

TABLE OF CONTENTS

Chapter 1 — OHS Due Diligence	1
1.1 Facing Work-Related Injury Risks — Yesterday and Today	1
1.2 Improving OHS Regulations and Practices to Meet Today’s Societal Standards	4
1.2.1 Societal Expectations in the 21 st Century	5
1.3 Towards Achieving a Higher Standard of Care	8
1.3.1 Acts of Commission and Omission	9
1.4 Public Welfare Statutes	10
1.4.1 Features of Public Welfare Statutes	11
1.5 Historical Background on OHS-related Criminal Prosecutions	11
1.5.1 Directing Mind	12
1.6 Regulatory Offences (Strict Liability)	14
1.7 How Are OHS Regulations Enforced?	16
1.7.1 Criminal Charges	16
Chapter 2 — Understanding Due Diligence	19
2.1 OHS Due Diligence Across Canada	19
2.1.1 Employer Obligations	23
2.2 Awareness of Enforcement Mechanisms under OHS Legislation	24
2.3 Negligence	28
2.3.1 Existence of Duty and Breach of Duty	29
2.3.2 Consequent Loss or Damage (Injury)	30
2.4 Answering Questions About Negligence	31
2.5 Negligence and Degree of Diligence	32

Table of Contents

2.6	About the Due Diligence Defence	33
2.6.1	Defence of Reasonable Care	33
2.7	Reasonable Belief in a Mistaken Set of Facts	36
2.8	Learning from Experience	37
2.9	Maintaining a Focus on OHS Due Diligence	37
Chapter 3 —	Foreseeability	41
3.0	Introduction to Foreseeability	41
3.1	Due Diligence Before Work Begins	42
3.1.1	Applicable Regulations	43
3.1.2	Hazard Assessments and Other Safe-Work Planning Techniques	44
3.1.3	Workplace Hazard Identification Systems	45
3.1.4	The Experience of Others	45
3.1.5	The Experience of the Employer	47
3.2	Considering Foreseeability From Different Perspectives	48
3.2.1	Be Aware of Foreseeability “Blind Spots”	49
3.2.2	Take the Time to Look	53
3.2.3	Are Any Incidents Unforeseeable? . . .	54
3.2.4	General vs. Specific Foreseeability	55
3.2.5	General Foreseeability and Contingency Planning	55
3.3	The Employer’s Duty	56
Chapter 4 —	Employer Duties	57
4.1	Definition of Employer	57
4.1.1	Is a Manager or Supervisor an “Employer”?	58
4.1.2	Is an Officer or Director an “Employer”?	59
4.2	Employer Duties	61
4.2.1	Strict Liability	64

Table of Contents

4.2.2	What is an “Acceptable Level” of Risk?	65
4.2.3	Regulations	65
4.2.4	Industry Standards	66
4.2.5	Best Practice	66
4.2.7	Your Own Policies, Procedures and Standards	67
4.2.8	Previous Incidents	67
4.3	Understanding the Meaning of Reasonably Practicable	68
4.3.1	You Must Make the Work Safe	71
4.4	Building Your Own Due Diligence Checklist	71
Chapter 5	— Systems of Work to Prevent Harm	73
5.1	Introduction	74
5.1.1	Developing Systems of Work	75
5.1.2	Appropriate Equipment, Inspections and Maintenance	78
5.1.3	PPE and Other Protective Devices	80
5.1.4	Effective Training	81
	5.1.4.1 Role of Supervisors	82
	5.1.4.2 Testing	83
	5.1.4.3 Ongoing Training	83
	5.1.4.4 Hiring and Training of Young or New Workers	84
5.1.5	Direction and Instruction	85
5.1.6	Information	86
5.1.7	Monitoring and Correction: Helping to Ensure the OHS Program is Working	88
Chapter 6	— Control and Incident Prevention	93
6.1	Introduction	93
6.2	Elements of Control	95
6.2.1	Authority	95
6.2.2	Knowledge	96
6.2.3	Proximity	96

