

Electrical Contractors Association of Ontario – Annual General Meeting

MOL Inspector at Your Door

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Preparing for MOL Inspector Visits to the Workplace

Update on Fines

- As of December 14, 2017, the maximum fines for an offence under the OHSA:
 - \$1.5 million, per offence, for a corporation
 - \$100,000 and/or 12 months in jail, per offence, for an individual

Most Frequent Reasons for Unannounced MOL Inspector Visits

- Anonymous complaint of unsafe situation or safety concern
- JHSC or union complaint
- Work refusal or certified member “stop work” situation which cannot be resolved internally
- Routine compliance audit or “IRS” audit
- Filing Notice of Project
- Workplace accident

Preparing for MOL Inspector Visits

- Copy of OHSA and Regulations posted
- Workplace Health & Safety Policy posted
- Violence and Harassment Policies posted
- JHSC minutes readily available

Preparing For MOL Inspector Visits

- Appoint a management representative as contact person for MOL who:
 - Understands the OHS/A powers of an inspector
 - Is very familiar with the company's health and safety program
 - Is familiar with applicable obligations under the OHS/A
- Management representative must develop professional, cooperative relationship with inspector
- Do not appoint adversarial individual
- Do not appoint manager who might express productivity concerns as overriding concerns (need to “sell” commitment to safety)

Routine Regulatory Compliance Inspection Powers

- Enter any time without warrant
- Require production of any document, report, record, training records, make inquiries
- Make inquiries of any person separate and apart from anyone else
- Take, use, set in motion equipment or machinery
- Conduct tests of any equipment, thing, agent, or require employer to have qualified person test
- Require engineering report or expert report, at employer's expense

Working With A “Heavy-handed” Inspector

- Maintain your cooperative stance
- Take the concern or issue seriously and investigate fully
- Make detailed notes of investigation and comments
- If necessary to avoid “stop work order”, offer to obtain assistance of external consultant or expert

Working With A “Heavy-handed” Inspector

- Firmly request opportunity to discuss any orders or decision (to present positive information on behalf of organization, to “get the order right”)
- Firmly request opportunity to negotiate reasonable compliance time frame for any order
- If necessary, involve inspector’s manager, or appeal decision or order

Inspector Power to Issue Orders

- Compliance orders specifying compliance time - no legal obligation to consult
- Compliance orders “forthwith”
- Stop work orders - where the inspector makes an order and “finds that the contravention of this Act or regulations is a danger or hazard to the health and safety of a worker”

Appealing Orders Without Repercussions

- Appeal to Ontario Labour Relations Board from any decision or order within 30 days
- Application to suspend order pending appeal hearing
- Mediation with officer of Ontario Labour Relations Board usually settles matter
- Maintain cooperative stance and notify inspector of reasons, where applicable

Inspector Power to Recommend Prosecution

- For any contravention or failure to comply with OHSA and regulations
- For failure to comply with MOL order
- There is no requirement for accident or injury to be foundation for prosecution

Additional Considerations for MOL Inspector Visits After a Workplace Accident

You've Had a Workplace Accident and There's an Inspector at the Door

- Can happen even to employers with robust health and safety programs
- Occurrence of an accident increases the risk of prosecution
- After an accident, there are numerous issues that arise and need to be managed:
 - Treatment of injured
 - Concerned family and co-workers
 - Company's immediate legal obligations
 - Investigation by regulators (MOL, police, ESA, TSSA, etc.)
 - Internal investigation

Company's Response to the Accident

- Attend to safety/medical needs
- Consider assistance from counsel
- Appoint an Accident Co-ordinator (consider previous slides re management contact person)

Company's Response to the Accident

The Accident Coordinator should...

- Manage any and all communication with the MOL (response to orders and requests for interviews, information, documents and materials)
- Shadow the investigators
- Take notes of items requested by and given to investigators, comments made by investigators, persons interviewed, tests performed and any results

Company's Response to the Accident

The Accident Coordinator should...

- Ask to sit in on any MOL interviews to take notes
- Attend to statutory obligations
- Manage internal investigation

Company's Response to the Accident – Statutory Obligations

- Critical or fatal injuries
 - Do not disturb the scene
 - Call the MOL immediately
 - Notify union and JHSC, if any
 - Within 48 hrs, send Director written report
- Disabling injuries and other specified accidents require written notice to the JHSC, safety representative, and union (as applicable) within 4 days
- Form 7 Notice of Accident must be provided to WSIB within 3 days of learning of workplace injury necessitating health care

Company's Response to the Accident – Internal Investigation

Conduct parallel internal investigation...

- Interview workers and supervisors (knowledge of hazards, procedures, training, warnings)
- Take photographs/videos, preserve damaged equipment
- Investigate root cause

Company's Response to the Accident – Internal Investigation

Conduct parallel internal investigation...

- Determine need for 3rd party expert
- Create final report and make recommendations
- Mark all internal investigation notes “Privileged and Confidential - in Contemplation of Litigation”

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