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Via E-mail

Cynthia Messenger
President
University of Toronto Faculty Association
720 Spadina Avenue, Suite 419
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Re: The rights, duties and liability of faculty members under the *Occupational Health and Safety Act*

UTFA has asked me to provide this opinion with respect to faculty members' rights, duties, and liability under the Occupational Health and Safety Act ("OHSa") in light of recent concerns about asbestos exposure in laboratories in the Medical Sciences Building. Some of the laboratories in the Medical Sciences Building have been contaminated with dust that tested positive for asbestos fibers. At least one lab remains closed. The following information is intended to provide a brief and general overview. Faculty members who have specific questions or concerns should bring them to UTFAs attention at faculty@utfa.org.

***OHSa* Overview**

The *OHSa* imposes duties and responsibilities for workplace safety on all workplace parties, including employers, supervisors, workers, owners, and others. The *OHSa* clearly provides that the greatest responsibility for workplace health and safety resides with employers who, among other duties, must take every precaution reasonable in the circumstances for the protection of a worker; establish a system to manage occupational health and safety (usually a joint health and safety committee); appoint competent supervisors; and provide information, instruction and supervision to workers to protect the health and safety of workers.

The *OHSA* also provides mechanisms for enforcement through the internal responsibility system, which is comprised of workplace health and safety representatives and/or joint health and safety committees. The *OHSA* is also enforced by Ministry of Labour inspectors who have the power to issue orders compelling compliance with the *OHSA*. Inspectors can lay charges against workplace parties for failing to comply with their statutory obligations. Individuals convicted of charges under the *OHSA* may face fines of up to \$25,000 and/or imprisonment for a period of up to twelve months.

Faculty Members as “Workers” under the *OHSA*

Faculty members, insofar as they are employees of the university, are “workers” under the *OHSA*. As workers, faculty members have three important rights:

- the right to know about hazards in their work and to be provided with information, supervision and instruction to protect their health and safety at work;
- the right to participate in identifying and solving workplace health and safety problems through a health and safety representative or worker member of the joint health and safety committee; and
- the right to refuse unsafe work (discussed below).

Workers also have four key duties and responsibilities: reporting hazards in the workplace; working safely and following safe practices; using required personal protective equipment; and participating in health and safety programs established in the workplace.

The Right to Refuse Unsafe Work

If a worker is concerned about their health and safety, an available recourse for them is a work refusal. In this situation, the worker first advises the Employer that the worker is exercising their right to refuse unsafe work. The Employer then has to investigate the refusal and the workplace with the appropriate involvement of the worker Health and Safety Representative. If the worker has reasonable grounds to believe the work is still unsafe, the Ministry of Labour is then brought in. For further information, please contact UTFa at faculty@utfa.org or review the Ministry of Labour website: https://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_part5.php.

Faculty Members as “Supervisors” under the *OHSA*

Under certain circumstances, faculty members would be considered “supervisors” under the *OHSA*. The *OHSA* defines a supervisor as “a person who has charge of a workplace or authority over a worker”. The *OHSA* also has a very broad definition of “worker”, which includes, but is not limited to “a person who performs work or supplies services for monetary compensation” and “a person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, a university or other post-

secondary institution”. If a faculty member is directing work in a laboratory or if they are directing the activities of Research Assistants, Teaching Assistants, or students, it is likely they will found to be a supervisor under the *OHSA*.

Section 27 of the *OHSA* sets out the general duties of a supervisor as follows:

27. (1) A supervisor shall ensure that a worker,
- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
 - (b) uses or wears the equipment, protective devices or clothing that the worker’s employer requires to be used or worn.
- (2) Without limiting the duty imposed by subsection (1), a supervisor shall,
- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
 - (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
 - (c) take every precaution reasonable in the circumstances for the protection of a worker.

Depending on their work, faculty members may have specific obligations as supervisors relating to hazardous materials, biological hazards, x-rays or other matters that are dealt with under in the *OHSA* and its regulations and should familiarize themselves with these obligations. Faculty members may request training from the university. As noted above, the *OHSA* imposes a duty on employers to appoint “competent” supervisors, which has been interpreted to mean competency in matters of health and safety under *OHSA*.

If you have any questions or concerns, please bring those to UTFA’s attention at faculty@utfa.org.

Sincerely,



Mandy Wojcik
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