

Tool Box Talk

A Working Understanding of Due Diligence

What is Due Diligence?

In occupational health and safety, due diligence means an employer has taken all reasonable precautions, under certain circumstances, to prevent incidents in the workplace.

This term may be heard from time to time, but what is its significance? It is an individual or organization's primary defence against prosecution when accused of an occupational safety infraction.

Due diligence uses safety documentation, policies, training records, worker training and more to prove that a person or company has complied with their legislated duties.

The idea of a due diligence defence is written into legislation via 3-8 General Duties of the Employer in the *Saskatchewan Employment Act* (SEA 2013). In Saskatchewan, the primary duty of an employer is to "ensure, insofar as is **reasonably practicable**, the health, safety, and welfare at work of all of the employer's workers."

Reasonably practicable is a significant term; it appears in Saskatchewan Legislation more than fifty times. It means "practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty". (SEA 2013)



To prove due diligence, an employer must prove that their actions have been reasonably practicable. In evaluating this standard, look at some basic principles and ask questions to ensure that reasonable actions have been taken.

1. **Foreseeability** – was this incident something that should/could have reasonably been seen coming? For example, a machine with a "high chance of rollover" rolling over.
2. **Preventability** – was this preventable? If there were controls in place, could the incident/injury have been prevented?
3. **Control put into place** – what control was provided? Was it adequate? Was it the best selection of reasonably practicable controls based on the scenario?

These questions may seem simple to implement. However, there must be an adequate safety system to ensure all company stakeholders understand their role as it relates to the implementation of these controls. This safety system should cover all minimum legislative requirements.

In many instances, you may be expected to exceed the requirements of the legislation. This may come in the form of standards like CSA or ISO, external agencies like WCB, industry best practices, or manufacturers' guidelines. Many of these standards are seen as reasonably practicable in a courtroom atmosphere.

Care must be taken to inform the workforce of health and safety responsibilities and expectations through education and communication strategies. All training and communication must be documented to ensure that if these processes are challenged in a court of law that the organization has documentation to prove appropriate steps were taken.

Keep in mind that proving due diligence is not an easy task – many organizations have tried and failed. This is usually due to a lack of documentation or ineffective training. Ensure to vet your training organizations, audit your program and ensure that good communication about health and safety is part of your day-to-day operations.