

Avoid Incriminating Yourself When Reporting Work Incidents to OHS Officials



Don't use legally required incident reports to 'tell the story of the accident.'

OHS laws require employers to report serious workplace accidents, injuries and illnesses to the government. Not filing a proper accident report can expose the company and its officials to the risk of prosecution and fines. For example, an Ontario restaurant owner was fined \$20,000 for not reporting a broken leg suffered by a waitress [*R. v. Famz Foods Ltd.*]. A Saskatchewan farming operation was hit with a \$14,286 fine for failing to report the hospitalization of a worker with a machine injury [*K. Hauesler Farms Inc.*, Govt. Press Release, December 22, 2020].

OHS Reporting Fines:

- **\$43,750** (total fine for 2 OHS violations): Worker suffers serious finger injuries after reaching into fully energized machine to clear paper jam and manufacturer didn't notify Manitoba WSH Branch until the next day [*Advance Paper Box Ltd.*, March 12, 2019];
- **\$20,000**: Ontario restaurant owner didn't report broken leg suffered by a waitress to MOL [*v. Famz Foods Ltd.*, Govt. Press Release, May 1, 1998];
- **\$14,286**: Saskatchewan farm operator didn't report hospitalization of a worker with a machine injury [*Hauesler Farms Inc.*, Govt. Press Release, December 22, 2020];
- **\$10,075**: Alberta company waited 2 days to notify Manitoba WSH Branch of worker's injuries in an acetylene torch explosion [*316291 Alberta Ltd. Operating as Western Archrib*, March 15, 2018]; and
- **\$2,100**: Saskatchewan company didn't report hospitalization of worker injured in ladder fall within 72 hours [*Alford Floors & Interiors (1967) Ltd.*, 2017].

On the other hand, 'many companies and their representatives don't realize that while they do have to report accidents, they don't have to provide any more information than the law requires,' notes a Toronto OHS lawyer. Providing extra information isn't just unnecessary; it may hand the prosecutor evidence it can use to build a case against you.

What Your Accident Reports Says May Be Used Against You

Accident reporting is crucial to the viability of the OHS system. The government needs to know when accidents happen. It also needs basic information about the accident so it can investigate and enforce the laws. Since the government can't be everywhere at once, it's reasonable to require companies to notify the authorities when accidents occur. Self-reporting helps the government track, analyze and, ultimately, prevent accidents.

But there's also another side to consider. When the government investigates an accident, it's also looking for evidence it can use to prosecute the company and its officials. The accident report is often the first place the government looks for incriminating evidence, warns an OHS lawyer. 'In Ontario, for example, prosecutors will often use and put into evidence the accident report the company submitted under the *OHS Act*,' she explains.

Example: An Ontario manufacturer hired an engineering firm to investigate the cause of an amputation injury. In addition to technical details, the report cited a Hazard Alert from the Ministry of Labour (MOL) from 5 years earlier warning of the machine part that caused the accident. The engineer attached a copy of the Alert (which wasn't even posted on the MOL's website) to the report. The company included a copy of the complete engineer's report, Alert and all, with the accident report. The government used these materials as evidence in its prosecution of the company.

Strategic Pointer: Alberta is the only province that expressly bans prosecutors from using accident reports in this way. Section 33(8) of the *Alberta OHS Act* says an accident report 'is not admissible as evidence for any purpose in a trial arising out of the serious injury or accident, an investigation or public inquiry under the *Fatality Inquiries Act* or any other action.'

How Accident Reporting Rules Work

In some jurisdictions, employers must provide 2 layers of notice after a reportable accident occurs:

- Immediate notification 'no later than 24 hours' to the OHS agency or workers comp board by whatever means necessary; and
- A report, typically within 3 days, outlining the findings of your preliminary internal investigation.

Many jurisdictions also require you to provide a copy of the reports to the workplace joint health and safety committee or health and safety representative (which we'll refer to as the 'JHSC report'), if there is one.

4 Ways to Protect Yourself

You need to ensure the accident reports you prepare aren't self-incriminating. 'No company should make admissions in a report, or hand government officials a case for prosecution on a silver platter,' the lawyer cautions. Here are 4 things you can do to protect yourself:

1. Don't Tell the 'Story of the Accident'

Bottom Line on Top: Don't use the accident report to 'tell the story of the accident.' It may be tempting to do this, especially if you think the circumstances will exonerate the company. But the deadline for reporting accidents is generally brief and doesn't leave time for careful consideration and research. As a result, companies that 'tell the story' in the accident report tend to include erroneous information or omit crucial details from their accounts. If you feel that giving an extensive account of the accident will help your cause and discourage a prosecution, lawyers suggest providing it after you submit the accident report in a letter carefully drafted by a lawyer.

2. Don't Volunteer More Information than the Law Requires

What **should** you put in your accident report? **Answer:** No more and no less than the law says you must. There's no need to prepare a detailed report that goes beyond minimum statutory requirements. Most jurisdictions specify the information you must list in the accident report, either in the OHS laws or in the official government accident reporting form you must complete. Such information typically includes:

- The employer's name;
- The victim's name and position (which you may be able to redact from the JHSC report for privacy purposes);
- The time, date and place of the accident;
- The names of witnesses;
- A description of the accident; and
- The apparent causes.

Things **not to list** in an accident report no matter what jurisdiction you're in:

- Admissions of violations or wrongdoing;
- Conjecture as to the cause of the accident;
- Statements of witnesses;
- Previous concerns or complaints by the JHSC or health and safety representative;
- Conclusions of your internal investigation;
- Reports of engineers, consultants or technical experts; and
- Anything else that the government can use to incriminate you.

Strategic Pointer: To repeat, be sure to instruct personnel completing accident reports that if the accident cause is unknown, this fact should be listed in the accident report, as opposed to speculation or conjecture about potential causes.

3. Show Report to Your Lawyer

Don't submit an accident report without first showing it to a lawyer who knows your province's OHS laws. Lawyers can help you figure out if the report contains any unnecessary information that may be incriminating. They can also include certain terms and conditions in the report to protect your rights in a later investigation.

4. Implement an Accident Reporting Policy

Last but not least, you should include accident reporting procedures and guidelines as part of your overall OHS program. Accident reporting is an essential part of any OHS program. One of the things the accident reporting policy should explain is what an accident report should (and should not) contain. You can base the latter section of your policy on the [policy template](#) on the OHSI website.