

workplace violence & harassment

Practical Compliance Strategies & How to Implement Them

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Introduction

Violence is becoming an increasingly serious problem in the workplace. According to Statistics Canada, 17% of all self-reported violent incidents in Canada, including physical and sexual assault and robbery, occurred in the victim's workplace—that's a shocking 356,000 incidents of workplace violence in the course of a single year! And 71% of these incidents involved physical assaults. These incidents don't always lead to fatal or serious injury, of course. But they all have serious consequences. Physical violence as well as harassment and bullying affect the safety and security of every worker. The emotional trauma and physical injury experienced by the victims, their families and co-workers extract a high personal cost—and impact companies' bottom lines. Just ask the Ontario company and supervisor ordered in Dec. 2008 to pay a former worker \$500,000 in damages after the supervisor yelled at, emotionally berated, threatened and pushed the worker.

The Lori Dupont case is a particularly sad example. In November 2005, the Ontario nurse was stabbed to death at the Hôtel-Dieu Grace Hospital where she worked. But what makes the story especially chilling is that her killer was her co-worker and former boyfriend, Dr. Marc Daniel. He later committed suicide. Senior hospital administrators were aware of Daniel's unstable behaviour and knew he'd made threats to Dupont. Yet on the day she was murdered, the nurse and doctor were scheduled to work together. Dupont's estate is now suing the hospital.

Recognition of the issues of workplace violence and harassment are relatively recent. Thus, when the OHS laws were originally enacted, they didn't address these hazards. But today, *all employers* have a legal duty to prevent violence and harassment in their workplaces under either OHS or other laws. And the burden of ensuring the company's compliance with this duty often falls to the safety coordinator.

This special report is designed to help you shoulder that burden by explaining the law on workplace violence and harassment, the duty to address these hazards under the OHS and other laws and the liability risks if employers fail to fulfill this duty. It also tells you how to:

- ✿ Assess the risk of violence and harassment in your workplace by getting feedback from workers and supervisors;
- ✿ Draft a workplace violence and harassment policy;
- ✿ Discipline workers for engaging in violence or harassment without exposing the company to liability; and
- ✿ Get senior management to commit to addressing violence and harassment in the workplace.

And in the Appendix, you'll find links to online resources on workplace violence and harassment and on protecting workers who work alone and are especially vulnerable to violence.

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Chapter 1.

Understanding The Law

Just how widespread is workplace violence and harassment? Consider this: Nearly two-thirds of human resources professionals surveyed by the Society for Human Resource Management said that they had experienced some form of violence at their organization since January 2000. Most of the time the violence was limited to verbal threats and inappropriate language. But sometimes it took more severe forms, including physical assaults, stabbings and shootings.

Given how common workplace violence and harassment have become, it's no surprise that employers in every jurisdiction in Canada have a duty to protect workers from these hazards. And a failure to fulfill this duty can expose an employer to at least five different kinds of liability.

1. OHS VIOLATIONS

The OHS laws across Canada require employers to protect their workers from violence and harassment in the workplace. Failing to protect workers from such hazards can expose an employer to the risk of OHS violations. Let's look at the duty to protect workers from violence first.

WORKPLACE VIOLENCE

The duty to protect workers from violence is imposed by the OHS laws in two different ways:

The 8 Specific Duty Jurisdictions

The OHS laws of eight jurisdictions—Fed, AB, BC, MB, NL, NS, PEI and SK—specifically require employers to take steps to assess and minimize the risk of violence in the workplace. For example, Part 11 of *Manitoba's Workplace Safety and Health Regulation* requires employers to:

- ✿ Identify and assess the risk of violence in the workplace;
- ✿ If a risk of violence has been identified, develop a violence prevention policy that contains certain required information, train workers on that policy and ensure that they comply with it;
- ✿ Post the violence prevention policy in the workplace; and
- ✿ Inform workers of the risk of violence in the workplace, including information on the nature and extent of the risk and the risk of violence from people the worker may encounter in the course of his employment.

The 5 Implied Duty Jurisdictions

Five jurisdictions—NB, NT, NU, QC and YT—don't specifically address workplace violence in their OHS laws. But the OHS act in each of these jurisdictions has a “general duty clause” that requires employers to provide a reasonably safe workplace and protect workers from foreseeable hazards that can cause serious injury or death. And this general duty is typically interpreted as requiring employers to protect their workers from workplace violence.

Ontario

Until recently, Ontario was in the implied duty category. In fact, the Ontario Ministry of Labour states on its website, “Under the *Occupational Health and Safety Act*, all employers must take every precaution reasonable in the circumstances to protect the health and safety of their workers in the workplace. This includes protecting them against the risk of workplace violence.” But it looks like Ontario's status is about to change.

On April 20, 2009, the government introduced Bill 168, which would add new language to the *OHS Act* specifically requiring employers to take certain steps to prevent workplace violence and harassment. The Bill's requirements are similar to the requirements in most Canadian jurisdictions that impose specific violence and harassment duties on employers. There are two notable exceptions, however:

- ✿ *Refusal rights.* Bill 168 specifically extends workers' right to refuse dangerous work to include refusals based on the risk of workplace violence; and

- ✿ *Domestic violence.* Bill 168's requires an employer to take every reasonable precaution to protect a worker if the employer is aware or ought to be aware that domestic violence that's likely to physically injure a worker may occur in the workplace.

Conduct Covered by this Duty

The seven jurisdictions that impose a specific duty on employers to protect workers from workplace violence all define the term “violence.” The definitions are similar and typically include actual or attempted conduct or gestures that cause or could cause physical injury to a worker. They also often cover threatening statements or behaviours that give a worker reasonable cause to believe that he or she is at risk of injury.

WORKPLACE HARASSMENT

As with the duty to protect workers from violence, the duty to protect workers from harassment is imposed by the OHS laws in two different ways:

The 2 Specific Duty Jurisdictions

The OHS laws in only two jurisdictions—MB and SK—specifically require employers to take steps to assess and minimize the risk of harassment in the workplace. (If Bill 168 is passed, Ontario would join this group.) Manitoba's definition of “harassment” is narrower than Saskatchewan's and is similar to the language in human rights laws barring discrimination. Manitoba defines “harassment” as any objectionable conduct, comment or display by a person that:

- ✿ Is directed at a worker in a workplace;
- ✿ Is made on the basis of race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, political belief, political association or political activity, marital status, family status, source of income, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- ✿ Creates a risk to the health of the worker.

Saskatchewan also includes such conduct in its definition of harassment. But it goes further and includes conduct not based on a protected characteristic provided that conduct:

- ✦ Adversely affects the worker’s psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and
- ✦ Constitutes a threat to the health or safety of the worker.

The 12 Implied Duty Jurisdictions

The remaining 12 jurisdictions—Fed, AB, BC, NB, NL, NT, NS, NU, ON, PEI, QC and YT—don’t specifically address workplace harassment in their OHS laws. But as with workplace violence, the “general duty clause” in each of these jurisdiction’s OHS laws likely requires employers to protect their workers from workplace harassment.

Québec

Québec *does* impose a specific duty to address workplace harassment, including violence, on employers but not in its OHS law; instead it address this duty in its labour standards law. *An act respecting labour standards* requires employers to prevent “workplace psychological harassment,” defined as including unwanted conduct, verbal comments, actions or gestures that affect a worker’s “physical integrity.” This requirement applies to not only non-physical acts of harassment but also more extreme forms of harassment, such as physical violence.

SPECIAL PROTECTIONS FOR WORKERS WORKING ALONE

The workplace violence requirements in the OHS laws typically focus on assessing and managing risks of violence in the general workplace and don’t provide any special protections for workers who work alone—and these are the very workers most at risk of being the victims of workplace violence. Consequently, many jurisdictions have adopted special OHS protections specifically for workers who work alone. Although violence isn’t the only hazard the working alone requirements cover, it’s one of the key hazards these requirements are designed to address.

An employer’s duty under the OHS laws to take measures to protect workers who work alone from violent attacks comes from two sources: the workplace violence requirements that cover all of the employer’s workers and requirements that specifically cover workers who work alone. We’ve already discuss the general workplace violence requirements. So now let’s look at the working alone requirements.

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DEFINITIONS OF VIOLENCE AND HARASSMENT

Here's how the OHS law in your province or territory defines violence and/or harassment:

FEDERAL: _____

Defines “work place violence” as any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee [*Canada OHS Regs., Sec. 20.2*]. Doesn't define harassment.

ALBERTA: _____

Defines “violence” as, whether at a work site or work related, the threatened, attempted or actual conduct of a person that causes or is likely to cause physical injury [*OHS Code 2009, Sec. 1*]. Doesn't define harassment.

BRITISH COLUMBIA: _____

Defines “violence” as the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury [*OHS Reg., Sec. 4.27*]. Doesn't define harassment.

MANITOBA: _____

Defines “violence” as (a) the attempted or actual exercise of physical force against a person; and (b) any threatening statement or behaviour that gives a person reasonable cause to believe that physical force will be used against the person [*Workplace Safety & Health Reg., Sec. 1.1*]. Defines “harassment” as any objectionable conduct, comment or display by a person that

(a) is directed at a worker in a workplace; (b) is made on the basis of race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, political belief, political association or political activity, marital status, family status, source of income, disability, physical size or weight, age, nationality, ancestry or place of origin; and (c) creates a risk to the health of the worker [Sec. 1.1].

