

Brief Your CEO: Temporary Workers and Training



A grocery store in Ontario brought in a truck driver from a temporary employment agency. Apparently, the driver hadn't gotten formal training on using a lifting device he was asked to operate. While trying to manoeuvre the device, he put it in reverse and drove it off the dock, breaking his ankle and hurting his arm. The grocery store—not the temp agency—was held responsible for the driver's injuries and charged with an OHS violation. It pleaded guilty to failing to ensure that the lifting device was only operated by a competent person or by a worker accompanied and instructed by a competent person and was fined \$75,000 [LOEB Canada Inc.].

THE PROBLEM

Every jurisdictions' OHS laws require companies to protect the health and safety of their workers. That is, companies must make sure that workers get proper instruction, training and supervision on the assigned jobs, the use of any equipment and safety in general. But what about temporary workers, such as seasonal workers or workers brought in on a short-term basis, say, to fill in for workers on vacation or leave or to meet increased production demands? Some companies assume that the temporary employment agency that provides the temporary workers has properly trained them for the assigned jobs—and vice versa. But that assumption can be a costly one, as the Ontario case shows.

THE EXPLANATION

You and your fellow officers are required under the OHS laws to exercise due diligence. That is, you must take every reasonable precaution to ensure that the work the company controls is carried out in accordance with the law and in a way that's designed to identify and prevent foreseeable workplace risks. The company clearly controls the work done by its employees. And it also arguably controls the work done on its behalf and in its workplace by temporary workers. So it's incumbent on the company and its officers to ensure that temporary workers have the appropriate skills and training to perform their assigned jobs and to provide them with appropriate health and safety training. If the company doesn't, temporary workers may be unaware of the hazards present at the workplace as well as any hazards particular to their assigned jobs, increasing the risk that they'll suffer a work-related injury or illness for which the

company—and its officers—may then be held responsible.

But that doesn't mean the company is *solely* responsible for ensuring the safety of temporary workers. For example, an inspector in Ontario ordered a temporary employment agency to "instruct and train all workers placed at clients' workplaces on health and safety legislation and hazards associated with all tasks which they do or perform" [*Prashad v. Zaher*]. And a bulletin issued by the Manitoba Dept. of Labour and Immigration explains that a temporary worker essentially has two employers: the temporary employment agency and the company that runs the workplace. And both employers have legal responsibilities regarding a temporary worker's health and safety [*Bulletin #241*]:

Agency's safety responsibilities. In general, temporary employment agencies are responsible for ensuring that temporary workers get sufficient initial health and safety information and training in preparation for the workplace and assigned job. More specifically, they're required to ensure that temporary workers:

- Get an initial health and safety orientation so that they can identify common hazards in the workplace to which they're sent;
- Get a workplace orientation and job specific training—including safe work procedures—from the company with which they're being placed;
- Are aware of their responsibility to follow workplace health and safety rules and safe work procedures at each workplace and for each assigned job;
- Understand that they must get appropriate training for all tasks;
- Understand the job they're sent to perform; their right to ask questions about the job they're assigned to do; and their right to refuse to do work they believe is unsafe; and
- Are capable of doing the assigned job.

Company's safety responsibilities. Companies that hire temporary employees bear the greatest burden for ensuring the health and safety of such workers in the workplace. They're required to ensure that temporary workers:

- Get a workplace orientation, including location of emergency exits, first aid kits, and eye wash equipment; a review of emergency fire and evacuation plans; and a review of workplace safety rules;
- Get job-specific training, including safe work procedures and job hazard information;
- Are given appropriate tools and protective equipment to perform their assigned jobs in a safe manner;
- Get competent supervision;
- Understand the job they're assigned to do as well as any work they're *not* to perform; and
- Don't operate powered lift equipment (such as forklifts and powerjacks) unless certified by the company to do so—that is, the company must train the temporary worker on its equipment, hazards and safe operating procedures before the worker is allowed to operate that equipment.

THE LESSON

If a temporary worker is injured at our workplace because he didn't get proper training, arguing that the temporary employment agency that provided the worker was responsible for his training won't shield the company or its officers from liability. Instead, the company must be proactive and treat temporary workers

much like it treats its permanent workers. So the company must provide sufficient health and safety information and training for temporary workers to prepare them for the workplace and their assigned jobs.

SHOW YOUR LAWYER

Bulletin #241: Manitoba Dept. of Labour and Immigration, January 2006

LOEB Canada Inc., MOL News Release, May 8, 2006

Prashad v. Zaher, 2001 CanLII 956 (ON L.R.B.) Oct. 24, 2001

More Reading: New Study Says Temporary Workers at High Risk of Injury