Use the Law to Get Employees to Work Safely



Like other animals, human beings are born with a survival instinct. Something in our natures tells us to try to stay alive and in one piece. The human instinct for self-preservation also causes us to protect others, like the people we work with. Workplace safety rules are in harmony with these instincts. Nature tells us to stay safe; the rules tell us how. We know that it's not good to fall 25 metres from a scaffold onto a hard concrete floor. But we're not born with knowledge of fall protection equipment. Fall protection rules and procedures fill in the gap.

Yeah, right! If safety rules are so in line with the laws of nature, why do so many companies have trouble getting their employees to follow them?

Here's something to try: Appeal to employees' fear of being found guilty of an OHS violation. Surprisingly, safety coordinators tell the *Insider* that it works.

Employees Are Not Above – Or Below – the Law

As it turns out, employees' concerns about the law aren't misplaced. Canadian employees are fair game for OHS fines and penalties. True, the purpose of Canadian health and safety laws is to protect employees. At the same time, though, the laws treat the employee not just as a bystander but as an active participant in ensuring workplace safety. Under the Internal Responsibility System, the theory on which Canadian OHS laws are based, everybody at or affected by what goes on at the workplace must play a role in making it safe.

Accordingly, all provincial OHS laws impose general safety-related duties on employees. Even though the substance of the duties varies slightly from province to province, most OHS laws require employees to work safely and co-operate with their employers. A strong argument can be made that obeying company safety rules is part and parcel of this duty. (Federal and B.C. OHS laws seem to say this directly.)

Employees who commit safety violations can also be liable for criminal negligence under C-45.

Employees Do Get Prosecuted

Nor are employees immune from prosecution. On the contrary, the government can and often does charge employees for violating OHS laws, especially after serious accidents.

Example: An Ontario worker lost both legs, his right arm and shoulder and a finger on his left hand after being struck by a 7,200-volt power line. The accident was caused when a tree cut down with a chain saw fell the wrong way. The worker who cut the tree was found guilty of two OHS violations—not clearing the area and not using ropes to control the direction of the falling tree. The worker appealed. The employer in this case had established work practices calling for the use of an unsafe method to cut down trees. Why should I be guilty of an offence, the worker argued, when I was only following my employer's protocols?

The court rejected this argument and upheld a sentence of 18 months' probation. The court admitted that a worker who violates a sound safety rule in a safe company is more deserving of punishment than a worker who follows unsafe work procedures established by his employer. But even workers who go along with their employer's unsafe work practices deserve to be punished when they put their co-workers in danger. After all, the victim in this case suffered horrific injuries. So it was appropriate to hold the worker guilty of an OHS violation [*R. v. Campbell*, [2004] O.J. No. 1144].

Prosecutions against employees used to be relatively rare. But that's changed. Such prosecutions happen more often than you might think. "Charges against employees don't get the attention that charges against corporations do," according to a Toronto OHS lawyer. One reason for this is that governments don't publicize these cases. "OHS authorities in many provinces issue press releases about convictions of corporations but not employees," the lawyer explains. In addition, employees who get charged with OHS violations often plead guilty and don't fight it out in court. Consequently, the cases don't get reported in the legal journals.

One more thing to consider: Not only are prosecutions of employees up but the fines are getting bigger.

Use Liability Risk to Build Awareness and Respect for Rules

Alccording to the safety coordinators we spoke to, many employees don't realize that they have to obey the workplace safety laws and can be prosecuted if they don't. "Workers mostly assume that the law only covers the employers and the company," according to a safety coordinator at a BC paper mill.

Letting employees know of their obligations under the law can thus be a powerful motivator to work more safely and follow the rules. At least three safety coordinators told us that they've used this approach successfully. "We found that most employees are less prone to commit infractions once they know it's against not only company policy but also the law," said one.

According to another: "Don't ask me to explain. We told them they were going to lose a leg [if they kept taking shortcuts by climbing over a moving conveyor], it didn't work. We told them somebody was going to get killed. They didn't listen. Then we told them they were going to get arrested, and, poof, the shortcuts stopped."

Conclusion

So it might be a good idea to give your employees a wake-up call about their legal obligations, especially if you’re having trouble getting them to follow your safety rules. In addition to making the important points, we tried to make the form visually appealing so employees will notice it if you post it on a notice board at your workplace.