure workers are trained in the hazards they face on the job. Certain types of operations and equipment may only be performed by "[competent persons](#)" with special, technical training. General safety training isn't enough to comply with these requirements.

**Example:** Prosecutors charge a manufacturer after a young worker gets killed while operating a forklift. The employer claimed that the victim attended regular toolbox talks and received information of safe work practices for forklifts and [powered mobile equipment](#). The Saskatchewan court ruled that this general information was enough to show due diligence on the first charge of failure to provide "information, instruction, training, and supervision" necessary to ensure the victim's health and safety – but it convicted the employer on the second charge of failing to ensure that only properly trained workers operated forklifts because the victim never received [required training on forklift operation](#) [[R v Brandt](#)

## Mistake 3. Not Providing Required Engineering Controls & Safety Equipment

OHS laws require employers to implement [reasonably practicable](#) engineering controls to eliminate or at least minimize work hazards, such as installing guardrails around dangerous openings into which workers may fall or ventilating indoor spaces to protect workers against exposure to airborne chemicals and contaminants. Lack of required engineering controls and safety equipment is a frequent source of OHS citations.

**Example:** A Nova Scotia court rejected the due diligence defence of companies charged with OHS violations for the [drowning death](#) of a dam site worker because they didn't furnish the required boat and rescue equipment at the site [[R. v. Brunswick](#), 2024 NSPC 49 (CanLII), August 2, 2024].

## Mistake 4. Assuming Workers Will Use Required Safety Equipment & PPE

OHS laws require employers to not only furnish but also ensure workers use the [PPE](#) and safety equipment necessary to perform certain hazardous operations safely.

**Example:** OHS inspectors cited a roof cleaning firm for a violation after observing workers on a roof without [fall protection](#). The firm claims due diligence, noting that it provided fall protection equipment, installed an anchor point on the roof and trained workers on how to use it. But the BC tribunal rejects the defence and upholds the \$8,374 AMP because the firm didn't adequately take steps to ensure that the

workers actually used the equipment [[A2300747 \(Re\)](#), 2024 CanLII 42967 (BC WCAT)].

## Mistake 5. Not Having Required Safety Policies & Procedures

OHS laws require employers to implement safety policies, programs, and procedures for carrying out specific kinds of hazardous operations, such as work inside a confined space or from an elevated platform requiring the use of fall protection. OHS inspectors that show up at your site will verify that you have all the required policies and cite you if you don't.

**Example:** One of the reasons the employer cited in the BC case above involving the radial saw injury to the experienced operator lost its due diligence defence was that it failed to establish a written procedure for locking out the saw during servicing.

## Mistake 6. Having But Not Implementing Required Safety Policies & Procedures

As many employers learn the hard way, simply having required safety policies, programs, and procedures isn't enough. To prove due diligence, employers must demonstrate that they implemented those policies, which at a minimum means:

- Putting them in writing.
- Keeping them in a location that all workers can easily access.
- Training workers to follow the policies.
- Disciplining workers who don't follow the policies.

**Example:** An excavation contractor had a clear policy requiring

crews not to use excavating machines but instead dig by hand if they have any trouble tracking the path of a buried gas line. So, the contractor claimed it used due diligence to prevent an OHS violation when the crew ignored the policy and caused a gas line explosion. But the BC tribunal didn't buy it, reasoning that "safety policies and programs do not amount to much if they are not enforced or ignored" [[A2400690 \(Re\)](#), 2024 CanLII 121657 (BC WCAT)].

## **Mistake 7. Not Accounting for Possibility of Worker Error**

You can't assume that workers will always follow the company's safety rules and procedures even if they've been trained to do so. You must also take into account worker error and consider what would happen if workers don't follow safety rules, either intentionally or inadvertently.

**Example:** A bucket truck 15 feet above the ground tips over and causes the fatal fall of 2 veteran power line workers who inexplicably failed to anchor their safety belt lanyards to the "D" ring. The power company is convicted of 3 OHS violations, including failure to provide safe equipment, proper training, or fall protection on elevated work platforms. It was reasonably foreseeable that journeymen workers with nearly 20 years of experience might forget to clip in their fall protection while being elevated, reasons the Saskatchewan court in nixing the company's due diligence defence [[R. v. Saskatchewan Power Corporation](#), 2024 SKPC 12 (CanLII)].

## **Mistake 8: Not Disciplining Workers for Violating Safety Rules**

Just as it's "reasonably foreseeable" that workers will make mistakes, you need to account for the possibility of workers

deliberately violating your safety rules. That's why [discipline](#) is a "reasonable step" required to show due diligence. Toleration of past violations makes future violations even more reasonably foreseeable while also suggesting that your company's OHS system is just a façade.

**Example:** A worker was crushed to death while trying to fix a broken iron plate by himself in violation of company policy requiring a lockout. While the company had safety procedures, a dock supervisor testified that no worker had ever received a written warning, suspension, or dismissal for violating them. Citing the "very laissez-faire" safety culture, the Ontario court rejected the company's due diligence defence [*R. v. Wilson's Truck Lines Ltd.*, [1998] O.J. No. 3219, May 22, 1998].

## Mistake 9. Not Performing a Proper Safety Incident Investigation

Due diligence requires reasonable steps to manage hazards that are reasonably foreseeable. So, if and when a safety incident occurs, the company is on notice that such incidents can happen and thus must implement appropriate safety measures including conducting a [proper investigation of the incident](#) to identify its root cause and take corrective actions to prevent it from happening again. Accordingly, failure to conduct such an investigation puts your prospects of making out a due diligence in serious jeopardy should the problem recur.

**Example:** A forestry operations company was fined \$69,550 for an incident in which a logging machine being operated on a steep slope became unstable and rolled down the slope, seriously injuring the operator. The company appeals. But the BC tribunal upholds the AMP, finding that the incident was similar to one that occurred 14 months earlier and that could and should have been prevented had the original incident been properly investigated [[A2102510 \(Re\)](#), 2024 CanLII 22802 (BC

WCAT) ] .