Cleaning Up a Work Accident Without Obstructing the OHS Investigation



The right and wrong way to respond to a workplace accident at your site.

If there's an accident at your workplace, your first instinct may be to clean up the mess and get operations back on track as soon as possible—especially true if the accident appears minor and your workplace is a store, restaurant, hospital or other establishment frequented by the public. Unfortunately, giving in to the urge can get you into big trouble. That's because OHS laws impose a duty not to disturb an accident scene until an inspector looks things over and gives the all-clear. **Exception:** You're allowed to move wreckage or clean up messes to prevent further injuries or protect valuable equipment. There may also be situations where you can clean up right away even where life, limb or expensive machinery isn't at stake.

Here's a look at a real case from Ontario involving a company in this situation.

Wrong Way: What the Company Actually Did

Situation: A waitress slips and falls while carrying a tray full of food. It's right in the middle of lunchtime and the restaurant manager is feeling a lot of pressure. He assumes the waitress will be fine and orders the mess cleaned up immediately. It turns out that the waitress has suffered a hairline fracture of the leg. The restaurant doesn't report the injury to the Ministry of Labour (MOL) as required by Ontario OHS law. The MOL learns of the accident a few days later. But since all of the evidence has been removed, it can't investigate.

Outcome: The restaurant is charged and convicted of failing to preserve the accident scene and fined $20,000. The restaurant is fined another $20,000 for not reporting the accident to the MOL [*R. v. Famz Foods Ltd.*, Unreported Decision of the Ont. Ct. (Prov. Div.)].

Right Way: What the Company Should Have Done

Situation: The same accident occurs. But let's change the response to show what would have been a proper response. The restaurant manager, still feeling the pressure to restore order and assuming the waitress is okay, orders the area temporarily blocked off. He immediately calls the MOL regional office and describes what happened. The MOL says it will take at least 90 minutes for an inspector to arrive. The manager

calmly explains that he has a restaurant to run and asks for permission to clean up the mess without waiting for the inspector. He offers to take photos of the accident scene.

Likely Outcome: Three different OHS lawyers—one from Alberta, one from B.C. and one from Ontario—confirm that OHS officers tend to be cooperative and would likely agree to such request. But they add one important piece of advice: Get written confirmation of your conversation.