NEW BRUNSWICK: _____

Doesn't define either violence or harassment.

NEWFOUNDLAND/LABRADOR: _____

Defines “violence” as the attempted or actual exercise by a person, other than a worker, of physical force to cause injury to a worker, and includes threatening statements and behaviour that gives a worker reason to believe that he or she is at a risk of injury [*OHS Regs., Sec. 22(1)*].

NORTHWEST TERRITORIES/NUNAVUT: _____

Doesn't define either violence or harassment.

NOVA SCOTIA: _____

Defines “violence” as any of the following: (a) threats, including threatening statements or threatening behaviour that give a worker reasonable cause to believe that the worker is at risk of physical injury; and (b) conduct or attempted conduct of a person that endangers the physical health or physical safety of a worker [*Violence in the Workplace Regs., Sec. 2(f)*]. Doesn't define harassment.

ONTARIO: _____

OHS law doesn't currently define either violence or harassment. But Bill 168 would amend the *OHS Act* to define "workplace violence" as 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; and b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker. Bill 168 would also amend the Act to define "workplace harassment" as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought to be reasonably known to be unwelcome.

PRINCE EDWARD ISLAND: _____

Defines "violence" as the threatened, attempted or actual exercise of any physical force by a person other than a worker that can cause, or that causes, injury to a worker, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that he or she is at risk of injury [*OHS Reg.*, Sec. 52.1].

QUÉBEC: _____

OHS law doesn't define violence or harassment. But labour standards law does define "psychological harassment" as any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects a worker's dignity or psychological or physical integrity and that results in a harmful work environment for the worker [*An act respecting labour standards*, Sec. 81.18].

SASKATCHEWAN: _____

Defines "violence" as the attempted, threatened or actual conduct of a person that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that the worker is at risk of injury [*OHS Regs.*, Sec. 37(1)]. Defines "harassment" as any inappropriate conduct, comment, display, action or gesture by a person: (i) that either: (A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or (B) subject to subsections (3) and (4), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and (ii) that constitutes a threat to the health or safety of the worker [*OHS Act*, Sec. 2(1)(l)]. To constitute harassment for the purposes of paragraph (1)(l)(i)(B): (a) repeated conduct, comments, displays, actions or gestures must be established; or (b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker must be established [Sec. 2(3)]. For the purposes of paragraph (1)(l)(i)(B), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer's workers or the place of employment [Sec. 2(4)].

YUKON: _____

Doesn't define either violence or harassment.

WORKING ALONE REQUIREMENTS

Like the duty to prevent workplace violence, the employer's obligation to protect workers who work alone or in isolation is contained in the OHS laws of each jurisdiction either expressly or by implication:

The 10 specific duty jurisdictions. The OHS laws of 10 jurisdictions—AB, BC, MB, NB, NL, NT, NU, PEI, QC and SK—impose a specific duty on employers to take steps to protect workers who work alone. NT, NU and QC simply require employers to set up a means of communication or surveillance for workers working alone. The other six jurisdictions generally require employers to:

- ✦ Conduct a hazard assessment of the risks faced by a worker working alone;
- ✦ Establish procedures to eliminate or minimize the identified risks; and
- ✦ Set up an effective communication system to check on the worker's status and allow him to receive emergency assistance if needed.

The 4 implied duty jurisdictions. The remaining four jurisdictions—Fed, NS, ON and YT—don't set specific requirements for protecting workers who work alone. But as with workplace violence, the duty to protect workers working alone is implied under the general duty clause of the jurisdiction's OHS act. Some of the implied duty jurisdictions have made it clear that they consider protecting workers who work alone to be part of the employer's general duty under the OHS act:

- ✦ NS has published a guide for new retail workers that says that employers should have specific procedures and safeguards for working alone; and
- ✦ The ON Ministry of Labour acknowledges on its website that the province doesn't have a specific working alone regulation but adds that “reliance [for the source of such an obligation] is placed in the employer's general duty to take all reasonable precautions for the health and safety of the worker.”

WORKING ALONE REQUIREMENTS

Here's what the OHS law in your province or territory requires employers to do for workers who work alone:

FEDERAL: _____

OHS law doesn't have specific working alone requirements.

ALBERTA: _____

Employers must conduct a hazard assessment for a worker working alone, eliminate or control the identified hazards and provide an effective communication system between that worker and people capable of assisting him if there's an emergency or the worker is injured or ill [*OHS Code, Part 28*].

BRITISH COLUMBIA: _____

Employers must conduct a hazard assessment for a worker working alone, eliminate or control the identified hazards and set procedures for checking on the worker. Late night retail workplaces are subject to additional requirements [*OHS Reg., Part 4*].

MANITOBA: _____

Employers must identify the risks faced by a worker working alone and implement safe work procedures to address those risks, including the establishment of an effective communication system [*Workplace Safety & Health Reg., Part 9*].

NEW BRUNSWICK: _____

Employers must establish a code of practice to ensure the health and safety of a worker who works alone. Codes of practice must identify the risks, include procedures for minimizing those risks and detail how the worker can get emergency assistance if needed [*Code of Practice for Working Alone Reg.*].

NEWFOUNDLAND/LABRADOR: _____

Employers must conduct a risk assessment of workers working alone and develop written procedures for checking on those workers' well-being [*OHS Regs., Sec. 15*].

NORTHWEST TERRITORIES/NUNAVUT: _____

When a worker is working alone, the employer must provide a means of checking the well-being of that worker at intervals that, under the circumstances, provide adequate protection [*General Safety Reg., Sec. 14*].

NOVA SCOTIA: _____

OHS law doesn't have specific working alone requirements. But a government guide for new retail workers indicates that employers should have specific procedures and safeguards for working alone.

ONTARIO: _____

OHS law doesn't have specific working alone requirements. But according to the MOL website, an employer's duty to protect workers working alone is based on the General Duty Clause in the *OHS Act*.

PRINCE EDWARD ISLAND: _____

Employers must develop and implement written procedures to ensure the health and safety of a worker working alone. Procedures must identify the risks, include steps for minimizing those risks and detail how the worker can get emergency assistance if needed [*OHS Reg., Part 53*].

QUÉBEC: _____

When a worker works alone, an efficient means of surveillance, whether continuous or intermittent, must be installed [*Reg. respecting occupational health and safety, Sec. 322*].

SASKATCHEWAN: _____

Employers must conduct a hazard assessment for a worker working alone and take all reasonably practicable steps to eliminate or control the identified hazards, including providing an effective communication system [*OHS Reg., Sec. 35*].

YUKON: _____

OHS law doesn't have specific working alone requirements.

2. HUMAN RIGHTS VIOLATIONS

Provincial human rights laws protect workers from discrimination on the basis of disability, family status, gender, race, religion and other personal characteristics. A failure to protect workers from such discrimination can result in claims against the employer for human rights violations.

An employer's obligation is twofold:

- ✿ To refrain from engaging in harassment (and other forms of discrimination) itself; and
- ✿ To ensure that other people the worker works with don't engage in this kind of behaviour.

Violence against or harassment of a worker could violate human rights law—but only if those actions are based on a protected characteristic. For example, human rights laws bar discrimination on the basis of religion but not weight. So bullying a worker because he's Muslim would be a human rights violation, while bullying a worker because he's overweight wouldn't be.

3. CONSTRUCTIVE DISMISSAL LAWSUITS

According to the Canada Safety Council, a 2003 survey found that 82% of workers who have been the target of a bully felt they had no choice except to leave their jobs to escape the intolerable behaviour. If workplace violence or harassment becomes so bad that the victim feels compelled to quit, he could sue the employer for "constructive dismissal." That is, the worker could argue that by allowing such conduct to go on, the employer essentially fired him.

Example: The owner of a company hired his uncle, who had problems dealing with women in general and one female worker in particular. The uncle made bigoted comments and regularly used profanity. In a meeting, he shouted and demeaned the worker. He also made threatening comments and gestures while leaning over and pointing in her face. At one point, he kicked open the worker's office door. The worker, who was beginning to have health problems from the stress, quit because she "couldn't take it anymore." She sued the company for constructive dismissal. An Ontario court ruled that the company had failed to provide the worker with a decent, civil and respectful workplace and so had violated its duties to her. Thus, the worker was entitled to treat the employment contract as terminated [*Stamos v. Annuity Research & Marketing Service Ltd.*, [2002] O.J. No. 1865, May 13, 2002].

4. INFLICTION OF MENTAL DISTRESS CLAIMS

Victims of workplace violence and harassment may also be able to sue their employers for the intentional infliction of mental distress. To win such a case, the worker must show that:

- ✦ The conduct at issue was “outrageous” and went beyond mere assertiveness or aggressiveness;
- ✦ The individual attacking or harassing the worker deliberately tried to hurt the victim; and
- ✦ The victim visibly suffered as a result of this conduct.

These cases are hard for workers to prove but it can be done:

Example #1: A supervisor was known for intimidating, yelling and swearing at his staff in general and one worker in particular. In one incident, the supervisor yelled at the worker and pushed her away. He then threatened her with a performance review and told her to “get the hell out” of his office. When the worker complained to HR, the company did little to discipline the supervisor. The worker went out on sick leave and eventually long-term disability. She was diagnosed with major depression, anxiety and post-traumatic stress disorder. The worker sued the company and supervisor for, among other things, intentional infliction of emotional distress.

