What is Due Diligence?
Due diligence is the ability to demonstrate that a person did what could reasonably be expected under their circumstances, in order to satisfy a legal requirement. A due diligence defence depends on your ability to demonstrate the actions taken before an incident occurs, not after.

Due diligence is providing reasonable efforts to comply with the legislation; not a perfection standard. Even within the best health and safety systems, non-compliance may occur from time-to-time, and those incidents of non-compliance may result in a serious incident.

Reasonably practicable
There are many similarities between the concepts of “doing what is reasonably practicable” and “due diligence.” The key difference is “doing what is reasonably practicable” is a legal obligation that you must perform at all times. “Due diligence” is a defense where the person has failed to comply with an OHS legal requirement, but can prove that they did everything reasonable to avoid that non-compliance. For more information, please refer to the bulletin L1015-1 Reasonably Practicable.

How do I prove due diligence?
To prove that everything reasonable has been done and due diligence has been applied, it is necessary to consider the following items:

1) Foreseeability — could a reasonable person foresee that something could go wrong?
2) Preventability — is there an opportunity to prevent an injury or incident?
3) Control — who has the ability or responsibility to prevent an injury or incident from occurring?

Employer requirements
The Canadian Centre for Occupational Health and Safety in the fact sheet: OHS Legislation in Canada – Due Diligence sets out the following factors to establish due diligence (please note that this is not an exhaustive list):

- The employer must have in place written OHS policies, practices, and procedures. These documents would demonstrate that the employer carried out workplace safety audits, identified hazardous practices and hazardous conditions and made necessary changes to correct these conditions, 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 train its supervisors to ensure they are competent persons, as defined in legislation, and ensure that managers and supervisors:
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- Talk to new workers about health and safety during orientation training.
- Meet regularly with staff to discuss health and safety matters.
- Inspect areas of the workplace under their responsibility, and respond promptly to unsafe conditions and activities.
- Pay attention to routine and non-routine activities, ensuring that workers understand the hazards and the control measures to be followed.

- Employers must also ensure 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 place before any incident or injury occurs. If employers have questions about due diligence, they should seek legal advice for their jurisdiction.

Penalties

Failure to prove that you have been diligent in complying with occupational health and safety legislation can result in significant penalties. Conviction on a first offense can lead to a fine of up to $500,000, plus $30,000 per day for continuing the offence and/or a jail term of up to six months per violation. A second conviction can result in a fine of up to $1,000,000 plus $60,000 per day for continuing the offence and/or a jail term of up to one year per violation.

In more egregious cases, criminal charges may be laid against individuals and corporations for failure to take reasonable steps to protect worker health and safety (Criminal Negligence – See s.217.1 and s.219-221 Criminal Code of Canada). There are no maximum fine amounts for criminal negligence (penalties can be any amount the court deems appropriate). Jail time can be handed down to individuals who are found guilty of criminal negligence in relation to a serious injury or fatality of a worker (life imprisonment for criminal negligence causing death and 10-years imprisonment for criminal negligence causing bodily injury).
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Contact Us
OHS Contact Centre
Edmonton & Surrounding area
- 780-415-8690

Throughout Alberta
- 1-866-415-8690

Deaf or hearing impaired:
- 780-427-9999 (Edmonton)
- 1-800-232-7215 (Alberta)

Website
work.alberta.ca/ohs-contact-us

FOR MORE INFORMATION:
OHS Legislation in Canada – Due Diligence
Reasonably practicable bulletin – (LI015-1)

Get Copies of OHS Act, Regulation and Code
Alberta Queen’s Printer
www.qp.gov.ab.ca

Occupational Health and Safety
work.alberta.ca/ohs-laws

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If in doubt with respect to any information contained within this material, or for confirmation of legal requirements, please refer to the current edition of the Occupational Health and Safety Act, Regulation and Code or other applicable legislation. Further, if there is any inconsistency or conflict between any of the information contained in this material and the applicable legislative requirement, the legislative requirement shall prevail.

This material is current to May 2017. The law is constantly changing with new legislation, amendments to existing legislation, and decisions from the courts. It is important imperative that you and keep yourself informed of the current law in this area.

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