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9TH ANNUAL HEALTH & SAFETY CONFERENCE  
*“ASK THE EXPERT”:  
KEY OH&S DUE DILIGENCE QUESTIONS***

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**What Are Our Responsibilities As A School Board, College, University (Or Supervisors Of The Board, College, University) For External Contractors?**

Legal background relevant to understanding OHS responsibilities when contracting and the need for a contractor safety program

## Definition of “Employer” Ontario OHSA

“Employer” means: “a person who employs one or more workers or contracts for the services of one or more workers and includes...”

Where “Employer” obligations exist there is no way to contract away responsibility and liability to another “Employer”. No matter how well the contract is written, or how specialized the contractor. Must ensure safety of contractor when contracting for services, due diligence steps. Due diligence steps can be established within contractor safety program

Core “Employer” obligations when contracting  
for services same as those obligations  
when directly employing workers

## Definition of “Owner” Ontario OHSA

“Owner” means: a tenant, lessee, or occupier of land or premises used or to be used as a workplace. The owner will generally be the school board, college, or university, or a tenant

Core “Owner” obligations depend on whether workplace is a construction project or not. Owner at a construction project must determine if there are designated substances present, prepare a list of all substances present, provide as part of tendering information to all prospective constructors. Liability if substance subsequently discovered

Core “Owner” obligations under OSHA exist where contracting as employer, contracting as “constructor”, and even when construction project is contracted to a general contractor who acts as the “Constructor”

## Definition of “Constructor” Ontario OHSA

“Constructor” is: “a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer”

“Constructor” is generally the owner of the workplace or a general contractor undertaking a project for the “Owner”. For every construction project there is a “Constructor”. If it is not a general contractor acting as a “Constructor” it is the owner. Extensive “Constructor” obligations

**Who Is A Supervisor Under The OHSA?  
When Can Supervisors Be Held  
Responsible (Order Under OHSA,  
Prosecution) Under OHSA?**

## Definition of “Supervisor” Ontario OHSA

“Supervisor” means: “a person who has charge over a workplace or authority over a worker”. This can include anyone with the necessary authority, whether in or out of the bargaining unit, a school principal, department head

Decided cases have treated lead hands to general managers as “supervisors” depending upon hands on authority

# How Do We Appeal An MOL Order? What Orders Are Most Common To School Boards, Colleges, Universities?

Orders in the educational sector include a full range of matters under the OHSA including section 25(2)(h).

Section 25(2)(h) has been used to require violence policies, compliance with matters within classrooms and maintenance areas with reference to industrial regulations. Orders to file notice of project as constructor. Orders re WHMIS, electrical safety, asbestos in maintenance operations

Appeal of an MOL order may be under section 61 OHSA.  
An employer, constructor, worker or trade union  
“aggrieved” by an order may appeal within 30 days.  
Forms and guidance available from Ontario Labour  
Relations Board

# How Do We Prove Our Due Diligence In Ensuring Compliance With The OSHA And Regulations?

Due diligence is a legal standard which allows a defence if stringent, court-developed standards can be met by employer, constructor, owner, supervisor charged with an offence

Due diligence is a standard by which an educational organization can assess its steps to protect workers on an ongoing basis

Key elements of due diligence standards – knowledge of legal obligations; Assessment and knowledge of workplace hazards; Ongoing correction of workplace hazards

Key elements of due diligence standards – detailed policies and procedures; Appropriate orientation and training; Supervisory monitoring; Communication; Enforcement

# **What Is Currently Proposed In Bill 168 To Add Violence And Harassment To The OHSA?**

Bill 168 was introduced for first reading April 20, 2009.  
Bill to add workplace violence and workplace harassment  
provisions to Ontario OHSA

Definition of workplace violence (exercise of physical force, attempt to exercise physical force) would be added

Definition of workplace harassment (course of vexatious conduct or comment) would be added

If passed, employers will be required to create workplace violence and harassment policies and programs.

Programs for violence more extensive, requiring assessment for workplace violence risks, measures and procedures to control the risks, measures and procedures for responding to threats

Express inclusion of right to refuse work for workplace violence would be included in OHSA

More controversial proposed additions to OSHA include: obligation for employer to respond where informed of domestic violence; and obligation to disclose personal information about a person with a history of violence, if workers can be expected to encounter that person in the course of work, and the risk of workplace violence is likely to expose the worker to physical injury (disclosure only as reasonably necessary to protect worker)

**Without Amendments To The OHSA (In Bill 168), What Are Worker Rights And Employer Obligations Relating To Potentially Violent Students?**

Currently, Ontario MOL is requiring educational sector to create violence policies and procedures, conduct workplace assessments, conduct training, under section 25(2)(h) OHSA. Current prosecution pending against health care organization

**When Must The School Board, College,  
University Report A Critical (Or Fatal) Injury  
To A “Person” Who Is Not An “Employee”,  
Student, Member Of The Public?**

Section 51 OSHA requires notification (MOL, JHSC,  
Health and Safety representative, Trade Union)  
immediately and report in 48 hours if a person killed or  
critically injured

Further, where death or critical injury, no person is to the disturb scene until permission is given by MOL Inspector

“Person” not defined and clearly includes parties other than Employer, Constructor, Owner reporting, and worker involved. Sufficiently broad to include obligation to notify and report injury to student, member of public and preserve scene. Recent case law supports this

**What Regulations Under The OSHA, If Any,  
Apply To Educational Facilities And Their,  
Workers And Students?**

Ontario OHSA as broad matter applies to a school board, college, university, as well as supervisors, workers, officers and directors. Regulations must be specific to workplace to apply. If “construction project” taking place, requirements of construction projects regulation applicable to workplace, worker, Employer, Constructor. If designated substance present, regulations apply

Section 25(2)(h) obligation to take every reasonable precaution applies in absence of applicable regulation (in absence of industrial establishment, shop, industrial regulations do not apply). Section 25(2)(h) may also apply to require employer to establish conditions of workplace for safety of workers and students

**Pandemics and Communicable Diseases –  
Can The Board, College, University,  
Send Workers Home?**

In an outbreak such as H1N1 virus, SARS, other communicable disease, employer may ask or require workers exposed to illness to remain absent. Pay depends on collective agreement or employment contract. Best to have communicable illness policy to ensure broad policies applied in non-discriminatory manner



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