

ALERT

Reporting of Critical Injuries in a Recreation Workplace Involving Non-Workers Update

November 17th, 2011

BACKGROUND: The ORFA released a resource in February 2010 entitled, “Guidelines for Reporting Critical Injuries in a Recreation Workplace Involving Non-Workers”. In this document the ORFA provided possible incident examples that may or may not be considered reportable events to the Ministry of Labour – these examples should no longer be considered current.

Recently ORFA representatives met with senior Ministry of Labour staff to better understand Section 51 of the Occupational Health & Safety Act (OHSA) and how it applies to the recreation industry. Ministry staff recognized the complexity and possible variables associated with injuries involving the general public or users in a recreational environment, but in the end reminded ORFA members that recreation facility operations fall under the Industrial Regulations of the OHSA and that the legislation has not changed. Specifically, Section 51 remains as follows:

Notice of death or injury

51. (1) Where a PERSON is killed or critically injured from ANY CAUSE at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe. R.S.O. 1990, c. O.1, s. 51 (1); 2011, c. 1, Sched. 7, s. 2 (7).

The Blue Mountain accident resulting in a death of a skier and the failure by the resort to report the accident to the Ministry of Labour has helped clarify the complexities and variables of the critical injury reporting obligations under Section 51 of the OHSA.

ORFA members should recognize that recreation settings, unlike a factory workplace are more diverse requiring management to be more diligent in their understanding of the reporting responsibilities to ensure compliance. A Ministry of Labour investigation may be time consuming and involve the preservation of an incident scene for an indefinite period, but it is a legal obligation that must be met. Be clear, such areas are the equivalent of a crime scene in another public location seen on the news surrounded by yellow police tape – making the right decision is not only a moral responsibility to those involved, but possibly a decision that could impact your employer legally and you personally.

Not being in a position to definitively answer the question if reporting of a critical injury is required it is recommended to err on the side of caution and report everything. The Ministry of Labour is in the best position to answer any inquiries. The phone call and direction from a Ministry of Labour representative who is available 24/7 is free – failing to act appropriately can quickly become very expensive and time consuming for all workplace parties. Reminder - It is also strongly recommended that you consult legal counsel within your operation to determine a best operational course of action.

For more information refer to:

http://www.orfa.com/library/guide_bp/documents/Reporting_of_Critical_Events_Best_Practices_2011_FINAL.pdf