



THE EMPLOYERS'Edge BULLETIN

Labour Board Rules That Employers Must Report Workplace Critical Injuries Or Deaths Of Non-Workers

Employers in the hospitality and recreational service industry may face increased liability under the *Occupational Health and Safety Act* ("OHSA") after a recent decision from the Ontario Labour Relations Board. In *Blue Mountain Resorts Ltd.*, the question was whether an employer has an obligation to notify the Ministry of Labour of any critical injuries that occur to a non-worker at a workplace. A guest vacationing at the Blue Mountain Resort ("Blue Mountain") drowned in the resort swimming pool. Shortly thereafter, the Ministry issued an order pursuant to section 51(1) of the OHSA for the failure of Blue Mountain to notify the Ministry of Labour of the guest's death.

Section 51(1) of the OHSA provides that an employer has an obligation to notify an inspector in circumstances where a person is killed or critically injured from any cause at a workplace. Further, where it is found that a person is killed or critically injured at a workplace, section 51(2) of the OHSA prohibits any person from "interfering with, disturbing, destroying" or carrying away any thing that is connected with the scene of the occurrence until permission is given by an Inspector.

Not surprisingly, Blue Mountain took the position that it did not have a reporting obligation to the Ministry of Labour in circumstances where a guest is involved. It argued that the nature and scope of the OHSA was aimed at protecting the safety of workers, and did not require the reporting of injuries of non-workers. It further argued that the resort did not constitute a "workplace" since there were no workers present at the time the guest drowned.

The Board disagreed with Blue Mountain's interpretation of section 51(1) and instead concluded that the language was clear that the provisions applied to any "person". The Board found it significant that the Legislature had chosen to use the broader term of "person" instead of limiting the application of the section to "workers".

In dealing with Blue Mountain's argument that the resort did not constitute a "workplace" for the purposes of s. 51(1) since there were no workers present at the time that the death occurred, the Board ruled that an employee does not have to be physically present at a workplace in order for it to be considered a workplace.

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This decision has far-reaching implications for employers, particularly those employers who operate businesses in the hospitality and recreational industry. As a result of this decision, employers will have to report the critical injuries or deaths that occur at a workplace to workers, as well as any other individual that is present at the workplace site. This may cause significant disruption to the business operations of the company since the company is now required to preserve the accident area until permission is given by an inspector to clear the area in which the accident occurred.

Crawford Chondon & Partners LLP will continue to keep you updated on this and other ground-breaking decisions in the area of labour and employment law.