An Ontario court concluded that both the company and supervisor had a duty of care to the worker to ensure that the workplace was safe and free from harassment. The supervisor’s abusive conduct clearly breached that duty. It held the company and supervisor jointly responsible for paying the worker \$500,000 in damages [*Piresferreira v. Ayotte*, [2008] CanLII 67418 (ON S.C.), Dec. 3, 2008].

Example #2: A supervisor in Alberta bullied a mentally frail female worker for over three years. He humiliated, insulted, manipulated and harassed her at every turn. His language and actions towards the worker grew progressively more violent as she tried to resist his attempts to dominate her. His actions made the worker fear physical harm and, in fact, on one occasion, he did physically hurt her. The worker had a mental breakdown and sued the employer for the intentional infliction of mental distress. The federal court held the employer responsible for the supervisor’s actions and ordered it to pay the worker \$35,000 in damages [*Boothman v. Canada*, [1993] F.C.J. No. 400, April 29, 1993].

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5. CRIMINAL LIABILITY UNDER C-45

If a victim of workplace violence is killed or suffers serious bodily harm, the company could be charged with criminal negligence for the wanton or reckless failure to protect the worker. How? Bill C-45 added Sec. 217.1 to the *Canadian Criminal Code* (Code), which says that every person “who undertakes, or has the authority, to direct how another person does work or performs a task” must “take reasonable steps” to protect that other person from bodily harm arising out of the work. “Criminal negligence”—that is, the act of doing something forbidden by the law or omitting to do something one has a legal duty to do when the act or omission shows “wanton or reckless disregard for the lives or safety” of others—was already a crime under the *Code* when C-45 was enacted. But by adding the new Section 217.1 duty, C-45 made it possible to hold a company or individual guilty of criminal negligence for failing to meet the duty to protect a person doing work if the failure to protect was the result of wanton or reckless disregard for life or safety and caused death or serious bodily harm to the worker or a person affected by the work.

Because of the nature of harassment and the lack of physical injury that results from such conduct, incidents of harassment can't lead to C-45 charges against an employer. And few incidents of workplace violence would result in C-45 charges. But if the victim is killed or seriously injured and the company was aware that the worker was in danger and wantonly or recklessly failed to do anything about the threat, a company—and its senior management—could be faced with criminal charges as a result.

HOW TO AVOID LIABILITY

The jurisdictions that specifically address workplace violence and harassment in their OHS laws set certain requirements for employers. So if your workplace is in one of those jurisdictions, complying with those requirements should enable you to avoid liability for workplace violence and harassment—both under the OHS laws and under human rights and other laws. The requirements vary from jurisdictions to jurisdiction but typically require employers to:

- ✦ Identify and assess the risk of violence and harassment in the workplace;
- ✦ If a risk of violence or harassment has been identified, develop violence and harassment prevention policies;
- ✦ Post these policies in the workplace; and
- ✦ Train workers on these policies.

But even if your workplace is not in one of those jurisdictions, it's still a good idea to voluntarily comply with the workplace violence and harassment requirements contained in the OHS laws of the other provinces and territories. Why? Because courts may look at those requirements to assess whether your response to violence and harassment in your workplace was reasonable.

Conducting A Risk Assessment

To protect your company from liability, you'll need to perform a workplace violence and harassment risk assessment to identify potential threats and vulnerabilities. The purpose of the risk assessment is to identify which workers may be at risk of violence and/or harassment, the degree of risk, whether control measures are in place to address this risk and, if so, whether these measures are adequate.

WHY YOU NEED TO CONDUCT A RISK ASSESSMENT

There are two reasons why you need to conduct an assessment of the risk of violence and harassment in your workplace. First, random acts of workplace violence and harassment are impossible to prevent. But most incidents involving violence and harassment aren't random. Violence in particular is often preceded by a number of warning signs. Although many of the warning signs are quite subtle, they are identifiable if you know what they are and how to look for them. Thus, one of the keys to preventing violence is to know what the warning signs are. And once you know what the warning signs are, you can establish a program for checking to see if any of them are present in your workplace. There's a Checklist of Warning Signs on page 18.

Second—and perhaps most important—the law may require you to conduct a risk assessment. The jurisdictions that specifically require employers to address violence and harassment in the workplace typically spell out the steps employers must take. Although these requirements vary slightly from jurisdiction to jurisdiction, the approach and required measures are pretty much the same everywhere. One of the cornerstone requirements: conducting a risk assessment. For example, Part 20.5(1) of the workplace violence section of the federal *OHS Regulations* requires employers to assess the potential for workplace violence by taking into account the following:

- ✦ The nature of the work activities;
- ✦ The working conditions;
- ✦ The design of the work activities and surrounding environment;
- ✦ The frequency of situations that present a risk of workplace violence;
- ✦ The severity of the adverse consequences to the worker exposed to a risk of workplace violence;
- ✦ The observations and recommendations of the workplace violence policy committee or JHSC and the workers; and
- ✦ The measures that are already in place to prevent and protect against workplace violence.

12 Warning Signs of Violence

Most workplace violence incidents are preceded by warning signs. If you know what the signs are, you stand a much better chance of preventing violence. Here's a list of 12 warning signs to look for. Some of them are no-brainers, but some are subtle and far from obvious:

- Overt or veiled threats
- Intimidating, belligerent, harassing and other inappropriately aggressive behaviour
- Frequent conflicts with supervisors and co-workers
- Bringing a weapon to work
- Showing a fascination with weapons and acts of violence
- Statements indicating thoughts of suicide
- Drug or alcohol abuse
- Increased absenteeism
- Mood swings
- Deteriorating hygiene
- Deteriorating job performance
- Extreme changes in behaviour

Even if your workplace is not in one of the specific duty jurisdictions, it's still advisable to conduct a workplace violence and harassment assessment patterned after those that are required by the OHS laws of the other jurisdictions. Why? Because the obligation to conduct assessments represents the current legal standard for workplace violence and harassment prevention. Accordingly, courts in the jurisdictions that don't have specific duties may look at those requirements to determine whether your company's response to violence and harassment in your own workplace was reasonable.

HOW TO CONDUCT A RISK ASSESSMENT

Step #1: Laying the Groundwork

Be warned: Workplace violence and harassment risk assessments can be a sensitive issue. Management and workers may consider them intrusive and unnecessary. Although awareness of workplace violence and harassment has increased in recent years, there are still too many companies that believe it can never happen to them. Safety coordinators need to overcome this false sense of security to conduct risk assessments and implement effective prevention programs.

That's why it's important to involve both workers and management in your efforts, including at least one member from the Security, HR and EHS departments. You should also involve the JHSC in the risk assessment. In fact, several jurisdictions, such as Fed, MB and NS, specifically require the employer to coordinate the risk assessment with the JHSC. Make sure all members of the group understand the purposes and goals of the assessment and violence and harassment prevention programs.

Step #2: Conducting the Risk Assessment

There are three parts of a workplace violence and harassment risk assessment:

Examining past incidents. Previous experiences with violence and harassment in your own company is the first place to look for signs of trouble. But don't limit your assessment to acts involving physical violence that resulted in serious injuries or fatalities. Most incidents of workplace violence involve lower levels of physical force, like pushing and shoving. Although they don't make the headlines, these incidents are often the ones that escalate into more serious forms of violence.

Nor should you limit your inquiry to *physical* acts. You also need to look at incidents involving harassment, such as intimidation, bullying and verbal abuse. "Subtle" forms of abuse can explode into physical violence, like in the O.C. Transpo tragedy in Ottawa, Ontario, when a worker who was bullied and teased because of a speech impediment finally snapped and shot four workers before turning the gun on himself. At the very least, nonphysical violence poisons the work environment, increases absenteeism and lowers productivity—and it may eventually escalate into acts of physical violence.

Surveying workers to identify red flags. Reviewing reports of previous incidents isn't enough to detect present problems. First of all, many of the subtle forms of workplace violence don't get recorded in incident reports. Compounding the problem is the fact that workers don't always

report workplace violence and harassment they witness or experience. In fact, workers tend to brush off threats, harassment and other forms of violence because they don't think it's a problem and don't want to be accused of overreacting or making trouble. Hesitancy to report is especially likely if the person engaging in the violent or harassing behaviour is in a position of authority, such as a supervisor.

So you need to dig deeper when doing a workplace violence and harassment risk assessment. How? One effective method is to ask workers to complete an anonymous survey that details their experiences with workplace violence and harassment. Then analyze the completed surveys carefully to ferret out red flags.

Survey workers in your company at least once a year. Give them the option to remain anonymous to promote candid responses. Your survey, like the Model Survey on page 21, should include:

- ✿ A description of what you mean by workplace violence. Most workers may associate violence with physical acts only;
- ✿ Reassurances that workers won't be subject to reprisals for speaking candidly;
- ✿ Questions about workers' experiences involving workplace violence and harassment; and
- ✿ Questions about situations workers perceive to be risky.

