

# Who is a Supervisor under the Occupational Health and Safety Act?

## Introduction

The *Occupational Health and Safety Act* (OHSA) defines a supervisor as *a person who has charge of a workplace or authority over a worker*. This is a broad definition that can apply to many different people in a workplace, including people in management, on the shop floor, in a bargaining unit, and individuals whose job title does not include the word “supervisor”.

The definition of supervisor has two separate parts. Having **either** charge of a workplace, **or** authority over a worker, is sufficient for a person to be a supervisor. In general, “charge of a workplace” refers to broad control over the planning of work and how it is carried out, while “authority over a worker” can be seen as a more specific power to ensure a worker’s compliance with directions.

This document was prepared to clarify the duties and responsibilities of a supervisor, as defined in the OHSA, and to guide workplace parties (employers, supervisors and workers) and the Ministry of Labour (MOL) when assessing which individuals in the workplace are supervisors under the Act. Workplace parties may wish to obtain legal advice regarding a specific situation in their workplace.

## What the OHSA Requires

Everyone in the workplace, from the employer to the newest worker, has different but important duties to keep the workplace safe. Because employers have the most authority in the workplace, they have the greatest responsibility for health and safety of workers. Supervisors are next in line.

The specific duties of a supervisor under section 27 of the OHSA are to:

- make sure that workers work in compliance with the OHSA and its regulations;
- make sure that workers use any equipment, protective devices or clothing the employer requires;
- tell workers about any workplace health and safety hazards that the supervisor is aware of;
- give workers written instructions on measures and procedures to be followed for their own protection, if prescribed by regulation; and
- take every precaution reasonable in the circumstances to protect workers.

Additional duties of a supervisor are set out in some regulations under the OHSA.

The OHSA gives employers and workers duties that help support the role of the supervisor. **When appointing a supervisor, the employer must ensure the person is competent.** To be competent, a supervisor must have enough knowledge, training and experience to organize the work and how it is to be performed. He or she must also be familiar with the OHSA and any regulations under it that apply to the workplace, and, know about any actual or potential health and safety hazards in the workplace.

Employers have other significant duties related to supporting a supervisor, including acquainting workers or supervisors with any hazards in the workplace; providing and maintaining equipment and protective devices; and, taking every precaution reasonable in the circumstances to protect workers. Workers also have duties that support the supervisor in his/her role, for example, to work safely and in compliance with the OHSA and regulations, and, to report any workplace hazards and contraventions of the law to the supervisor or employer.

More information about the different duties of the employer, supervisor and worker can be found in the Ministry of Labour's Guide to the OHSA, which is available on the Ministry's web site at: [www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php](http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php)

### **Who is a supervisor?**

Determining if a person is a supervisor is an **objective** test based on the person's actual powers and responsibilities. Whether or not a person subjectively believes s/he is a supervisor is not part of the determination. Under the OHSA, having **either** charge of a workplace, **or** authority over a worker, is sufficient for a person to be a supervisor. In any case, the person must have sufficient authority to carry out the duties in section 27 of the OHSA (described under **What the OHSA Requires**). If the person does not have such authority, s/he is not a supervisor.

Below are two general lists of powers and responsibilities that may be exercised or carried out by a supervisor. The first list includes powers that are primary indicators of being in a supervisory role. The second list includes responsibilities that would generally be carried out on the job site by a front-line supervisor who interacts directly with workers.

1. Powers that are primary indicators of being in a supervisory role include the power to:
  - hire, fire or discipline,
  - recommend hiring, firing or discipline,
  - promote, demote or transfer,
  - decide a worker's rate of pay,
  - award bonuses,
  - approve vacation time,
  - grant leaves of absence, or
  - enforce procedures established to protect worker health and safety.

2. A person with none of the powers listed above could still be a supervisor as defined in the OHSA, if he or she has some of the following responsibilities:
- determining the tasks to be done, and by whom,
  - directing and monitoring how work is performed,
  - managing available resources such as staff, facilities, equipment, budget,
  - deciding on and arranging for equipment to be used on a job site,
  - deciding the make-up of a work crew,
  - deciding on and scheduling hours of work,
  - dealing directly with workers' complaints, or
  - directing staff and other resources to address health and safety concerns.

The above lists are not exhaustive, and having just one of the powers or responsibilities does not necessarily make one a supervisor. For example, in larger companies, Human Resources staff carry out some of the listed functions, such as hiring and firing, but this fact alone does not mean such HR staff are supervisors for the purposes of the OHSA.

Generally speaking, the more authority a person has over workers and the way work is performed, the greater the likelihood that the person is a supervisor under the OHSA. The combination of powers and responsibilities that have to be present for a person to be considered a supervisor will vary from case to case and will depend on the circumstances in a given workplace at a given time.

A person who merely relays an official's instructions and reports back to that official, or who determines tasks by following a standard protocol, does not have charge of the workplace or authority over workers and would not be considered a supervisor.

