

Brief Your CEO on How Supervisors Protect Company Officers from OHS Liability



When it comes to supervisor safety responsibilities, there's a fine line between delegation and dependence

Instructions: Here's a briefing for OHS directors to provide their CEO or corporate officers about the dangers of blindly letting supervisors 'take care' of workplace safety. You can either read the officers the briefing or hand it to them to read for themselves.

A trucker at an Ontario road construction project delivers rock fill from a blasting site. Upon arriving at the dump location, he parks his truck right under a power line. When he lifts the dump box it touches the line and 115,000 volts surge through the trucker's body with fatal results. The supervisor didn't warn the trucker about the power lines or provide safety instructions. In fact, he wasn't even on the scene when the accident took place. The Ministry of Labour charges the supervisor and the company for violations of the Ontario *OHS Act*. The company denies responsibility. 'We hired a competent supervisor,' it claims. 'It's not our fault that he didn't do his job.' But the court isn't convinced and finds the company guilty [*Ontario (Ministry of Labour) v. Helmer Pedersen Const. Ltd.*, [1990] O.J. No. 653].

The Challenge

OHS laws require employers to hire competent supervisors who have adequate training in health and safety. There was no dispute that the company in the *Helmer Pedersen* case met this obligation. The supervisor it hired to oversee the project clearly knew his stuff. In fact, he had what the court called a 'wealth of experience both with this company and other employers.' But the *Helmer Pedersen* case illustrates 2 important points about supervisors and a company's OHS liability:

- Even competent supervisors make mistakes; and
- The company can be liable for the results of those mistakes.

The Solution

Supervisors are obviously critical to workplace safety and OHS compliance. But there's more to it than just hiring qualified and competent people and assuming they'll do their jobs. 'Hiring a competent foreman or superintendent is not the end of a company's responsibility,' according to the *Helmer Pedersen* court.

What else does a company have to do'

Answer: Ensure that supervisors are aware of their safety responsibilities and actually carry them out.

What It Means

The *Helmer Pedersen* court is not saying that a company is automatically responsible any time competent supervisors make a mistake. What the court is saying is that a company has certain responsibilities for safety that it can't delegate to supervisors, no matter how competent those supervisors are. And while the *Helmer Pedersen* case is over 3-decades-old, it

remains a landmark ruling in not just Ontario but all parts of Canada.

What to Do

If you're counting on the supervisors and foremen to 'take care' of safety for the company, you're making the exact same mistake that got the company in *Helmer Pedersen* into trouble. When it comes to safety, you need to get involved. No, you don't have to show up at the site with a clipboard and personally conduct safety inspections. You can still count on supervisors to do those kinds of day-to-day tasks. But you need to oversee how they do those duties. For you and your fellow officers and directors, appropriate oversight would involve taking steps to ensure that:

- Supervisors are aware of and receive training in their obligations under the OHS laws;
- There's a system in place to ensure that supervisors provide safety instructions;
- Supervisors are prepared to enforce the company's rules and policies even if it means disciplining noncompliant workers; and
- The carrying out of safety-related responsibilities is one of the factors company managers consider when appraising supervisors' job performance.