

# SUPERVISORS: 5 Dos & Don'ts for Avoiding Liability



Supervisors are one of the key stakeholders in your workplaces' and an important part of a successful OHS program. After all, supervisors are usually the ones in the field (so to speak) ensuring that workers follow your safety rules and policies, disciplining those who don't, identifying new hazards, etc. If supervisors don't do their jobs well or fulfill their duties under the OHS laws, workers may get hurt' and both the supervisors and the company may face safety charges. So here are some dos and don'ts to help you and the supervisors in your workplace avoid liability.

## SUPERVISOR LIABILITY BASICS

Any individual who performs supervisory functions runs the risk of liability if he doesn't meet the responsibilities that come with those functions. In many jurisdictions, the OHS laws specifically define 'supervisor' and spell out the responsibilities of these individuals. For example, in BC, supervisors must:

- Ensure the health and safety of all workers under their direct supervision;
- Be knowledgeable about the OHS law and regulations applicable to the work being supervised;
- Comply with the OHS law, regulations and any applicable orders;
- Ensure that the workers under their direct supervision are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work and comply with the OHS law, regulations and any applicable orders;
- Consult and cooperate with the JHSC or worker health and safety representative for the workplace; and
- Cooperate with the Board, officers of the Board and any other person carrying out a duty under the OHS law or the regulations.

In those jurisdictions where supervisory duties aren't specifically defined, individuals with supervisory roles can still be charged for OHS violations as either 'employers' or 'workers.' In either case, supervisors who don't supervise effectively can be prosecuted for safety violations. And such prosecutions are becoming more common. (See the box at the end for some recent examples.)

Supervisors also face liability risks under the *Criminal Code* as amended by Bill

C-45. Under the criminal law, any person who directs or has the authority to direct how another person does work or performs a task and who fails to take reasonable steps to protect that person can be charged with criminal negligence if such failure was the result of wanton or reckless indifference to life and safety and resulted in death or serious injury. Because supervisors usually have such direction or authority, they can potentially be liable for criminal negligence. In fact, a project manager in Ontario was recently sentenced to three and a half years in jail for criminal negligence. In convicting him, the court found that the project manager was someone with the authority to direct how another person does work and noted that he would also be considered a supervisor under the OHS law.

**Insider Says:** In many cases, when supervisors fail to fulfill their duties or effectively supervise workers, the Crown may prosecute not only the supervisors for OHS offences but also the employer for related safety violations, such as failing to provide adequate supervision.

## 5 DOS & DON'TS

[learn\_more caption="X Don't Identify Supervisors by Solely Title"]

You need to know who the supervisors are in your workplace to ensure that they're fulfilling their duties. But you shouldn't identify supervisors solely by their title, such as supervisor, foreman or manager. As mentioned above, the OHS laws may define 'supervisor.' Although these definitions vary, they typically describe a supervisor as someone who instructs, directs and controls workers in the performance of their duties or who has charge of a workplace or authority over workers. One thing all these definitions have in common is that they're *not* based on the person's title. That is, employees may be considered to be 'supervisors' under the OHS laws even if they don't have a 'supervisory' title or even think of themselves as supervisors. In fact, even individuals within senior management could be held liable as 'supervisors':

- A new worker was killed after he got caught in an unguarded pinch point in a conveyor at a small plastics factory. The company's **president** was prosecuted and convicted as a supervisor. The court ruled that the president was a supervisor because he assigned work; was in control of hours, wages, bonuses, hiring and firing; conducted worker safety training; controlled production; determined what equipment would be used in the factory; and disciplined workers [*R. v. Adomako*, [2002] O.J. No. 3050, June 21, 2002].
- A four-worker crew moving a scaffold contacted an overhead power line, killing one worker and critically injuring three. The construction company's **vice president** was convicted of safety violations as a supervisor. The court found that the vice president was fulfilling most, if not all, of the functions of a supervisor. He decided who was going to be on the crew and what equipment was going to be allowed on the site; did most of the hiring and firing; was the one that normally met with the crew the first day at a new site and reviewed the safety issues unique to that project; and disciplined the workers. So although the vice president may not have seen himself as a supervisor, he was still a supervisor under the OHS law [*R. v. Jetters Roofing and Wall Cladding Inc.*, [2000] O.J. No. 5734, Nov. 1, 2000].[/learn\_more]

[learn\_more caption="Û Identify Supervisors by Duties & Authority"]

