

Legal update

Ontario Ministry of Labour clarifies definition of a critical injury

March 2017

Occupational health and safety and workers' compensation

In early 2017 the Ontario Ministry of Labour issued a [clarifying statement](#) on the definition of “critical injury” under Regulation 834 of the *Occupational Health and Safety Act*. This clarification will be of interest for all employers facing a potentially reportable injury in the workplace. While not binding, it illustrates what the Ministry of Labour will consider appropriate practices for Ontario employers in reporting workplace injuries.

Any critical injury in the workplace triggers the following obligations:

- The employer and/or constructor (if any) must **immediately notify** a Ministry of Labour inspector, the joint health and safety committee (or health and safety representative) and the union
- Employer must send a **written report** of the circumstances of the occurrence to a director of the ministry **within 48 hours**
- The scene where the injury occurred **must not be altered** in any way without the permission of an inspector, which generally results in no further work being done in that area until the inspector releases the scene

Regulation 834 of the *Occupational Health and Safety Act* defines critical injury as follows:

“critically injured” means an injury of a serious nature that,

- (a) places life in jeopardy,
- (b) produces unconsciousness,
- (c) results in substantial loss of blood,
- (d) involves the fracture of a leg or arm but not a finger or toe,
- (e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,
- (f) consists of burns to a major portion of the body, or
- (g) causes the loss of sight in an eye.

Under a strict reading of the above definition the fracture or amputation of a finger or toe is not a critical injury.

The Ministry of Labour's clarifying statement, however, makes clear that the ministry will also view the fracture or amputation of more than one finger or more than one toe to be a critical injury for the purposes of the legislation if it is an injury of a serious nature.

The clarifying statement is not a legal amendment of the *Occupational Health and Safety Act* or its Regulation 834, nor is it an interpretation of this legislation by a court that would have binding effect.

However, it is a guideline that will inform the judgment of the Ministry of Labour, its inspectors and prosecutors. Employers should expect inspectors to treat this broader scope of workplace injuries as critical injuries. This means that where such injuries occur, the accident scene should be secured, the injury reported and a written report should be sent to the Ministry of Labour as with a critical injury to avoid negative scrutiny by the Ministry of Labour. The ministry will likely issue orders and failure-to-report charges if the employer does not follow its clarifying statement and its expanded view of injuries considered critical.

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