

Workplace Risk Management for Manufacturers

Occupational Health and Safety and Workers' Compensation ("OHS") risk management is a key business and legal issue for manufacturers in Ontario. Failure to have an OHS Management System to comply with OHS laws may put manufacturers at legal risk. Manufacturers owe a legal duty to ensure that all reasonable precautions are taken for the protection of the health and safety of workers (see reverse). In addition to monetary penalties and workers' compensation costs, failure to manage OHS workplace risk can damage the manufacturer's reputation.

Norm Keith, B.A., LL.B., CRSP¹ and Gowlings' OHS team have designed a comprehensive program to assist manufacturers to make their workplace safer, avoid expensive workers' compensation claims, and prevent OHS prosecution and damage to their reputation. Our program will help improve working conditions for employees, reduce legal and save money.

- Step 1:** **OHS LAW Gap Analysis™** - OHS legal audit to assess the level of legal compliance with provincial OHS laws, identify gaps and provide detailed recommendations for the manufacturer.
- Step 2:** **OHS Management System** - Gowlings can develop or enhance an existing OHS Management System with our expertise and extensive library of OHS safe work procedures.
- Step 3:** **Train Managers and Supervisors** - Gowlings has extensive experience in training managers and supervisors in OHS prevention and management in a 1 or 2 day customized course.
- Step 4:** **Worker Education** - we can provide training for workers regarding their rights and responsibilities in a half day seminar that informs and motivates safe work behaviour.
- Step 5:** **Annual OHS Management System Review** - we can provide an annual OHS Management System Review and provide recommendations to senior management.

Gowlings' 5 Step Process will help manufacturers ensure that all of their operations are legally compliant, have reduced legal and financial risk, and have their reputation protected.

¹Mr. Keith, a partner at Gowling Lafleur Henderson LLP, leads the firm's National OHS Practice, is the author of numerous texts including *Canadian Health and Safety Law*, and is a Canadian Registered Safety Professional (CRSP).

MANUFACTURER'S HEALTH AND SAFETY OBLIGATIONS

Manufacturers have important legal duties under OHS and Workers' Compensation legislation.

For example, the following legal duties under the *Occupational Health and Safety Act* (“OHS_A”) apply to manufacturers and distributors in Ontario. Depending on the nature and scope of the sub-contractor agreement, liability may flow to the manufacturer upon a breach of the OHS_A.

Employer

Manufacturers are “employers” and therefore are required under the OHS_A to provide a safe workplace for the employees.

The definition of “employer” in the OHS_A covers two distinct relationships:

- (1) that of a person who employs workers; and
- (2) that of one who contracts for the services of workers.

The expanded statutory definition of employer, which has been affirmed by the *Wyszen* decision of Court of Appeal for Ontario, may apply to subcontractors as well. Depending on the nature and content of the sub-contract agreement and the degree of control exercised by the manufacturer on the sub-contractor's operations, a manufacturer may be held to be the employer of sub-contractor's employees under the OHS_A.

Owner

In situations where a manufacturer leases premises legal responsibilities for the health and safety may flow to the manufacturer as an “owner”, under the OHS_A. An owner is subject to similar legal obligations imposed by the OHS_A on landlords and occupiers of land regarding worker safety on the premises.

Supplier

The manufacturer may also be a “supplier” of equipment, tools, and machinery for use by the sub-contractors at the workplace. For instance, the sub-contractor agreement may stipulate the use of specific equipment, tools or procedures. The term “supplier” under the OHS_A may apply to a manufacturer and establish liability if it fails to ensure that the equipment is operated properly and health and safety procedures relating to that equipment are provided to sub-contractors and that they are followed.

Special Fee

Each of the 5 step process involves a professional service offered by Gowlings specifically designed for manufacturers. Gowlings can provide all five steps, at a discounted fixed fee, based on your needs.

For further information, please contact Norm Keith at 1-866-862-5787 ext. 85699, norm.keith@gowlings.com.