Where Do Occupational Health and Safety Laws Come From?



Train the Trainer – Workplace Safety Laws

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Statutes

Statutes are pieces of legislation enacted by a body of lawmakers called legislators. OSHA and Canadian OHS laws are all examples of statutes. But other statutes affect health and safety, such as environmental and general health laws. Moreover, statutes can be enacted by different governments—federal, state/provincial and municipal.

Regulations

Regulations are detailed rules that are connected to and fill out the specific provisions of a statute. Thus, for example, the OSHA statute establishes the broad duty to safeguard employees against workplace hazards and the OSHA regulations or standards define the hazards and kinds of measures employers are required to take to prevent them. Unlike statutes which are made by legislators, regulations are created by the government agency that administers the statute, e.g., OSHA in the U.S. or provincial OHS regulators in Canada.

Government Guidelines/Interpretations

Regulatory agencies typically issue interpretation letters or guidelines that explain what the laws mean and what employers and others should do to implement them. Although they technically don't carry the force of law, guidelines are important because they show how the agency interprets the law. Consequently, courts and arbitrators look to government guidance when deciding cases under the law.

Common Law/Court Case

Common law is made by judges, rather than by legislators and regulators. The law gets made one case at a time on the basis of the facts of that case. Each case then serves as precedent; establishing standards and rules for other cases to follow. Of course, since no two cases are ever exactly the same, judges have to extrapolate the old rules to the new facts of the case they're being asked to decide. Thus, the more cases that get ruled on, the more the law grows.

Negligence is the tort everybody has heard of, the one that spawns the most

litigation. Negligence law is fairly straightforward: Persons are guilty of negligence if:

- They owe a person (who we'll refer to as a victim) a duty of reasonable care;
- They don't live up to that duty;
- The failure to show reasonable care causes the victim to get hurt; and
- The victim suffers damages.

Just about anything can be negligence—from failing to signal a turn to leaving a banana peel on a crowded train platform. Negligence can be committed by individuals or companies. This exposure to liability is a major concern for all companies and the reason they need liability insurance. Of course, a company is really an consolidation of the individuals who work for it. So, when companies are sued for negligence, it's usually because one or more of its managers or employees did something wrong.

Voluntary Standards

Standards by non-governmental organizations like ANSI, NFPA, ILO and CSA are, by definition, voluntary. Thus, while failure to obey an OSHA or OHS rule is grounds for liability, you can't be fined for not following an ANSI standard. Or so you'd think. In fact, failure to follow a voluntary standard can constitute a violation. How? One way is if the standard is adopted into the statute or regulation. Thus, if an OSHA standard says you must provide PPE that conforms to ANSI standards, the standard becomes mandatory.

Another way voluntary standards can become legally binding is when regulators, judges and juries use them to determine if a company did enough to meet its obligations under the law. This can happen when a law sets a general and vague requirement, e.g., that employers act "reasonably" to safeguard against "known risks." Voluntary standards are used to judge what risks are "known" and what steps are "reasonable" to take to guard against it. Thus, courts and regulators might rely on a company's failure to meet a voluntary standard as evidence of its violation of its legal duty.

Industry Standards

Industry standards work according to the same principles as voluntary standards. They're not mandatory to follow; but not living up to them can result in liability. But there are a few differences:

First, while voluntary standards are typically more stringent than legal requirements, industry standards might be more lax. In such a case, employers must obey the regulatory standard. In other words, industry standards supplement but don't replace regulatory standards and following an industry standard is not a defense for violating a legal requirement.

The other difference between industry and voluntary standards is that the former tend to be less clearly defined. While CSA and ANSI standards are spelled out in black and white, there's often grounds for dispute over what constitutes an industry standard.