

Company And CEO Both Convicted Of OHSA Offences, Despite The Absence Of A Workplace Accident



Bottom Line

A Kitchener-based manufacturing company and its CEO were recently convicted of offences under Ontario's *Occupational Health and Safety Act* ("OHSA") after they failed to ensure that machines being operated in the workplace were equipped with proper guarding.

Background Facts

In December 2021, the Ontario Ministry of Labour responded to an anonymous complaint from a worker, which reported that individuals were bypassing the guarding devices on a number of nail-maker machines. Upon arriving at the workplace, the Ministry's Inspector observed that a number of machines were equipped with what the Inspector viewed as being inadequate guards and that a number of fixed guards and protective devices that had originally been installed on the machines had been removed. The company had been convicted on two other occasions for OHSA-related offences in the last six years.

Even though no workers were actually injured due to the lack of guarding, the Ministry charged the employer with failing to ensure the machines were equipped with adequate protective devices. The employer's CEO was also charged in their personal capacity for the same offence. Ultimately, both the company and the CEO pled guilty and were issued fines of \$85,000 and \$15,000, respectively.

The Decision

This case is somewhat unusual in two ways.

Firstly, although the Ministry has the power to lay charges against the officers and directors of a corporation in connection with violations of the OHSA, the Ministry has rarely done so.

Secondly, the Ministry has generally issued formal charges against an employer where a workplace accident had occurred. In situations where there is no

accident, the Ministry has typically limited itself to issuing compliance orders directing the employer and/or other workplace parties to correct the hazards that have been identified.

In this case, it seems the fact that the Ministry not only pressed charges in the absence of an accident, but also charged the CEO personally, is likely because the incident was the third conviction against the company in six years. With repeat offenders, Ministry Inspectors have often ramped up their enforcement activities, increasing the frequency that they visit the employer's jobsite(s) and demonstrating an increased willingness to issue charges and/or tickets in the name of deterrence.

Check the Box

This case is an important reminder for employers to be proactive about enforcing proper health and safety protocols in the workplace. Workers, supervisors, officers, and directors can all be held liable in their personal capacity if they fail to comply with their statutory obligations to ensure a safe workplace. Additionally, as the Ministry is not restricted to issuing compliance orders where health and safety infractions are identified in the absence of an accident, employers can face significant fines if they have not adequately identified and addressed any workplace hazards before they are subject to a Ministry inspection.

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