

EFFECTIVE HEALTH AND SAFETY PROGRAMS

The key to a safe workplace
and due diligence

WORK SAFE BC

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Workers' Compensation Board of B.C.

Effective Health and Safety Programs

The key to a safe workplace and due diligence

According to the *Workers Compensation Act* and the *Occupational Health and Safety Regulation*, it's the employer's responsibility to implement an occupational health and safety (OHS) program to prevent workplace injury and disease.

OHS programs must meet certain standards. The employer must exercise due diligence in taking steps to meet those standards.

This pamphlet is mainly for employers and supervisors who must ensure that their OHS programs meet a standard acceptable to WorkSafeBC (the Workers' Compensation Board of B.C.). It also explains that demonstrating due diligence in implementing OHS programs can be a defence to a monetary penalty or prosecution when WorkSafeBC requirements have allegedly been violated.

If you are a worker, you will find the pamphlet useful because you must also act with reasonable care – or due diligence – when performing your job. It will also help you understand your employer's health and safety responsibilities.

Using a question-and-answer format, this pamphlet:

- Defines due diligence
- Describes how WorkSafeBC applies due diligence
- Explains how WorkSafeBC assesses compliance with requirements
- Identifies the elements of an OHS program
- Explains how OHS programs help establish due diligence

What is due diligence?

“Due diligence” simply means taking all reasonable care to protect the well-being of employees or co-workers. To meet the standard of due diligence, you must take all precautions that are reasonable in the circumstances so that you can carry out your work and your health and safety responsibilities.

What is the *defence* of due diligence?

In prosecutions for violations of health and safety laws, the prosecutor must prove that the accused committed a prohibited act. To be acquitted, the accused must then establish that on a balance of probabilities *all reasonable precautions to comply were taken in the circumstances*. This is the defence of due diligence.

The standard the courts apply to determine whether an employer has acted with due diligence isn't absolute – as an employer, you aren't expected to anticipate and prevent every possible accident. You must take all the precautions that a reasonable and prudent person would take in the circumstances.

Does WorkSafeBC recognize due diligence?

WorkSafeBC recognizes due diligence in its administration of the *Workers Compensation Act* and the Occupational Health and Safety Regulation. WorkSafeBC will not impose monetary penalties or recommend prosecution for violations of regulatory requirements if it is satisfied that the employers were duly diligent. WorkSafeBC, however, may still issue orders identifying the violations and directing employers to comply with the *Act* or Regulation.

How does WorkSafeBC encourage compliance with its requirements?

WorkSafeBC encourages compliance with the *Workers Compensation Act* and the Occupational Health and Safety Regulation through consultation and education and by issuing orders to correct violations of the Regulation.

WorkSafeBC has the legal authority to levy monetary penalties, known as administrative penalties, on employers for failing to comply with the *Act*, with the Regulation, or with orders. WorkSafeBC can also stop hazardous work and levy administrative penalties on employers who use work practices that pose a high risk of death, serious injury, or disease.

Examples of high-risk work practices include:

- Working on equipment that isn't locked out
- Working in an excavation over 1.2 metres (4 ft.) deep without adequately supporting or sloping the sides of the excavation
- Failing to fall danger trees (snags) and using domino falling procedures in logging
- Permitting workers to be exposed to situations or conditions that are immediately dangerous to life or health

Can orders be issued to employers and workers?

Consider the example of a WorkSafeBC officer who, while inspecting a worksite, finds a piece of machinery missing a guard. The officer needs to determine the cause of the violation. Was it due to a failure to inspect the worksite regularly? A lack of training or supervision? The isolated act of one worker?

If the officer finds that the violation occurred because the instruction, training, or supervision provided to the worker was inadequate, the employer will be issued an order. If the officer finds that a worker — despite adequate training and supervision — *deliberately* violated a requirement or violated it because of *carelessness or neglect*, WorkSafeBC policy requires the officer to issue a report on the worker.

How does WorkSafeBC apply due diligence to administrative penalties?

When a WorkSafeBC officer initiates an administrative penalty, the employer is notified and is given the opportunity to respond in writing or at a meeting. An administrative penalty will not be imposed if the employer exercised due diligence to prevent the violation or unsafe condition.

Officers consider many factors in determining whether to pursue an administrative penalty. Factors include:

- The degree of hazard associated with the violation
- The employer's past history of compliance
- Whether the employer deliberately violated WorkSafeBC requirements
- Whether the employer has a complacent attitude toward compliance
- The adequacy of the employer's OHS program, and evidence that the employer is actively pursuing a program of compliance with the *Act* and the Regulation
- The training and instruction workers receive on how to perform their jobs safely
- The training provided to supervisors and managers about their health and safety duties
- Whether workers were properly supervised
- The disciplinary policy and practices for workers, supervisors, and managers who don't follow safe work procedures

The policies relating to administrative penalties are published in the *Prevention Manual*. This is available online at WorkSafeBC.com or can be purchased in print (see page 15).

