

Distracted by mobile phones: forklift operators guilty of occupational health and safety offence

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In *Ontario (Ministry of Labour) v Nault* (2018 ONCJ 321 (CanLII)) two forklift operators at a bottling plant were found guilty under the Occupational Health and Safety Act for using mobile phones while sitting on their forklifts. The charge was operating equipment in a manner that may endanger a worker (ie, distracted driving of a forklift).

A co-worker staged a work refusal after observing the forklift operators using mobile phones while seated on their forklifts and a Ministry of Labour inspector was called in. The co-worker, who was retired at the time of trial, testified that one operator had been looking at the mobile phone while sitting on the forklift, which was stationary and not moving, and the other operator had been showing his mobile phone to another employee.

In response, one of the operators stated that he had used his mobile phone only to check the time, and the other stated that he was not on his forklift and that it was another employee who had been using his mobile phone. The court did not accept the operators' version of events and found that they had and were using their mobile phones.

The court held that "operating or using" a forklift includes sitting on a forklift even when it is stopped and turned off, as other workers and forklifts may be nearby and put at risk by the operator's distraction and inattention to their surroundings while using a mobile phone. Further, the employer had clearly prohibited the use of mobile phones in the warehouse, even displaying a poster that depicted a mobile phone with a slash through it. Therefore, the operators were guilty of the Occupational Health and Safety Act charge against them.

The court stated:

Like motorists who unlawfully hold or use cellphones or other mobile communication devices while operating or driving motor vehicles on public highways in Ontario, workers that use cellphones or other mobile communication devices while operating equipment or machines in factories or warehouses, such as a forklift, would also pose the same danger to themselves or others, as a consequence of being distracted to what is going on around them while using those mobile communication devices.(1)

For further information on this topic please contact **Adrian Miedema** at Dentons Canada LLP by telephone (+1 416 863 4511) or email (adrian.miedema@dentons.com). The Dentons Canada LLP website can be accessed at www.dentons.com.

Endnotes

(1) For more information please see www.occupationalhealthandsafetylaw.com.

AUTHOR

**Adrian
Miedema**

