You Make The Call: Do Lockout Work Controls Provide Protection Equivalent to Energy-Isolation?

OHS regulations frequently give employers leeway to use alternative safety measures when required engineering controls aren't "reasonably practicable" to deploy—but only as long as those alternatives provide equivalent or greater protection. The following scenario, which is based on an actual lockout case from Alberta, illustrates key principles to keep in mind when using alternative measures at your own workplace.

SITUATION

An Alberta tire shop worker ordered the driver of a semi-truck with a flat tire to inch his vehicle forward so it could be repositioned on the platform. Neither he nor the driver realize that a co-worker was underneath the vehicle jacking up the front wheels. The victim suffered serious injuries and the shop owner was charged with a lockout violation.

THE LOCKOUT LAW

As in every other jurisdiction, Alberta OHS laws (*OHS Code*, Sec. 212) contain lockout provisions requiring employers to ensure that workers don't service vehicles, machinery or equipment unless and until the equipment to be serviced comes to a complete stop and either:

- An energy-isolation device is used to isolate the equipment from its energy source; or
- The equipment is otherwise rendered inoperative in a way that provides equal or greater protection than an energy-isolating device.

THE LOCKOUT POLICY

The tire shop's lockout policy included 8 basic requirements for servicing trucks:

- The truck must be turned off before service work is done on the vehicle;
- The truck must be isolated from its power source;
- The driver must take the key and be directed to the office by a worker where he/she must wait until the work is done;
- An "out of service" tag must be placed on the driver's door handle before work is done to ensure nobody moves or starts the truck accidentally;
- Only the worker who places the tag may remove it from the truck;
- Tags may not be removed until somebody does a 360® walk around the vehicle;
- Wheel chocks must be placed on both sides of a truck wheel before work is done; and
- The driver of the truck must engage the air brakes or other brakes before restarting the vehicle.

IMPLEMENTATION OF THE POLICY

All of the policy requirements were implemented except for one: The truck wasn't isolated from its power source. But the owner had what it thought was a compelling explanation: The manufacturer of the truck neither designed nor provided an energy-isolation device for the vehicle. And the Crown conceded that it wasn't reasonably practicable for the owner to get one from a third party.

YOU MAKE THE CALL
Did the tire shop owner exercise due diligence’

ANSWER

Yes, says the Alberta court.

EXPLANATION

While the owner might have had a good explanation, the fact is that an energy-isolating device wasn’t used to service the truck; and the alternative lockout measures that were followed didn’t provide protection equivalent or greater to the use of such a device. Result: The owner was guilty of a lockout violation.

MORAL

Once the Crown conceded that using an energy-isolation device wasn’t reasonably practicable in this case, the pivotal question became what alternative procedure the owner *should have* followed. The prosecution claimed there were at least 2 alternative lockout procedures providing “equivalent” protection to an energy-isolation device that the owner could have used:

- Detaching the ground battery from the batteries powering the vehicle’s start-up motor; or
- Putting the key in a box that can only be opened by a personal key issued to the worker making the repair.

But the owner argued that the first procedure created explosion risks if the battery cables got mixed up; and the second alternative was also risky if the driver gave the worker the wrong or a duplicate key. In addition to prevailing on these points, the owner was also able to show that there was no industry standard on how to handle the key exchange.

Having shot down all the alternatives, the court was faced

with a stark fact: *Nobody* could demonstrate what alternative procedure would have been at least equally safe as using an energy-isolating device in this situation.

Regrettably for the owner, though, that didn't amount to victory. It wasn't up to the prosecution to point to a specific equivalent measure, the court reasoned. All it had to do was show that the method the owner did use didn't measure up to the equivalency standard.

R v. Kal Tire, 2017 ABPC 246 (CanLII), Sept. 28, 2017

THE 3 TAKEAWAYS

1. The fact that required engineering controls aren't reasonably practicable to deploy doesn't get you off the hook for an OHS violation.
2. You still need to implement alternatives that provide equivalent or greater protection.
3. The prosecution doesn't have to demonstrate what those alternatives are—all it needs to do is show that the alternative methods you did follow failed to provide equivalent protection.