In what circumstances does WorkSafeBC consider prosecutions?

Under the *Workers Compensation Act*, WorkSafeBC may recommend prosecutions of employers, supervisors, or workers for a violation of occupational health and safety requirements. An employer cannot be both prosecuted and assessed an administrative penalty for the same violation.

The exercise of due diligence is also a defence to a prosecution.

Why is the OHS program critical to showing due diligence?

An ongoing OHS program that controls specific hazards in your workplace forms the basis of due diligence.

If you, as an employer, have all the OHS program elements required by the Occupational Health and Safety Regulation in effect and working well, you will generally be acting with due diligence.

You will also have to take special steps to control specific hazards in order to show that you are exercising due diligence in particular circumstances. Generally, the greater the risk, the greater the need for specific policies, practices, and other measures to control the hazard.

Why is documentation important?

Records provide a history of the activities of, and improvements to, the OHS program. They are evidence that you have a program that is working as intended.

However, a written program won't amount to due diligence *unless you have implemented it*. Similarly, copies of written safety rules and procedures won't amount to due diligence *unless they are understood and followed by workers*.

Documentation can show that you took steps to control or eliminate specific hazards. It can also show that you have provided workers with adequate instruction, training, supervision, and discipline to work safely.

What kinds of records are part of an effective OHS program?

Examples of the types of records you should keep include:

- Worker orientation records
- Records of worker and supervisor training showing the date, names of attendees, and topics covered (for example, lockout and WHMIS)
- Inspection reports and records of corrective actions taken to solve problems
- Incident/accident investigation reports and records of corrective actions taken to solve problems
- Records of meetings and crew talks at which safety issues were discussed
- Supervisors' notes and logs of safety contacts

- Records showing use of progressive discipline to enforce safety rules and written safe work procedures
- Joint OHS committee meeting reports showing steps taken to address health and safety issues
- Subcontractor pre-qualification documents
- Equipment logbooks and maintenance records
- First aid records, medical certificates, and hearing tests
- Forms and checklists (for example, confined space entry permits) showing requirements for safe work procedures
- Sampling and monitoring records for work around harmful substances
- Emergency response plan, record of drills, and any resulting improvements
- OHS-related budget items and purchase orders
- Statistics on the frequency and severity of accidents

Many people believe that accidents just happen – how can anyone foresee them?

Accidents are caused by unsafe acts or unsafe conditions, or by a combination of unsafe acts and unsafe conditions. A key activity of an OHS program is to assess hazards to prevent harmful events in the future. This is also a critical factor in the due diligence standard.

You should routinely observe workers to identify and correct unsafe acts and poor work practices. Poor judgment by workers and poor work practices cause or contribute to many accidents. You may have to supervise some workers very closely or provide additional training to correct poor work habits.

In some cases, you may have to discipline workers to ensure that they observe safety rules. Supervisors, managers, and senior managers should also be disciplined for failing to carry out their health and safety responsibilities.

Your OHS program must include activities that prevent the recurrence of accidents. Analysing jobs and work procedures to identify hazards and taking steps to eliminate or reduce hazards are examples of these activities.

Your system of identifying and correcting hazards must include three basic steps:

1. Eliminate hazards posed by equipment and work processes at the source. For example, redesign the work process, substitute a safer chemical for a hazardous chemical, or replace hazardous equipment.
2. If it's impractical to eliminate the hazard, control it to reduce the risk to workers. Machine guards and noise enclosures are examples of controls.
3. If it's impractical to reduce the hazard with the preceding types of controls, protect the worker from the hazard. Methods of protecting workers include providing personal protective equipment and adequate instruction, training, and supervision.

OHS program elements

For workplaces that require a formal OHS program, the Occupational Health and Safety Regulation, section 3.3, lists the following essential elements:

1. **An OHS policy** that includes a statement of the employer's commitment to the OHS program, the aims of the program, and the responsibilities of the employer, supervisors, and workers
2. **Regular inspection** of premises, machinery, tools, equipment, and work practices to:
 - Identify conditions and unsafe acts with the potential to cause injury or illness
 - Determine necessary corrective measures
 - Prevent the development of unsafe work conditions
3. **Written instructions** (safe work procedures) to guide and direct workers in the safe performance of their jobs
4. **Regularly scheduled management meetings** to review OHS program activities, identify incident trends, and decide how to make improvements
5. **Investigation of incidents, injuries, and diseases** to determine the causes (for example, unsafe conditions, acts, or work procedures) so that corrective actions can be taken to prevent similar incidents

6. **Records and statistics** including:
 - Reports of inspections and incident investigations
 - Records of program activities such as orientation, training, and sampling
 - Trend analyses that may indicate unsafe conditions, acts, or work procedures
7. **Instruction and supervision of workers** such as on-site direction, instruction by supervisors, orientation, crew talks, on-the-job training, and refresher training, to make workers proficient in the safe performance of their jobs

Employers with a small workforce may be permitted to have a less formal OHS program. Refer to the Occupational Health and Safety Regulation, Part 3, sections 3.1 and 3.2.