Surveying supervisors. Asking workers about their experiences with workplace violence and harassment isn't enough. You also need to survey supervisors. After all, they're on the front line and so may have the best perspective on the likelihood of violence and harassment in the workplace. Again, an effective and efficient way to get this information is to have each supervisor complete a survey that asks them about key factors indicating the potential for workplace violence and harassment. There's a Model Supervisor Survey on page 23 that's based on a violence hazard assessment form from the Education Safety Association of Ontario that you can adapt for use in your workplace.

Insider Says: After you conduct an initial assessment of the workplace, you should regularly review that assessment. (Consult your company's lawyer to see how often to conduct such reviews.) You should also review your assessment when and if circumstances change in case the risk of violence or harassment has increased. And you should review it if a violent incident or episode of harassment occurs.

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MODEL WORKER SURVEY

Adapt this survey to meet your company's needs.

WORKER VIOLENCE & HARASSMENT SURVEY

Workplace violence and harassment are serious concerns to [insert company's name] (the Company). Management is determined to take all necessary measures to ensure that none of you ever fall victim to it. This survey is part of our prevention efforts. It's meant to help us detect potential problems in your facility and at alternate worksites. Please fill out this form and return it to the Company's safety coordinator, [insert name of safety coordinator] by [insert deadline].

Don't be afraid to tell the truth. Nobody is going to punish you or think any less of you because you tell us about potential problems. You don't even have to include your name.

Instructions: When filling out this survey, keep in mind that when we say "workplace violence," we mean more than just physical acts. Violence can include a range of behaviours including threats, verbal abuse, harassment, bullying, teasing and intimidation. It also involves acts of people in the Company, including co-workers, supervisors and management, as well as outside the Company, including contractors and customers.

NAME (optional*): _____

**You may complete this survey anonymously, if you like.*

1. Do you ever work alone? Yes No
If yes, do you notify someone when you finish work? Yes No
2. Have you read the Company's workplace violence and harassment policy? Yes No
3. Do you feel comfortable that you would know how to handle a violent customer or co-worker? Yes No
4. If confronted by a violent individual, would you:
 - a. Request the help of a co-worker? Yes No
If yes, when. If no, why not?

 - b. Call the police? Yes No
If yes, when. If no, why not?

5. Are you concerned about:
 - a. How to respond to a verbal threat from an individual at work? Yes No
 - b. How to respond to a threat of violence from an individual at work? Yes No
 - c. How to respond to harassment at work? Yes No
 - d. Working alone or with a particular co-worker or customer? Yes NoIf you answered yes to any of the above questions, please explain

6. Do you know how to operate the Company's alarm systems? Yes No

WORKER VIOLENCE & HARASSMENT SURVEY CONTINUED

7. Do you feel that the Company's security measures are appropriate:
- a. Inside the building Yes No
 - b. Outside the building (including the parking lot?) Yes No
- If no, please list ways in which they could be improved.
-

8. Have you ever been assaulted at work by:
- a. An outsider? Yes No
 - b. A customer? Yes No
 - c. A co-worker? Yes No
 - d. Other Company employee? Yes No

9. To your knowledge, have incidents of violence ever occurred at the Company's workplace, either between co-workers or with customers?
- Yes, between co-workers Yes, between customers No

10. Where in the building or worksite do you think a violent incident would most likely occur?
- lounge exits deliveries bathroom private offices parking lot entrance
- other (please specify) _____

11. Have you ever noticed a situation that you thought could or would lead to violence? Yes No
- If yes, please explain.
-

12. Do you think the risk of violence is greatest:
- During shift work?
 - On the road?
 - In other situations (please explain)
-

13. Have you ever missed work because of fear of violence at the workplace? Yes No
- If yes, please explain.
-

14. Has anything happened recently at your worksite that you believe Yes No could have led to violence?
- If yes, please explain.
-

15. Please describe any instances when you have been uncomfortable at work or in fear for your safety as the result of a possible workplace violence situation.
-
-
-

MODEL SUPERVISOR SURVEY

Adapt this survey to meet your company's needs.

SUPERVISOR VIOLENCE & HARASSMENT SURVEY

Instructions: When filling out this survey, keep in mind that when we say “workplace violence,” we mean more than just physical acts. Violence can include a range of behaviours including threats, verbal abuse, harassment, bullying, teasing and intimidation. It also involves acts of people in the Company, including co-workers, supervisors and management, as well as outside the Company, including contractors and customers.

Part 1: Work Department/Area

Please describe your department/area and the types of activities/functions performed by workers in the department.

Part 2: History

1. Have there been incidents when workers in your department have experienced or been threatened with physical violence? Yes No
If yes, please describe incidents

2. Have there been incidents when workers in your department have experienced harassment or verbal abuse, i.e. been shouted at or subjected to obscene language, threats or obscene phone calls? Yes No
If yes, please describe incidents

Part 3: Activities that Might Expose Workers to Risk of Violence

3. Do workers in your department handle money or other valuables? Yes No
4. Do workers in your department deliver or collect items of value? Yes No
If yes, please describe

5. Do workers in your department deal with people who may be under the influence of drugs or alcohol? Yes No

6. Do workers in your department deal with people who are deeply troubled or distressed? Yes No

7. Do workers in your department monitor or regulate the activity of others or carry out procedures or make decisions that adversely affect others? Yes No
If yes, please describe

SUPERVISOR VIOLENCE & HARASSMENT SURVEY CONTINUED

Part 3: Activities that Might Expose Workers to Risk of Violence (cont)

8. Are workers in your department involved with activities that may elicit a negative or confrontational response? Yes No

If yes, please describe

9. Are there other aspects of the work in your department that might spark a violent response? Yes No

If yes, please describe

Part 4: Factors that Increase the Risk of Violence

10. Do any of your workers work alone –that is, out of sight and out of hearing of other workers– *after* normal working hours? Yes No

If yes, please describe

11. Do any of your workers work alone *during* normal working hours? Yes No

If yes, please describe

12. Please describe any precautions already taken to safeguard workers in your department who work alone.
-

13. Please describe other factors that you feel might increase the risk of violence.
-

Part 5: Reducing the Risk of Violence

14. Please describe policies or procedures already in place to reduce the risk of violence in your department.
-

15. In light of your responses to the questions in this assessment:

- a. Do you believe that all reasonable steps have been taken to prevent or reduce the risk of violence? Yes No

- b. What further steps would you recommend?
-
-

- c. What assistance do you need to accomplish any of the above steps? Specify:
-
-

Name: _____ Department: _____

Date: _____

Thank you for your cooperation and input!

Chapter 3

Drafting A Workplace Violence/Harassment Policy

Once you've assessed the risk of violence and harassment in your workplace, the next step is crafting a workplace violence and harassment policy. Why do you need a policy? As discussed in chapter 1, employers across Canada have a duty to protect workers from violence and harassment in the workplace. And like any other hazard in the workplace, employers need to create policies and procedures for preventing violence and harassment and for addressing these behaviours if they occur.

Think Twice about a Zero Tolerance Policy

A typical response to workplace violence and harassment is to adopt a so-called “zero tolerance” policy. Zero tolerance generally means that workers who commit workplace violence or harassment will be subject to immediate and automatic dismissal with no second chances. Zero tolerance puts these hazards outside of the company's normal progressive discipline system. In other words, under zero tolerance, workers who engage in workplace violence or harassment get fired immediately—even for first offenses. This stance signals that the company considers workplace violence and harassment more serious than other kinds of offenses.

But although adopting a zero tolerance policy makes a strong statement against violence and harassment, as a practical approach for combating these hazards, it has its limitations. Simply put, zero tolerance may be too inflexible to implement. Zero tolerance works best in the most serious cases of workplace violence, such as those involving physical assault. After all, it's hard to argue that workers who kick, punch or otherwise physically attack other workers should get a second chance. The problem is that violence and harassment often take more subtle forms, such as threats, teasing, verbal abuse and bullying. The severe penalties provided by zero tolerance may be too harsh for these kinds of offenses, especially if the conduct isn't clearly violent or harassing and the offender doesn't have a track record of engaging in such behaviour.

In addition, there may be mitigating circumstances or reasons that, if they don't justify, at least explain a worker's violent behaviour. For example, maybe the worker was acting in self-defence or just engaging in horseplay. A company should be free to consider such factors before it decides how to respond and not have its hand forced by a zero tolerance policy.

Example: A pipe worker picks up a piece of iron pipe and swings it at a fellow crew member's head stopping at the very last second. Everybody realizes that it's a joke, albeit a stupid and dangerous one. The company thinks the worker should be warned and perhaps suspended for the prank but considers termination too harsh. But the zero tolerance policy calls for immediate termination of workers who engage in or threaten violence against other workers. So the company has to choose between ignoring the policy or ignoring the offense.

It might seem easy for a company in this situation to simply ignore the policy and give the worker a break. But that could lead to unforeseen legal consequences: Letting one worker get away with an offence undermines the legitimacy of a zero tolerance policy and makes it harder to enforce on future occasions. That's because consistency of enforcement is one of the key factors a court or arbitrator looks at in deciding whether to support a disciplinary action.

Example: A Saskatchewan arbitrator reinstated a construction worker who had been fired for hitting another worker. Although the company had a zero tolerance policy calling for automatic firing for fighting, the arbitrator noted that the company didn't consistently enforce this policy [*Re Sri Homes Inc. and IWA Canada*, Loc. 1-184, 45 C.L.A.S. 329 (1996)].

