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REGULATORY CHANGES AND LIABILITY

Legal Considerations

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Regulatory Changes and Liability: Legal Considerations

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Regulatory Changes and Liability: Legal Considerations

- **OHS Policy R5.48-1 Controlling Exposure - Exposure Limits**
- ***Workers Compensation Act***
 - Online Platform Workers**
 - Permanent Disability Evaluation Schedule**
- **OHS Regulation**
 - Occupational First Aid**
 - Notice of Project for tower cranes**
 - Washroom facilities at construction sites**
 - Online Platform Workers Regulation**

Regulatory Changes and Liability: Section 127 of the Workers Compensation Act

Limitation on legal proceedings against employers or workers

127 (1) Subject to subsection (2),

(a) the compensation provisions are in place of any right and rights of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker or a dependant or family member of the worker is or may be entitled against

(i) the employer of the worker,

(ii) an employer within the scope of the compensation provisions,
or

(iii) any other worker,

In respect of any personal injury, disablement or death of the worker arising out of and in the course of employment, and

(b) no action lies in respect of such an injury, disablement or death.

Regulatory Changes and Liability: Section 127 of the Workers Compensation Act

Section 127 of the *Workers Compensation Act* bars an action in damages founded on a breach of a duty of care or other cause of action in respect of a workplace injury. It does not bar damages against non-workplace defendants that include a non-tortious workplace aggravation of an indivisible injury they caused (*Pannu v Behnke*, 2024 BCSC 362 (CanLII)).

Legal Considerations: Failing to Register as an employer with the Board

Section 245 of the *Workers Compensation Act* and policy AP5-245-1 require employers to register with the Board.

Failing to register or failing to pay a full assessment or part of an assessment, makes the employer liable for the full amount or capitalized value of compensation payable to a worker.

Section 263(4) gives the Board discretion to reduce or cancel this liability if it is satisfied that the employer's default was excusable.

Legal Considerations: Failing to Register as an employer with the Board

Policy item AP5-263-1, *Charging Claim Costs to Employers*, states that the Board may reduce or cancel charges in these circumstances:

- There has been a Board error;
- the employer contacted the Board prior to the injury with a view to registration, and the employer supplied the information required to proceed with registration within 30 days of the original contact;
- the employer is already registered as a different legal entity;
- the employer is a labour contractor who would be considered a worker if not registered;
- the costs associated with the claim are less than the minimum set by the Board;
- there is sufficient evidence that the employer mailed a registration form prior to the date of injury; or
- any other circumstances which the Board considers are consistent with the Act and the purpose of this charge.

Legal Considerations: Failing to Register as an employer with the Board

WCAT Decision Number A2300577 (January 10, 2024)

- The employer relied on the account administrator for the property management company, an individual with significant training and experience registering employers with the Board, to submit its Board registration application in a timely manner.
- However, the employer did not demonstrate that all reasonable steps were taken to obtain the correct information, namely that it had been registered with the Board in a timely manner.
- There were more than two months between when the employer directed the account administrator to submit its registration to the Board in February 2022 and when the worker's workplace injury occurred in April 2022.
- The employer did not have a system in place to follow-up with the account administrator and/or the Board to confirm that it had been registered. WCAT found that the employer did not establish a reasonable care defence under the circumstances.

Legal Considerations: Failing to Register as an employer with the Board

Canada (A.G) v Albrecht

Failure to comply with a legal requirement due to lack of familiarity is not a reasonable care defence.

Legal Considerations: Duty to disclose workplace hazards

- The *Workers Compensation Act* says that every employer must ensure the health and safety of all workers of that employer, and any other workers present at a workplace at which that employer's work is being carried out.
- The Occupational Health and Safety Regulations asks the person receiving an unsafe condition complaint to investigate the reported unsafe condition or act and ensure that any necessary corrective action is taken without delay.
- The Regulations also asks that unsafe or harmful conditions found during an inspection be remedied without delay. However, in emergencies, every possible measure must be made to control the hazard.
- WCAT Decision 2007-00316.

Legal Considerations: Penalties

Policy item P2-95-1, Criteria for Imposing OHS Penalties, the Board must consider imposing an administrative penalty if the violation in question meets any one of certain criteria, including:

- ▶ The violation results in a high risk of serious injury, illness or death;
- ▶ the employer previously violated the same, or substantially similar, sections of the Act or Regulation or the violation involves failure to comply with a previous order within a reasonable time;
- ▶ the employer intentionally committed the violation; or
- ▶ the Board considers that the circumstances warrant a penalty.

Legal Considerations: Penalties

Policy item P2-95-1 also sets out additional factors that must be considered with regard to the appropriateness of imposing a penalty:

The potential for serious injury, illness or death in the circumstances, based on the available information at the time of the violation.

The likelihood that the penalty will motivate the employer and other employers to comply in the future, taking into account one or more of the following:

- ▶ The extent to which the employer was or should have been aware of the hazard;
- ▶ the extent to which the employer was or should have been aware that the Act or Regulation were being violated;
- ▶ the compliance history of the employer;
- ▶ the effectiveness of the employer's overall approach to managing health and safety; and
- ▶ whether other enforcement tools would be more appropriate.

Recommended Resources

01

WORKSHOP | Legal + Human Organizational Performance

Tomorrow at 8:30 AM

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WEBINARS SERIES

First Aid Regulatory Changes, OHS Regulatory changes for Combustible Dust, Introduction to Bill 41 and Return-to-Work policy, and more: safetyalliancebc.ca/webinars



Additional training to support
the information shared today