



Training as a due diligence defence

All employees should be knowledgeable of basic OHS legislation

Across the country, the number of occupational health and safety prosecutions continues to rise and the courts continue to assign higher and higher penalties. Seriously injuring or fatally injuring a person at work is a strict liability offence and the only defence against such prosecution is a due diligence defence. A due diligence defence demands that the employer shows it did everything reasonable to prevent the undesirable event from happening, including good work planning, maintaining good communication and ensuring worker competency.

Most employers have well-established formalized and effective processes for assessing hazards (such

as field-level hazard assessments and task hazard assessments) and communicating on issues related to health and safety (such as safety meetings and safety stand-downs).

But increasingly, the question comes up: "What processes are in place to ensure competency? What do employees need to know and what do they need to be effective in their jobs?"

A good starting point — and one that is so often overlooked — would be to have a process in place to ensure employees are knowledgeable and otherwise competent with respect to the basic occupational health and safety legislation. If they do not know what the regulators are asking of them, how could they ever have a chance to

build a system to achieve it? This does not just apply to the safety professionals on staff but also to the front-line supervisory management team.

It is, after all, this group of employees who oversee the operational activities and are required to provide the necessary guidance, leadership and legislative understanding to assure a due diligence defence should the need arise. Demonstrating that employees are competent with respect to the occupational health and safety legislation is a key aspect (along with demonstrated processes for work planning and communication) of passing the due diligence test.

Training on the functional legislative requirements is typically not offered because it is thought of as too technical, too detailed or some people have even been as bold as to say it is "common sense." Somehow it gets missed that this employee group needs training on the legislative framework because they are ultimately the ones in a position to see that the legislative requirements are met.

The problem is most training provided to this group of employees is focused on specific work activities (such as how to use or maintain equipment) or on very defined aspects of the legislation (such as WHMIS or first aid). Even when training is provided, the competency assessment process usually consists of a short multiple choice or short answer quiz, if an assessment is required at all. Oftentimes attendance at the course is the only "assessment" that the employee learned anything at all.

Somehow the perception is that training and the issuing of "tickets" is evidence of competence. But this is wrong. Attendance at a training course is not evidence of competency. Training alone does not demonstrate due diligence. Effective education and training is necessary and a mechanism for assessing its effectiveness is required. The challenge is how do we assess occupational health and safety legislative competency?

Access to technology allows for systematic online evaluation. Ensuring occupational health and safety regulatory competency development and assessment can be cost-effective for both small and large organizations, no matter where they are operating in the world. Traditionally, it has been the view of many that these courses are for people who want to be health and safety specialists. The more progressive view is that all employees in a front-line leadership role need to

develop these competencies. Access to the course material is no longer an issue. Many organizations across Canada offer courses in occupational health and safety legislation that are available to all employees — not just the safety advisory team.

The development of occupational health and safety regulatory competency is not restricted to the classroom. Self-study, at work lunch-and-learns, formal at-work training, work experience and mentoring can be used to provide the foundations. Employers can make use of numerous alternative approaches to delivering education and training as a means to competency development. The starting point would be to do a gap analysis of the current state and then create a competency development plan. Part of the gap analysis should be a baseline competency assessment. This can be achieved using an in-house type of testing process or by accessing an online tool.

An organization that has developed a process to assess basic understanding of the occupational health and safety legislation is I-CAB or the International Competency Assessment Board. Their process provides employers with comprehensive proctored assessments aimed at objectively measuring an employee's understanding of a wide range of regulatory competencies that are industry and jurisdictionally specific.

Employers should be encouraged to offer occupational health and safety competency development and assessment processes for all front-line leadership employees. The training processes help them to develop competency and better understand how their work planning and communication processes reduce occupational health and safety risk.

Of course on its own, a competency development and assessment process would not constitute pure due diligence. As part of an integrated occupational health and safety management system a competency development and assessment process would complement the other management system processes and allow an employer to demonstrate it held its duty of care for employees in high regard.

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