

Is a Company to Blame for Injuries Caused by Worker's Safety Violations? – Ask The Expert



It depends on whether it was 'reasonably foreseeable' that the worker would violate the safety rule.

QUESTION

Suppose a company implements safety procedures but a worker doesn't follow them and gets injured as a result. Would the company be liable?

ANSWER

It depends.

EXPLANATION

The question you ask is one with which courts, prosecutors and employers have wrestled for decades, usually in the context of due diligence. **The scenario:** A worker suffers a serious injury or fatality as a result of violating a company safety policy or procedure, e.g., deliberately disabling a machine safeguard while servicing the equipment. Since the machine guard was disabled, an OHS violation occurred. The question then becomes

whether the employer exercised due diligence, that is, took reasonable steps to comply and prevent the violation.

The fact that the worker didn't obey a safety policy suggests that the incident was the worker's fault and the employer shouldn't be held responsible. But it's more complicated than that. In assessing whether the employer exercised due diligence, courts consider whether it was 'reasonably foreseeable' that the worker wouldn't follow the policy. If so, the court will hold the employer for not anticipating and taking steps to prevent the violation. Incriminating evidence against the employer could include the fact that:

- The worker didn't receive proper training in how to carry out the safety policy or procedure;
- The company didn't consistently enforce its safety policies and tolerated violations;
- Other injuries or incidents occurred because a worker didn't follow the particular policy or procedure; and/or
- Somebody or something 'like a supervisor, JHSC, OHS inspector or consultant' warned the employer that workers were likely to violate the policy or procedure.