

OHS Quiz: Are Homeowners Liable for Injuries to their Contractors?



Situation

After a snowstorm, a homeowner goes up to shovel and salt the roof so that the roofing contractor he's hired can start work right away. But he only clears part of the roof. Sure enough, the roofer slips on an icy patch and falls to the ground suffering serious injury. He sues the homeowner for negligence and not installing guardrails or providing him fall protection equipment as required by the province's OHS laws.

Question

Is the homeowner liable for the roofer's injuries'

1. Yes, because the homeowner was negligent
2. Yes, because the homeowner violated the OHS laws
3. No, because even if the homeowner was negligent, the roofer was negligent, too
4. No, because the roofer is an independent contractor and not the homeowner's employee

Answer

1) The homeowner is liable for negligence because he knew that the snowy and icy roof posed a hazard but didn't take reasonable care to protect the roofer.

Explanation

OHS laws aren't the only source of liability for failing to protect a worker from occupational hazards at a work site. This situation, which is loosely based on a New Brunswick case called *Beaupre v. Rowan*, [2010] N.B.J. No. 101, illustrates the potential liability of homeowners and landowners for injuries to workers on their property.

One principle source of liability outside the OHS laws is negligence which requires a property owner to take reasonable care, under the circumstances, to ensure the health and safety of the people they hire to perform work on their property. The homeowner in this case didn't meet his duty of reasonable care. He recognized that snow and ice on the roof posed a hazard to the roofer but cleared and salted only part of it. He also failed to install guardrails on the roof or ensure the roofer used fall protection equipment. Thus, the court found the homeowner was negligent and awarded the roofer \$342,272 in damages.

Why Wrong Answers Are Wrong

2 is wrong because even if the homeowner's failure to install guardrails on the roof or provide fall protection equipment technically are OHS violations, unlike the negligence laws, OHS laws don't allow private parties to sue each other for damages. The remedy for an OHS violation, in other words, is a fine, stop work or other order or penalty imposed by the government agency in charge of enforcing the law.

3 is wrong because negligence by the roofer might reduce his damages but doesn't necessarily get the homeowner off the hook. In Canada, courts apportion the negligence between the parties and reduce the damages accordingly. For example, the court will cut the damages in half if a victim is 50% at fault for his/her own injuries.

4 is wrong because although status as employee or independent

contractor is relevant in determining liability under OHS law, under negligence law, a homeowner has a duty to ensure that all visitors to his property are reasonably safe. Thus, even if the roofer is an independent contractor and not the homeowner's employee, the homeowner still had a duty to protect him from hazards posed by the roofing work.