So how *do* you determine which individuals in your workplace could be considered supervisors under the OHS law if not by their title? If your jurisdiction's OHS laws define 'supervisor,' assess individuals based on that definition. In addition, consider whether the person has supervisory authority. According to court rulings, such authority typically includes the power to:

- Hire and fire;
- Promote and discipline;
- Give awards or bonuses;
- Grant workers' vacation and leave of absence requests;
- Determine how workers are paid;
- Schedule work;
- Decide the makeup of a work crew;
- Decide which equipment to use;
- Discuss safety issues with workers;
- Provide safety training to workers;
- Discuss details of the job with workers;
- Deal with worker complaints; and
- Stop work if hazards arise.[/learn\_more]

[learn\_more caption="Û Ensure Supervisors Are Competent"]

Employers have a duty to ensure that all employees, including both workers and supervisors, are generally competent to do their jobs. But the OHS laws may specifically require a supervisor to be a 'competent person,' that is, a person with a higher level of skill than the average worker based on knowledge, training and experience to safely perform the assigned work. So if you put a worker in a supervisory position when he's *not* competent under the law to fill that position, you endanger the workers being supervised by him and are at risk of being fined for a safety violation.

*Example:* A worker was learning how to thread multiple strands of plastic strapping material on a production line as part of peer-to-peer job advancement training with a lead hand, who told the trainee to shut down the machine. While the trainee was reaching for a side stop control panel near exposed rollers, one hand and forearm got entangled in plastic strapping. As he tried to use the other hand, it also became caught. The lead hand witnessed the incident and stopped the machine. The trainee worker suffered bruising, sprains and bone fractures as well as the amputation of one finger tip.

The Ministry of Labour investigated the incident and found that the employer hadn't made the lead hand familiar with the *OHS Act* or the *Industrial Establishments Regulation*, which applied to the workplace. Thus, the lead hand wasn't a 'competent person' as defined by the OHS law and so shouldn't have been acting as a supervisor. The employer pleaded guilty to failing to appoint a competent person as supervisor and was fined \$70,000 [*Samuel, Son & Co., Ltd.*, Govt. News Release, Nov. 18, 2014].

To ensure that those individuals who would likely be considered supervisors are 'competent' under the law, give them proper training on their supervisory responsibilities. In fact, the OHS laws may require employers to provide supervisors with special training. For example, the federal Canada Labour Code requires employers to ensure that employees who have supervisory or managerial

responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under the OHS law when they act on their employer's behalf [Sec. 125(1)(z)].

In general, supervisor training should cover, at a minimum:

- Requirements for supervisors under the OHS laws;
- Other relevant requirements under the OHS laws;
- Rights and responsibilities of workers, including work refusals;
- Relevant elements of the company's OHS program, including roles, duties, and responsibilities;
- Risk management;
- Hazard analysis and safe work procedures;
- Workplace inspections;
- Incident investigations;
- Near miss reporting;
- Emergency preparedness;
- WHMIS;
- PPE;
- Safety training;
- Motivating workers to work safely; and
- Dealing with safety infractions by workers.

As with all safety training, make sure to test supervisors to ensure that they understood their training and review their work to make sure that they're applying what they learned. And keep records of all training provided to supervisors.

**SUPERVISOR COMPETENCY CHECKLIST:** Download this [supervisor competency checklist](#) and use it to evaluate the competency of your supervisors or give it to them for use in conducting self-assessments.[/learn\_more]

[learn\_more caption="Û Ensure Supervisors Are Around to Supervise"]

It's nearly impossible for a supervisor to fulfill his safety duties if he's not actually around to supervise workers. Supervisors don't necessarily have to be physically present in the workplace or at a particular site at all times. How much supervisors need to be around will be dictated by the safety hazards posed by the work being done, the experience of the workers performing it and other factors. But supervisors must be present at least some of the time and reachable when they're not present in order to adequately supervise workers and the work. An absentee supervisor will have a tough time trying to prove due diligence if charged with a safety offence.

*Example:* Two workers were carrying material from one section of a roof to where it needed to be installed. One worker was wearing a safety belt. But it wasn't attached to a fixed object. He lost his footing, fell three metres to a concrete floor and died. The supervisor was charged with failing to ensure that the worker used the required protective devices. An Ontario court convicted him, ruling that he hadn't exercised due diligence. The supervisor had *never* visited the work site nor had he spoken to any of the workers until after the incident occurred. And although the workers were given safety booklets, he never held a meeting on the safety standards related to this particular job site [R. v. J.P. Pierman Construction Ltd., [1990] O.J. No. 3143, Jan. 22, 1990].[/learn\_more]

[learn\_more caption="X Don't Assume Experienced Workers Don't Need Supervision"]

It's easy to conclude that supervisors should focus their attention on new and young workers, who aren't experienced in your operations or in workplace safety in general. And that conclusion is true to some extent. But it doesn't mean that workers who are very experienced don't need any supervision at all. Employers still have an obligation to supervise experienced workers, although such supervision may be less direct or intense.

