Nadine Zacks Discusses Blue Mountain & Incident Reporting in Ontario



As Dylan Short, chair of the OHS Summit 2012, explained, the conference has three tracks, one of which focuses on the OHS reform movement underway in Ontario. One of the sessions in this track will be by Nadine S. Zacks, a lawyer with Hicks Morley, LLP, and will look at the OHS reporting requirements in the wake of the decision in the *Blue Mountain* case.

The Blue Mountain Case

As previously covered on the OHS Insider, the *Blue Mountain* case involves the death of a guest at a ski resort who drowned in the facility's swimming pool. The resort didn't report the fatality to the Ministry of Labour (MOL). After a safety inspector cited the resort for violating the critical injury reporting requirements, it appealed, claiming that these requirements apply only to incidents involving workers, not guests. But the Ontario Labour Relations Board ruled that the OHS reporting requirements applied to the guest's death because the OHS laws say employers must report fatalities or critical injuries to a "person"—not a worker. In addition, the drowning occurred in a workplace [*Blue Mountain Resorts Ltd. v. Bok*, [2009] CanLII 13609 (ON L.R.B.), March 23, 2009]. And the Superior Court upheld this decision as reasonable [*Blue Mountain Resorts Ltd. v. Ontario*, [2011] ONSC 3057 (CanLII), May 18, 2011].

The *Blue Mountain* case is currently on appeal. Zacks says that the hearing is scheduled for September. Although a decision in what's likely to be the final appeal of the case may not be issued before the Summit, she'll be attending the hearing and will report on what occurs in it at her session.

Importance of Blue Mountain Decision

Zacks explains that the *Blue Mountain* decision is significant for employers in Ontario because it effectively changes the incident reporting requirements. Now, employers must report *every* "critical injury" or fatality occurring in the workplace—not just those involving workers. So the reporting requirement encompasses the death of a guest, contractor, visitor or anyone else in your workplace. And this decision impacts *every* Ontario workplace, which is broadly defined in the OHS law, she adds.

Failing to comply with the OHS reporting requirements can have serious ramifications, stresses Zacks. For example, employers can be fined for failing to notify the MOL of a reportable injury or fatality. In addition, if an employer wrongly believes an incident involving a serious injury or fatality isn't reportable, it may clean up the area where the incident occurred, thus failing to preserve the scene and committing an additional OHS violation, she notes.

Benefits of Attending the Session

Zacks' session won't be just a legal discussion of the *Blue Mountain* case. She will discuss the facts of the case and both the Labour Relations Board and Superior Court decisions. But she also plans to explain what these decisions mean for employers and how the reporting requirements currently stand after this case.

The session will also include practical information Ontario employers can apply in their own workplaces. For example, Zacks will provide attendees to her session with what her firm

believes is a workable solution to dealing with the ramifications of the *Blue Mountain* decision. She'll explain how to decide which incidents should be reported—and which shouldn't—and give clear guidelines for making these determinations.

Obviously, this session is geared toward attendees with workplaces in Ontario. But attendees from jurisdictions whose OHS laws also require the reporting of injuries or fatalities involving a "person" may find the session valuable as well.

***INSIDER* SOURCE**

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