

# Is Employer Liable for Ladder Fall Caused by Worker's Carelessness? – Ask The Expert



It depends on whether the employer used due diligence to prevent the incident.

## QUESTION

A worker who's received safety training stressing the importance of placing the ladder on flat stable ground ignores that training and puts the ladder on a unlevel surface. As a result, the ladder wobbles and the worker falls. Would we be responsible for the incident?

## ANSWER

It depends.

## EXPLANATION

The issue of employer liability would be based on 2 things:

### 1. Whether the Employer Committed an OHS Violation

Unsafe use of a ladder is clearly an OHS violation. But who actually committed the violation—the worker, you—the employer, or both? The answer to that question would depend, in part, on which jurisdiction you're in. **Explanation:** Under Federal, Manitoba, Nova Scotia, Northwest Territories, Nunavut and Saskatchewan OHS law, the employer must ensure safe placement of a ladder that a worker uses in a workplace; but in Alberta, New Brunswick, Prince Edward Island and Yukon, that responsibility falls on the worker using the ladder. The remaining jurisdictions don't specify who's responsible for safe placement.

### 2. Whether the Employer Exercised Due Diligence

If you didn't commit an OHS violation, the case is over. But even if you did, you could still avoid liability by showing due diligence. To do this, you'd have to show you took all steps reasonable in the circumstances to comply with the

OHS laws regarding ladder safety and prevent the violation. Being able to prove that you provided appropriate safety training to the worker, including with regard to ladder placement, will be essential to make out your case. But you'll also have to show that you verified that the worker understood and was capable of applying that training on the job. You'll also have to show that you enforced your OHS rules consistently. Lax enforcement and a culture of non-compliance where workers feel free to ignore their training and work unsafely is fatal to any due diligence defence.