

BRIEF SENIOR MANAGEMENT: Personal Liability as Supervisors for Safety Offences



- A roofer fell off a roof and a bucket of hot tar spilled on him. He suffered multiple broken bones and third degree burns. The owner of the contractor—and supervisor at the time of the incident—was fined \$10,000 for a fall protection violation [*Joe Scarna*].
- A worker changing a tire on an excavator was crushed to death when it fell on him. The president of the tire company pleaded guilty to failing, as a supervisor, to ensure that the excavator was securely and solidly blocked and was fined \$10,000 [*Michael Holmes*].
- A concrete panel collapsed on top of a worker, killing him. Although the company president, who was supervising the work, had a copy of an engineered procedure for safely performing the work, this procedure wasn't followed. He pleaded guilty, as a supervisor, to two OHS violations and was fined \$30,000 [*Barry Wood*].
- After an inspection of a construction site, a roofing company and a director were charged with OHS violations. The director pleaded guilty, as a supervisor, to fall protection violations. He was fined \$1,250 [*Oceanside Roofing Inc.*].

THE PROBLEM

What do these cases above have in common? They each involve the prosecution of a company executive as a supervisor for safety violations. Members of senior management can be liable under the OHS laws as officers and directors of the company. But if they play a more hands-on role in the company's daily operations, they may also face liability as supervisors. As the cases above illustrate, company owners, officers, presidents and other members of senior management are being prosecuted as supervisors and fined with increasing regularity across Canada, especially, but not solely, in Ontario.

THE EXPLANATION

Typically, companies are prosecuted as employers for the safety violations committed by their employees. But individuals can also be held personally liable for safety violations. That's because the OHS laws impose safety duties on not

only employers but also certain individuals. Members of senior management face possible personal liability under the OHS laws as:

Officers and directors. Most jurisdictions' OHS laws specifically hold officers and directors personally liable for corporate safety violations in certain circumstances. And this liability may extend beyond corporate officers and directors to include any agent of the company who directed, authorized, assented to, acquiesced or participated in the commission of a safety offence. Thus, such personal liability may apply to many members of senior management. (Here's a chart showing the personal liability of officers and directors for safety violations committed by their corporations under the OHS law of each jurisdiction.)

Supervisors. Members of senior management may also face personal liability for safety violations to the extent they qualify as supervisors. The OHS laws in eight jurisdictions—BC, MB, NL, NT, NU, ON, SK and YT—spell out specific supervisor safety duties. And they typically define “supervisor” very broadly and based on the *functions* a person performs at the workplace rather than on his title. As a result, anyone—including members of senior management—who exercises supervisory functions can be charged as “supervisors” even if they don't have a “supervisory” title. And although the OHS laws of the other six jurisdictions—Fed, AB, NB, NS, PEI and QC—don't specify supervisors' health and safety duties, supervisors there have implied duties.

In large companies in which members of senior management are removed from daily operations, senior managers likely face personal liability only under the officer and director provisions in the OHS law. But in some companies, especially small ones, company executives may wear several hats in the organization. For example, a company president may be directly involved in the work the company performs and take a hands-on approach to overseeing its operations. Depending on the nature of his involvement in these operation, he could qualify as a supervisor under the law. So if the president fails to fulfill the duties of a supervisor, he could face personal liability as a supervisor for any resulting safety violations.

THE SOLUTION

The more involved that managers get in the company's daily operations, the more likely they are to face liability as supervisors for safety violations that happen on their watch. So members of senior management need to be aware of their possible liability risks as supervisors and the trend of charging senior company officials as supervisors for safety violations. And if managers take a hands-on approach to operations, they should get training on supervisors' duties under the OHS laws and the consequences of failing to fulfill those duties.

SHOW YOUR LAWYER

R. v. Barry Wood, Ontario Govt. News Release, July 12, 2012

R. v. Joe Scarna, Ontario Govt. News Release, July 18, 2012

R. v. Michael Holmes, Ontario Govt. News Release, Aug. 14, 2012

R. v. Oceanside Roofing Inc., NL Govt. News Release, Sept. 14, 2012