

# Health and Safety Legislation in Canada

## Health and Safety Legislation in Canada - Due Diligence

### On this page

[What is meant by due diligence?](#)

[Why does due diligence have special significance?](#)

[How does an employer establish a due diligence program?](#)

[What documentation is needed to show due diligence?](#)

[What are areas to consider when reviewing due diligence?](#)

[What is an example of a due diligence checklist?](#)

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## What is meant by due diligence?

Due diligence is the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances.

When applied to occupational health and safety, due diligence refers to the reasonable precautions taken by employers under particular circumstances to prevent harm in the course of work. This duty applies to all situations, including those not addressed specifically in occupational health and safety legislation. Reasonable precautions are also referred to as reasonable care. It refers to the care, caution, or action a reasonable person is expected to take under similar circumstances.

Another term used is employers must do what is "reasonably practicable". Reasonably practicable has been described by the Labour Program (Canada) as taking precautions that are not only possible, but that are also suitable or rational, given the particular situation. Determining what should be done is usually done on a case-by-case basis.

To exercise due diligence, an employer must implement a plan to identify possible workplace hazards and take the appropriate corrective action to prevent incidents or injuries arising from these hazards.

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## Why does due diligence have special significance?

"Due diligence" is important as a legal defence for a person charged under occupational health and safety legislation. If charged, a defendant may be found not guilty if they can prove that due diligence was exercised. In other words, the defendant must be able to prove that all reasonable precautions were taken to protect the health and safety of workers.

Due diligence is demonstrated by the actions taken before an event occurs, not after.

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## How does an employer establish a due diligence program?

The conditions for establishing due diligence include several criteria:

- The employer must have written occupational health and safety policies, practices, and procedures in place. These policies, etc., would help demonstrate and document that the employer carried out workplace safety audits, identified hazards and made necessary changes to correct them, and provided workers with information to enable them to work safely.
- The employer must provide the appropriate training and education to the workers so that they understand and carry out their work according to the established policies, practices, and procedures.
- The employer must educate and train the supervisors to ensure they are [competent persons](#), as defined in legislation. Ensure that managers and supervisors:
  - Talk to new workers about safety during orientation training.
  - Meet regularly with staff to discuss health and safety matters.
  - Inspect workplace areas under their responsibility, and respond promptly to unsafe conditions and activities.
  - Understand the hazards and take reasonable measures to control any aspect of work that may harm a worker.
  - Pay attention to routine and non-routine activities, making sure that workers understand the hazards and follow the preventative measures.
- The employer must monitor the workplace and ensure workers follow the policies, practices, and procedures. Written documentation of progressive disciplining for breaches of safety rules is considered due diligence.
- The employer should have an incident (accident) investigation reporting system and investigation program in place. Workers should be encouraged to report "near misses," which should also be investigated. Acting on the recommendations and incorporating information from these investigations into revised improved policies, practices, and procedures will also establish that the employer is practicing due diligence.

- The employer should document, in writing, all of the above activities. This documentation will give the employer a history of how the company's occupational health and safety program has progressed over time. It will also provide up-to-date documentation that can be used as a defence to charges in case an incident occurs despite an employer's efforts.
- Employers must also make sure that all people who are at the workplace are included, such as contractors, visitors, students, interns, and volunteers.

All of the elements of a "due diligence program" must be in effect before any incident or injury occurs. If employers have questions about due diligence, they should seek legal advice for [their jurisdiction](#) to ensure that all appropriate due diligence requirements are in place.

There are obviously many requirements for the employer, but workers also have responsibilities. They have a duty to take reasonable care to ensure the safety of themselves and their coworkers, which includes following safe work practices and complying with legal requirements.

More information on how to establish these programs is available through OSH Answers, including:

- [Health and Safety Program - General Elements](#)
- [Health and Safety Policy - Development and Implementation](#)
- [Emergency Planning](#)
- [Hazard and Risk - Hazard Control](#)
- [Effective Workplace Inspections](#)
- [Incident Investigation](#)
- [Job Safety Analysis](#)

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## What documentation is needed to show due diligence?

Written documentation is essential. Records, reports, and documentation for the following activities can help show due diligence:

- Worker orientation, education, and training.
- Workplace inspections, including corrective actions taken.
- Incident reports, including corrective actions taken.
- Audit reports, including evidence of implementing recommendations for improvement.
- Risk assessments and evidence of implementation of control measures.

- Supervisor notes (e.g., supervisor inspections, meetings with workers or contractors regarding safety, etc.).
  - Health and safety committee meeting minutes.
  - Equipment log books and maintenance records.
  - Emergency response drills and exercises, including evidence of implementing recommendations for improvement.
  - Instructions or safe work procedures, including any changes.
  - Forms and checklists are used when following safe work procedures (e.g., confined space entry permits).
  - Sampling and monitoring records from exposure testing.
  - Statistics about the frequency and severity of injuries, etc.
  - Enforcement of health and safety rules and procedures.
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## What are areas to consider when reviewing due diligence?

When reviewing your due diligence program, it may help to ask the following questions:

1. Can a reasonable person predict or foresee something going wrong?
  2. How severe is the potential harm to workers?
  3. Is there an opportunity to prevent the incident?
  4. Who is responsible for preventing the incident?
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## What is an example of a due diligence checklist?

To be effective, evidence must be available for each item in the checklist.

Note that the contents of this checklist are not exhaustive. Customize this checklist with items specific to your workplace that will help demonstrate due diligence.

## Due Diligence Checklist

Yes	No	
		Do you know and understand your health and safety responsibilities?
		Do you have current, definite procedures in place to identify and control hazards?
		Have you integrated safety into all aspects of your work?
		Do you set objectives for safety and health?
		Have you committed appropriate resources to safety and health?
		Is the workplace regularly inspected to identify hazards?
		Have you implemented appropriate control measures for identified hazards?
		Have you explained safety and health responsibilities to all workers and made sure that they understand and comply with them?
		Have workers been trained to work safely and use proper protective equipment?
		Is there a hazard reporting procedure in place that encourages workers to report all unsafe conditions and unsafe practices to their supervisors?
		Are managers, supervisors, and workers held accountable for health and safety?
		Is safety a factor when acquiring new equipment or changing a process?
		Are tools and equipment maintained to manufacturers' recommendations?
		Are contractors, volunteers, and others in the workplace held to the same safety standards?
		Do you keep records of your program activities and improvements?
		Are meetings dedicated to safety and health matters held regularly?
		Do you address concerns and recommendations made by workers, the health and safety committee (or representative), and others?
		Are drills and exercises held on schedule?
		Have items from reports such as inspections or incident reports been reviewed and corrective actions taken?
		Is the organization fully legally compliant (according to a gap analysis, inspectors' orders, etc.)?
		Do you keep records of the education and training each worker has received?
		Do you check to confirm that all policies and procedures are being followed regularly?

Due Diligence Checklist		
		Do your records show that you take appropriate action when a worker violates safety procedures?
		Do you review your occupational health and safety program at least once a year and make improvements as needed?

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