

Primer On Due Diligence In Occupational Health And Safety Matters



Among the defenses employers can rely on for infractions under the *Occupational Health and Safety Act* is that of due diligence. Due diligence is a well-known term, but what does it really mean? Because fault on the part of the employee is not a valid defence...

The courts have developed five criteria for a successful due diligence defence by the employer:

1. Ensuring that employees have the appropriate safety equipment before leaving for their job site or work station;
2. Meeting with foremen to make sure they understand the importance of safety instructions and the consequences of not following them;
3. Supervising the employees and/or making check-up visits to their job site or work station;
4. Issuing oral and then written reminders if safety instructions are not followed;
5. Issuing warnings and, if warranted, imposing disciplinary measures for not following safety instructions.

One line of recent cases refers rather to the employer's duties of foresight, efficiency and authority.

The duty of foresight entails identifying the risks inherent in the work and properly managing them. The employer must analyze each facet of the work to be performed and ensure that the employees have the necessary level of competence and information to perform it safely.

The duty of efficiency entails the concrete application of measures to mitigate the targeted risks. For example, the employer must provide employees with appropriate safety equipment, see that the accident prevention program is prominently posted, and ensure that the work is adequately supervised.

As for the duty of authority, it consists of the employer's obligation to take action against employees who do not follow safety instructions. The employer cannot tolerate any such lapses and must impose sanctions for non-compliance.

Since the year 2000, the CSST has had a zero-tolerance policy in place for certain work such as work performed at high elevations, in excavations and trenches, and with

material containing asbestos or silica.

Be sure to take appropriate measures, as CSST fines can reach as much as \$300,000!

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