



## CANADA AND THE U.S.:

### Differences in Occupational Health and Safety (“OHS”) and Workers’ Compensation (“WC”) Law

#### **Constitutional Division of Powers**

- Canada is a federal state in which both the federal and provincial governments have passed OHS and WC laws.
- Approximately 10% of the Canadian workplace is under federal OHS laws including banking, interprovincial/international transportation, telecommunications, nuclear power, and the federal civil service. The remaining 90% of the workforce is governed by provincial or territorial OHS laws.
- WC laws have only been established provincially; federally regulated employees are covered by provincial WC statutes by agreements between the federal government and the provinces.

#### **Internal Responsibility Systems**

- Canadian OHS statutes are based on the Internal Responsibility System (“IRS”); the IRS is a system of overlapping legal duties and responsibilities on all workplace stakeholders to maintain a healthy and safe workplace;
- The IRS also provides workers with the right to participate in OHS management, the right to know OHS hazards, and the right to refuse to do unsafe work.
- Unlike the U.S., Canadian OHS statutes require all employers to establish joint health and safety committees in workplaces with 20 or more workers. These committees are primarily advisory and form part of the IRS.

#### **OHS Law Enforcement**

- Canadian OHS statutes are enforced by Government Regulators through inspectors, Orders and Charges; Orders may direct workplace change and Charges are prosecuted in Court as quasi-criminal, public welfare offences.
- Unlike the U.S., most Canadian jurisdictions do not have authority to issue citations with monetary penalties; only Manitoba and British Columbia have this authority.
- OHS charges and convictions, after a trial or a plea of guilty, result in monetary fines and fines and, rarely, jail terms for individuals; directors, officers, managers, supervisors and workers may all be charged with OHS offences;

- The Supreme Court of Canada has stated that the defence of “due diligence” is available [1] if the accused either believed in a mistaken set of facts that if true would render the act or omission innocent, or [2] if they took all reasonable precautions to avoid the commission of the offence.

### **Bill C-45 Criminal Code Amendments**

- Effective March 31, 2004, the Canadian *Criminal Code* was amended to establish a duty on individuals and organizations to take reasonable steps to prevent bodily harm to workers and the public failing which they may be charged with criminal negligence.
- A conviction under the Canadian *Criminal Code* may result in a jail term up to life imprisonment for an individual and for an organization, a fine of an unlimited amount; there has been very little enforcement activity by the police and prosecutor under the Bill C-45 amendment.

### **Workers' Compensation**

- Unlike the U.S., Canadian WC laws have established government Boards to administer workers' compensation benefits to workers injured arising from and in the course of employment;
- Both employers and workers have positive duties to assist injured workers in returning to the workplace; employers are required to provide modified duties and accommodate any disabilities in Canadian jurisdictions.
- WC benefits are capped by law; workers are statute barred from commencing civil lawsuits in most situations; worker misconduct will rarely disentitle an injured worker from WC benefits.
- The vast majority of employers are required to register with the WC Boards; WC premiums are set on the basis of industry rate groups and experienced ratings within rate groups; second injury and enhancement fund cost relief and cost transfers are available to employers in prescribed circumstances.
- Employers have a number of strategies that may be used to reduce or transfer WC costs; the most effective way to reduce WC costs is through an effective OHS Management System.
- The defence of “due diligence” is primarily achieved and proven by the establishment of an effective OHS Management System, determination and training;

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