

Are Employers Liable When Workers Deliberately Remove Machine Guards?



It depends on whether the worker's violation was reasonably foreseeable.

Lack of machine guarding is a common cause of serious workplace injuries and OHS penalties. But what if companies do put machine guards in place and workers deliberately remove them? Should the employer still be liable for a machine guarding violation? The answer depends on whether the employer exercised due diligence to ensure compliance and prevent the injury. And that in turn depends on whether the employer should have reasonably foreseen that workers would remove the machine guards. Here are 2 venerable cases addressing that issue. While both are from Ontario, the principles involved apply in all parts of Canada.

Company IS Liable for Machine Violation

Situation

An Ontario manufacturer installs machine guards to block workers' access to a sheet metal press. The guards don't completely surround the machine. A narrow gap affords access to a moving part. But a worker would have to make a determined effort to squeeze through the gap. The company warns workers not to do this. A worker disobeys and suffers a fatal injury. The company denies responsibility for the accident.

Ruling

The court finds that the company didn't exercise due diligence and is guilty of violating OHS machine guarding regulations.

Reasoning

The company should have completely blocked access to the moving part. True, access was restricted and difficult to accomplish. But the company should have foreseen that some worker would be idiotic enough to try. 'The scheme of the [OHS] Act appears to be to protect the foolish, heedless, thoughtless employee,'

the court reasons. 'The wise, careful and thoughtful ones will protect themselves.'

1. *v. Commodore Business Machines*, Ont. Prov. Ct., unreported decision, Nov. 15, 1985

Company Is NOT Liable for Machine Violation

Situation

An Ontario paper manufacturer shows a worker how to operate a printer-slotter machine and orders him never to try and clean the machine while it's in motion. The worker disobeys the order and suffers a serious injury. The company denies responsibility for the incident.

Ruling

The court finds the company not guilty of OHS charges because it exercised due diligence.

Reasoning

A company must take reasonable precautions to carry on the business safely. But once it does that, the court continued, it shouldn't be held responsible for every violation, especially if the violation is caused by the worker's deliberate disobeying of orders. 'How can [the company] prevent a violation solely within the worker's control, where the worker does the prohibited act intentionally, negligently or through his own inadvertence,' asked the court.

1. *v. Z-H Paper Products Ltd.*, 27 O.R. (2d) 570, 1979