If an employer identifies specific individuals at the workplace as supervisors, based on the criteria in this guideline, MOL inspectors will consider that identification when determining whether a person is a supervisor in a given case. MOL inspectors will also use the criteria in this guideline when determining who has charge of a workplace or authority over a worker, and may determine a person to be a supervisor for the purposes of the OHSA, even if the employer has not identified that person as one.

If an employer assigns someone supervisory duties – i.e. gives the person charge of the workplace or authority over a worker – the employer must ensure that the person is competent to carry out his or her legislated duties under the OHSA. The employer should also ensure that the person assigned understands that s/he is legally accountable to fulfil those duties.

Other points to consider include:

- An individual temporarily authorized to direct a worker's work activities can be a supervisor during that time period. For example, in the construction sector, if a competent person is temporarily appointed by a supervisor under section 14 of Ontario Regulation 213/91 for Construction Projects, that person is also considered to be a supervisor for enforcement purposes.

- Whether or not a person should be considered a supervisor is based on job functions, not whether the term “supervisor” is in his or her job title.
- A supervisor for the purposes of the OHSA can belong to a bargaining unit.

## Some Examples

The following examples may provide additional guidance.

1. At a large construction site, there may be multiple supervisors under the OHSA. The constructor appoints a supervisor for the project, as prescribed in Ontario Regulation 213/91 for Construction Projects. A number of employers at the site have more than five workers and all appoint supervisors for their crews, as prescribed by the regulation. The constructor/project supervisor has overall responsibility for operations at the site and gives directions to the employers of the various trades on the work to be done. At the level of the work crew, supervisors would assign tasks based on the directions of the project supervisor but they would still be considered supervisors for the purposes of the OHSA because they organize their crews' work, monitor how the work is performed and ensure workers follow prescribed procedures and carry out tasks safely.
2. At an underground mine, a “supervisor” assigns tasks by way of a work-to-be-performed line-up that is generally given to the mine development leader prior to travelling underground with a work crew. Is the mine development leader also considered a supervisor? Not in this case – the development leader is relaying instructions from the supervisor to the workers underground, and has no authority to change the supervisor's instructions, nor direct the workers.
3. An apprentice is someone who learns a skilled trade on the job, under the direction of more experienced workers, such as a journeyman who, by definition, holds a certificate of qualification in the trade in question. Depending on the circumstances, a journeyman may or may not be an apprentice's supervisor for the purposes of the OHSA. For example, if a journeyman's role is limited to that of a trainer who oversees the quality of work performed and ensures an apprentice develops the proper skills for the trade, the journeyman may not be considered a supervisor as defined in the OHSA.

But, if a journeyman is in a position to hire apprentices (e.g., as a certified electrician who is the owner/operator of a small electrical contracting company), gives direction beyond that related to the development of skills and the quality of work, and has the authority to apply progressive discipline to ensure an apprentice's compliance with directions, then the journeyman may be considered to have “charge of a workplace” or “authority over a worker”, and as such, be a supervisor under the OHSA.

4. In health care institutions like hospitals or nursing homes, an employer may assign responsibilities to a nurse that could make him or her a supervisor under the OHSA, depending on the circumstances. For example, a nurse acting in the capacity of a charge nurse may be considered a supervisor under the OHSA if the manager is not present on the unit or in the hospital or nursing home, and s/he has the following responsibilities:
  - giving directions to other healthcare workers,
  - monitoring how other healthcare co-workers carry out directions,
  - reassigning duties, calling in extra staff when short staffed, and/or
  - being in charge of the building.

In such a case, the employer would be obligated to train this nurse to the same competency level as any other supervisor.

### **Some Court Decisions**

Described below are five Ontario court cases that show the range of factors courts have considered when determining that a person is a supervisor under the OHSA. Courts have recognized that a broad interpretation of the definition of supervisor increases responsibility over worker health and safety and furthers the purpose of the OHSA.

1. A Ministry of Labour health and safety inspector arrived at a construction site and saw two workers climbing a scaffold without proper fall protection equipment. Both workers were at risk of falling at least 10 feet. A “working foreman” at the site was responsible for overseeing the work of these and other workers while still performing his own duties as a carpenter on the project. He was later charged and convicted for failing, as a supervisor, to ensure that workers were working in a manner and with the protective devices, measures and procedures required by the OHSA and the Construction Projects Regulation.

The court concluded that the working foreman was a supervisor under the OHSA, based upon evidence that he:

- was responsible for health and safety matters at the site – for ensuring workers had the required safety equipment and personal protective equipment and for advising them of potential hazards;
  - reviewed company procedures with the workers and told them what was expected of them with respect to health and safety;
  - had the authority to direct workers to take corrective action;
  - could advise higher levels of management in relation to reprimanding and disciplining workers. (*R. v. Lockyer* [2009])
2. On the first day of a roofing project, the project manager discussed safety issues, including the presence of overhead power lines, with the site foreman. Shortly after, the foreman was moved to another site. The project manager did not have the same discussion of safety issues with the new site foreman, or his crew. Four workers at the site were moving a scaffold and pushed it into contact with the power lines, resulting in the death of one worker and injuries to the other three.

