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it means business.

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Welcome to the August 2007 issue of the Priority Health & Safety newsletter. Our goal is to keep our clients and prospective clients up to date on news from the Ministry of Labour. We also hope to keep you informed of events in the world of employee relations and of any changes in labour or O.H.S.A legislation that may have an impact on your business.

Who is **Priority Health & Safety Inc?**

We are a group of professionals with 60 years of combined experience in the design of company specific Health & Safety policy & procedure manuals, W.S.I.B Audits and claims management and occupational health & safety training. As well, we have 23 years of solid front line labour relations experience.

We are offering our services to those companies that need to have professional assistance to help with the myriad of legislation and regulations they have to deal with on a daily basis. Our service offers sound advice acquired by in depth understanding of the demands made on companies by provincial legislation. Our experience allows us to offer advice to management concerning how to become and remain compliant with the O.H.S.A Section 25. (1)(2). Most importantly, we do our utmost to help our clients to show that they have done everything reasonably possible for the safety of their workplace. Without proper advice, the Occupational Health & Safety Act can be a legal minefield for those companies that have a serious accident in their workplace and then find themselves before the courts unable to show that they practice due-diligence.

In our first edition, we would like to remind you how seriously the Ministry of Labour, the W.S.I.B and, ultimately, the courts are about enforcing the Occupational Health & Safety in every workplace. Please Visit **www.labour.gov.on.ca**

Due Diligence

"Due Diligence" is most often used to describe the legal concept as a defense against charges laid under provincial statutes, including the *Occupational Health & Safety Act* ("OH&SA"). Charges may arise from:

1. Failure to comply with OH&SA and Regulations, i.e. WHMIS, designated substances etc.
2. MOL inspections resulting Orders;
3. Failure to comply with Company Health & Safety policies and procedures
4. Workplace injuries, accidents and fatalities

Officers, directors, supervisors, workers and the Company can all be charged under the OH&SA.

Our Mission:

To assist businesses in the process of making their workplace safe and productive for all personnel, reducing lost time injuries and accidents and complying with government rules and regulations in a timely manner.

Your workplace safety is our priority.

Determination of Due Diligence

The legal defense of due diligence was first discussed by the Supreme Court of Canada. The Court stated that an accused can avoid liability if they can prove that they took all reasonable care to avoid the particular event which was the subject of the alleged offense.

The defense of "reasonable care" requires that, given the facts and evidence, on the balance of probabilities, all reasonable care was taken to avoid the situation or event that the charge is based upon.

OH&SA Framework for Due Diligence

In addition to the Courts, the OH&SA states that, on a prosecution for failing to comply with the provisions in the OH&SA which set out the duties of constructors, employers, employees or supervisors, "it shall be a defense for the accused to prove that every precaution reasonable in the circumstances was taken". This may be proven if it can be shown that there was a proper system in place to prevent an offence from happening and that reasonable steps were taken to ensure the effective operation of that system.

Evidence of Health & Safety Program in Place

The steps or actions that will satisfy the legal test will vary from case to case depending upon factual complexities. However, there are a number of principles of general application which are essential elements of a due diligence defense.

1). Workplace Audit / Analysis

Every employer must understand the nature of the potential risks or hazards in the workplace.

2). Corporate Safety policy and Implementation Program

Once the workplace hazards are identified, the Company must have a Safety policy, but more importantly, a program to implement that policy.

3). Specific Critical Task procedures and Policies

The program must have policies and practices in place, which are specifically designated to prevent the type of incident that may violate the OH&SA.

4). Training Procedures

The employer, through its supervisors and managers, must take steps to ensure employees understand the specific safety policy, program and procedures. Training must be up to date.

5). Enforcement of Health & Safety

Safety policies and procedures must be consistently enforced through discipline.

6). Supervisor Competence

The employer is required to appoint only supervisors who are "competent". To be competent a supervisor must:

- Be qualified, because of knowledge training and experience to organize the work and its performance
- Be familiar with OH&SA and Regulations
- Have knowledge of any actual or potential danger to Health & Safety in the workplace

From Our Labour Relations Specialist

John W Clark.

In March of this year, Local 91 of the International Brotherhood of Teamsters started an organizing drive with the school bus drivers of the Tri County School board. This drive is only the beginning of the plans that the Teamsters have to organize the school bus industry in Ontario and across North America.

Please see: <http://www.schoolbusworkersunited.org/>

It is also part of a long term plan to be perceived by employees as the organization that is now setting the standards for the school bus industry. The Teamsters are part of a much larger organization called the Change to Win Coalition, **www.changetowin.org**

This organization is comprised of seven of the largest unions in North America that broke away from the AFL/CIO in July of 2005, taking with them six million members and billions of dollars in assets. Their motto is **Organize Or Die!**

This organizing drive so far has seen the teamsters become the bargaining agent for three Tri County bus companies and one taxi company. It is important at this time not to over react if you find that your company has been targeted. The union will use every tool at their

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disposal, especially the Ontario Labour Relations Act Sec 11.2(C) which allows the Labour Board to grant a union automatic certification if a company has been found to have violated the rights of the employees or the union during an organizing campaign.

Section 70, O.L.R.A

No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence. 1995, c. 1, Sched. A, s. 70.

Section 72.O.L.R.A

No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

(a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

(b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act. 1995, c. 1, Sched. A,