Table of Contents

6.3	Degree of Control by Work Site Parties	97
6.3.1	The Employer (Company or Organization)	97
6.3.2	Managers	97
6.3.3	Supervisor	98
6.3.4	As a Supervisor or Manager, When do you Have Control?	98
6.3.5	Worker	99
Chapter 7	Supervisor Duties	101
7.1	Supervisors and Due Diligence on the Front Line	102
7.1.1	Persons Who Are Not Supervisors	104
7.2	Reviewing General and Specific Duties	105
7.3	Stopping Work for Immediate Safety	108
7.4	Correcting Workers for Future Safety	109
7.5	Applying Discipline as Due Diligence	109
7.5.1	Record of Discipline	110
7.6	Avoiding Discriminatory Action	111
7.7	Checklist for Supervisors	112
7.8	Supervisors and the Employer's Duty	113
7.8.1	Systems of Work	114
7.8.2	Equipment	114
7.8.3	PPE and Protective Devices	114
7.8.4	Training	114
7.8.5	Direction and Instruction, and Competency	114
7.8.6	How to Verify Competency	115
7.8.7	Qualifications	115
7.8.8	Training	116
7.8.9	Experience	116
7.8.10	Situational Factor	116
7.8.11	Direct Supervision	117
7.8.12	Leadership	118
7.8.13	Work Planning	118
7.8.14	Change Management	118

Table of Contents

	7.8.15	Information	118
	7.8.16	Monitoring and Correction	119
7.9		Employer's Responsibility to its Supervisors	119
	7.9.1	Training the Supervisor	120
Chapter 8 —	Worker Duties		123
8.1		Introduction	123
	8.1.1	Worker's Role in Health and Safety	124
	8.1.2	Vulnerable Workers	125
8.2		General and Specific Duties	126
8.3		Knowing Basic Workers' Rights	127
8.4		Adopting Essential Safety Behaviours	128
8.5		Reporting Unsafe Conditions	131
8.6		Refusing Unsafe Work	132
8.7		Protection for Workers Against Discriminatory Action	135
8.8		Working Alone or in Isolation	137
8.9		Getting Workplace Health and Safety Information	139
8.10		Knowing the Employer's Responsibilities	143
8.11		Worker Resources	144
Chapter 9 —	Contracted Work		147
9.1		Introduction	148
	9.1.1	Alberta Example	149
	9.1.2	Saskatchewan	152
9.2		Examples of Contract Work	155
	9.2.1	Construction	155
	9.2.2	Turnaround/Shutdowns	155
	9.2.3	Regular Activities	156
	9.2.4	"One-offs" or Infrequent Activities	156
	9.2.5	Regular Short-Duration Activities	156
	9.2.6	Vendor	157
	9.2.7	Temporary Workers	157

Table of Contents

9.3	Benefits of Contracted Work	157
9.3.1	Cost Savings	158
9.3.2	Specialized Skills	158
9.3.3	Unpleasant Work	158
9.3.4	High-Risk Work	159
9.3.5	Increased Flexibility	159
9.4	How Hazards Change With Contracted Work	159
9.4.1	Meeting Assigned Duties	162
9.5	Four Steps in Managing Health and Safety for Contracted Work	164
9.5.1	Selection	164
9.5.2	Writing the Contract	165
9.5.3	Orientation	166
9.5.4	Monitoring	168
9.6	Multiple-Employer Work Sites	170
9.7	Scenarios Where Site Owner is not a Site Operator	171
9.8	Degree of Control and Legal Duties for Contracted Work	172
Chapter 10	— Joint Committees	175
10.1	Introduction	176
10.1.1	Joint Committee’s Auditing Role ...	177
10.1.2	Federally Regulated Employers	179
10.2	Selection of Joint Committee Members	180
10.3	Main Duties and Functions of Joint Committees	182
10.3.1	Joint Committee Recommendations to Employers	184
10.4	Role of Worker Health and Safety Representatives	184
10.5	Employer Support for HS Representatives and Joint Committees	185
10.6	Education and Training of HS Representatives and Joint Committee Members	186