The project manager, although generally not present at the site on a daily basis, was charged and convicted of failing, as a supervisor, to ensure that workers worked in the manner and with the protective devices, measures and procedures required by the Construction Projects Regulation; and, with failing to advise workers of the existence of a danger to their health and safety, as required in the OHSA. The Court found the project manager to be a supervisor because he decided the make-up of work crews and what equipment was allowed on site; did most of the hiring and firing; and typically met with a crew on the first day to review relevant safety issues. Although the crew considered the site foreman to be their supervisor, the Court did not consider him to be a supervisor under the OHSA because his authority was limited to ensuring quality control, and he had no authority to enforce the obedience of workers. (*R. v. Jettors Roofing and Wall Cladding Inc.* [2000])

3. A maintenance crew working in a subway tunnel with gasoline-powered equipment was overcome with carbon monoxide fumes after a second crew working nearby shut off the ventilation system. At the time, a temporary foreman directly supervised the maintenance crew. He reported to a Project Supervisor, who in turn reported to a Superintendent, who reported to a General Superintendent.

The Ministry charged both the temporary foreman and the General Superintendent as supervisors. The charges were considered consistent with the intent of the OHSA to hold individuals personally accountable according to their level of responsibility. Charges against the foreman were later dropped but the court found the General Superintendent to be a supervisor because he had ultimate responsibility for the condition of the workplace and for those who gave direct orders to workers.

Despite being found to be a supervisor, the General Superintendent was found not guilty because he proved he had exercised due diligence, for example:

- he had reasonably relied on recommendations of the Safety Department regarding ventilation requirements and equipment; and, could not have known about deficiencies in the equipment used by the crew;
- he had a system in place to address hazards he knew about:
  - workers were aware of their right to refuse unsafe work,
  - a previous foreman had been suspended for a safety violation,
  - procedures recommended by the Safety Department had been circulated;
- he personally inspected the subway tunnels monthly with a member of the Joint Health and Safety Committee.

In addition, training deficiencies that contributed to the incident were considered the responsibility of the employer, not the General Superintendent. The employer was convicted of failing to ensure that prescribed measures and procedures were carried out. (*R.v. Bartram* [2009])

4. A crew of four landscape workers, including a lead hand, was assigned the task of cutting the grass at a large public park. The lead hand modified one of the lawn mowers to make it easier to operate. A worker using the lawn mower was injured as a direct result of the modification. The lead hand was later charged under the OHSA, and convicted of failing, as a supervisor, to take every precaution reasonable in the circumstances for the protection of a worker. The Court considered the lead hand to be a supervisor because he was in charge of the crew; assigned work and answered workers' questions; could influence who was assigned to his crew; and, was expected to address safety issues. (*R v Walters* [2004])
5. A small plastics recycling plant was operated by the owner and two workers. One of the workers was killed on his second day of employment, while working on an unguarded machine. At the time of the incident, the owner was not at the plant and the co-worker, who was the nominal supervisor for the day, had stepped outside for a few minutes. The MOL charged the owner/president for failing, as a supervisor, to ensure that a worker worked in a manner and with the protective devices required; and, for failing to take every precaution reasonable in the circumstances for the protection of a worker.

The Court considered the company owner to be a supervisor within the meaning of the OHSA because he assigned work, was in control of hours, wages, hiring and firing, conducted safety training, controlled production and determined what equipment would be used in the plant. Although on site only 60 per cent of the time, the owner was in regular contact by telephone with the co-worker, and made all the decisions. The Court considered the co-worker to be a supervisor in name only because he passed on instructions of the owner and had minimal authority over any other worker. (*R v Adomako* [2002])

#### **Notes:**

*This guideline has been prepared to help the workplace parties understand some of their obligations under the Occupational Health and Safety Act (OHSA) and the regulations. It is not intended to replace the OHSA or the regulations and reference should always be made to the official version of the legislation.*

*The criteria in this guideline are part of the MOL Operations Division Policy and Procedures Manual and are used to train inspectors. MOL inspectors use and consider the criteria when carrying out their regular enforcement activities.*

*Effective July 1, 2014, employers are required to ensure that their supervisors complete a basic occupational health and safety awareness training program that meets requirements set out in Ontario Regulation 297/13. Free resources to help employers comply are available on the MOL's web site at [www.Ontario.ca/learntoworksafe](http://www.Ontario.ca/learntoworksafe)*

*It is the responsibility of the workplace parties to ensure compliance with the legislation. This guideline does not constitute legal advice. If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, please contact your legal counsel.*

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