

# Must an Employer Provide Continual, Direct Supervision of Workers?



## SITUATION

A car wash hires a new worker to clean cars. He's 18-years old and has a driver's license. The employer trains the worker on its cleaning procedures but doesn't train him on its safe driving protocols, instead instructing him not to drive the cars. The employer explains to him that certain workers are designated as trained drivers who move the cars from the prep area to the wash bay, then to the cleaning lanes and finally outside to a parking lot. None of the other workers are authorized to drive the cars. When a supervisor finds the worker sitting in a car listening to music, the supervisor reminds him not to drive the cars. But on his fourth day of work, after prepping a car for washing, the worker drives it into a wash bay and sets off a chain of collisions between other cars already in the bay. As a result, a co-worker is injured. At the time, there was no supervisor nearby. The employer is charged with OHS violations, including failure to provide supervision at all times.

## QUESTION

**Did the employer violate OHS law'**

- A. Yes, because contemporaneous supervision is required at all times.
- B. Yes, because the employer should have foreseen that the worker might drive and properly trained him on driver safety protocols.
- C. No, because the employer properly instructed the worker to clean but not drive the cars.
- D. No, because he had a valid driver's license and was legally authorized to drive.

ANSWER:

**C. The employer isn't liable because it took reasonable action to instruct the worker on what his job did'and didn't'include.**

## EXPLANATION

This hypothetical is based on an Ontario appeals court decision, which reversed a car wash's convictions for OHS violations, including failure to have constant supervision of workers. The court ruled that the evidence indicated the employer's workplace wasn't one with complex safety instructions or procedures. The worker had been properly trained to clean vehicles, was assigned only cleaning duties and was told more than once not to drive the cars. In fact, he testified that he knew he wasn't supposed to drive the cars and there was evidence that there'd never been an occasion when an unauthorized worker drove a vehicle. The court said there's no legal requirement that a worker be contemporaneously supervised at all times, calling such a requirement 'absurd.' And because it wasn't the worker's job to drive cars and there was no reason for the employer to foresee that he would do so, it didn't have to train him on safe operation of the vehicles at the workplace, added the court.

## WHY THE WRONG ANSWERS ARE WRONG

**A is wrong** because as explained above, there's no generally applicable legal requirement under OHS law that employers provide constant, direct supervision of workers every minute that they're working. The level of supervision required will depend on the nature of the workplace, the activities and operations involved and the experience of the workers. For example, workplaces in which hazardous materials are used or other highly dangerous or complex activities are undertaken, raising significant safety risks, may require more supervision of workers than the average workplace. In addition, new and young workers will generally require more direct supervision than more experienced ones. However, this workplace's car wash didn't have any complex procedures or significant safety risks. And although the worker was young and new, he'd been properly trained for the cleaning job he was instructed to perform and got adequate supervision for that job.

**Insider Says:** For two cases where different results were reached when the level of supervision was questioned, see 'When is Supervision Adequate to Meet Due Diligence Standards' And for more information about supervising and training new and young workers, see our New and Young Worker Compliance Centre.

**B is wrong** because although a supervisor saw the worker sitting in a car listening to music once, that evidence alone isn't sufficient to put the employer on notice that he may drive the vehicles. Driving wasn't part of his responsibilities, there were clear divisions of labour within the operations and he was repeatedly instructed not to drive the vehicles. In fact, the supervisor who saw him in the car reminded him not to drive. Thus, there was no evidence to reasonably indicate the worker would disregard his training and instructions and drive a vehicle.

**D is wrong** because the fact that the worker has a driver's licence doesn't mean he's authorized to drive vehicles in the employer's worksite without training or supervision. The employer trained specific individuals for the task of moving vehicles at the car wash. It authorized only those trained individuals familiar with its procedures to drive on the worksite. The worker's possession of a valid driver's licence simply means the employer *could* train him to drive vehicles at the worksite if it chose to do so, which it didn't.

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*R. v. 679052 Ontario Ltd. (c.o.b. Auction Reconditioning Centre)*, [2012] ONCJ 747 (CanLII), Nov. 30, 2012