



# Supervision under Part II of the *Canada Labour Code*

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# This presentation will cover

- Foundations – Internal Responsibility System
- Employer duties
  - *124, 125.1(q), 125.1(z), 125.1(z.161)*
- Supervisor duties
- Prosecution
  - Liability
  - Previous case
  - Due Diligence Defense
- Best Practices for supervision

# Internal Responsibility System

- Part II of the *Canada Labour Code* (Code) is built on the principle that parties within the workplace are best placed to identify, monitor and address/control workplace hazards before a hazardous occurrence takes place
- This is called the **Internal Responsibility System (IRS)** and it is a collaborative approach between the employer, the Workplace Health and Safety Committee and employees to identify and resolve health and safety concerns in the workplace
- This principle also makes employers and their representatives directly responsible for protecting the health and safety of employees while they are working

# Employer's Duties

- The employers has the general duty to ensure the health and safety of employees is protected while they are working, even if no more specific provisions apply – 124
- The employer has the specific requirement to ensure that employees are supervised while carrying out their work – 125(1)(q)

## References:

s. 124 - "Every employer shall ensure that the health and safety at work of every person employed by the employer is protected."

Para. 125(1)(q) - "Provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;"

# Employer's duties related to supervisors -

- In the *Canada Labour Code* (Code), Managers/supervisors are considered agents of the employer and, therefore, are required to fulfill the duties of the employer
- As such, supervisors must be trained to fulfill the employer duties listed in sections 124, 125, and 125.1 of the Code and are subject to the employee duties in section 126

## References:

**125(1)(z)** ensure that employees who have **supervisory or managerial responsibilities** are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer;

**125(1)(z.161)** ensure that employees, including those who have **supervisory or managerial responsibilities**, receive training in the prevention of harassment and violence in the work place and are informed of their rights and obligations under this Part in relation to harassment and violence;

# Supervisors' Duties

- Ensure the health and safety of employees
- Be knowledgeable about the Canada Labour Code (Code), and its associated Regulations
  - Know and follow the processes laid out in the Code related to complaints, refusals to work etc.
- Know workplace processes and work procedures including the hazards involved and the control measures for the hazards defined in workplace policies
  - Identify new/emerging hazards
  - Identify ineffective control measures
- Ensure employees are made aware of all known or foreseeable hazards
- Ensure employees comply with the Code and the Regulations

# Prosecution

- Under the *Canada Labour Code* (Code), supervisors can be held liable for directing, authorizing, assenting to, acquiescing in or participating in a contravention of the Code.
- Charges for contraventions of the Code, can be punishable fines up to \$1,000,000 and/or imprisonment for up to two years.

## Reference:

**149(2)** If a corporation or a department in, or other portion of, the federal public administration to which this Part applies commits an offence under this Part, any of the following persons who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether or not the corporation or department in, or portion of, the federal public administration has been prosecuted or convicted:

- **(a)** any officer, director, agent or mandatary of the corporation;
- **(b)** any senior official in the department in, or portion of, the federal public administration; or
- **(c)** any other person exercising managerial or supervisory functions in the corporation or department in, or portion of, the federal public administration.

# Previous Case

- Charges have been brought against managerial/supervisory staff for contraventions of the *Canada Labour Code* (Code)
- In 2013, a manager prevented timely first aid from being rendered to an employee, who died as a result
- Charges under the Code were laid against the manager and his employer under the Code
- In 2014, the manager pled guilty to one charge under the Code and was fined
- For more information, please see the [summary of this prosecution](#)



# Due Diligence Defense

- Liability can be limited through a demonstration of due diligence – ss.148(4)
- The defendant must be able to prove that all reasonable precautions were taken to protect the health and safety of employees
- Due diligence is demonstrated by actions taken **BEFORE** an event occurs, not **AFTER**
- For more information, please visit CCOHS's Guidance on Due Diligence
- **Reference:**

**148(4)** On a prosecution of a person for a contravention of any provision of this Part, except paragraphs 125(1)(c), (z.10) and (z.11), it is a defence for the person to prove that the person exercised due care and diligence to avoid the contravention. However, no person is liable to imprisonment on conviction for an offence under any of paragraphs 125(1)(c), (z.10) and (z.11).

# Best Practices for Supervisors (Demonstrates Due Diligence)

- Directly observe employees while they are working
- Provide/verify employees' training before they undertake new tasks
- Respond to employees' questions & concerns
- Verify that employees' performance meets expectations for safety on an ongoing basis
- Actively seek out emerging hazards and ensure they are identified in the workplace Hazard Prevention Policy
- Correct improper work behaviours, activities and conditions
- Positively reinforce and model safe/proper work behaviours and procedures
- Record supervisory activities in a journal or log
- Ensure documentation is clear, appropriate, and frequent enough to show a systematic approach