

Ministry of Labour

Workplace Violence and Harassment Requirements Under the Occupational Health and Safety Act

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Safe At Work Ontario
Enforcement > Compliance > Partnership >

Ministry of Labour

Disclaimer

- The purpose of today's presentation is to assist the workplace parties in understanding their obligations under the Occupational Health and Safety Act (OHSA) and its regulations. It is not intended to replace the OHSA or the regulations, and reference should always be made to the official versions of the legislation.
- It is the responsibility of the workplace parties to ensure compliance with the legislation and the presentation does not constitute legal advice. If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, please contact your legal counsel.
- Ministry of Labour inspectors will apply and enforce the OHSA and its regulations based on the facts as they may find them in the workplace. This presentation does not affect their enforcement discretion in any way.

Definitions - OHSA

"workplace violence" means,

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker
- (c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker

Workplace Violence - Examples

- verbally threatening to attack a worker;
- leaving threatening notes at or sending threatening e-mails to a workplace;
- wielding a weapon at work;
- hitting or trying to hit a worker;
- throwing an object at a worker;
- sexual violence against a worker;
- kicking an object the worker is standing on such as a ladder; or

High Risk Workplaces

- Generally, the risk of workplace violence is greater in the following sectors:
 - Health care
 - Social services
 - Retail
 - Hospitality
 - Financial institutions
 - Education
 - Transportation
 - Police, security and corrections
- The nature of work is also be evolving in many sectors:
 - More mobile workers, and workplaces, e.g., workers with laptops using vehicles as an office,
 - Changing demands for services in the community, e.g., health care service providers entering clients' homes

High Risk Work Activities

- The risk of workplace violence is generally greater in work that involves:
 - Handling cash
 - Protecting or securing valuables
 - Transporting people and goods
 - Mobile workplaces (such as vehicles)
 - Public or community contact
 - Working with potentially violent people
 - Working alone or with just a few people
 - Working late at night or very early mornings.

Key Requirements – Policy and Program

- Employers must prepare a policy for workplace violence and develop and maintain programs to implement the policy (and provide information and instruction to workers on the contents of the policies and programs)
- Workplace violence programs must:
 - include measures and procedures for workers to report incidents of workplace violence/harassment, and
 - set out how the employer will investigate and deal with incidents or complaints
- The workplace violence program must also include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur

Key Requirements - Assessment

- Employers must proactively assess the risks of workplace violence that may arise from:
 - the **nature of the workplace**
 - the **type** of work, or
 - the **conditions** of work
- Employer also to consideration:
 - circumstances that would be **common to similar** workplaces
 - the circumstances **specific** to the workplace
- Program to include measures and procedures to control those risks identified in the assessment

Domestic Violence and OHSA

- Section 32.0.4 of OHSA requires employers who are aware, or who ought reasonably to be aware, that domestic violence may occur in the workplace to take every precaution reasonable in the circumstances to protect a worker who is at risk of physical injury
- Domestic violence not specifically defined under the OHSA, however, when domestic violence enters the workplace the OHSA would apply.

Domestic Violence and OHSA

- How might an employer become aware of domestic violence that may enter the workplace?
 - threatening emails and phone calls
 - incident takes place at work
 - concern of domestic violence reported
 - unwelcome visits at the workplace

Domestic Violence and OHSA

- Violence provisions include domestic violence
 - A person who has a personal relationship with a worker – such as a spouse or former spouse, current or former intimate partner or a family member – may physically harm, or attempt or threaten to physically harm, that worker at work. In these situations, domestic violence is considered workplace violence.
- General duty
 - an employer must take every precaution reasonable in the circumstances for the protection of workers when they are aware, or ought reasonably to be aware, that domestic violence may occur in the workplace, and that it would likely expose a worker to physical injury.
- Measures and procedures in the workplace violence program can help protect workers from domestic violence in the workplace

Provision of Information

32.0.5

(3) An employer's duty to provide information to a worker under clause 25 (2) (a) and a supervisor's duty to advise a worker under clause 27 (2) (a) include the duty to provide information, **including personal information**, related to a risk of workplace violence from a **person** with a history of violent behaviour if,

- (a) the worker can be **expected to encounter** that person in the course of his or her work; **and**
- (b) the risk of workplace violence is **likely to expose the worker to physical injury**.

