

Officers & Directors Can't Turn a Blind Eye to Safety



At a manufacturing plant, a worker was operating a vertical lathe when her hand got caught between the chuck and the tooling turret as she was lowering the chuck to load a piece into it. Her hand was seriously crushed. The manufacturer was convicted of several guarding violations. The BC Workers' Compensation Appeals Tribunal ruled that the company hadn't exercised due diligence. The worker hadn't been adequately trained on how to operate the lathe or properly supervised. In addition, safeguards on the lathe and other machines in the shop had been rendered inoperable. And supervisors and the company owner were aware that they'd been disabled but did nothing about this dangerous situation [WCAT-2011-01486].

THE PROBLEM

Ensuring that a company complies with the OHS laws requires the participation of many individuals, including workers, supervisors, middle and senior management. But ultimately, the buck stops with you and your fellow officers and directors. Although corporate leadership can leave the day-to-day details of the OHS program to the safety coordinator, it must oversee the company's compliance efforts and ensure that all reasonable steps are being taken to satisfy its duties under the OHS laws. The BC lathe case is a good reminder of the liability a company incurs when senior management turns a blind eye to safety problems.

THE EXPLANATION

If there's a safety issue in the workplace, such as broken equipment, disabled safety devices or workers failing to use PPE, senior management needs to know about the situation so that they can ensure that steps are taken to resolve the issues, adequately protect workers and comply with OHS requirements. Although as an officers or director you don't have to investigate every situation personally, you need to proactively monitor safety compliance and the OHS

program to spot and address safety issues as soon as possible and before they lead to incidents or violations. And you certainly can't just ignore safety issues once they've been brought to your attention.

In the BC lathe case, the manufacturer's owner dropped the ball when it came to safety compliance. As a result, the manufacturer's due diligence defence had several flaws. First, the company didn't ensure that the worker was adequately trained to operate the lathe or properly supervised when doing so. Second, the safeguards on the vertical lathe in which the worker was injured had been disabled. In fact, safeguards on other machines in the shop had also been rendered inoperable by a prior employee. And this situation had existed for years. To make matters worse, the owner, who was a professional engineer, *knew* that the safety devices been disabled but did nothing about it. Instead, he turned "a blind eye to the situation" and treated the defeating of the lathe's safeguard as a "tolerable, acceptable situation instead of a safety hazard", criticized the Tribunal.

THE LESSON

The BC lathe case is a good reminder of what the courts and other regulatory bodies expect of senior management when it comes to safety compliance. No one expects officers and directors to regularly inspect the workplace to ensure that workers and supervisors are fulfilling their safety duties. But because responsibility for the company's compliance with the OHS laws ultimately falls at the feet of senior management, you must implement a system that allows you and your fellow officers and directors to actively monitor safety compliance efforts. This system can include:

- Regular safety reports, including the results of workplace inspections;
- Briefings on safety issues, including incidents, near misses, violations, training and new OHS requirements;
- Reviews of the minutes of the JHSC's meetings; and
- Reviews of disciplinary measures imposed for safety infractions. For example, if you see that several workers have recently been disciplined for failing to use PPE, that pattern could signal a problem with the company's PPE compliance efforts.

And most importantly, once you've become aware that a safety issue exists, you *must* take steps to ensure that the situation is corrected as soon as possible, such as by repairing equipment, installing safeguards or retraining workers.

SHOW YOUR LAWYER

WCAT-2011-01486, [2011] CanLII 50763 (BC WCAT), June 15, 2011