

Occupational Health & Safety Bulletin

Health & Safety Extends to Your Contractors

A business reality for most company owners and employers is that, at some point, they will contract an outside company to perform work on-site. For some owners, this may be the simple act of retaining a contractor to install or repair new equipment. Janitorial services is just another example.

When you hire a contractor you are expected by law to do your due diligence as the employer. This includes any of your staff that legislatively exercise a great degree of control over the project in relation to safety issues.

Start by understanding the legislation that can put you and your staff at risk of charges under the Ontario Health and Safety Act (OH&SA). There are two key definitions you need to be aware of.

Key Definitions

The OHSA defines “employer” as a person who directly employs one or more workers or a person who contracts the services of one or more workers.

The Act also defines a “constructor” as someone who undertakes a project for an owner. It also includes an owner who undertakes all or part of a project by himself or by more than one employer.

Either way, when hiring outside contractors, employers are burdened with the responsibility of protecting workers at their worksite whether the worker is on your payroll or someone else’s.

Supervisor & Designate Responsibilities

Supervisors and their designates are included in the criteria under the OH&SA because they are “a person who has charge of a workplace or authority over the worker.” This is especially true during the employer’s absence. However, since sub-contractors report to a supervisor, that supervisor assumes the greatest degree of control over the sub-contractor’s workers. The supervisor exercises his or her legislative responsibility of authority over the worker. Supervisors are at the same risk of charges as the employer under the OH&SA if there is an accident.

A corporation which contracts services should not simply attempt to ensure that, under contractual terms, the sub-contractor is supposed to perform work in compliance with the

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“Due diligence is a company’s only DEFENSE against fines and other penalties brought against it as a result of not adhering to the Occupational Health & Safety Act.”

Due Diligence Steps before Hiring a Contractor

When you hire a contractor be sure he or she knows how to comply with the Ontario Health and Safety Act (OHSA) and most important, can prove it. The sub-contractor should be willing to share its company health and safety program.

J. & D. Patterson Management has developed a sub-contractor’s checklist to help your due diligence.

Use the checklist to answer the following questions:

- Do they have a health and safety policy and a detailed program to implement the policy?
- Do they train supervisors and workers in the relevant areas of the OH&SA and its regulations?
- Do they have adequate supervision present on the job site?
- Do they have appropriate policies, procedures and rules for the work to be performed i.e. pre start-up?
- Does the contractor keep appropriate records of instruction, training and orientation before they start the work?
- Does the contractor have adequate levels of supervision and competency?
- Does the contractor understand the competency obligations under the OH&SA?

After all the requirements are met, the sub-contractor should be put on an approved list of contractor’s that is distributed to your supervisors and managers.

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OH&SA and its regulations. You should also consider the direct, specific steps which you can take to ensure that a prospective contractor and/or sub-contractor will comply and is complying.

The Best Solution?

Treat contractors and their staff as you would your own company staff when it comes to occupational health and safety. Do your due diligence. The standard of due diligence applied by the courts will be the same!

In addition, as an employer you have to be aware that certain contractors will be obligated to comply with different regulations than your own company’s. For example: a grocery store must comply with regulations under regulation 851 for industrial establishments while an electrical company must comply with regulation 213/91. As an employer you may have two sets of regulations to deal with.

Contact J&D Patterson Management to discuss specifics that relate to your business and industry.

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