

Recent Case Shows Importance of Good Safety Documentation



There are many steps companies should take to protect workers and ensure compliance with the OHS laws, including providing adequate training for workers, disciplining them for safety infractions and conducting regular workplace inspections. But taking such steps won't help you in an OHS prosecution if you can't *prove* that you took these steps.

That's why it's so important to formally document all of your safety efforts and measures. (The OHS Insider's [Toolbox](#) has many model documents to help you do so.) Failing to have adequate safety documentation may leave you without proof that you exercised due diligence.

That's the lesson a store in Ontario recently learned. An empty wooden pallet lay on the floor in the receiving area. A worker was unloading a full pallet from a truck onto a pallet jack. While walking backwards, he tripped on the empty pallet, fell and hit his head. He complained of a headache and called in sick the next day. He never returned to work and died two weeks later. The store was charged with failing to ensure the floor was kept free of obstructions, hazards and accumulations of refuse, snow or ice. It argued that it had exercised due diligence.

The court convicted the store of the safety offence. The empty skid being left on the floor in that area posed a risk that someone might trip over it. As to due diligence, the government pointed out that there was no evidence regarding:

- How the empty skid got to its location;
- When it got there;
- How long it was there;
- When it was removed; or
- Who removed it.

The court agreed, saying, 'I am concerned about the non-production of documents in possession of the defendant corporation kept in the usual and ordinary course of business.' The evidence was clear that the store had several 'sweep logs' kept specifically for the receiving/stock area, in addition to the general maintenance log. But despite having exclusive control over this material, the store didn't turn these logs over to the MOL inspector or produce them at trial.

These logs would show either the diligent sweep of this area or the failure to do so as well as the presence or absence of any obstructions.

So although the store pointed to its safety sweep program and clean-as-you-go policy as evidence of its due diligence, the absence of the logbook for the receiving area meant there was no direct evidence on which the court could conclude that workers were actively engaged in the proper implementation of the safety sweep program in that particular area. So the court ruled that 'the absence of the missing safety sweep logs for the backroom area results in a failure of reliable proof' that it's more likely than not that every reasonable precaution available in the circumstances was taken [*Ontario (Ministry of Labour) v. Wal-Mart Canada Corp.*, [2016] ONCJ 267 (CanLII), May 6, 2016].