

Three Months Until July 1 Training Deadline: Update on Ontario's New Safety Awareness Training Requirement



By Adrian Miedema, Dentons

Ontario employers have less than three months left to ensure that their workers and supervisors get 'basic occupational health and safety awareness training' before the July 1, 2014 deadline.

Our February 25, 2014 article set out 'what you need to do' to comply with this new requirement.

We have been considering various strategies for our clients as to how to provide this training, and have been in touch with the Ministry of Labour. Here are some updates and additional insights for employers to consider.

Can you combine the worker and supervisor training into one joint in-person session'

There is substantial overlap between the required content of the worker and supervisor training sessions.

If your company will be delivering the training face-to-face not using the Ministry's online e-module, and is considering combining the worker and supervisor training into one session for all employees, ensure that the session covers all of the required content in the Regulation'but also covers the material *from the perspective* of both workers and supervisors.

The new Regulation refers to a basic occupational health and safety awareness training program *for* workers and a basic occupational health and safety awareness training *for* supervisors. A Ministry of Labour inspector could argue that 'for' means 'from the perspective of' or 'tailored to'. So if, for instance, in a joint session you present only the supervisor's perspective on a

particular safety topic, an inspector might say that you have not complied with the Regulation's requirement to provide the training 'for' workers.

Although the required content for the worker and supervisor training overlap to some extent, you can see from the safety awareness training materials prepared by the Ministry of Labour (see our February 25th article for hyperlinks to those materials) that the Ministry approaches these topics quite differently for workers and supervisors. When delivering the safety awareness training, it is important to ensure that for each topic, workers and supervisors understand the distinction between their respective roles and responsibilities, even if the topic itself 'such as 'duties and rights of workers under the Act' ' is required content in both the worker and supervisor training.

If you are going to combine the worker and supervisor sessions into one joint session, the safest approach is to ensure that any combined training session satisfies all of the criteria in the Regulation while articulating the different perspectives, roles and responsibilities of workers and supervisors. This will likely make the joint session longer than worker-only or supervisor-only sessions would be, possibly defeating the benefit of combining the worker and supervisor sessions.

Must supervisors also take the worker training'

There is some legal debate, based on the wording of the Regulation, as to whether supervisors who complete the supervisor training before July 1st must also complete the worker training. The debate centres around when the Regulation 'came into force', since part of the Regulation came into force on November 14, 2013 and the rest will come into force on July 1, 2014. A Ministry of Labour representative has recently advised us that the Ministry's position is that July 1, 2014 is the applicable date.

Based on the Ministry's position, a supervisor will be exempt from completing the *worker* training if:

- (a) the supervisor was performing work as a supervisor for the employer prior to July 1, 2014; and
- (b) the supervisor completed a basic occupational health and safety awareness training program *for supervisors* that contains the required supervisor contents, before July 1, 2014.

As a result, employers should ensure that all supervisors take the supervisor training before July 1st, because if they do, it appears that the Ministry of Labour will not require them to also take the worker training.

What about supervisors outside Ontario who supervise workers in Ontario'

Where your company has a supervisor outside Ontario 'for instance, in Calgary ' who supervises a worker in Ontario, the safe approach would be to have the Calgary supervisor complete Ontario's basic safety awareness training for supervisors. Although, except in very limited circumstances, the Ontario *Occupational Health and Safety Act* does not apply to supervisors or workers working outside Ontario, a Ministry of Labour inspector could take the position that the OHSA *does* require an Ontario employer to ensure that any person supervising Ontario workers take the training 'even if the supervisor is not

located in Ontario.

Revising your contractor agreement

Ontario employers are required to ensure that contractors ' who are 'workers' under the OHS Act ' working for the employer have taken the worker safety awareness training. We are suggesting that companies revise their template contractor agreement to include a clause in which the contractor confirms that he or she has completed the training and that he or she will provide proof.

E-learning modules need specific web browsers

If you plan to have your workers and supervisors complete the training through the Ministry of Labour's online e-learning modules, ensure that your company's computers have at least Internet Explorer 9 or Chrome 17, or they won't be able to access the modules.

Keep checking www.occupationalhealthandsafetylaw.com for further updates on this topic, or e-mail us at adrian.miedema@dentons.com or chelsea.rasmussen@dentons.com.

OHS Insider Resources

Join us on April 9th for a webinar in which Adrian Miedema will discuss the complex topic of disciplining workers for safety infractions.

Here are some resources on OHS Insider on the Ontario awareness training requirements:

- An alert that provides an overview of the regulation
- A recording of and the PowerPoint slides from a webinar on complying with the regulation by Ontario OHS lawyer Kevin MacNeill of Heenan Blaikie.

And stay tuned for more information on an online course we've created that your workers can take to comply with the new awareness training requirement.