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ONTARIO HEALTH AND SAFETY LAW

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Ontario Health and Safety Law: A Complete Guide to the Law and Procedures, with Digest of Cases covers everything from how to appeal Ministry of Labour orders, to new methods of improving workplace health and safety, to the latest legislation and more.

What's New in This Update:

This release includes updates to the caselaw and commentary in Chapter 1 (Introduction to Ontario Health and Safety Law), Chapter 4 (Duties Under the O.H.S.A.), Chapter 5 (Toxic Substances), Chapter 6 (The

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Workplace Hazardous Materials Information System (WHMIS)), Chapter 7 (Work Refusal and Work Stoppages), Chapter 8 (Accident Notices), Chapter 9 (Ministry of Labour Inspectors and Orders) and Chapter 15 (Alcohol and Drugs in the Workplace).

Highlights:

- **DUTIES UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT — EMPLOYERS — DEFINITION** — The recent Court of Appeal decision in *Ontario (Labour) v. Sudbury (City)*, 2021 ONCA 252, 2021 CarswellOnt 5697 arose out of a tragic workplace accident where a pedestrian was struck by a road grader that was operated by an employee of a contractor who had signed a contract with the City. The Court held that, because the City had its employees on the project at various times (including when the fatal accident occurred), it was an employer for the purposes of the *Occupational Health and Safety Act* and could be prosecuted as such. Based on the decision an owner who is not the constructor can be an employer of a contractor's worker for the purpose of duties, compliance and enforcement under the Act.
- **ACCIDENT NOTICES — NOTICE OF DEATH OR CRITICAL INJURY** — Amendments to Chapter 8 include a new discussion of Ontario Regulation 420/21 (Notices and Reports Under Sections 51 to 53.1 of the Act - Fatalities, Critical Injuries, Occupational Illnesses and Other Incidents) which came into force on July 1, 2021. The regulation standardizes mandatory requirements to submit a written report of critical injuries and deaths that were formerly contained in individual regulations that have also been amended, including those relating to industrial establishments, construction projects, mining plants, and health care and residential facilities.
- **WORK REFUSAL AND WORK STOPPAGES — DISCIPLINE OF REFUSING WORKER — NO REPRISALS FOR PROPER WORK REFUSAL** — In *Flores v Scotlynn Sweetpac Growers*, 2020 CarswellOnt 16886 (O.L.R.B), an employee alleged reprisal after raising concerns of his working and living conditions due to the COVID-19 pandemic. The complainant was a migrant worker who arrived at the worksite, a farm, where he and the other workers were housed in bunkhouses and shared bedrooms. As a result of the conditions, around 190 workers tested positive for COVID-19, and one worker died from complications. After the complainant spoke to the media about the conditions at the farm, he was confronted by the farm owner and was told to leave. The board found that the complainant was dismissed in response to his complaints to the

media, and awarded damages for lost wages, loss of future earnings as well as for pain and suffering.

- **WORK REFUSAL AND WORK STOPPAGES — REFUSAL TO WORK JURISPRUDENCE — WORK REFUSAL BECAUSE OF WORKER'S COMFORT** — In *Pearce v De Havilland Aircraft of Canada Ltd.*, 2021 CarswellOnt 10349 (O.L.R.B.), an employee refused to wear a three-ply mask because it allegedly made his breathing difficult. The employee produced a doctor's note that was unsatisfactory to the employer's on-site doctor. The employer asked the employee to provide further information including medical evidence establishing that he had a disability. The employee appealed the Ministry of Labour inspector's decision that there was no basis for a work refusal. The board denied the appeal. The employee failed to provide information establishing the need for accommodation. In the absence of evidence about a medical condition, the work refusal was not supported.

