

Brief Your CEO on Injury Reporting & Workers' Comp Fraud Liability Risks



One of your biggest responsibilities as an OHS coordinator is to keep company executives apprised of liability risks under OHS and workers' comp laws. Here's a briefing you can deliver on a key issue that tends to fly under the C-Suite radar—namely, potential liability for fraudulent and improper workplace injury reporting. Modify the text below to adapt the Briefing to your own situation.

Situation

An Ontario salt mining and processing company submitted false or misleading reports to the Workplace Safety and Insurance Board (WSIB) about the injuries sustained by its workers. For example, it reported that a worker had “damaged” 2 fingers when, in fact, they'd been amputated. The company ended up pleading guilty to 6 counts of knowingly making false or misleading reports to the WSIB that minimized the seriousness of the incidents and one count of failing to report a workplace injury. **Result:** The company was fined \$600,000 [*WSIB v. Canadian Salt Company Ltd.*].

Compliance Challenge

Workers' comp boards across Canada are making a determined effort to crack down on fraud. While the term “workers' comp

fraud” may summon up images of workers’ faking or exaggerating injuries to claim benefits they don’t deserve, employers can be guilty, too. **Explanation:** Workers’ comp laws require employers to report workplace injuries and illnesses to the provincial or territorial workers’ comp board. Those injuries must be reported in a timely manner, and they must be reported accurately. The *Canadian Salt* case is an example of the significant penalties companies may face for failing to meet these injury reporting obligations.

The Law of Workplace Injury Reporting

Injury reporting requirements are contained in both OHS and [workers’ comp laws](#). Although they vary by province, in general, employers must report any workplace injury to workers’ comp where one of the following conditions is present or subsequently occurs:

- The worker loses consciousness after the injury.
- A first aid attendant or other employer representative transports or directs the worker to a hospital or other place of medical treatment, or recommends that the worker go to such place.
- The worker receives medical treatment for the injury.
- The injury is one that obviously requires medical treatment.
- Because of the injury, the worker is unable or claims to be unable to return to their usual job assignment on any working day after the injury occurs.
- The injury or incident results or is claimed to have resulted in the breakage of an artificial limb, eyeglasses, dentures, or a hearing aid.

Injury reports must be filed with the workers’ comp board anywhere from 3 to 5 days after the injury occurs, depending on the province. Workers’ comp boards need accurate information about workplace injuries to properly process workers’ claims and determine what workers’ comp premium rates

companies should pay. Accident rates are used to determine the premiums employers pay for workers' comp insurance. Some workers' comp boards also offer rebates to employers with injury or claim rates below specific benchmarks for their respective industries.

For these reasons, employers may have an incentive to under-report or minimize the workplace injuries their workers suffer. Failing to file an injury report or filing false or misleading reports is a serious offence that exposes the company and its officers and directors to liability. Even unintentional reporting delays or misstatements can lead to prosecution under not only the workers' comp law but also the *Criminal Code*. The penalties for such violations are often great. The \$600,000 fine in the *Canadian Salt* case isn't an aberration. A number of companies have been prosecuted and fined high amounts for workers' comp reporting violations.

Compliance Takeaway

Ultimate responsibility for ensuring that workplace injuries are promptly and accurately reported to the proper authorities falls to you and your fellow officers and directors. To meet that responsibility, you must ensure that:

- You're familiar with the company's injury reporting policies and procedures.
- All workers understand their reporting obligations, including which injuries they must report and to whom.
- Staff members responsible for filling out the workers' comp injury reports on the company's behalf are properly trained and understand the reporting requirements and deadlines.
- Staff members responsible for filling out the workers' comp injury reports get complete and accurate information about all workplace injuries, including the nature and extent of any medical treatment given, whether the worker was put on modified duty, how long

the worker was out, and so on.

- A senior staff member reviews all workers' comp injury reports before they're filed with the workers' comp board.