Limitation on Disclosure of Information

32.0.5(4) Limitation on disclosure

- No more personal information shall be disclosed than is reasonably necessary to protect the worker from physical injury
- Workers should already have been provided with information and instruction on the contents of the wpv policy and program with **additional personal information provided to workers as needed on a case by case basis and only when the circumstances of 32.0.5 (3)(a) and (b) are met e.g. worker at a reception area may need additional personal information**

The Right to Refuse Unsafe Work

- The OHS Act now extends the right to refuse work to a worker who has reason to believe that workplace violence is likely to endanger him/herself
 - The right to refuse work extends to incidents of domestic violence in the workplace
- The limited right to refuse of certain workers continues
- Reprisals by the employer continue to be prohibited

JHSC & Incidents of Workplace Violence

- 51(1) JHSC/H & S Rep to be advised of a fatality or critical injury from any cause by telephone, telegram or other direct means
- 52(1) written notice containing the prescribed information to the JHSC/H & S Rep of an incident where a worker is disabled or requires medical attention but is not killed or critically injured

Definitions

Workplace Harassment is defined as:

- a) Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- b) workplace sexual harassment;

Workplace Sexual Harassment-*NEW*

Defined as:

- a) Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome

***NEW* to Definition section 1**

- The following subsection has been added to Section 1(4) (under the definition clause) of the *Occupational Health and Safety Act* (OHSA):

A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

Workplace Violence and Harassment Policy

- Section 32.0.1:
 - 1) An employer shall,
 - a) prepare a policy with respect to workplace violence;
 - b) prepare a policy with respect to workplace harassment; and
 - (c) review the policies as often as is necessary, but at least annually
- Section 32.0.1:
 - 2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.
- Exception
- Section 32.0.1:
 - 3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.

Harassment Program-*NEW elements*

- Section 32.0.6:
 - (1) An employer shall, **in consultation with the committee or a health and safety representative**, if any, develop and maintain a **written** program to implement the policy with respect to workplace harassment required under clause 32.0.1(1)(b)

Harassment Program- NEW elements

- Section 32.0.6:
 - 2) The program shall,
 - a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
 - b) includes measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser; *(NEW)*
 - c) set out how incidents or complaints of workplace harassment will be investigated and dealt with;

Cont'd- *NEW*

- d) set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law; (*NEW*)
- e) set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation; and (*NEW*)
- f) include any prescribed elements.

Duties-Harassment- *NEW*

- Section 32.0.7:
- (1) To protect a worker from workplace harassment, an employer shall ensure that:
 - a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
 - b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;

Cont'd- *NEW*

- c) the program developed under section 32.0.6 is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the policy with respect to workplace harassment required under clause 32.0.1 (1) (b); and
 - d) such other duties as may be prescribed are carried out.
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- Section 32.0.7:
 - (2) The results of an investigation under clause (1) (a), and any report created in the course of or for the purposes of the investigation, are not a report respecting occupational health and safety for the purposes of subsection 25 (2).

Order for Workplace Harassment Investigation-*NEW*

- Section 55.3:
 - 1) An inspector may in writing order an employer to cause an investigation described in clause 32.0.7 (1) (a) to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person.
 - 2) A report described in subsection (1) is not a report respecting occupational health and safety for the purposes of subsection 25 (2).

MOL Inspectors

- Inspectors may refer workplace parties to the Health and Safety Associations
 - obtain assistance on developing their workplace violence and workplace harassment policies and programs and/or
- Should a worker advise an inspector or the Occupational Health and Safety Contact Centre that they have received a personal threat; that worker would be advised to report the incident to their local police.
- Inspectors may provide a copy of MOL's Guideline for Workplace Violence and Harassment

Compliance Support Resources and Tools

- Ministry of Labour Resources:
 - compliance guideline
 - brochure
 - Code of Practice for addressing workplace Harassment
- Health and Safety Associations Resources:
 - a tool box to help employers assess the risks of workplace violence and an accompanying guide which contains information on developing policies and programs; (currently being revised/updated) and,
 - brochures for both employers and workers about domestic violence in the workplace.

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- *Questions??*