OHS Legislation in Canada – Due Diligence Fact Sheets



WHAT IS MEANT BY DUE DILIGENCE?

Due diligence is the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances.

Applied to occupational health and safety, due diligence means that employers shall take all reasonable precautions, under the particular circumstances, to prevent injuries or incidents in the workplace. This duty also applies to situations that are not addressed elsewhere in the occupational health and safety legislation. Reasonable precautions are also referred to as reasonable care. It refers to the care, caution, or action a reasonable person is expected to take under similar circumstances.

Another term used is employers must do what is “reasonably practicable”. Reasonably practicable has been described by the Labour Program (Canada) as taking precautions that are not only possible, but that are also suitable or rational, given the particular situation. Determining what should be done is usually done on a case by case basis.

To exercise due diligence, an employer must implement a plan to identify possible workplace hazards and carry out the appropriate corrective action to prevent incidents or injuries arising from these hazards.

Why does due diligence have special significance?

“Due diligence” is important as a legal defense for a person charged under occupational health and safety legislation. If charged, a defendant may be found not guilty if he or she can prove that due diligence was exercised. In other words, the defendant must be able to prove that all precautions, reasonable under the circumstances, were taken to protect the health and safety of workers.

Due diligence is demonstrated by your actions before an event occurs, not after.

How does an employer establish a due diligence program?

The conditions for establishing due diligence include several criteria:

- The employer must have in place written OH&S policies, practices, and procedures. These policies, etc. would demonstrate and document that the employer carried out workplace safety audits, identified hazardous practices and hazardous conditions and made necessary changes to correct these conditions, and provided employees with information to enable them to work safely.
- The employer must provide the appropriate training and education to the

employees so that they understand and carry out their work according to the established policies, practices, and procedures.
- The employer must educate and train the supervisors to ensure they are competent persons, as defined in legislation. Ensure that managers and supervisors:

- Talk to new employees about safety during orientation training.
- Meet regularly with staff to discuss health and safety matters.
- Inspect areas of the workplace under their responsibility, and respond promptly to unsafe conditions and activities.
- Pay attention to routine and non-routine activities, ensuring that employees understand the hazards and the preventative measures to be followed.

- The employer must monitor the workplace and ensure that employees are following the policies, practices and procedures. Written documentation of progressive disciplining for breaches of safety rules is considered due diligence.
- There are obviously many requirements for the employer but workers also have responsibilities. They have a duty to take reasonable care to ensure the safety of themselves and their coworkers – this includes following safe work practices and complying with regulations.
- The employer should have an incident (accident) investigation reporting system and investigation program in place. Employees should be encouraged to report "near misses" and these should be investigated also. Acting on the recommendations, as well as incorporating information from these investigations into revised, improved policies, practices and procedures will also establish the employer is practicing due diligence.
- The employer should document, in writing, all of the above activities. This documentation will give the employer a history of how the company's occupational health and safety program has progressed over time. Second, it will provide up-to-date documentation that can be used as a defense to charges in case an incident occurs despite an employer's efforts.
- Employers must also ensure that all people who are at the workplace are included, such as contractors, visitors, students/interns and volunteers.

All of the elements of a "due diligence program" must be in effect before any incident or injury occurs. If employers have questions about due diligence, they should seek legal advice for their jurisdiction to ensure that all appropriate due diligence requirements are in place.

Remember, due diligence is demonstrated by your actions before an event occurs, not after.

What documentation is needed to show due diligence?

Written documentation is essential. Records, reports and documentation for the following activities can include:

- Worker orientation, education, and training.
- Workplace inspections, including corrective actions taken.
- Incident reports, including corrective actions taken.
- Supervisor notes (e.g., supervisor inspections, meetings with workers or contractors regarding safety, etc.).
- Health and safety committee meeting minutes.
- Equipment log books and maintenance records.
- Emergency response drills and exercises.
- Instructions or safe work procedures, including any changes.
- Forms and checklists used when following safe work procedures (e.g., confined space entry permits).
- Sampling and monitoring records from exposure testing.
- Statistics about the frequency and severity of injuries, etc.
- Enforcement of health and safety rules and procedures.

What are areas to consider when reviewing due diligence?

When reviewing your due diligence program, it may help to ask yourself the following questions:

1. Can a reasonable person predict or foresee something going wrong?
2. How severe is the potential harm to workers?
3. Is there an opportunity to prevent the incident?
4. Who is responsible for preventing the incident?

What is an example of a due diligence checklist?

Due Diligence Checklist		
Yes	**No**	
		Do you know and understand your safety and health responsibilities?
		Do you have definite procedures in place to identify and control hazards?
		Have you integrated safety into all aspects of your work?
		Do you set objectives for safety and health just as you do for quality, production, and sales?
		Have you committed appropriate resources to safety and health?
		Have you implemented appropriate control measures for identified hazards?
		Have you explained safety and health responsibilities to all employees and made sure that they understand it?
		Have employees been trained to work safely and use proper protective equipment?
		Is there a hazard reporting procedure in place that encourages employees to report all unsafe conditions and unsafe practices to their supervisors?
		Are managers, supervisors, and workers held accountable for safety and health just as they are held accountable for quality?
		Is safety a factor when acquiring new equipment or changing a process?
		Are contractors, volunteers and others in the workplace held to the same safety standards?
		Do you keep records of your program activities and improvements?
		Do you address concerns and recommendations made by workers, the health and safety committee (or representative), and others?
		Have items from reports such as inspections or incident reports been reviewed and corrective actions taken? Have these steps been documented?
		Do you keep records of the education and training each employee has received?
		Do you check to confirm that all policies and procedures are being followed regularly?
		Do your records show that you take disciplinary action when an employee violates safety procedures?
		Do you review your OSH program at least once a year and make improvements as needed?

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