Tailoring a Workable Workplace Violence & Harassment Policy

So the goal is to draft a workplace violence and harassment policy that's both effective and practical to implement. To accomplish this goal, your policy, like the Model Policy on page 29, should do the following:

Define “violence” broadly. Your workplace violence and harassment policy should clearly describe the types of behaviour that the company considers unacceptable. Instead of using the terms violence and harassment,

many companies opt to use the term “workplace violence” only and define it broadly to cover both the use or threat of physical force as well as bullying, harassment, intimidation, affronts to dignity, the creation of poisonous work environment and other similar conduct. Your definition should also cover a wide array of conduct, including acts, gestures and verbal comments.

State that all work-related violence is barred, regardless of location. Workplace violence and harassment aren’t just issues in your physical workplace. Tensions between co-workers that have been building up at work might erupt into actual violence *outside* the confines of the workplace. For example, two workers who hate each other could get into a fistfight at a company softball game or a worker could punch someone during an off-site business conference. But if your company’s violence policy only addresses violence *within* the workplace, your hands may be tied when you try to discipline the workers involved in such incidents.

So make sure that your company’s policy specifies that the actions included in the definition of workplace violence are barred whether they occur on company property, off-site (such as at meetings or conferences) or at workers’ homes if the actions may impact the workplace (such as if they involve two workers). By doing so, you’ll make it easier for the company to discipline workers who engage in violence away from the workplace.

Example: Two female workers, Martha and Hayat, didn’t like each other. Each one badmouthed the other to co-workers. There were also three non-violent incidents between them, including one in which they refused to work together. Management was aware of the situation and tried to resolve it without success.

One day, Martha saw Hayat in the management office and concluded that Hayat was trying to get her into trouble. So she drove to Hayat’s home and confronted her on the street. Martha claimed that Hayat knocked off her glasses and then ran away. Martha chased down Hayat, grabbed her, began punching her and pulling out her hair at the roots. Bystanders eventually broke up the fight. Although Martha gave the employer a letter of apology the next day, it fired her. The union filed a grievance, arguing that termination was excessive.

The Manitoba arbitrator upheld Martha's firing. The arbitrator noted that the employer had a clear policy on workplace violence that *specifically* barred violence at off-site locations, including "contact at home if there are real or implied consequences related to the workplace." Workers were trained on this policy, which was also posted in the plant. Martha was aware of this policy but she still went to Hayat's home—not to talk about their issues as she claimed but with a "hostile and aggressive" intent, said the arbitrator [*Phillips & Temro Industries Ltd. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9074-34 (Ahmo Grievance)*, [2008] M.G.A.D. No. 31, Nov. 18, 2008].

State that all workers are protected from violence regardless of location. Your workers may be subjected to violence or harassment not only in your workplace but also offsite when working on the company's behalf. And the duty to protect workers from violence and harassment doesn't end at the workplace's walls. Employers have a duty to protect workers from violence and harassment on the job *wherever* they may be working. So include language in the policy that makes it clear that the company takes offsite violence and harassment seriously and treats such conduct exactly like it treats that conduct on its own premises.

Reserve a range of disciplinary options. You want to be able to investigate all the circumstances of an incident involving violence or harassment and then impose whatever disciplinary action you consider appropriate. So give yourself leeway to impose any form of discipline *up to* and including immediate termination for cases of actual physical assault, even for first offenders.

MODEL POLICY

Adapt this policy to meet your company's needs.

WORKPLACE VIOLENCE & HARASSMENT POLICY

1. Definition of "workplace violence."

For purposes of the Company's workplace violence and harassment prevention policy, "workplace violence" is defined as the attempted, threatened or actual conduct of a worker that causes or is likely to cause injury to another worker, including, but not limited to:

- Actual physical assaults or attacks;
- Threats or intimidation;
- Violent gestures;
- Harassment;
- Bullying;
- Persistently and excessively criticising and scrutinizing a worker's work without justification;
- Spreading malicious rumours;
- Belittling a worker's opinions;
- Spying on or stalking a worker;
- Tampering with a worker's desk, workspace or belongings;
- Excluding or ignoring a worker;
- Undermining or sabotaging a worker's work by, say, setting unreasonable deadlines or withholding key information;
- Maliciously blocking a worker's efforts to achieve promotions, raises and other forms of professional success within the Company;
- Engaging in verbally abusive behaviour, such as yelling, making threats and name calling;
- Engaging in physically abusive or aggressive behaviour, such as pushing, hitting, spitting, finger pointing or aggressively invading a worker's space; and
- Any other conduct that gives a worker reasonable cause to believe physical force will be used against him or creates a hostile or toxic work environment.

2. Location of barred conduct.

- a. This policy prohibits workplace violence on Company premises and also at off-site locations, including, but not limited to, off-site meetings or conferences, client locations, social situations related to work or workers' homes if there are real or implied consequences related to the workplace.
- b. Every Company worker has the right to be free from workplace violence. Employees who work outside of the Company's premises, either full-time or occasionally, have the same right to be free from violence while they're performing their duties offsite. The Company takes offsite workplace violence seriously. Employees who have been subjected to violence while working outside of the Company's premises should immediately report such violence to their supervisors. The Company will treat the complaint with the same degree of seriousness and in accordance with the same procedures it applies in response to complaints of workplace violence that occurs on the premises.

3. Discipline.

Acts of workplace violence will not be tolerated and will be responded to with appropriate disciplinary action, up to and including termination, based on a thorough investigation of the incident and the surrounding circumstances. Such disciplinary action may include immediate termination for acts of physical assault, even if the person committing the act has committed no prior offences or engaged in previous acts of violence.

Chapter 4

Disciplining Workers For Violence & Harassment

Having a comprehensive workplace violence and harassment policy is only half the battle. Employers must be prepared to enforce that policy by disciplining workers who engage in barred conduct in the workplace. But in an effort to be vigilant, safety coordinators (and HR directors) may go overboard and overreact to incidents involving threats of violence and harassment. It's easy to make the knee-jerk decision that the safest course is to fire any worker who makes such threats. After all, there's always a chance the worker may carry out that threat and then the consequences for the victim and the company may be dire. But such snap decisions themselves can actually expose employers to liability.

Are Workers' Threats 'Just Cause' for Termination?

- ✿ "If I lose my job, I'll shoot you."
- ✿ "I'm going to wring your scrawny neck."
- ✿ "I can see another OC Transpo situation happening here."

What kind of discipline should you impose if one of your workers makes a statement like the ones above to a supervisor or co-worker? The answer depends on how real the threat actually is. If the statement is just the exaggerated rantings of a frustrated worker, you don't have "just cause" to fire him without notice or payment in lieu of notice. Instead, a stern warning is probably the appropriate response. But if the statement is a serious threat of violence, you *do* have just cause and not only can but also *must* terminate the worker immediately to protect others at your workplace.

This bright-line rule is easy to state but difficult to apply. In the real world, it's usually hard to tell when a violent threat is serious and when it's just hyperbole. And as the safety coordinator, you're likely to be called upon to help management make a judgment—and do it fast.

What The Law Says

To help mete out discipline for threats of violence by workers, you need to understand a few fundamental principles of Canadian employment law. It's illegal to fire a worker without proper notice. Among other things, wrongfully dismissed workers are entitled to damages in lieu of notice. But immediate termination without notice is justified if you have "just cause"—that is, the worker engages in conduct that irreparably destroys the confidence and trust on which the employment relationship is based.

Unfortunately, the law doesn't specifically define "just cause." It's up to courts to decide the issue on a case-by-case basis. The words of the Ontario Superior Court of Justice summarize the approach courts take in determining if just cause exists: "Where the conduct is isolated and minor, the courts have imposed an obligation upon the employer to give proper warning and instruction, where necessary, to correct the deficiency" [*McEwan v. Nabisco Ltd.*, [2002] O.J. No. 5239, Oct. 1, 2002].

Threats of Violence as Just Cause

Few would dispute that an actual or attempted act of violence by a worker in the workplace is just cause. So it would be hard for a worker who punches a co-worker or tries to run over a supervisor with a forklift to claim he was wrongfully terminated. However, unlike physical acts of violence, verbal threats leave room for ambiguity. Generally, making a violent threat is just cause if the threat is:

- ✦ Genuine;
- ✦ Credible; and
- ✦ Directed at somebody in the workplace.

The mere utterance of such a threat is grounds for immediate termination; you don't have to wait to see if the worker actually follows through to fire him. But not all violent threats rise to this level. Many if not most of the threats workers make on the job aren't meant to be taken literally. Although such behaviour might be worthy of discipline, immediate termination might be an overreaction. So employers need to decide the seriousness of the threat to determine how to react to it.

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HOW TO EVALUATE THREATS

To evaluate whether a violent threat is just cause, you must consider not only what the worker said but also all of the circumstances under which the threat was made. There are five questions you should ask in making that evaluation:

1. What Did the Worker Actually Say?

Although it's not the whole story, what the worker actually said is a critical factor in determining the seriousness of a threat. For example, the statement, "I'm going to kill you," could be understood as an actual threat to kill a person or as hyperbole, posturing, blowing off steam or just plain horsing around. So the mere use of those words isn't likely to be enough to prove just cause.

