"Who Is A Supervisor?"



Employers often struggle with the question of who is a "supervisor" under the Ontario *Occupational Health and Safety Act.* The answer to that question is obviously important because supervisors have legal duties under the OHSA, violations of which can lead to charges and fines.

The Ontario Ministry of Labour has recently released a "guideline" called, "Who is a Supervisor under the Occupational Health and Safety Act?"

The MOL provides, in that guideline, two lists of "powers and responsibilities that may be exercised or carried out by a supervisor". The MOL says that the first list includes powers that are "primary indicators of being in a supervisory role", and the second list "includes responsibilities that would generally be carried out on the job site by a front-line supervisor who interacts directly with workers":

"1. Powers that are primary indicators of being in a supervisory role include the power to:

- hire, fire or discipline,
- recommend hiring, firing or discipline,
- promote, demote or transfer,
- decide a worker's rate of pay,
- award bonuses,
- approve vacation time,
- grant leaves of absence, or
- enforce procedures established to protect worker health and safety.

2. A person with none of the powers listed above could still be a supervisor as defined in the **OHSA**, if he or she has some of the following responsibilities:

- determining the tasks to be done, and by whom,
- directing and monitoring how work is performed,
- managing available resources such as staff, facilities, equipment, budget,
- deciding on and arranging for equipment to be used on a job site,
- deciding the make-up of a work crew,
- deciding on and scheduling hours of work,
- dealing directly with workers' complaints, or
- directing staff and other resources to address health and safety concerns."

The MOL guidance goes on to provide examples as well as summaries of relevant court

decisions.

Ontario employers, particularly those in safety-sensitive businesses, should familiarize themselves with the guideline, and ensure that all supervisors (1) know that they are “supervisors” under the OHSA, (2) have taken the MOL’s required basic supervisory safety awareness training, (3) are fully aware of their duties under the OHSA, and (4) have received the workplace-specific safety training necessary for them to comply with their duties under the OHSA.

Last Updated: March 16 2015

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