
Ontario considers new OHS Act requirements to prevent workplace violence – invites comments from labour and employer stakeholders

On September 17, 2008, the Ministry of Labour released its “Consultation Paper on Workplace Violence Prevention” and invited the people of Ontario to provide their views on whether the current protections in the *Occupational Health and Safety Act* go far enough in preventing violence in the workplace. The Ministry is considering revising the legislation to require employers to develop violence prevention strategies after issues relating to workplace violence were raised by workers, organizations, and Coroner Inquests. The Consultation Paper poses a number of questions relating to workplace violence prevention and encourages feedback from all stakeholders ([See the Ministry of Labour Consultation Paper on Workplace Violence](#)).

CURRENT PROTECTIONS UNDER THE OHS Act

The Ontario *Occupational Health and Safety Act* (the “OHS Act”) does not provide any explicit requirements relating to violence in the workplace but does place a general duty on employers to take every precaution reasonable in the circumstances for the protection of the health and safety of a worker. The employer’s general duty in this regard is stated by the Ministry to include taking precautions to protect against workplace violence.

In addition, Ministry occupational health and safety inspectors are trained to respond to complaints involving workplace violence and also have the authority to order an employer to implement a workplace violence protection program where a risk of violence is identified. Although the OHS Act does not provide a definition of “workplace violence,” Ministry operational policy documents define it as,

“...the attempted or actual exercise, by a person, of any intentional physical force that causes or may cause injury to a worker, and includes any threats which give a worker reasonable cause to believe he or she is at risk of physical injury.”

Notwithstanding the recognition at the policy level, the fact that the OHS Act does not directly address workplace violence does raise issues. For example, concerns relating to workplace violence will not usually meet the criteria for a work refusal based on safety. Under the OHS Act, workers have a right to refuse to work where they have reason to believe,

- any equipment, machine, device or thing the worker is to use or operate; or
- the physical condition of the workplace,

is likely to endanger either themselves or another worker.

The Ministry states that since violence is not equipment or a physical condition of the workplace, concerns relating to the threat of violence will not usually meet the criteria for work refusal.

In light of these issues, the Ministry asks stakeholders whether the current protections in the OHS Act should be clarified or enhanced to further prevent and address workplace violence. Specifically it requests feedback on the following:

- The Definition of “Workplace Violence”;
- Workplace Violence Prevention Requirements;
- Sector-specific Requirements;
- Domestic Violence in the Workplace; and
- Work Refusals.

DEFINITION OF WORKPLACE VIOLENCE

As mentioned, the Ministry defines workplace violence as:

“...the attempted or actual exercise, by a person, of any intentional physical force that causes or may cause injury to a worker, and includes threats which give a worker reasonable cause to believe he or she is at risk of physical injury.”

Although this definition is consistent with the definitions used by most Canadian jurisdictions, the Ministry is requesting feedback from stakeholders as to whether the language is appropriate in their particular organization or workplace.

WORKPLACE VIOLENCE PREVENTION PROGRAM

The Ministry has received suggestions that specific workplace violence requirements under the OHS Act would help to clarify the duties of Ontario employers. The Ministry is contemplating requiring employers to develop workplace violence prevention programs that could contain the following elements:

- A risk assessment of the workplace
- Workplace violence prevention measures and procedures;
- Training for workers;
- A workplace violence response plan; and
- A requirement to address behaviors that contribute to workplace violence (such as bullying or teasing).

Stakeholders are asked whether the OHS Act should in fact require employers to develop workplace violence prevention plans, what elements plans should include, and the impact of the implementation of these plans.

SECTOR-SPECIFIC REQUIREMENTS

Certain sectors and certain work activities may be exposed to a greater risk of workplace violence. For example, “front-line” employees who deal directly with the public in health care or social services, or workers who are required to handle cash or transport people, are generally considered to be in higher risk areas.

In considering these higher-risk sectors and activities, the Ministry is asking stakeholders whether, in addition to a general requirement to develop a workplace violence prevention program, there should be sector-specific requirements, and if so, what specific requirements would be necessary.

DOMESTIC VIOLENCE IN THE WORKPLACE

The Consultation Paper states that instances of violence in the workplace can sometimes involve intimate or domestic partners of workers. Although no other Canadian jurisdiction has addressed domestic violence in the workplace in their legislation, the Ministry asks stakeholders whether the OHSA should do so. The Consultation Paper reminds stakeholders of the sensitivities around these situations as well as the privacy expectations of workers, and asks whether the OHSA should require employers to address the risk of domestic violence in the workplace. The Ministry also invites comments in respect of the impact of such a requirement as well as alternative actions employers could take in the absence of an OHSA requirement.

WORK REFUSALS

Not only may concerns relating to violence fail to meet the criteria for a work refusal based on safety, but also, under the OHSA, a refusing worker must remain near his or her workstation until the investigation is complete - a requirement that may not be compatible with worker safety in situations involving the potential for violence. The Ministry seeks feedback as to whether the work refusal provisions under the OHSA should therefore be broadened to accommodate situations involving violence in the workplace. The Ministry also questions whether such provisions should address the steps workers should take to remove themselves from the workplace when there is a risk of injury due to workplace violence.

In our view

Although a worthy concern, it is unclear if any empirical data exist to indicate whether workplace violence is a worsening problem. Also, violence is often a symptom of issues which are more traditionally managed by human resource personnel, rather than safety practitioners or government safety inspectors.

Nonetheless, some Canadian jurisdictions have already enacted specific requirements regarding workplace violence prevention programs in their respective occupational health and safety legislation. For example, the federal *Violence Prevention in the Workplace Regulation* requires federally regulated employers to develop policies and controls to prevent workplace violence, and to assess and update their policies every three years. Compliance is monitored and enforced through the traditional broad statutory powers of federal health and safety officers. In considering how best to address the issue of workplace violence in Ontario, the Ministry is conducting its consultation process for thirty days and comments are to be submitted by October 17, 2008. For instructions on how to respond, or to view the Consultation Paper on Workplace Violence Prevention visit "http://www.labour.gov.on.ca/english/about/consultation/wp_violence/index.html".

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