

# Summary Offence Tickets: Are You Prepared?



The recent amendment to the Saskatchewan Employment Act includes the introduction of Occupational Health and Safety (OH&S) Summary Offence Ticketing (SOT) program. Under this program, Occupation Health Officers levy tickets for infractions which compromise workplace safety in high-risk environments against employees, contractors, and employers. This program came into effect, after a year delay, on July 1, 2014.

## PURPOSE

The SOT program is aimed at small offences which proved difficult to enforce under the former *Occupational Health and Safety Act*, because of the amount of time between the offence and when the charge could be laid.<sup>1</sup> The tickets are meant to be issued after other tools, such as Compliance Undertakings or Notices of Contravention, have failed to motivate parties to address their health and safety issues.<sup>2</sup> The offences are found in table 49 and 50 of clause 8(a) of the *Summary Offence Procedures Regulations*, 1991.<sup>3</sup>

Occupational Health Officers conduct roughly 4,500 on-site inspections annually.<sup>4</sup> Following an inspection, an SOT can be issued, either on-site or by mail. The SOT can be paid voluntarily or disputed at the court date stated on the ticket. Fines are based on the offence and range from \$250 to \$1,000, plus a victim surcharge.

## OFFENCES

There are two kinds of SOT offences: lone offences and employer offenses.

A lone offence SOT may be issued when an employee fails to wear personal protective equipment. These tickets are issued directly to the employee, and in doing so, the SOT program recognizes that employees must be held accountable

when working to maintain safe work environments.

The rest of the offences under the SOT program are aimed at employers, contractors, owners, self-employed persons, and suppliers. The offences under the SOT program for employers are oriented towards compliance with OH&S regulations, the provision and use of personal protection equipment, fall prevention, and excavation and trenching.

Below is a summary of the general categories which the SOT program is designed to address.

#### *Compliance with OH&S Procedures*

A compliance undertaking or notice of contravention may be issued by an Occupational Health Officer following an inspection and may require a progress report detailing the steps taken by the employer to remedy the contravention. The OH&S Director can instruct an employer to produce information or statistics by a certain date where it is deemed to be required for the performance of their duties or to ensure compliance.<sup>5</sup>

An employer's failure to submit a progress report or to comply with instructions from the OH&S Director may result in a summary offence ticket.

#### *Personal Protective Equipment*

Failure by the employer to supply workers with approved personal protective equipment can also result in a SOT being issued to employers. Personal protective equipment refers to items, either clothing or a device, which are worn or used by an employee to prevent injury or facilitate rescue.<sup>6</sup>

The employer also has an ongoing responsibility to ensure that workers use personal protective equipment and failing to do so can result in a summary offence ticket. An employer knowing what personal protective equipment must be supplied and taking steps to ensure its use is vital to avoid both potential fines and ensure workplace safety.

Failing to provide an effective safeguard for dangerous machines is another ticketable offence for employers. A safeguard is required when workers may contact a dangerous moving part, pinch-point, cutting edge, open flame, or surfaces exceeding 80 degrees Celsius or less than -80 degrees Celsius.<sup>7</sup> Employers need to be cognisant of the appropriate safeguards for their machines, and whether they are in place, to avoid fines.

#### *Fall Protection*

The SOT program also encourages the proper use of fall protection systems. A fall protection system is required when a worker can fall 3 metres or more or where there is a possibility of injury if a worker falls less than 3 metres.<sup>8</sup> A fall protection system is comprised of 4 parts: <sup>9</sup>

- a control zone [OH&S Regulations, 1996, s. 116.2];
- a personal fall arrest system [OH&S Regulations, 1996, s. 102(1)] and either;
- a safety net [OH&S Regulations, 1996, s. 126] or
- a travel restraint system [OH&S Regulations, 1996, s. 116(1)(g)].

Developing an awareness of whether your business requires a fall protection system and the means by which one is implemented is a business's best way of avoiding potential fines.

Employers can also be ticketed for failing to adequately mark or cover holes or openings. Any opening or hole that a worker could fall through needs to be either securely covered and marked or have a guardrail and toeboard.<sup>10</sup>

### *Excavation and Trenching*

If an employer fails to ensure workers are protected against cave-ins or sliding in an excavation or trenching scenario, the employer may be ticketed. The required protections come into effect when the trench or excavation is more than 1.2 metres deep. These protections can include steps such as cutting back the top part of the excavation or trench wall or installing a temporary protective structure.

Failure to implement a hazardous confined spaces plan can also result in a SOT for an employer. This is a fairly common sense requirement but has required elements such as the procedures to enter, work in, and exit the hazardous confined space and the location and availability of equipment required to work in the space.

## **CONCLUSION**

It is possible that the list of new Summary Offence Tickets will be expanded in the future, as only 12 offences of the 75 original suggested offences have been implemented at this time. It is important that employers bring their business in line with these regulations now as more may need to be done in the future.

In Saskatchewan, during 2013/14, there was 118 Occupational Health & Safety (OH&S) prosecutions initiated against businesses and 85 convictions, for a total fine amount of \$647,200.<sup>11</sup> OH&S prosecutions can clearly be expensive for employers, in fines, litigation costs, and dedicating personnel and other resources to these proceedings. Lowering the amount of small-scale infractions in high-risk environments can easily be seen as a proactive measure for employers in avoiding costly OH&S prosecutions.

The first step in bringing your business in line is educating yourself and your employees about the Summary Offence Ticket program, including the controlling legislation and regulations. Engaging your business's OH&S representatives or committee in this process is imperative to avoiding fines for so-called common sense OH&S infractions.

The next step is to ensure your business is compliant which includes reviewing and updating internal policies and continually taking steps to enforce these policies. Some of the offences require simple diligence, like submitting progress reports by the required deadline. However, while the offences are aimed at common sense infractions of OH&S regulations, the regulations themselves can be complicated and downright confusing.

Taking proactive steps can be difficult but is the best way to avoid potential fines and possible litigation. Furthermore, with the introduction of any new program there may be some uncertainty in regards to whether an offence was actually committed. When a SOT is issued, like a speeding ticket, the onus is

on the accused to prove there was no offence.

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