Supervisors in the Health Care Setting

Defining a supervisor in the health care setting

Common Definition
The Occupational Health and Safety Act (OHSA) defines a supervisor as: A person who has charge of a workplace or authority over a worker.

Common Interpretation
Those who hold traditional leadership roles are supervisors. This includes those with power to hire, fire, manage performance or discipline employees.

The Ontario Human Rights Commission defines a supervisor as a “directing mind employee” and refers to managers, decision-makers and supervisors in an organization who function or are seen to function as representatives of an organization. Even non-supervisors may also be a “directing mind employee” if they have supervisory authority or have significant responsibility for the guidance of employees.

From the Public Services Health and Safety Association (PSHSA): Supervisors are accountable to the organization for the activities of their department or service, including health and safety activities. This definition makes it easy to understand that a supervisor can be anyone from a department manager, to a charge nurse, to the chief executive officer (CEO) of an organization. Labour relations decisions have qualified the definition to some extent. To be a supervisor, a person must be able to set and reinforce policy and must have managerial functions relating to hiring, dismissing, promoting and disciplining employees. In most cases, this type of authority rests with supervisors at the level of department heads up to senior management. However, even when a charge nurse or front-line supervisor can only recommend such actions, the OHSA considers such people to be supervisors because they have charge of a workplace or authority over a worker. If you are in doubt about your situation, review your job description. You cannot tell a supervisor from the title alone. Any person with supervisory responsibilities can be considered a supervisor even if they are a member of a union.

Professional Practice guidelines: In healthcare, all employees working under professional practice guidelines have an elevated level of responsibility for monitoring competency and reporting to their respective Colleges if they have any concerns. These guidelines also suggest health care professionals may provide guidance and support to their colleagues, and may mentor students or other workers. This may or may not complicate interpretations of authority over a worker, as providing guidance and assistance does not necessarily translate to responsibilities of a supervisor under OHSA. It is important to differentiate when a worker (i.e. supervisor) has authority over another worker, and when a worker is fulfilling their professional responsibilities. One way to provide assistance in this regard would be to explicitly define reporting relationships.
Steps to generating a list of “Supervisors” as per the OHSA

1. **Management roles and definite supervisors:** Anyone who has one or more direct report(s) on the organizational chart should be considered a supervisor.

2. **Health Care Supervisor “Grey Roles”:** Lead hands, charge nurse, senior technologist, nurse educators, professional practice leaders, in-charge (after hours), physicians and others may be considered a “Supervisor” under the Act even if they have no direct reports and even if they are part of a union. Also consider program and project managers (i.e. likely excluded as they do not have any direct reports and although are responsible for facilitating change, they must work with managers to implement anything impacting employees). Note that in many nursing units, lead nurse opportunities are rotated amongst a large number of front-line staff – it is given as an opportunity for learning and development.

**Why may they be considered a supervisor?** Because in exercising this role they:
- set expectations regarding professional conduct and behaviour,
- monitor performance, (for example recommend discipline)
- evaluate competency and adherence to regulatory requirements,
- communicate expectations and ongoing changes.
- They are the most senior person on site, or available for contact in an emergency situation.

When are roles not supervisory? When a role is focused more on communication to workers and delegation of assigned responsibilities, (for example, the lead nurse is delegating work to meet patient care area needs) but the person does not perform the above “supervisor” tasks.

The question to ask is “if something goes wrong, does the role have a clear reporting process to elevate concerns and get an immediate response from a person of authority?” If the answer is Yes, that role may not be a supervisory position.

It is important to note that agreements between an organization and its bargaining units may not be considered by the MOL Inspectorate, should an incident lead to worker injury or illness. Risk assessments of individual roles and responsibilities is necessary to determine if the role in question includes supervisory responsibilities under OHSA.

**When in doubt** - the Ministry Of Labour (MOL) advice is generally “when in doubt, assume they are supervisors and train accordingly.”
Process of Assessment of “Grey Roles”

- Put together an internal assessment team. Suggested membership could include: Human Resources, Occupational Health and Safety, Benefits, Compensation, Labour Relations, and the Role’s Leader (i.e. the confirmed supervisor for the role in question).

- Gather data including any: Job descriptions, role profiles, collective agreement language, and any other relevant documents, such as those that outline who manages supervisory issues within your organization (i.e. after hours processes).

- Then, using the attached table, assess each role using the yes/no count. If your assessment indicates “yes” for the majority of answers for that role, it is most likely a role as a Supervisor under the OHSA and its Regulations.
  - If there is only one or two “yes” responses, the role is most likely not that of a Supervisor.

**What if the role is in the middle?** You need to determine what direction you want to move this role.

For example, if you do not want this role to deemed Supervisory: ask where there are “yes” answers, can that aspect of the work that be moved up to the next level? Are there documents in place to ensure decisions on safety issues are out of scope and how to escalate these, to be addressed?

*If you deem the role to be Supervisory:* You must advise the persons in the role that they are supervisors under OHSA; the extent of their responsibility; and ensure the person(s) in this role receive Supervisor Awareness training as outlined in the O. Reg. 297/13. This must be followed up with the Supervisory competency training you have in place for all of your other Supervisory staff. Documentation and records of these steps will ensure you are meeting your obligations as an employer under OHSA.

**Why?**

In a note from a recent Ontario Nurses Association (ONA) MOL submission (2014) the union noted that “ONA members who often act in the capacity of a supervisor (e.g. nurses in charge in homes and hospitals) have repeatedly asked their employer for training to be competent under the OHSA, and for the most part, the training continues to be denied. A few members said they received a much condensed version of the training the employer provided to supervisors who were actually hired as supervisors; they question how they can be competent if they aren’t equally training with the same information.”
### Who is a Supervisor?

An answer of "yes" in these first six rows may indicate that the person is a supervisor.

<table>
<thead>
<tr>
<th>Job Title</th>
<th>Does this Person...</th>
<th>Monitor performance?</th>
<th>Evaluate competency and adherence to regulatory requirements?</th>
<th>Communicate expectations and ongoing changes?</th>
<th>Deal directly with worker complaints such as harassment?</th>
<th>Determine and schedule work hours?</th>
<th>Only delegate tasks?</th>
<th>If no decision making, is there a clear reporting line to elevate concerns to a person of authority?</th>
<th>Decision: Is this person considered a supervisor? If not, record details of the decision on file.</th>
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