



2010 ALBERTA CHAMBERS OF COMMERCE RESOLUTION A Legislative Response to Alternative Work Arrangements

Issue

The “workplace” is an evolving concept and labour legislation including occupational health & safety (OH&S) and workers compensation legislation may need to be adapted to reflect varying workspaces and work arrangements. In many cases the legislation is either ambiguous or holds employers accountable for environments or employee behaviour over which they have no control. These issues are most apparent in the cases of telework arrangements and off-hours “captive workers”.

Background

Telework

Telework (also known as telecommuting), which allows employees to work effectively from outside the office environment, is an emerging trend among both large and small employers. Businesses find that workers are more productive with flexible working arrangements and employees are attracted to companies which are able to offer such arrangements because they are often able to achieve a more desirable work / life balance.

There is, however, one snag in these otherwise mutually beneficial work arrangements. The problem arises from perceived ambiguity in OH&S and workers compensation legislation with respect to the accountability of employers for the safety of their employees while employees are working under these types of alternative work arrangements.

On initial inspection it appears that employees working at home [i.e. in their “own private dwellings” in the language of the *Occupational Health and Safety Act* Sec. (1) s) ii)] are exempt from the legislation, though even this exemption is seen as ambiguous because of the broad directive to ensure the health and safety of workers engaged in the work of the employer also contained in the legislation. Additionally, there appears to be no exemption for workers who may be working outside the workplace in locations other than the home, like a coffee shop or a shopping mall, under a telework arrangement.

WCB Coverage for employees working at home is provided under Policy 02-01, Part 1:

An accident occurs in the course of employment when it happens at a time and place consistent with the obligations and expectations of employment. Time and place are not strictly limited to the normal hours of work or the employer's premises, however, there must be a relationship between employment expectations and the time and place the accident occurs.



Here, the policy may be conceived to be more onerous than OH&S legislation even though the employer may have little to no control over the working environment with telework arrangements.

Both employers and employees would benefit from greater clarity in the application of both OH&S and workers compensation legislation and policies regarding these alternative work arrangements and a more appropriate balance between employer accountability and an employer's control over working conditions.

Captive Workers

Similar issues arise in a very different context, that of workers working in the field and required, either by necessity or by their employers, to stay in work camps run by their employer or a third party. Captive workers, as defined in WCB Policy 02-01 Part II, "are workers who, because of the circumstances and nature of their employment, have no reasonable alternative to living in a bunkhouse or campsite (for example, a remote campsite in the wilderness)." Workers are considered to be captive on their initial trip to the worksite and remain so until the return trip from the worksite and are covered for all points in between, with some exceptions.

Employers find the current framework for captive workers inequitable because, though they may provide facilities for their workers, directly or through a third party, they have no ability to supervise workers once they have completed their shifts, and yet are still held to account in cases of injury, even if the injury occurs off-hours or on a break.

The hazards of the premises are not considered hazards of employment if a worker lives in employer-provided premises with the same rights and privileges as those which normally exist between landlord and tenant. In most cases, however, temporary accommodations are provided by owners, or by third party camp operators who essentially operate a camp as a commercial hotel and it is well established that employers are not held accountable for any injuries suffered while an employee is staying in a commercial hotel, even if the employer is paying for the accommodation through a living allowance or other mechanism.

An additional concern comes out of the transportation of employees. As mentioned above, employees are considered covered by compensation once they start the trip including at the embarkation point, during transportation and at the disembarkation point. Admittedly, cases must be handled on a case by case basis but the Alberta Chambers believe there is better way to distribute responsibilities between the employer, the employee, and any third party provider of accommodation / transportation.



Recommendations

The Alberta Chambers of Commerce recommend that the Government of Alberta:

1. Work with employer and employee groups to develop clear direction for alternative work arrangements, including the cases of telework and captive workers, which strikes the right balance between employer's ability to control the work environment, an employee's non-working time/environment and their responsibilities as employers in labour law.