



Workplace Violence and Harassment — New Obligations for Employers under OHSA

Recent amendments to Ontario's Occupational Health and Safety Act provide heightened health and safety protections for workers against physical violence, attempted physical violence, threatening behaviour, and harassment. WeirFoulds LLP associate Farah Malik tests your knowledge on what an Ontario employer is obliged to do when dealing with situations governed by the OHSA.



1 You are corporate counsel to an Ontario distributing company. Your employees work from an office and have little face-to-face interaction with customers. Your workplace violence risk assessment reveals that: (1) there are no reported incidents of violence; (2) your company is not aware of any employee with a history of violent behaviour; and (3) no employees are required to work in isolation or late at night.

A supervisor refuses to report to work because she believes one of her customer service representatives exhibits warning signs of a troubled and potentially violent employee. The employee consistently raises his voice to her, challenges her on a daily basis, has a history of negative interpersonal relationships, and overreacts to constructive criticism.

The human resources manager approaches you for advice. What advice would you give to the human resources manager?

- a) There is no basis for the supervisor's work refusal. She should be disciplined if she does not return to work when requested.
- b) The company must investigate the supervisor's concerns and reassign her to a safe place that is as near as reasonably possible to her work station until the investigation is completed.
- c) None of the above.

2 As in-house counsel to an Ontario company, you discover your company has not prepared policies respecting workplace violence and harassment. One of your employees jumps off the top of your building to her death. It is rumoured that egregious bullying by a co-worker led to the event. Despite reported incidents of misconduct, your company has not disciplined the co-worker. What is the maximum penalty imposed on corporations for failing to comply with the OHSA's requirement for developing and implementing workplace violence and harassment policies and programs?

- A fine of up to
- a) \$25,000
- b) \$100,000
- c) \$150,000
- d) \$500,000

3 As in-house counsel to an Ontario company, you are aware that a manager yells and swears at his sales team. The manager considers this conduct to be an effective and acceptable motivational tool. In one incident, the manager glared at an associate and forcibly pushed her.

The associate lodged a formal complaint with HR against the manager. The manager admitted pushing her but claimed he was provoked. Your company investigator did not contact the associate for her version of the incident. The manager received only a written warning. The associate never returned to work.

Your company has been served with the associate's statement of claim. Is your company liable for constructive dismissal?

- a) Yes
- b) No

4 Which of the following is considered to be conduct constituting workplace harassment under the OHSA:

- a) repeated offensive or intimidating phone calls or e-mails
- b) implementation of dress codes
- c) differences of opinion between co-workers
- d) all of the above

1 **(B).**

Section 43 of the OHSA outlines an investigatory procedure that employers must follow upon receipt of a work refusal. Because "workplace violence" is defined broadly as including a behaviour that is reasonable for a worker to interpret as a threat to exercise physical force that could cause physical injury to that worker, the supervisor is entitled to refuse work where she has good reason to believe that an employee's behaviour is likely to endanger her. Upon receipt of the supervisor's report, the company should forthwith investigate it, and reassign the supervisor to a safe place that is as near as reasonably possible to her usual work station. The supervisor should remain in this safe place pending completion of the company's investigation.

The method by which the company will investigate this incident should be included in its workplace violence policy and program. At a minimum, the company should assess on a relatively quick basis whether the report is meritorious, and whether disciplinary sanction is warranted against the customer service representative.

2 **(D).**

Under the OHSA, an employer is required to prepare policies with respect to workplace violence and harassment, review them at least annually, post them, and develop and maintain programs to implement those policies.

The maximum penalties for a contravention of the OHSA or its regulations are set out in s. 66 of the OHSA. If a corporation is convicted of an offence under the OHSA (i.e. failing to comply with a provision of the OHSA) the maximum fine that may be imposed upon that corporation is \$500,000.

3 **YES.**

Your company may be liable for not only constructive dismissal, but also for the torts of assault and battery. An employer has a common law duty to properly investigate complaints of harassment in the workplace, as well as a statutory duty under Ontario's Human Rights Code and the OHSA. (See *Piresferreira v. Ayotte*.)

**4****(A).**

As in-house counsel, it is important to note that not all disagreements or differences of opinion constitute workplace harassment. Reasonable managerial action taken by an employer, manager or supervisor is not workplace harassment. Such managerial duties include fair job assessments and evaluations, implementation of dress codes, and appropriate disciplinary action when warranted.

YOUR RANKING?

- █ One or fewer correct: *Might be time to brush up.*
- █ Two correct: *Not bad, but could do better.*
- █ Three correct: *Very well done, but not perfect.*
- █ Four correct: *Impressive.*

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