

How Construction Rules May Apply to Non-Construction Sites: Quiz



It's the work, not where it's carried out that determines which OHS requirements apply.

Fall protection, PPE, materials handling and other OHS requirements may be more detailed and stringent when they apply to 'construction' work. This is particularly the case in Ontario and other jurisdictions that have separate OHS regulations for construction sites. Of course, you don't have to worry about this if you're at a manufacturing plant, warehouse or any other establishment that's obviously not a construction site. Or do you'

SITUATION

A manufacturing company in Ontario decides to install a metal press machine using both its own and contractor workers. The company controls the work, which involves assembling the pieces inside the factory through the use of hoists. The worker operating the hoist is 'competent' to do so under the OHS regulation covering 'Industrial Establishments' (RO 1990, Reg 851) but lacks the written proof of training required under the regulation for Construction Projects (O Reg 213/91). The Ontario MOL claims the work is 'construction' and cites the company for violating the construction regulation; it also orders the company to file a notice of project for construction work. The company contests both actions, claiming it's subject to the Industrial Establishments regulation.

QUESTION

Which, if any, of the following violations did the company commit'

- A. Failure, as a constructor, to file a Notice of Project for construction (under Section 23(2) of the Ontario *OHS Act*)
- B. Letting an unqualified worker operate a hoisting device (in violation of Section 51(2) of the *Construction Regulation*)
- C. Both
- D. Neither

ANSWER

C. The company would be guilty of both offences listed in A and B.

EXPLANATION

OHS requirements vary depending on the kind of work involved. Generally speaking, the more dangerous the work, the more stringent the rules. Accordingly, construction regulations tend to be more onerous than those that cover less dangerous kinds of work. But this scenario illustrates an important point that applies not just in Ontario but in most jurisdictions: It's the nature of the work and not where it takes place that determines which rules apply. In other words, work might be considered 'construction' even if the work takes place in a manufacturing or other work setting that you wouldn't normally think of as being the site of construction work.

In Ontario, for example, 'construction' includes not just traditional construction activities such as excavation and erection but 'installation of machinery or plant.' It's pretty much the same in all but 2 provinces'QC and NS. Thus, the company's installation of the machine would be 'construction.' **Result:** It should have filed a notice of project and complied with the more stringent requirements for hoist operators under the construction regulation. So, C is the right answer.

WHY WRONG ANSWERS ARE WRONG

A is a true statement but not the right answer to the question. That's because like many jurisdictions, Ontario does require the 'constructor' or 'prime contractor' in charge of work and safety at a site where workers from multiple employers work, to file a notice with the government before engaging in 'construction' work. In this situation, the machine installation does constitute 'construction' and the employer would be considered the constructor.

B is also true but the wrong answer. Because the work performed was construction, the hoist operator must meet the more stringent qualification standards of the Construction regulation; conversely, even the less stringent 'competent' standard doesn't apply even though the plant is a workplace normally considered an industrial establishment.

D is wrong but would have been right had the machine installation work been subject to the Industrial Establishments regulation.