

Who Can an Employer Designate as First Aid Attendants?



SITUATION

The OHS law that applies to a plant requires it to have at least one designated first aid attendant. There are several categories of workers at the plant but only the millers and miller assistants are always present at the workplace through all shifts. For example, on weekends, the millers and miller assistants are the only workers in the plant. So the plant requires all millers and miller assistants to obtain first aid certification and serve as first aid attendants for all workers in the plant, arguing that doing so ensures a first aid attendant is always present during all shifts. The millers and their assistants argue that first aid responsibilities aren't in their written job descriptions and the plant can't unfairly single out this one class of workers for this big responsibility. Their union files a grievance, claiming the plant exceeded its managerial authority under the collective agreement.

QUESTION

Who can the plant reasonably assign first aid attendant responsibilities'

- A. All millers and miller assistants
- B. Only workers who volunteer for the responsibility
- C. Any single worker because the OHS law only requires one attendant
- D. All workers must share the responsibility equally

ANSWER:

A. It's reasonable for the plant to exercise its management authority to assign the first aid attendant responsibilities to the millers and miller assistants.

EXPLANATION

This hypothetical is based on a federal labour arbitration decision, which held that an employer acted reasonably in assigning the first aid attendant role to only one class of workers, millers and millers assistants. Recognizing that

first aid attendants must always be present at the workplace to offer assistance before an ambulance and first responders arrive, the arbitrator noted that millers and millers assistants were the only workers consistently at the plant whenever it was operating and workers were onsite. During some shifts, they were in fact the *only* workers present. So the arbitrator declared that requiring that class of workers to be designated as first aid attendants was 'practically and operationally logical' and reasonable. In fact, failure to do so could cause the employer to violate its first aid obligations under the OHS regulations and raise scheduling issues that could violate the collective agreement, the arbitrator added.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because relying solely on volunteers isn't reasonable or practical. Depending on the jurisdiction, the OHS or workers' comp laws require employers to have first aid attendants or first aiders available in the workplace. To fulfill that duty, the employer can assign that role, as it may any other work responsibility, as it sees fit to do so and as makes sense given its operations and requirements. So if the plant only relied on volunteers, it may not have enough or any first aid attendants and so could be in violation of the OHS laws.

C is wrong because the OHS laws set only the minimum requirements. Under the general duty clause in every jurisdiction's OHS statute, employers have a duty to take all reasonable steps to protect workers. In some workplaces, having one first aid attendant might be sufficient. But as is true in many workplaces, the plant in this case has many workers working many different shifts. So it's unlikely that having just one worker designated as a first aid attendant would be considered sufficient or reasonable. For example, if that worker was sick or on vacation or simply not working that shift, the workplace wouldn't have any first aid attendant at all. That's why the OHS laws in some jurisdictions require more than one attendant depending on the number of workers present at the workplace at any given time. For example, Manitoba requires three first aid attendants during working hours when 200 or more workers are at the workplace.

D is wrong because requiring all workers to get designated as first aid attendants isn't necessary or practical. To be qualified to serve as first aid attendants, workers must undergo specialized training. Providing such training to all the workers in a workplace isn't reasonable or cost effective. And there are some workers who it simply wouldn't make sense to designate as first aid attendants. For example, the OHS regulations generally require a first aid attendant to be present at the workplace during all work hours and their usual work responsibilities to be amenable to the addition of first aid responsibilities. Therefore, workers who aren't consistently at the workplace (such as sales agents who regularly travel to customers) couldn't properly serve as first aid attendants. Here, the millers and miller assistants are the only category of workers consistently present at the workplace during all shifts. So it's reasonable to require those workers to serve as first aid attendants to ensure there's always a first aid attendant available in an emergency.

Insider says: For more information on complying with the first aid requirements, see 'First Aid: What are an Employer's Legal Obligations''

SHOW YOUR LAWYER

United Food and Commercial Workers' Union, Local 1518 v. Rogers Foods Ltd.
(*Armstrong Plant First Aid Attendants Grievance*), [2013] C.L.A.D. No. 329, Nov.
4, 2013