



Changes to Clearance Certificates



Obtaining and providing Workplace Safety and Insurance Board (WSIB) "Clearance Certificates" is a common practice in the construction industry. Its purpose is to protect organizations who retain construction contractors and sub-contractors from any potential liability that would arise under Section 141 of the Workplace Safety and Insurance Act, which would make these organizations responsible, if their contractors or sub-contractors fail to pay their premiums to the WSIB. The use of the WSIB "Clearance Certificate System" has however been entirely optional to date, with many organizations willing to take the risk that contractors and sub-contractors will pay their premiums.

Under the new provisions of the mandatory coverage system, which will come into effect on January 1, 2013, contractors and sub-contractors will be required to provide clearance certificates **before** the work begins. These certificates which will have expiry dates will cause the purchaser of the services to establish a process to obtain new certificates before the older ones expire. The new provisions will now require organizations to retain the certificates for three years so that they are available to WSIB officials in the event of an investigation.

The new provisions will now grant the WSIB the authority to revoke a certificate at any time should a contractor or subcontractor fail to pay its premiums to the Board. In such a scenario, the contractor or subcontractor will be prohibited from doing further construction work until the premiums are paid. Contractors or subcontractors who become aware of the revocation will be prohibited from allowing these organizations to continue to work for them while the certificate is in suspension. Failure to comply with any of these obligations will constitute an offence, with fines of up to \$25,000 for individuals and of up to \$100,000 for corporations. Additionally, individuals can also run the risk of up to six (6) months imprisonment.

MOL Fall Safety Blitz



As part of its "Safe at Work" strategy, the Ministry of Labour (MOL), this fall, will focus on supervisors in a blitz of construction projects across the Province. During the months of September and October, MOL inspectors will check on supervision of construction projects and workers on those projects. They will look for inadequate supervision that could lead to injury or death.

The inspectors will check that:

- construction projects are supervised by a competent person
- supervisors conduct required onsite inspections

- supervisors ensure that all workers use safety equipment, protective devices or clothing required by the employer
- supervisors ensure young and new workers are provided with adequate information and supervision

The MOL stated that in 2011, violations involving supervisors were among the top three "Part I" summonses issued by Ministry of Labour (MOL) inspectors under the Provincial Offences Act.

The offences involved supervisors failing to ensure workers wore required fall protection equipment and protective headwear and failing to ensure workers were protected by required guardrails.

The Mathews Dinsdale Minute



This month we write to draw your attention to an interesting recent case regarding workplace intoxication. This case involves a non-Union employee who had a major accident driving in the course of his duties. Employers have been taking these situations more and more seriously over the years because of the safety and liability risks attached to this kind of behaviour.

The employee in question was a Vice President of Quality control with 23 years service with the Company. He was returning to Toronto from a client visit. During his trip he pulled over somewhere and consumed four (4) beers over the course of an hour. While continuing on to Toronto he lost control of his company owned truck, rolling it four (4) times and sustaining life threatening injuries. After an airlift to a hospital, a blood sample was taken and he was eventually charged with a number of drunken driving related offences, one of which he eventually pled guilty to.

One month after the accident and before the guilty plea the company terminated the employee for cause. The employee sued for wrongful dismissal claiming, among other things, that he hadn't been given the opportunity to explain his conduct. The employee argued that in light of his clean discipline record, positive work history and years of service, termination was excessive.

The Court, in dismissing his claim, noted that workplace intoxication might not, normally, warrant discharge after a single incident. However, the Court noted that in this case the conduct put the employer at risk of multiple areas of liability including to third parties and for WSIB claims and premium increases. The court did note that it was of some concern that the employer didn't give the employee the opportunity to explain his conduct but accepted that, in this case the employer had a full appreciation of the events.

Workplace intoxication is a serious issue, but the Court's noting that it didn't automatically warrant discharge is an accurate representation of the law, even if that surprises you. Every situation should be dealt with on its unique facts as they arise and often other steps would be required. While the employer avoided difficulties in this case, it is important that employers get the "entire story" in almost every situation in order to show they have acted fairly. For example, this case may have been substantially complicated had this employee claimed an alcohol addiction or raised human rights issues.

In terms of preparation, it is important that you, as an employer, have up to date policies and procedures on things like use of company vehicles and intoxication in the workplace. When people know what to expect, it is harder to claim that the response is unfair.

