

Are Employers Liable for Injuries Caused by Victims' Own Safety Violations?



It depends on whether they knew or should have known workers would break the rules.

The OHS laws require you to establish and train workers to follow procedures to ensure the safe performance of hazardous operations like blasting or confined space entry. But what happens if a worker who should know better deliberately decides not to follow the safety procedures and gets injured as a result? Is it fair to hold the employer liable for the incident? **Answer:** The mere fact that a worker commits a safety violation isn't enough to prove you acted with due diligence if you knew or should have known that such a violation would happen. Here are 2 venerable court cases that illustrate the factors that determine whether employers are liable for injuries caused by worker safety violations.

EMPLOYER SHOWED DUE DILIGENCE & INCIDENT IS WORKER'S FAULT

SITUATION

A Saskatchewan meat packing plant has a clear safety rule banning workers from wearing loose clothes or jewelry that could get ensnared in moving machine parts. But a worker deliberately defies the rule by wearing her engagement ring. Then, when frozen hamburger patties get stuck in the nitrogen tunnel area of a production line, she reaches into the tunnel to remove the patties and gets her hand jammed when the ring snags on the conveyor. She loses 2 fingers in the incident. The government charges the plant/employer with one OHS violation, failure to provide proper supervision.

RULING

The Saskatchewan Provincial Court finds the plant not guilty because it exhibited due diligence.

EXPLANATION

The plant took reasonable steps to comply with the law and prevent the violation, according to the court. It provided extensive training to the victim.

As part of that training, the victim was warned to keep her hands away from belts and equipment. The victim admitted that she knew of the no jewelry rule and understood that it was for her own protection, but deliberately disobeyed it. More importantly, the court said the plant had no reason to suspect that the worker wouldn't follow safety rules. The victim 'was the author of her own misfortune,' it ruled.

1. *v. CIC Foods*, [2004] S.J. No. 479

EMPLOYER DIDN'T SHOW DUE DILIGENCE & INCIDENT IS EMPLOYER'S FAULT

SITUATION

A 21-year-old mine worker falls more than three metres to his death. The victim was wearing a proper fall-arrest harness. But he hadn't 'tied off' the equipment. The company had properly trained the victim how to use the equipment and stressed the importance of 'tying off.' But the victim deliberately disobeyed instructions to save time. The employer denied responsibility for the accident.

RULING

The Ontario Superior Court rejects the employer's due diligence defence and finds it guilty of failing to ensure that a proper fall-arrest system was in place.

EXPLANATION

Just like in the *CIC Foods* case, the employer provided proper training and established proper safety rules. And just like in the *CIC Foods* case, the victim deliberately disobeyed the rules. But unlike in the *CIC Foods* case, the employer knew that workers weren't obeying the rules. Specifically, it knew workers were deliberately not 'tying off' to save time. Tolerating this 'culture of discretion' violated OHS laws, the court said.

1. *v. Moran Mining & Tunnelling*, [2004] O.J. No. 5592

Takeaway

The same principles that govern employer liability for incidents and injuries caused by workers' safety violations also apply when the incident or injury is caused by worker carelessness. In other words, the question becomes whether it was reasonably foreseeable that a worker would act carelessly.