News

Accident Investigations

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As the number of prosecutions under the *Occupational Health and Safety Act ("OHSA")* continue to rise, clients need to be effectively managing accident investigations.

We have summarized some of the key *OHSA* issues that arise in any accident:

1. Know the Reporting Requirements

The *OHSA* sets out different reporting requirements depending on the type of accident/injury. Accidents involving fatalities or critical injuries give rise to significant reporting requirements. These accidents must be reported immediately to the Ministry of Labour ("MOL"), the Joint Health and Safety Committee or Health and Safety Representative and, if applicable, the Union. As well, a written report must be sent to the MOL within 48 hours. The *OHSA* sets out the requirements for this written report. As the MOL will rely on any incriminating statements made in this report, these reports can generally be drafted in a way that is not incriminating.

2. Preserve the Accident Scene

In a case of fatalities or critical injuries, the *OHSA* requires the accident scene to be preserved until released by the Inspector. The only exceptions relate to the provision of medical assistance, to maintain an essential public utility or transportation service, or to prevent unnecessary damage to equipment or property.

3. Dealing With the *OHSA* Inspector

a. Designate one person to deal with the Inspector. That person should be knowledgeable about the *OHSA* and its regulations.
b. Accompany the Inspector at all times during his/her stay on the premises.
c. Make careful notes of all of the Inspector's comments and questions.
d. Remember that anything said to an Inspector is "on the record".
e. Do not obstruct an Inspector in the carrying out of his or her duties.
f. If the Inspector wishes to take original documents or other items, obtain a signed receipt.
g. If the Inspector requests copies of documents, keep a record, or a second copy of those documents.
h. If there is any concern that a document is privileged (i.e. was prepared for/by lawyers) inform the Inspector of the concern and object to its production.

4. Interviews

a. Inspectors have the right to interview any employees and exclude managers from those interviews.
b. If a supervisor is interviewed, the supervisor is entitled to legal counsel. Generally, the Inspectors will permit another manager to sit in on the meetings.
c. Advice for supervisors who will be interviewed:
    - understand the questions;
    - take time in answering;

    - stick to the topic;
    - do not volunteer information, but be aware of helpful information the Inspector has missed;
    - if they cannot answer the question, say so;
    - do not speculate or answer hypothetical questions;
    - beware of “what do you think could have been done to avoid the accident” questions;
    - if an employee is at fault, make that clear.

d. Inspectors will ask a person who has been interviewed to sign the Inspector’s notes. There is no legal obligation to do so. It is generally best to decline.
e. If the Inspector believes there are reasonable grounds to charge the person being interviewed, that person will be cautioned by the Inspector. At that point, the interview should end until legal counsel is consulted.
f. If an Inspector presents a search warrant, the warrant should be copied and faxed to legal counsel.

5. Employer Investigation

a. Employers need to remember that the MOL has twelve months to lay charges. Accordingly, the employer should conduct a thorough investigation immediately following the accident. It may include interviewing all relevant witnesses, taking photographs, taking measurements, conducting tests, retaining experts and preserving documents.
b. Employees (unionized and non-union) are required to cooperate with the management investigation.
c. Any report summarizing the management investigation should be addressed to legal counsel or should be reviewed by legal counsel as the MOL may require its production.
d. Appropriate corrective action should be taken which may include discipline.

6. Police Investigation

The police often investigate critical injuries or fatalities. Their investigation will focus on the Criminal Code and will often be fairly brief. The MOL is usually provided with a copy of the police investigation.

7. Workplace Safety and Insurance Board Investigation

The WSIB now investigates fatal accidents. If it concludes the employer did not take appropriate precautions, then it will withhold any rebates. Generally speaking, it is prudent to ask the WSIB to defer its investigation until the MOL processes are complete.

For further information on Accident Investigations, please contact your regular Hicks Morley lawyer.

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