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When push comes to shove

Employers are expected to provide their own protections against workplace violence

BY LISA CORRENTE

LORI DUPONT, an operating room nurse, was murdered by her ex-partner and colleague at a Windsor, Ont., hospital on Nov. 15, 2005. This tragedy, along with other high-profile incidents at Canadian workplaces, has prompted several provinces to pass legislation aimed at preventing workplace violence. Across the country, the increased legislative focus on the prevention of workplace violence is creating significant responsibilities for employers. When push comes to shove, legislative requirements provide a starting point for which employers can develop policies to prevent and respond to violence and harassment in their organizations.

Occupational health and safety legislation requirements

In Canada, most provinces have a "general duty provision" in their occupational health and safety legislation which requires employers to take all reasonable precautions for the protection of workers. Implied in this provision is an obligation to protect employees from the risks of workplace violence.

To date, Alberta, British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia and Prince Edward Island

have included specific obligations for employers to address workplace violence in their occupational health and safety legislation, though most focus on physical violence only. In Manitoba, Saskatchewan and Quebec workplace violence prevention legislation also addresses harassment. Federally, the Canada Labour Code contains a broad definition of workplace violence which seeks to protect workers against threats or conduct which may cause harm, injury or illness.

WORKPLACE VIOLENCE

Regardless of whether a jurisdiction has specific workplace violence prevention legislation in place or is implying this type of responsibilities into a general duty provision, there appears to be a consistent approach for how employers are expected to deal with workplace violence. Occupational health and safety legislation throughout Canada requires employers to:

- Undertake risk assessments in order to determine the possibility or prevalence of violence in their workplaces.
- Develop workplace violence prevention policies and procedures.
- Implement measures to prevent or minimize the risk of violence in the workplace.
- Train employees in violence prevention strategies.

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Nurse's firing for stealing drugs reduced to unpaid suspension

AN ALBERTA hospital did not have to accommodate a nurse who stole drugs for her own use because the nurse wasn't addicted and knew what she was doing, the Alberta Arbitration Board has ruled.

On May 22, 2007, the program manager of the emergency department at Edmonton's Royal Alexandra Hospital performed an audit of recent drug withdrawals from a medical station after a Demerol syringe had been found in a staff washroom. The audit revealed Leah O'Neill, a registered nurse who had been at the hospital since 1987, had made several withdrawals of Demerol a few days earlier that had no doctor's orders supporting them.

The manager and an HR representative met with O'Neill and asked her

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Ontario bill defines workplace violence and harassment

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•Address incidents of workplace violence.

Proposed legislation in Ontario

Workplace violence prevention legislation in other jurisdictions, as well as inquest recommendations arising from the Dupont murder, have laid the path for significant new responsibilities to protect against workplace violence and harassment.

On April 20, 2009, the Ontario government introduced Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009. The bill proposes to place explicit obligations on employers to implement workplace violence prevention initiatives through comprehensive amendments to existing occupational health and safety legislation.

As a starting point, the bill introduces definitions for “workplace violence” and “workplace harassment.” The definition of “workplace violence” is limited to physical force which causes or could cause physical injury to a worker, while the definition of “workplace harassment” is more expansive. It means “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.” This is the same definition found in Ontario’s Human Rights Code, except the conduct does not have to be related to a prohibited ground, such as race, sex or religion.

Within the context of these definitions, the bill directs employers to:

- Prepare policies with respect to workplace violence and harassment to be posted in conspicuous locations within the workplace, and review these policies at least annually.
- Develop a program to implement workplace violence and harassment policies which includes procedures for workers to report incidents and sets out how the employer will investigate

and deal with incidents.

•Conduct risk assessments of workplace violence which take into account conditions specific to the workplace, as well as conditions in similar workplaces.

The bill also proposes to make employers accountable for domestic violence in the workplace, although the term has not been defined. Employers will be required to take every reasonable precaution to protect workers if the employer becomes aware, or ought to be aware, domestic violence is likely to expose a worker to physical injury in the workplace.

Additionally, workers will have a right to refuse work if workplace vio-

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lence is likely to endanger them.

Employers who fail to comply with their obligations to protect against violence and harassment in the workplace may face substantial liability. Contraventions of the act or its regulations by employers will be punishable by a fine of up to \$500,000.

Given that Bill 168 is a government initiative, it is expected to become law in Ontario later in 2009.

Tips for employers

In Canada, existing occupational health and safety legislation and initiatives such as Bill 168 are indicative of a social climate which seeks greater protections for workers against violence and harassment in the workplace. Prudent employers should be diligent in formulating and implementing a plan designed to protect workers against risks of violence and harassment in their organizations. Best practices for employers include:

- Establishing comprehensive violence prevention policies and standards.
- Conducting risk assessments to ascertain the potential for workplace violence and harassment.
- Minimizing violence hazards through workplace design and work practices.
- Requiring compulsory education and training on violence prevention for all employees.
- Regularly inspecting the workplace to ensure standards are maintained.
- Thoroughly investigating any and all incidents of workplace violence and harassment.
- Maintaining accurate and detailed records of incidents and related investigations.
- Responding appropriately and quickly to aggressive behaviours, including disciplining employees for failing to adhere to workplace policies or committing workplace violence or harassment.
- Contacting law enforcement as appropriate.
- Keeping informed of legislative requirements to ensure company policy remains in compliance.



ABOUT THE AUTHOR

Lisa Corrente

Lisa Corrente practices civil litigation in the Labour Relations and Employment Law and Health Law Groups at Torkin Manes LLP in Toronto. She can be reached at (416) 643-8800 or lcorrente@torkinmanes.com.

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