

Board Members — Know Your Liabilities

This OSACH Fast Fact is intended to promote awareness. There are over 200 provincial and federal statutes under which Directors and Officers can be held personally liable.

In today's world, whether you are a Board member for a not-for-profit or a for-profit organization makes little difference when it comes to your personal liability. In Canada, there are over 200 provincial and federal statutes under which Directors and Officers can be held personally liable. These Statutes range from the Income Tax Act, Pension Benefits Act, and Unemployment Insurance Act through to the Bankruptcy Act. Board members often learn of these responsibilities only during their orientation as a new Board member or perhaps throughout their term on the Board as part of the Board's development sessions.

Can You be Held Personally Responsible? . . . quite simply, YES.

Beyond this, however, Corporations, officers and directors are also ultimately responsible for compliance with the Occupational Health and Safety Act (OHSA) by ensuring that appropriate accident prevention systems are implemented in the workplace. In order to demonstrate due diligence (OHSA S.32) corporations are required not only to prove that a safety program is in place, but also to demonstrate the steps taken to ensure the effective operation of the health and safety program. Such steps include providing supervisors and employees with appropriate safety training; providing and maintaining adequate safety equipment; and designing and implementing systems to identify, eliminate and reduce workplace hazards. Adequate time and resources must be allocated to the program, and it must be clearly understood and followed by all employees.

Even in light of the due diligence requirement, Board meeting agendas are often taken up with reports citing profit lines, capital expenditure, client satisfaction surveys, project initiatives, negotiation updates, etc., and except for some of the most successful organizations, few monitor the well-being of their most valuable asset: their employees.

The Board often requires their most senior employee, the CEO, to report on the management of key aspects of the business, mainly to ensure that risks are being minimized and that the returns on the owners' investment are being recognized. Board members often become concerned when financial controls are seen as lacking, environmental concerns are raised by the public, profits are declining, or there is evidence of a situation being out of control. Employee injuries or — worse — fatalities are preventable; when injuries occur it should be a sign that there is a lack of emphasis being placed on employee safety, and Board members should be concerned. Every injury can negatively impact not only the injured employee and their family, but others within the organization and, ultimately, the organization's overall ability to provide the highest quality of service and care to its clients.

Now, more than ever, organizations are experiencing recruitment and retention issues, and those that do not recognize employee health and safety as an important issue continue to fall behind those considered to be "employers of choice." Although benefits and wages are important, employees now not only want but have the right to a safe and healthy work environment. Ultimately it is the Board of Directors who heightens the importance of this aspect of the business through the monitoring reports provided by the CEO.

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Performance Measures

Performance measures to be reported at Board meetings through a formal occupational health and safety monitoring system may include any of the following:

- does the CEO attend at least one JHSC meeting per year?
- percentage reduction in the number of lost time days per injury
- percentage reduction in the frequency of lost time injuries
- has the organization been free from critical injuries and fatalities?
- percentage reduction in WSIB surcharge
- MOL inspection orders
- comparative benchmarking reports with similar organizations
- number of managers trained in health and safety annually
- number of staff who have attended health and safety training during the year

Leadership Style

Together with the monitoring aspect, there are three statements that Board members may wish to examine with their senior management in order to identify their leadership style.

- “Workplace injuries and illnesses are, unfortunately, an inevitable outcome of certain types of jobs.”
- “Actions and decisions on workplace health and safety procedures are made by other people and are not in my control.”
- “All workplace injuries are unacceptable and preventable.”

If the first statement is selected, consider that for every effect there is a cause; for every cause there is the potential for control; for every control there must be intent; and intents are the basis of direction. Therefore, effective direction can prevent injuries and illness; these are never inevitable.

If the second statement is selected, remember that although the administrative details of health and safety programs are formulated by the managerial staff, and the tasks associated with these are carried out by workers and management alike, these plans and actions will have no place without the intent and direction that results in a plan for their effective execution ... as a Board member, only you have this control.

If the third statement is selected, CONGRATULATIONS! Your vision and commitment are a cornerstone of your organization’s success.

At the end of the day, it is you — the Board member — who sets the direction of the organization, states the values you wish the organization to embrace, and monitors outcomes on behalf of owners or stakeholders. You have not only the ability but a legal obligation to ensure that employees work in a safe environment, have the right equipment to perform their duties safely, and receive ongoing training appropriate for the duties they perform in the workplace.

Your CEO and the organization as a whole need your support and commitment to provide a safe workplace. As a Board member, by profiling health and safety in the workplace, you will reduce your liability and increase your effectiveness. Because what gets measured, gets done!



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