Threatening words may assume a more menacing quality when they're accompanied by details about the manner in which the worker intends to carry out the threat or the weapon he plans to use. It's the details that turn a vague expression such as "I'm going to kill you" into something that sounds more like an expression of intent, such as, "I'm going to beat you to death with this crowbar." Threats of violence also tend to be more disturbing when they're directed at members of the victim's family. Which sounds more threatening to you: "I'm going to shoot you" or "I'm going to shoot your six-year-old girl, Sara"?

2. Were Verbal Threats Accompanied By Threatening Gestures?

It's not only *what* the worker says but also *how* he says it that counts. Words are one thing; those same words may become something altogether different when they're accompanied by gestures. For example, the words, "I'm going to crush your skull" feel more like a credible threat of violence when the worker who utters them is also waving a wrench.

Example: An arbitrator ruled that a company had just cause to fire a worker who pointed a pike pole at a co-worker's nose and threatened to "wring his scrawny neck." The company had a legal and moral obligation to fire the worker to maintain a safe workplace, said the arbitrator [*Weyerhaeuser Canada Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-207 (Devost Grievance)*, [2000] A.G.A.A. No. 65, Sept. 29, 2000].

3. What Was the Worker's Intent?

Let's return to the example of "I'm going to kill you." You must try to determine what was on the worker's mind when he uttered those words. There are several possibilities:

He meant it literally. If the threat literally describes the worker's intentions, uttering it is just cause for immediate dismissal. In other words, "I'm going to kill you" can be just cause when the worker literally means to kill the person. Of course, workers facing disciplinary consequences for threats are bound to claim that they didn't mean what they said. And maybe they didn't. But that argument won't necessarily get them off the hook.

He meant to intimidate. One possibility is that the worker didn't mean the words literally but did intend to intimidate the victim. Although in terms of morals, using threats to intimidate is a notch below expressing an actual intent to harm, as a matter of law, it's generally enough to constitute just cause.

Example: An employer had just cause for firing a factory worker after she threatened to break co-workers' bones. Even if the worker had no intention of actually harming the co-workers—she made the threat to another worker in the hopes that it would get back to the co-workers—she intended to scare them. And, the court explained, this act created "an intolerable situation, which did to some degree affect the production efficiency of the employees" [*Perry v. Ontario Die Co.*, [1986] O.J. No. 1867, April 3, 1986].

He didn't mean to intimidate but did. Even if workers didn't actually mean to bully or intimidate, you may still have just cause if intimidation was the consequence of their behaviour. Courts will apply an objective standard. In other words, they'll ask not whether the worker actually intended to intimidate but whether a reasonable person would have expected such behaviour to result in intimidation.

4. Did the Worker Have a Track Record of Violence?

Just cause doesn't require prior warnings; a first offence is enough to justify immediate termination. So a worker's unblemished 30-year track record is no defence if the worker suddenly makes a genuine and credible threat of

violence to someone in the workplace. But if the threat falls in the gray area between serious and hyperbole, the worker's track record may become of critical importance. Courts generally give workers who have never engaged in violence or any other offence worthy of discipline the benefit of the doubt.

Example: An auto worker called a union rep who mishandled some matters a “piece of s***” and said the rep was “going down.” The court ruled that firing was too severe and knocked the penalty down to a suspension because, among other reasons, the worker had no history of violence [*Siemens VDO Automotive, Inc. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 1941 (Twigg Grievance)*, [2006] O.L.A.A. No. 158, April 2, 2006].

In contrast, workers who make threats will get less slack if they *do* have a history of violence or of losing their temper on the job.

Example: After the OC Transpo tragedy (in which a worker shot four co-workers before turning the gun on himself), a city worker remarked that he “could see something like that happening here.” In ruling that the city had just cause to fire the worker, the arbitrator noted that he had a history of losing his temper at work [*Guelph (City) v. Canadian Union of Public Employees, Local 241 (Spicer Grievance)*, [2000] O.L.A.A. 143, Feb. 22, 2000].

Even discipline for problems unrelated to violence, such as chronic absenteeism or failing to follow company policy, can weigh against a worker in determining if an ambiguous threat creates just cause. In such cases, the threat gets lumped together with all of the worker's previous offences as proof that he's a troublemaker and often represents the final straw justifying dismissal.

Example: A court ruled that Nabisco had just cause to fire a worker of 11 years when he told a superior, “If I lose my job, I'll shoot you.” The worker had received numerous warnings about his absenteeism and other violations of corporate policy. He'd also been involved in two incidents in which he was accused of assaulting his co-worker. So his violent threat to the supervisor was the final straw [*McEwan v. Nabisco Ltd.*, [2002] O.J. No. 5239, Oct. 1, 2002].

5. How Did the Victim Perceive the Threat?

When dealing with violent threats, you must consider not only the delivery but also the perception of the message. To assess the victim's perceptions, you need to consider the characteristics of both parties involved—the threatener and the threatened—including their:

- ✦ **Genders**—call it sexist but a threat of violence is likely to be taken more seriously when uttered by a male against a female;
- ✦ **Relative size and stature**—a threat is more menacing when it's made by a big person to a smaller and physically weaker one;
- ✦ **Relative positions at the company**—a threat is more disturbing when it comes from a person in authority, such as a supervisor or corporate executive; and
- ✦ **A known history of mental weakness on the part of the victim.**

Example: A supervisor, a large man with a loud voice, bullied a mentally frail female worker over an extended period. He made threats like “I’ll bash your head in,” while brandishing a hammer for effect. The worker eventually suffered a mental collapse and sued the employer for mental distress. The court ruled that the supervisor’s conduct was “outrageous” and ordered the employer to pay the worker \$40,000 in damages [*Boothman v. Canada*, [1993] F.C.J. No. 400, April 29, 1993].

In evaluating the victims’ perceptions, you need to consider not only their physical characteristics but also how they actually responded to the threat. Did the victim really believe the threat or just shrug it off?

Example: A radio sportscaster with a bad temper made the following remarks to a fellow sportscaster during a Vancouver Canucks game: “Just so you know, my son is going to beat the s*** out of you.” The court ruled that these words didn’t give the station just cause. The victim didn’t take the threat seriously and didn’t fear for his safety, even though he claimed he did. He continued sitting next to the sportscaster for the remainder of the game and only reported the incident later [*Davidson v. Westcom Radio Group Ltd.*, [1990] B.C.J. No. 1196, May 25, 1990].

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Bottom Line

Workplace violence is a serious safety concern. And the duty to prevent or address workplace violence is contained expressly or implicitly in every jurisdiction's OHS law. But properly responding to workplace threats made by workers is a real dilemma. If the threat isn't really serious, immediate termination will probably be considered an overreaction and make your company vulnerable to grievances and damage awards. If, on the other hand, the threat is serious and you *don't* fire the worker, you expose your other workers to the risk of violence. The only way to resolve the dilemma is to avoid knee-jerk reactions, determine what happened and make the best possible judgment according to all of the circumstances.

THREATS AS 'JUST CAUSE'			
CASE	WHAT WORKER SAID	JUST CAUSE?	REASON
<i>Davidson v. Westcom Radio Group Ltd.</i> (BC)	"Just so you know, my son is going to beat the s*** out of you. When he finds you, he is going to shoot your a** off. He will bend you in half."	NO	The worker's intention wasn't to kill the co-worker. And the fact that the co-worker continued to sit next to the worker for the rest of the hockey game they were watching showed that he didn't take the threat seriously.
<i>Guelph (City) v. Canadian Union of Public Employees, Local 241 (Spicer Grievance)</i> (ON)	"I can see something like that [the OC Transpo shooting] happening here."	YES	Among other things, the worker had a history of a hot temper.
<i>McEwan v. Nabisco Ltd.</i> (ON)	A worker hits his superior and says, "If I lose my job, I'll shoot you."	YES	The worker engaged in actual violence and was involved in two past incidents of assaulting co-workers.
<i>Perry v. Ontario Die Co.</i> (ON)	After being accused of stealing, a factory worker threatens several co-workers—to one, she says she's going to "do her in and break every bone in her body."	YES	Even though the factory worker only meant to scare the co-workers, this act created "an intolerable situation, which did to some degree affect the production efficiency of the employees."
<i>Siemens VDO Automotive Inc. v. National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 1941 (Twig Grievance)</i> (ON)	An automotive worker calls a union rep who mishandled some matters a "piece of s****" and says he's "going down."	NO	The worker had no history of violence and was never warned about being fired.
<i>Weyerhaeuser Canada Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-207 (Devost Grievance)</i> (AB)	A worker points a pike pole at a co-worker's nose and threatened to "wring his scrawny neck."	YES	The company had an "obligation, moral and statutory, to maintain a safe workplace."

GETTING WORKERS TO TAKE HARASSMENT SERIOUSLY

It's easier to discipline workers for engaging in violence and harassment after they've been told that such behaviour is banned and warned of the consequences for engaging in it anyway. Most workers understand that violence isn't acceptable in the workplace. But convincing them that harassment is just as bad is a harder sell.

NT Worker Learns Lesson the Hard Way

A mine worker in the Northwest Territories sexually harassed a female co-worker. The harassment lasted for a month. Some of the lowlights: the worker made sexual comments to the co-worker, tried to pull her into his room in the mine's dormitory, made inappropriate comments to her and grabbed her from behind while squeezing her torso to get her breasts to move up and down. The worker was arrested and a court found him guilty of two crimes: assault and sexual assault. The court noted that the worker had ruined his co-worker's working environment and ultimately forced her to quit, depriving her of what had been a productive and lengthy job history at the mine. The court said that it hoped that sentencing the worker to three months' jail and one year of probation would discourage not only this worker but also other workers from taking advantage of their co-workers "to satisfy their sexual appetites" [*R. v. Bowvier*, [2007] NWTTC 6 (CanLII), May 9, 2007].

