

OHSA Penalties Possible Without Workplace Accident



The *Occupational Health and Safety Act* (“OHSA”) and its regulations establish essential standards for workplace health and safety in Ontario. Non-compliance can lead to significant penalties imposed by the Ministry of Labour, Immigration, Training and Skills Development (the “Ministry”).

An example illustrating such penalties involves THS Industries Ltd., a steel nail manufacturer in Kitchener, Ontario. In early 2023, the company and its CEO were fined a total of \$100,000 due to violations related to machine guarding.

Following an anonymous complaint alleging workers bypassed machine guarding devices on nail-making machines, Ministry inspectors investigated the manufacturing site. They found unfixed access gates on multiple machines and discovered that fixed guards had been removed from numerous nail-making machines and at multiple locations on each machine. Additionally, inspectors observed a worker actively working inside an open access gate of a running machine. These discoveries collectively pointed to a systemic issue rather than an isolated incident.

Despite no injuries resulting from these guarding deficiencies, the Ministry identified a serious risk of injury to workers due to the absence of fixed guarding, which created an in-running nip hazard. This hazard occurs when body parts could potentially be caught between rotating parts or between a rotating and stationary part of a machine.

The violations were cited under Section 25 of Ontario Regulation 851/90 of the OHSA, which mandates guards or devices to prevent access to pinch points or other hazardous machine parts.

Both the employer and CEO were found to have failed in their duty to take all reasonable care to ensure the provision of equipment, materials, and protective devices for nail-making machines, as required by Section 25 of Ontario Regulation 851/90. More specifically, the employer was found in violation of section 25(1)(a) of the OHSA for failing to ensure the provision of necessary equipment and protective devices, and the CEO was found in violation of section 32(a) of the OHSA, which outlines the responsibility of directors to take reasonable care to ensure corporate compliance with the OHSA and its regulations. Consequently, fines totaling \$100,000 were imposed, with \$85,000 allocated to the employer and \$15,000 to the CEO personally.

These penalties were significantly influenced by prior convictions of the company under the OHSA within the last six years.

Key Lesson for Employers

Employers must consistently prioritize compliance with occupational health and safety regulations, irrespective of whether workplace incidents have occurred. The case of the Kitchener-based steel nail manufacturer underscores the risks of neglecting proper machine guarding, which can lead to substantial financial penalties under the OHSA. It is essential for employers to rigorously enforce safety protocols to mitigate hazards and ensure the safety of their employees. Failure to do so not only risks legal consequences but also compromises worker well-being.

This case highlights the critical importance for directors and officers of corporations to strictly adhere to OHSA regulations, as they can be held personally liable for corporate actions.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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