Table of Contents

10.7	Procedures for Running a Successful Joint Committee	187
10.8	About Workplace Inspections	187
10.8.1	Purposes of Inspections	188
10.8.2	Inspect All Operations and Locations	188
10.8.3	Inspection Reports	190
10.9	Accessing Resources	190
10.10	Hazard Identification and Control	192
Chapter 11	— Criminal Liability for OHS Offences	193
11.1	Introduction	196
11.2	Review of R. vs. Sault Ste. Marie	196
11.3	Strict Liability vs. Criminal Law	198
11.4	Criminal Law	199
11.4.1	What is Criminal Negligence?	200
11.5	Regulatory Law (Strict Liability)	200
11.6	Other Comparative Factors About Criminal and Regulatory Law	201
11.6.1	Commission of Act (Physical Element)	201
11.6.2	State of Mind (Mental Element) ...	201
11.6.3	Standard of Proof	202
11.6.4	Burden of Proof	202
11.7	Penalties	202
11.7.1	Impact of Being Convicted	203
11.8	Summary	204
Chapter 12	— Methods of Enforcement	207
12.1	Introduction	208
12.1.1	Inspections	210
12.1.2	Investigations	210
12.1.3	Orders	210
12.1.4	Offences	210
12.1.5	Fines and Penalties	211
12.2	Administrative Penalties	211
12.3	Creative Penalties	212
12.4	What Happens to Fine Amounts?	214

Table of Contents

12.5	How Does the Court Assess a Penalty Amount?	214
12.6	Factors in Sentencing	216
12.7	Imprisonment	217
12.8	Federally Regulated Workplaces	218
12.9	British Columbia	223
12.9.1	Fines and Penalties under the Act	224
12.9.2	Administrative Penalties	225
12.9.3	About OHS Citations (Lower Maximum Administrative Penalties Regulation)	229
12.9.4	Administrative Penalty Examples	230
12.10	Alberta	230
12.10.1	Penalty Amounts	233
12.10.2	Administrative Penalties	234
12.10.3	Tickets for OHS Contraventions	237
12.11	Saskatchewan	238
12.11.1	Compliance Undertakings and Notices of Contravention	239
12.11.2	Summary Offence Tickets	240
12.12	Manitoba	240
12.12.1	Improvement Orders and Stop Work Orders	242
12.12.2	Administrative Penalty Regulation	244
12.13	Ontario	244
12.14	Quebec	246
12.15	New Brunswick	247
12.16	Prince Edward Island	249
12.17	Nova Scotia	250
12.18	Newfoundland and Labrador	250
12.19	Yukon	252
12.20	Northwest Territories and Nunavut	253
12.21	Summary	254

Table of Contents

Appendix 12-A: Maximum Fines and Penalties by Jurisdiction	257
12-A.1 Introduction	258
12-A.2 Federally Regulated Employers	258
12-A.3 Criminal Code Penalties	263
12-A.3.1 Case Examples	263
12-A.3.2 Illustrative Cases Showing “Disregard” for Safety	266
12-A.4 British Columbia	269
12-A.5 Alberta	273
12-A.6 Saskatchewan	276
12-A.6.1 Prosecution Statistics	280
12-A.7 Manitoba	283
12-A.8 Ontario	287
12-A.9 Quebec	292
12-A.10 New Brunswick	294
12-A.11 Prince Edward Island	296
12-A.12 Nova Scotia	297
12-A.13 Newfoundland and Labrador	300
12-A.14 Yukon	301
12-A.15 Northwest Territories and Nunavut	303
Chapter 13 — Online OHS Resources	307
13.1 Federal	307
13.1.1 Federal and Social Development Canada (ESDC)	307
13.1.2 National Organizations	308
13.2 British Columbia	309
13.3 Alberta	311
13.4 Saskatchewan	312
13.5 Manitoba	314
13.6 Ontario	315
13.7 Quebec	316
13.8 New Brunswick	316
13.9 Prince Edward Island	316
13.10 Nova Scotia	317
13.11 Newfoundland and Labrador	317

Table of Contents

13.12	Northwest Territories and Nunavut	318
13.13	Yuko	318
13.14	United States	318
13.15	International	319
Index		321