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**EMPLOYEE SAFETY AND WORK-RELATED INJURY**  
**Recent Trends in the Law and Managing Your Risks**

**Toronto – November 29, 2007**

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**Implementing Compliance as Employers**

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By Stanford R. Brown  
Raising The Standard (RTS) Consulting Inc.

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## Implementing Due Diligence



GSPZ@AOL.COM <http://members.aol.com/gspz/policehumor.html>



60 miles an hour?! But that's impossible!  
I've only been driving for 15 minutes!

62 Barr Cres., Brampton, ON, L6Z 3E4, 905-840-1918, Fax: 905-840-3135, [rtsc@rtsconsulting.com](mailto:rtsc@rtsconsulting.com)

## Establishing Due Diligence:



### Be Aware:

- Make sure you know the Act and regulations governing your workplace.
- Ensure that others are aware of their responsibilities under the Act.

### Be Objective:

- Invite health and safety professional to participate in a workplace hazard analysis or conducting an audit.
- Actively reviewing accident and injury statistic.

### Be Pro-Active:

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**Develop a Health, Safety and Environmental  
Management Policy Implement Policy with  
Commitment from Senior Management for  
foreseeable contingencies Through compliance with  
legislation**

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**DUE DILIGENCE  
MANAGING SYSTEMS**

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## Inventory of hazards

- Hazard Analysis/Job observation
- Planned and informal inspections
- Senior management tours
- Safety talks
- Active JHSC
- Accident investigations
- Accident analysis/Training needs analysis

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## Policy

- Written Policy Includes:
  - Management commitment
  - Commitment to comply with legislation
  - Who is accountable
  - Signature of the highest level of management
  - The date and posted

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## Policy and programs

- Monitor supervision and training
- Method of communication and feed back regarding compliance to program
- Clearly defined responsibilities
- Documented

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## Policy

- **Policy is Posted in the Workplace:**
  - Reviewed with all employees and contractors
  - Included in health and safety manual
- **Appropriate Training Includes Leadership Policy**
- **Policy is Evaluated at Least Annually.**
- **Policy is revised as needed**

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## Training



- Train employees in safe policies, procedures and practices.
- Training is a key component of any defense of due diligence.
- Internally or externally.
- Record of training.
- Training for competency & prevention
  - general
  - specific
  - workers
  - supervisors

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## HIRING PRACTICES



- When drafting job descriptions and posting notices of vacancy, employers should consider specifying the obligations which are incumbent in the position to ensure compliance with the governing health and safety legislation.
- Communicates the corporation's commitment to health and safety.
- Interview procedure.

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- Work Refusal
- Workplace Accidents
- Monitor adherence to policies, practices and procedures
- Contractors
- Take note(record)
- Take care

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- Maintenance programs
- Monitoring systems
- Design and implement emergency response and reporting programs.
- Ensure that problems and potential problems are promptly identified and dealt with and document all steps.

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## No Regulation



- Guidelines are frequently used by the Ministry of Labour Inspectors when there are no regulations that apply.

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## Responsibilities defined



- For everyone in the organization
- Clearly communicated
- Measurable objectives and tasks
- Responsibilities evaluated and measures against targets

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## A Management Control Loop



- IDENTIFY:
  - work to be done
- SET PERFORMANCE STANDARDS:
  - what's to be done, by whom, when, or how often
- MEASURE:
  - performance compared to standard

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## A Management Control Loop (cont.)



- EVALUATE:
  - standards and performance
- COMMEND/CORRECT:
  - commend performance to standard
  - correct sub-standard performance

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## A Risk Management System



### (The Five Management Goals)

- IDENTIFY:
  - all loss exposures
- EVALUATE:
  - risk in each exposure
- DEVELOP A PLAN:
  - to address all unacceptable risk
- IMPLEMENT THE PLAN
- MONITOR THE SYSTEM

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## Examples of lack of due diligence



- Knowledge of hazard, but no action taken
- Knowledge of hazard, and delegate without monitoring
- Knowledge of hazard not communicated to the employee
- Rules established to protect against hazards but they are not enforced

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## Examples of lack of due diligence (con't...)



- No progressive discipline, simply repeat actions that do not improve behavior
- Lack visible actions of general promotion of good environment, health and safety practices.

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## Progressive discipline



- The enforcement of safety rules shall be reasonable, consistent, and in accordance with a system of progressive discipline

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## Progressive discipline (con't...)



- Regardless of positive reinforcement philosophy non-adherence to safety rules must be controlled with progressive discipline
- Repeating ineffective discipline is looked upon as condoning the act

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## Workwell Program



- **The Workwell program is:** an audit tool used by the Workplace Safety and Insurance Board of Ontario to implement section 82(1) of the Workplace Safety and Insurance Act. The purpose of the auditing tool is to identify organizations that unfairly add to the assessment burden of their rate group through high claim costs or frequency and regain those costs through fines based on the organization's audit score.
- Promote health and safety
- Levy additional assessments

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## Workwell Process



- If a company fails the first evaluation, it must now work with a health and safety provider to develop and monitor its improvement program. Failure to cooperate may result in immediate levying of the relevant surcharge.
- Employers now have six as opposed to three months to make improvements if they fail the first evaluation.
- The passing grade for the evaluation has been increased from 65% to 75%.
- The penalty is still an absolute maximum of 75% of the employer's premium, (if evaluation score is zero) but the cap is now \$500,000 instead of \$100,000.

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## How to Approach it



- Use it as a tool to improve health and safety
- Many companies are using our services to audit themselves before they receive an audit - Why appeal a re-audit – 3yr window
- Claim still on record – audit cheaper/if good
- Use a professional familiar with the intent of the questions and experience with the auditors

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## What it Will Do



- Excellent way to conduct your own audit
- Identify your gaps
- Develop an action plan with target dates and responsibilities
- Document everything and prioritize what you will work on first and why
- Consolidate all your information

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## Some Benefits



- Improves business efficiency
- Ensures legal compliance
- Keeps senior management and supervision out of court and the newspapers
- Only true method to ensure due diligence
- Prevents you having to tell your employee's loved ones that they were injured because of your organization's negligence.

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## Questions to Ask Yourself



- Are you confident that your safety program could hold up against the scrutiny of a MOL or WSIB audit?
- Do you hold your workers accountable for health and safety? How is it documented?
- Have you conducted a systematic analysis of all the hazards associated to your workplace? Is it documented and current?

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## Finally!!!



- Written health & safety program
  - it must be communicated and *lived*
  - monitor effectiveness, and update as needed in consultation with JHSC Committee or Health & Safety Representative.
- *Due diligence* always depends on the facts of the situation,
- but it is *too late* to build a defence after an incident,
- so, build it into your system now.

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