Why Workers Downplay Harassment

The face of workplace safety regulation has slowly been changing. It's no longer just about protecting workers from incidents and injuries involving machines, chemicals, falls and other traditional hazards; legislators and courts are now calling on employers to protect their workers from newly recognized hazards, such as harassment, bullying and violence. But while workers may take their "traditional" safety duties seriously, many are oblivious to their duties regarding non-traditional hazards. Too many workers still consider acts such as telling racist jokes and making sexually suggestive gestures as fun and games. Or they may realize that such conduct is harmful but underestimate the severity of the consequences of engaging in it. In most cases, about the worst punishment a worker who commits harassment can expect is losing his job. Being fired is, of course, very serious. But as the *Bowvier* case illustrates, the consequences of workplace harassment can go beyond being disciplined by an employer. There's also the chance that guilty workers can go to jail.

Stress the Consequences of Harassment

Most workers understand that they play a role in ensuring a safe workplace for themselves and their co-workers. So they generally try to follow safety rules and procedures, such as wearing PPE and locking out machinery. But harassment is a different kind of hazard. There are no engineering

measures, PPE or safety practices you can use to manage this hazard. The only way to manage the risk is to prevent workers from engaging in harassing behaviours. As with other forms of undesirable behaviour, one of the best ways to discourage harassment is to point out the potential consequences for committing it. In fact, there are severe penalties for workplace harassment, including:

- ✦ Discipline, up to and including dismissal;
- ✦ Liability for a human rights violation if the harassment is based on a co-worker's race, sex, religion or some other characteristic protected by provincial and territorial human rights codes;
- ✦ Prosecution for an OHS violation. For example, SK's *OHS Act* specifically requires workers to refrain from causing or participating in the harassment of another worker [Sec. 4(b)]. So a worker in SK who harasses a co-worker could be prosecuted for an OHS violation; and/or
- ✦ Arrest, criminal prosecution and jail.

Most cases of workplace harassment don't end up in criminal court, but they certainly could, especially if the harassment is physical or sexual in nature. The *Bowier* case is interesting because the court devoted a great deal of time to discussing the workplace ramifications of the worker's criminal conduct. It criticized the worker and others like him who may think it's "acceptable behaviour to violate the sexual integrity of a fellow [worker] and thereby poison the working environment" for that colleague. Workers who think this type of behaviour is "good fun" have to realize that it's criminal and "the consequences will be severe," the court added. And it noted,

All people, all members of our communities should be able to go to work, to pursue their employment, their career objectives without being concerned that they will be harassed, assaulted, fondled, bothered—basically objectified, treated with disrespect, to the point that the treatment amounts to a criminal offence. Such treatment poisons the work environment; it often, as is the case here, results in the victim having to leave the workplace, finding it intolerable.

As a safety coordinator, you should be aware of the *Bowier* case and consider using it to educate the members of your workforce on the seriousness of workplace harassment. Telling your workers about the case can serve as a wakeup call that makes workers think twice before harassing their co-workers. To help you deliver the message that workplace harassment is serious business, there's a Model Notice on the next page that you can give to workers, post in the workplace and/or publish in your company's newsletter.

MODEL NOTICE

TO ALL WORKERS

WORKPLACE HARASSMENT: IT CAN BE YOUR TICKET TO JAIL

How would you like to spend a few months in a place where your lodging and meals are provided at government expense? They'll even pay for the clothes you wear. But there's a drawback: You'll have to spend most of your time behind iron bars.

Actually, the place we're talking about is not one where you want to go. We're talking about jail. A mine worker in the Northwest Territories was recently sent to jail for three months. His crime: harassing a co-worker.

Workplace Harassment Is a Matter of Health & Safety

Workplace safety goes beyond simply following the company's safety rules and procedures, such as wearing PPE and locking out machinery when necessary. You and your co-workers must also help the company keep the workplace free of harassment, bullying and violence. Why is harassment a health and safety issue? Because the health and safety laws require the company to protect workers from workplace harassment. And the law bars workers from harassing each other. So if the company learns that a worker is harassing a co-worker, it won't take the situation lightly.

WHAT IS HARASSMENT?

Harassment includes a lot of things. Some examples:

- ✦ Picking on, mocking, imitating or teasing a co-worker;
- ✦ Spreading malicious rumours about a co-worker;
- ✦ Tampering with a co-worker's desk, workspace, equipment or belongings;
- ✦ Excluding or ignoring a co-worker;
- ✦ Telling jokes that are racist, sexual, sexist or otherwise in bad taste;
- ✦ Abusing co-workers with your words by yelling at them, making threats and name calling; and
- ✦ Physically abusing co-workers by pushing, hitting, spitting, fondling, groping, grabbing, finger pointing or aggressively invading a co-worker's space.

THE CONSEQUENCES OF COMMITTING HARASSMENT

Workplace harassment isn't fun and games; it's serious business.

Workers who engage in harassment can be:

- ✦ **Disciplined**, up to and including *being fired*;
- ✦ **Sued** for a human rights violation if the harassment is based on a co-worker's race, sex, religion or some other trait protected by human rights laws;
- ✦ **Prosecuted** for a health and safety violation; or
- ✦ **Arrested** and prosecuted for a crime, especially if the harassment is physical or sexual.

Yes, arrested and thrown in jail. In fact, that's exactly what happened to the worker in NWT. He was a mine worker who sexually harassed a woman he worked with for a month. He tried to pull the woman into his dorm room in the mine, made sexual comments to her and groped her from behind. The worker was arrested and found guilty of two crimes: assault and sexual assault. **The court sentenced the worker to three months' jail and one year probation.**

THE LESSON

Sexual and other kinds of harassment aren't a joke. They can lead to punishments more serious than just losing your job. The case in NWT shows that workers who harass co-workers can end up in jail. We urge all of you to remember this lesson and follow the terms of the company's workplace violence and harassment policy.

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Chapter 5

Getting Senior Management Buy-In

As a safety coordinator, *you* no doubt recognize that workplace violence and harassment are hazards that your company's safety program must address. But measures like conducting risk assessments, creating workplace policies and investigating complaints of violence and harassment require a serious commitment of corporate resources. It's also hard to get workers to take workplace violence and harassment policies seriously without senior management buy-in and support. Unfortunately, there are still a lot of corporate executives who dismiss concerns about workplace violence and harassment as "media hype." This false sense of security makes it tough to persuade senior management to spend the time, money and energy necessary to protect their workers from violence and harassment.

But there are arguments that you can make to get the necessary support from senior management. Those arguments fall into two categories: liability arguments and financial arguments.

1. LIABILITY ARGUMENTS

One of the most effective ways to get senior management commitment to preventing workplace violence and harassment is to stress the liability to which a failure to act could expose the company. There are few things corporate executives hate more than lawsuits. So if you can show them that ignoring the issues of workplace violence and harassment could lead to lawsuits by victims, safety violations and maybe even a criminal prosecution under C-45—not to mention the hefty damage awards, fines and possibly jail sentences that these legal proceedings could result in—they may finally see the light and agree to devote the necessary resources to addressing these workplace hazards.

On the next page, you'll find a briefing that you can give to senior management to lay out the various liability risks that allowing workplace bullying poses for a company.

BRIEF YOUR CEO

Please feel free to photocopy this briefing and give it to your CEO and board of directors.

A Company's Liability for Workplace Bullying

A supervisor, a large man with a loud voice, bullies a mentally frail female worker for three and a half years. He spews insults and makes threats such as “I’ll bash your head in,” sometimes brandishing a hammer for effect. The worker has a mental collapse and sues the employer for mental distress. The court rules the supervisor’s conduct “outrageous” and holds the company responsible. The worker wins \$35,000 in damages [*Boothman v. Canada (T.D.)*, [1993] CanLII 2949 (F.C.), April 29, 1993].

THE PROBLEM

Workplace violence is a growing problem in Canada. Many companies think of it as a physical assault. But that’s only part of it. Workplace violence can take many forms, including bullying. And, as shown by the *Boothman* case, companies can be held responsible if workers (or supervisors) bully other workers—even if senior management doesn’t engage in or condone such behaviour.

Bullying isn’t just a form of violence; it’s also a breeder of violence. The most notorious example is the 1999 OC Transpo tragedy in which an Ottawa transit worker fatally shot four workers before turning the gun on himself. The victim had been bullied and teased by his colleagues for a speech impediment and facial tick. The case produced a public outcry and a call to crack down on workplace bullying.

LIABILITY FOR WORKPLACE BULLYING

Historically, companies had no real obligations to police bullies in the workplace. But that started to change even before OC Transpo. There are five laws that can be used against a company for putting up with bullies:

1. OHS Laws

Some jurisdictions treat workplace violence, including bullying, as an occupational hazard and specifically cover it in their OHS laws. Other jurisdictions don’t directly ban bullying. But they do impose on employers a general duty to ensure workers have a reasonably safe workplace. Failing to address bullying could be considered a violation of that general duty.