*Example:* An electrical services company assigned an experienced electrician, another electrician and an intern to finish tying down an electrical feeder cable in an electrical cabinet. While doing this job, the experienced electrician, who wasn't wearing any protective equipment or clothing, contacted energized bus bars in the cabinet and was electrocuted. As a result, the company was convicted of two OHS violations.

The deceased electrician was very experienced, highly regarded and known to be safety conscious. But the court explained that the electrician's 'tragic miscalculation' in working on the cabinet while it was still energized and without any protective equipment didn't absolve the company of its safety duties. For example, the company took a completely hands-off approach to the electrician's work, providing no supervision at all. Instead, it relied exclusively on his experience and commitment to safety, said the court. In fact, the evidence showed that the company did nothing that remotely satisfied the requirement to provide supervision [*R. v. R.D. Longard Services Ltd.*, [2015] NSPC 20 (CanLII), April 17, 2015].[/learn\_more]

#### **BOTTOM LINE**

Qualified, well-trained, effective supervisors can enhance a company's OHS program, protect its workers, and shield themselves and the company from liability. But incompetent, untrained or absent supervisors endanger workers and expose everyone to potential liability. And OHS regulators are getting more aggressive in going after supervisors directly for safety violations. So safety professionals should take steps to ensure the individuals who qualify as supervisors in their workplaces have the training and resources they need to fulfill their duties and do their job well.

[box]

#### **Recent Prosecutions of Supervisors for OHS Violations**

Here are some examples of recent prosecutions of supervisors for OHS violations:

- A worker was killed while performing maintenance on a vacuum valve. He'd been at the company for only six months and was alone at the time. And he'd worked on only one of these valves before this incident. The supervisor had assumed that the worker had gotten training on the hazards associated with the company's procedure for disassembling such valves, with no basis for that assumption. The supervisor pleaded guilty to failing to ensure that the worker was sufficiently trained and/or supervised to perform the task safely and was fined \$5,000 [*Joe Heynsbergen*, Ontario Govt. News Release, Jan. 6, 2016].

- A supervisor was fined \$750 for failing to ensure workers were using fall-arrest equipment. Two workers also pleaded guilty to failing to use such equipment [*Marcel Richard, Gilles Bastarache and Remi Thibodeau, New Brunswick Govt. News Release, Oct. 26, 2015*].
- Two company site superintendents were supervising insulation of an overhead water pipe by workers for a plumbing subcontractor. The workers asked one superintendent what to do about an open overhead door. He told them not to go near it. But a mechanic pushed a cart through the open doorway, triggering a sensor and causing the door to open. The door struck the scissor lift the workers were on and knocked it over, causing them to fall to the concrete floor about 20 feet below. One worker died from blunt head trauma; the other suffered broken bones. The site superintendents were fined \$4,000 each [*Matheson Constructors Ltd., Phil Lindsay and Karl Jedan, Ontario Govt. News Release, Aug. 6, 2015*].
- Several mine workers suffered burns performing a backfill procedure. Two weeks before the incident, workers had raised concerns about this procedure to the general foreman and supervisor. But they made no changes to the procedure. A supervisor pleaded guilty to OHS violations and was fined \$8,000 [*Jeffrey Huffman, Ontario Govt. News Release, March 13, 2015*].
- A worker was seriously injured after he went onto a roof to move a hoist. His leg got caught in the hoist as it was being lowered over the roof's edge and he fell two stories to the ground. A supervisor pleaded guilty to a safety violation and was fined \$2,100 [*Harold Vincent, Saskatchewan Govt. News Release, Feb. 4, 2015*].
- Three workers were doing asbestos abatement work on a home in an area that was enclosed. During an MOL inspection, the inspector found the workers either working inside or exiting the enclosed area without wearing proper protective clothing. A supervisor pleaded guilty to failing, as a supervisor, to ensure that a worker worked in the manner and with the required protective devices, measures and procedures and was fined \$4,000 [*Gregory Simpson, Ontario Govt. News Release, Jan. 22, 2015*].