Covid-19 And Resources For Maintaining A Safe Workplace In The Natural Resource Sector

Authors: John Stefaniuk, K.C.

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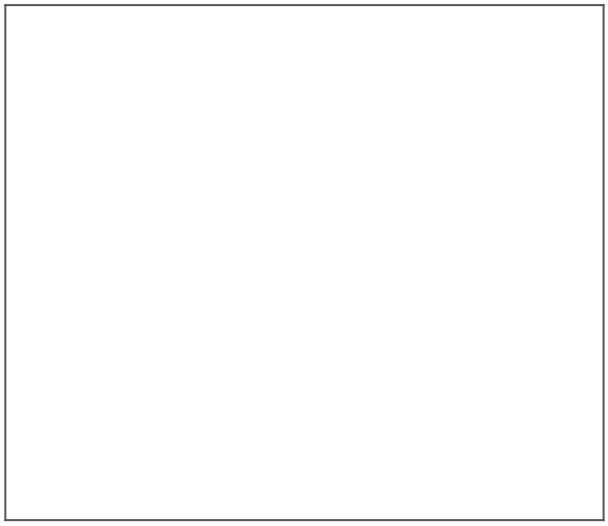
Maintaining a safe workplace must be a priority for all employers, including those in the natural resources sector. The obligations start with the board of directors and management and continue to the “shop floor”. The current COVID-19 pandemic creates unique challenges, but these do not reduce an employer’s obligations in any way; they only create new ones.



Mining (except uranium mining, which is federally regulated) and forestry fall under provincial and territorial jurisdiction. Provincial workplace health and safety legislation imposes obligations on employers to:

- provide their employees with a safe workplace;
- provide the information, instruction and training necessary to ensure the health and safety of their employee;
- report breaches of health and safety protections to the regulator (and, usually, the workplace safety and health committee established at the business); and
- deal with employees who refuse to work on the basis of a reasonable belief that the work would constitute an unsafe condition.

In the case of a pandemic, where disease could be spread through contact at the workplace, the employer’s obligations extend to taking appropriate measures to protect workers from the potential spread.

Who must ensure workplace safety? The obligation rests not only upon the employer corporation, but also on directors, officers and managers as individuals.

The why is self-evident. Employees, like anyone else, have a right to expect protection from unsafe working conditions. Employers have an interest in protecting their workers, often described as the most valuable asset of the business. All who have an obligation to employees also have an interest in avoiding penalties for non-compliance with the law. Fines of a million dollars per day for a continuing offence can be imposed under some legislation. It is now common for workplace health and safety legislation to specify minimum fines, fines

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that escalate exponentially in amount automatically on each subsequent conviction. In addiction to being fined, directors, officers and managers can face imprisonment. In addition, the Criminal Code of Canada, under what has become known as the “Westray Law”, imposes criminal liability upon anyone who directs how another person does work and who fails to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work.

What standard must the employer meet? The standard applied in determining whether an employer has satisfied its obligations under regulatory law is the exercise of “due diligence”. That is, the employer must be prepared to prove that it has done everything reasonably possible to protect the health and safety of its workers. (The cost of compliance is not usually considered to be a factor in determining what is reasonable.)

What can an employer in the natural resource sector do to ensure that it is meeting its obligations to maintain a safe workplace? Fortunately, since the beginning of the COVID outbreak there have been a wide range of free, publically available resources that have been developed.

The Mining Association of Canada has a web page devoted to COVID-19 initiatives of the Association and its members: Among these resources is a guide to the latest testing and screening practices titledCovid-19 Testing and Screening: Public Health Advice and Mining Association of Canada Member Practices. In addition, several MAC members have site that demonstrate there own responses to the pandemic. Recognizing that members’ mines do not operate in isolation from their surrounding communities, MAC has also put together Approaches to Indigenous Community Engagement and COVID-19.

The Canadian Centre For Occupational Health and Safety (CCOHS) was establishes in 1979 by federal legislation “to promote health and safety in the workplace and the physical and mental health of working people in Canada.” **CCOHS** has a wide range of publications, tip sheets, safety posters and courses specifically related to COVID-19 and general pandemic preparedness reference on its website. Among the CCOHS resources are individual “Tip Sheets” devoted specifically to mining, manufacturing (applicable to sawmills, pulp and paper mills), and to the operation of work camps.

The Tip Sheet for work camps, for example, includes general measure to be taken by employers and employees to protect employees from infection and specific guidance on isolation requirements on travel, transportation to and from the work site, sanitation in the camp, management of activities at the camp to minimize exposure among workers, managing how crews perform their duties, the physical and operation requirements for living quarters, and restrictions on external visitors. The Tip Sheets also instruct employees on what to do if they experience symptoms consistent with those of COVID-19.

Natural Resources Canada (NRCAN) references the CCOHS resources and others at its own

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website providing pandemic guidance to companies in the natural resource and energy sectors. NRCAN include guidance for indigenous communities in close proximity to natural resource operations, and guidance to industry in protecting the safety of workers and those in nearby communities.

Pandemic planning is something new to most workplaces, but the obligation to provide a safe workplace is old news Knowing and being able to prove compliance with industry standards and practices (assuming that they are reasonably protective and consistent with applicable regulations) is one way of protecting workers in the performance of their duties, and establishing a due diligence defence to charges under workplace safety and health regulations.

John Stefaniuk is a partner with the Manitoba based law firm Thompson Dorfman Sweatman LLP.

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