

Memo to RCC members re: HSR at small shops

Early in May, an OHS inspector visited one of our Ontario shops and issued several orders. One of the orders addressed the lack of a health and safety representative (HSR) as defined under Section 8(1) of the Occupational Health and Safety Act (OHSA):

8(1) At a project or other workplace where no committee is required under section 9 and where the number of workers regularly exceeds five, the constructor or employer shall cause the workers to select at least one health and safety representative from among the workers at the workplace who do not exercise managerial functions.

The shop in question has two full-time employees and seven part-time employees. At any given time, there are usually one or two employees present. Even during this year's busy Easter season, there were never more than three. Nevertheless, the inspector interpreted Section 8(1) as referring to the number of employees *regularly employed*, and issued the order based on the fact that the shop has nine employees.

This order had potentially broad ramifications. If allowed to stand, it would be generally applicable, and would apply to every retail shop in Ontario of similar size. I initiated an appeal with our counsel, Tim Allen of Sherrard Kuzz LLP. At the heart of our appeal was the phrasing of the law. In the inspection report, and in a reply to my email query, the inspector used the phrase "regularly employed" several times to justify his order. Our appeal noted that this phrase does not exist in Section 8(1), but is used elsewhere in the OHSA. Therefore, the legislators were fully cognizant of its meaning, and would have used the phrase if that were their intent. The plain and ordinary meaning of "...where the number of workers regularly exceeds five" is that, under ordinary circumstances, there are five or more workers simultaneously present at the workplace.

The Board agreed, and issued their decision today, June 9, 2022. The decision letter states that no HSR is required because "the number of workers at the workplace does not regularly exceed five", reinforcing the proper interpretation of Section 8(1) by using the same phrasing.

I'm sure there are other RCC members that operate shops of similar size. If another inspector issues an order based on the same misinterpretation of Section 8(1), the company should cite **OLRB Case No: 0495-22-HS** in their response to the order.

Please pass this message to other retail operators. It may save someone the hassle of an appeal. I can provide further information if required.

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