Supervisors Increasingly in the Spotlight When Safety Inspectors Find Violations

As a supervisor you may or may not be very high up the totem pole in your company or organization's hierarchy. But whether you are in a line-level position or a senior safety manager, you may be held liable if a worker is seriously injured or killed on the job.

Jeremy Warning, a former prosecutor who now works as a senior associate at Heenan Blaikie, an occupational safety and health law firm in Toronto, ON, says workplace health and safety inspectors key in on the actions of supervisors when unsafe or unhealthy conditions are found during inspections or accident investigations.

In occupational safety and health enforcement, Warning sees a trend toward safety inspectors/investigators going after not only companies, but also individual supervisors whose actions or lack of actions contribute to worker injuries or deaths.

While Warning is observing the trend from a Canadian perspective, Canada certainly is not alone in prosecuting individuals. For example, the owner of a California print shop and a pressroom manager were both charged with involuntary manslaughter after a 26-year-old pregnant employee was crushed to death in a creasing and cutting machine. The men pleaded not guilty to the charges during a late October, 2010 court appearance.

Here are a couple of Canadian examples:

The general superintendent of Toronto Transit Commission, who headed a department with 400 workers and was three supervisory levels removed from a crew working in a subway tunnel, was determined to be a "supervisor" after several members of a subway crew suffered carbon monoxide poisoning. However, he was acquitted at trial after a judge found he had shown due diligence.

The lead hand of a grass-cutting crew was determined to be a supervisor after a student worker suffered a serious foot injury as a result of his foot slipping under a lawn mower while the machine was running. The lead hand had taped a lawnmower's dead-man bar to the handle to keep the motor and blade running when the mower was unattended. The "supervisor" was fined $500 for failing to ensure a worker's safety.

Warning says factors that determine whether a supervisor will be charged include:

The safety breach's degree of seriousness. How responsible the supervisor was for what happened, such as whether a worker was ordered to use unsafe equipment that the supervisor knew was unsafe, and then became hurt as a result. The potential for harm and the actual harm involved stemming from unsafe workplace conditions. The need to send a message to other supervisors that an uncaring attitude toward safety will not be tolerated by the courts.

"If you have actual hands-on authority, the courts won't hesitate to find there is a supervisory role there," says Warning.

Employers have an obligation to provide appropriate and competent supervision of workers and "supervision may also be expected as part of an employer's duty to take all reasonable care to protect workers."

Warning says prosecutors are looking closely into whether supervision levels are adequate, including whether a supervisor is overextended and can't possibly cover all aspects of his or her job. They are also delving into a supervisor's level of competence, including understanding and following occupational safety/health regulations and understanding hazards and knowing how to protect workers against them.

His advice to supervisors who want to cover their bases in the event of an inspection or investigation is "document, document, and document." That means supervisors should be keeping daily notes of their activities with respect to training and measures

they have taken to address safety issues.