Don’t Assume that Following an Industry Standard Is Enough to Comply with OHS Requirements



Following industry standards can help a company comply with OHS requirements for material handling that are broadly written and don’t provide specifics. For example, it could be reasonable to follow an industry standard of stacking materials 5-units-high where OHS regulations require safe stacking of those materials but don’t specify how high stacks can be. But just because a practice is standard in your industry doesn’t necessarily mean that it complies with the OHS law.

Relying on Industry Standard Costs Alberta Company $100,000

An Alberta company learned this lesson the hard way. Two workers were assigned to sort a pile of scrap aluminum. Because the pile was so large, there wasn’t enough room in the area where it had been dumped to sort it. So, the foreman told the workers to sort the scrap in a location close to stacked bales of scrap wire that were 4-bales-high and about 3-metres-tall. A large, heavy bale fell on top of a worker while he was

sorting the aluminum on the ground. The incident proved fatal.

The company was prosecuted for an OHS violation. In its defence, it noted that the regulation didn't specify how high the stacks could be and claimed that stacking them 4-high met the industry standard. But the Alberta court didn't buy it, reasoning that while an industry standard may be a relevant starting point in determining what an employer must do, it isn't the same as the legal standard of care. The 'known instability' of the bales and the fact that the company didn't have a written stacking policy or make efforts to keep workers away from the bales undermined its due diligence defence, the court concluded [*R. v. General Scrap Iron & Metals Ltd.*, [2003] ABCA 107 (CanLII)].

Takeaway: Make Sure Your Industry Standard Is Consistent with the OHS Law

There are 3 things you should do instead of blindly following industry standards and assuming that you're complying with OHS laws:

1. Compare Industry Standard to OHS Requirements in Your Jurisdiction

If the OHS regulations establish clear and specific stacking requirements, those requirements are the ones you must follow. For example, if OHS regulations set a height limit on stacks or require the use of supports or anchors for stacks, following an industry standard that permits the stacking of

material over that height limit and without supports or anchors won’t relieve your company of liability for a safety offence. But substituting an industry standard for an OHS requirement may not only be acceptable but also advised if the industry standard is *stricter,* that is, it allows for stacking 3-units-high instead of the 4 units permitted by the OHS law.

2. Verify that Standard Is an Industry Standard

Ensure that what you believe to be the industry standard really **is** the standard for the industry. The employer has the burden of proving that the practice it followed was the industry standard, which isn’t always easy to do.

3. Verify that the Industry Standard Is Reasonable

Even when the practice you follow is actually followed by others in the industry, you’re still not necessarily off the hook. The industry standard will cut ice only to the extent it’s a reasonable safety standard. For example, the court in the *General Scrap* case suggested that stacking scrap metal bales four high wasn’t a reasonable standard given how unstable those stacks are.

In addition, courts distinguish between industry **practices** and industry **standards** and afford far more weight to the latter to the extent they represent not simply what people in the industry do but what they think it’s important to do. And even then, industry standards won’t help you in an OHS case if its purpose is to promote efficiency or any other goal other than

safety. is clearly an industry standard, the practice must also be reasonable.