

Why you should consider the . . .

WPCC™ Health and Safety Board solution

LAW C-21: NEW CRIMINAL LIABILITY FOR WORKPLACE SAFETY

Amendments to the criminal code have been passed in Parliament that establishes corporate criminal liability for workplace health and safety. Here are the key points you need to know and actions you need to take.

Who is liable?

LAW C-21 (Bill C-45) establishes criminal liability for organizations and individuals when they fail to take reasonable steps to prevent workplace accidents that affect workers, or the public in general. LAW C-21 does more than create additional legal liability for directors, officers, and corporate decision-makers; it also extends individual legal liability for all persons directing work in the workplace. In the case of death, the maximum penalty for an individual convicted of criminal negligence is life imprisonment!

Three important elements of legal duty

1. LAW C-21 elevates the stigma and the penalty to that of a crime with a permanent criminal record.
2. LAW C-21 extends legal duties to a new level including foremen, lead hands, and even co-workers.
3. LAW C-21 casts the net further than any other OHS legislation in the past because it requires that employers be responsible for members of the public at or near the workplace, as well as all persons affected by the work or task.

Who has criminal liability?

LAW C-21 broadens the definition of “who” to include “organization” rather than corporation, as well as, “public body,” “society,” “company,” “firm,” “partnership,” “trade union,” or “unincorporated association.” LAW C-21 also expands the definition to include “representative” to mean directors, officers, partner, employee, member, agent, or contractor. A “senior officer” means a representative who plays an important role in the establishment of the organization’s policies, or is responsible for managing an important aspect of the organization’s activities. In the case of the “body corporate,” it includes a director, its chief executive officer, or its chief financial officer.

Tougher sentences

In addition to tougher sentences, a number of factors may be taken into account, such as, whether there was any advantage realized by the organization as a result of the offence, whether the organization has attempted to conceal its assets or convert them in order to show that it is not able to pay the fine or make restitution, the cost of the investigation and prosecution and any measure that the organization has taken to reduce the likelihood of it committing a subsequent offence.

Conclusion

Corporate Canada is well advised to assess their current OHS programs, training budgets, and real commitment to workplace health and safety. Compliance demonstrates that you and your “organization” are taking “all reasonable steps to preventing bodily harm.”

More information is available on LAW C-21 (Bill C-45) at www.canada.justice.gc.ca