In addition, the *Workers Compensation Act* requires:

- A joint health and safety committee at workplaces where 20 or more workers are regularly employed
- A designated worker health and safety representative at workplaces where more than 9 but fewer than 20 workers are regularly employed

While the employer is ultimately responsible for the overall OHS program, the committee is responsible for identifying and recommending solutions to health and safety problems in the workplace.

For more information on OHS programs, see the WorkSafeBC publication *How to Implement a Formal Occupational Health and Safety Program* (see page 15).

Can you give an example of how employers might show that they used due diligence?

Consider the example of a piece of equipment that you will be installing in your workplace. Health and safety should be considered in the selection process.

You should do an assessment to determine if special procedures are required for protecting workers who operate or service the equipment. What about noise or vibration – have you chosen the quietest piece of equipment? What about ventilation – will harmful emissions be captured and removed before workers are affected? What about lockout procedures?

If the assessment shows that it will be necessary to lock out the control devices to service or repair the equipment, you should take the following steps to prevent an accident from occurring:

- Install devices that allow locks to be applied.
- Develop written procedures that describe a step-by-step process for locking out all required points on the equipment and checking that the locked-out equipment can't be operated.
- Train workers in the procedures, and document that training.
- Issue personal locks to the workers.
- Post signs on or near the equipment reminding workers that lockout procedures are required for servicing the equipment.
- Observe workers the first time that they use the lockout procedures to ensure that they know how to use them correctly.

- Monitor lockout procedures from time to time to ensure that workers are following them. If you observe any problems, correct them on the spot and give refresher training to workers, if necessary.
- Develop a system of progressive discipline and be prepared to use it when workers, supervisors, or managers deliberately ignore safety rules and regulatory requirements.
- Review your lockout program at least annually to determine its effectiveness.
- Document the review process and the corrective action you take.

By following a similar process in all your work activities, you will be more likely to meet the due diligence standard of care. Keep in mind that the circumstances of the individual workplace must be considered in determining whether the employer exercised due diligence.

If there is a record that a worker attended a training session, why should the employer be held responsible if the worker has an accident?

Evidence that a worker *attended* a training session doesn't necessarily mean that the worker *understood* the training, nor does it mean that the worker intended to apply the training. You must take reasonable steps to ensure that the worker understood the training and is able to apply it successfully on the job. You should routinely monitor workers and correct unsafe work methods with instruction or refresher training as needed.

Shouldn't workers be expected to use their common sense to recognize hazards?

Never assume that a worker will be aware of a hazard because "it's common sense." You must bring every risk – even if it seems obvious – to the attention of the workers you supervise. An effective system of supervision is a key part of the due diligence standard.

The employer must also know about a worker's right to refuse hazardous work. Workers also need to be aware of this right. You must be familiar with the steps to follow when a worker refuses to carry out unsafe work. (See Part 3, sections 3.12 and 3.13 of the Occupational Health and Safety Regulation.)

How can employers feel confident that they are taking all reasonable precautions?

If you can answer yes to the following questions without hesitation, you should feel confident that you have met the test of due diligence:

Yes **No**

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Do you know and understand your health and safety responsibilities? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you have systems in place to identify and control hazards? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have you integrated health and safety into all aspects of your business? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you set objectives for health and safety just as you do for quality, production, and sales? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have you committed appropriate resources to health and safety? |

Yes **No**

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Have you assigned health and safety responsibilities to workers? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have workers been given sufficient training so they can successfully discharge their health and safety responsibilities? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you hold managers, supervisors, and workers accountable for health and safety just as you do for productivity? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you keep records of your program activities and improvements? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you keep records of the training each worker has received? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do your records show that you take disciplinary action when necessary? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do you review your OHS program at least once a year and make improvements as needed? |

Need more information?

- For more information on OHS programs or answers to other health and safety questions, contact your local WorkSafeBC office (see page 16) or the Prevention Information Line at 1 888 621-SAFE (7233) or 604 276-3100.
- For information on WorkSafe courses on OHS programs, contact your local WorkSafeBC office or the Health and Safety Centre on the WorkSafeBC web site.
- Many WorkSafeBC publications are available on the WorkSafeBC web site at WorkSafeBC.com. Some are available in print; call toll-free 1 866 319-9704, or e-mail: customer.service@worksafebcstore.com.

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