2. Human Rights Laws

Provincial and territorial human rights laws ban discrimination on the basis of race, sex, religion, disability and other grounds. Harassment and bullying

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are generally considered a form of discrimination. So companies must prevent such conduct. There's only one hitch: The bullying must be based on one of the protected grounds. For example, anti-gay bullying of a worker isn't discriminatory if the human rights law doesn't bar discrimination based on sexual preference.

3. Infliction of Mental Distress

Victims of bullying can sue companies for intentional infliction of mental distress, like the worker in the *Boothman* case did. To win, the victim must show that: 1) The conduct was "outrageous"; 2) the bully deliberately tried to hurt the victim; and 3) the victim suffered visible illness as a result of being bullied. Meeting this burden is hard to do but it does happen. For example, an ex-Mountie won a \$88,000 mental distress case against the RCMP for not responding to calls to the supervisor for help against bullying from fellow officers.

4. Constructive Dismissal

If bullying becomes so bad that victims must leave their job, they can claim they were as good as fired. Under the "constructive dismissal" theory, employers have an implied contract to treat workers with respect and dignity so they can do their jobs. Letting the worker be bullied violates that contract and is the equivalent of firing the worker.

5. C-45

In extreme cases, a company that tolerates bullying could be criminally liable under C-45. The government could argue that tolerating workplace bullying was a failure to take reasonable steps to protect a worker against serious bodily harm (as required under Section 217.1 of the Canadian criminal law).

SOLUTION

The first thing you have to do is take workplace bullying seriously. Bullying is more than just a "personality conflict" and a "boys-will-be-boys" attitude is unacceptable.

You and your fellow officers and directors must take active steps to manage the problem and root it out. Above all, you must send a clear message letting everybody in the company know—from the CEO to the supervisor and down to the front-line worker—that bullying is an issue of concern to senior management and that it won't be tolerated. This message must be reinforced with strongly-worded, clear policies banning bullying and, if necessary, imposing discipline (up to firing) on anybody who engages in bullying.

ATTACKS BY NON-EMPLOYEES

Getting senior management to commit to implementing measures to address workplace violence and harassment is the first step. You also need to make sure that senior management understands that such measures must address violence and harassment not only among individuals in the workplace (such as workers assaulting co-workers and supervisors harassing workers) but also by non-employees against individuals in the workplace. Some workplace violence and harassment prevention programs ignore the possibility that the threat of violence in particular may come from outside the workplace, such as from clients, customers, visitors and former employees.

On the next page, you'll find a briefing for senior management on this blind spot in many workplace violence and harassment prevention program.

BRIEF YOUR CEO

Please feel free to photocopy this briefing and give it to your CEO and board of directors.

Attacks by Non-Employees: The Blind Spot in Preventing Workplace Violence

A special needs student at a school in Saskatchewan got “out of control” and needed to be restrained by a teacher and teaching assistant. When the teacher thought the student was calm, she told the assistant to release him. Upon being let free, the student hit the teacher very hard in her right temple. She suffered headaches, nausea, pain, numbness and bruising as a result. The teacher sued the school district for not providing a safe workplace. The trial court dismissed the lawsuit. It said “there is no doubt” that the school district had a duty to protect workers from “unreasonable risk of harm.” But the school district *had* taken steps to protect special education teachers and to reduce their risk of being attacked by students to reasonable levels, the court ruled. And an appeals court agreed [*Kendal v. St. Paul’s Roman Catholic Separate School Division No. 20*, [2004] SKCA 86 (CanLII), May 27, 2004].

THE PROBLEM

Just about all employers understand that they’re required to provide a safe workplace for their workers. Many employers understand that it’s not enough simply to address the hazards associated with equipment, machinery, work processes, chemicals and the other nuts-and-bolts trappings of the workplace. They’re starting to understand that the duty to furnish a safe workplace also involves providing some level of protection against violence in the workplace.

This trend is good news because even a decade ago, workplace violence was often overlooked or discounted as a real hazard. The bad news is that awareness of this hazard and the duty to protect workers from it doesn’t mean employers are necessarily taking effective action. One reason for the continued failure to contain the problem is tunnel vision about the source of the danger. Too many companies see the risk of workplace violence as coming from attacks, threats or harassment by co-workers, supervisors and other people who work for the company. Of course, they’re right. The problem is that violence can also come from *non-employees*, such as visitors, clients, customers and former employees. The *Kendal* case is important because it illustrates that employers do have a legal duty to address the threat of violence against workers from non-employees.

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THE EXPLANATION

Workplace violence by non-employees is, unfortunately, becoming all too common. Here are just a few recent examples:

- ✿ A man went to the Starbucks where his estranged wife worked and confronted her. The store manager tried to protect the wife and was stabbed to death.
- ✿ Hours after getting fired, a worker returned to the office and killed two workers before turning the gun on himself.
- ✿ A gas station attendant was working alone late at night when a customer tried to leave without paying. When the attendant tried to stop the car, the customer ran him over and dragged him to his death.

Violence by non-employees is an especially serious threat for workers who work alone and/or late at night, handle money or prescription drugs, work with the public and work where alcohol is served. But it can happen anywhere and anyplace. Thus, all employers have a legal duty to protect workers from violence by non-employees. That duty comes from:

Workplace violence regulations. Some jurisdictions have regulations that specifically address workplace violence. And some of these regulations specifically cover attacks against workers by non-employees. For example, the BC *OHS Regulations* require employers to protect workers from violence and define “violence” as the attempted or actual exercise by a person—other than a worker—of any physical force so as to cause injury to a worker and includes threatening statements or behaviour.

Working alone regulations. Some jurisdictions—including AB, BC, MB, NB, NT, NU, PEI, QC and SK—have specific regulations on protecting workers who work alone. And those regulations require employers to take specific steps to protect workers working alone from various safety hazards, such as violence.

OHS laws. Even if a jurisdiction doesn’t have workplace violence or working alone regulations, each jurisdiction’s OHS laws have a so-called “general duty clause” that requires employers to protect workers from foreseeable hazards that can cause serious injury or death. And that general duty will likely be interpreted by courts to require employers to protect their workers from violence by both co-workers and non-employees.

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THE SOLUTION

As the *Kendal* case shows, although employers must protect workers from threats and violence by non-employees, they don't have to be perfect. In other words, employers won't be held liable if they take reasonable steps to protect workers but violence occurs anyway. Ultimate responsibility for ensuring that steps to guard against violence from non-employee are taken falls to you and your fellow officers and directors. These steps include:

Assessing the risks of violence by non-employees. Conduct a risk assessment of the likelihood of violence in the workplace by non-employees. That assessment should consider prior experiences in the workplace and in similar workplaces, as well as the workplace's location and the circumstances in which work is performed.

Setting a violence prevention policy and procedures. If a risk of workplace violence by non-employees is identified in the assessment, set a violence prevention policy and procedures, such as requiring workers leaving late at night to be escorted to their cars by security.

Taking steps to reduce violence hazards. Consider making changes to the workplace environment to minimize any identified risks, such as limiting access to parts of the workplace by non-employees, improving lighting in the parking lot or trimming shrubbery in which a criminal could hide.

Educating and training workers. Educate workers exposed to the risk of workplace violence by non-employees on the nature and extent of that risk; the policies, procedures and environmental changes made to minimize that risk; the appropriate responses to violence; and the procedures for reporting incidents of workplace violence by non-employees.

2. FINANCIAL ARGUMENTS

In many cases, your best chance of getting support from senior management is to relate the problems of workplace violence and harassment to money. Most of the literature and media coverage treats workplace violence in particular as, for lack of a better term, a human interest story. But that's not the only kind of harm created by workplace violence. What gets less attention is how workplace violence hurts a company's financial performance and eats away at profits. Emphasizing the economic costs can help you get senior management to see that workplace violence is, in fact, a serious problem and that investing the resources necessary to control this hazard is not only a moral but also an economic imperative. Here's some information you can use to make this case.

Workplace Violence Is More than Hype

The perception that workplace violence is increasing isn't just a creation of the media; it's grounded in reality. For example, the Canadian Initiative on Workplace Violence ("Initiative") conducted a survey of labour organizations across the country to identify the level and types of violence in Canadian workplaces. The survey defined workplace violence as "any incident in which a person is abused, threatened or assaulted in circumstances relating to their [sic] work," including physically violent or aggressive behaviour and psychological violence, such as emotional abuse, bullying and the systematic infliction of fear and anxiety. The "workplace" part of the definition covers behaviour of co-workers (at any level in the company) or of outsiders, such as customers, visitors or contractors.

The survey's result: Workplace violence in Canada is increasing. The prevailing view was that violence in workplaces had increased over the prior five years. Sixty-six percent of the survey respondents reported that they've witnessed an increase in aggressive acts in their workplaces, while 82% of those respondents reported an increase in both formal incident reports and grievances. And significantly, 53% felt that their employers weren't doing enough to address workplace violence.

Demonstrating the Economic Costs of Violence

Showing that workplace violence is on the upswing may get your CEOs' attention and even arouse their emotions, but it probably won't loosen the company's purse strings. To persuade senior management to invest company

resources in a workplace violence prevention program, you'll need to clearly explain exactly how workplace violence hurts the bottom line. However, doing so can be difficult because the costs associated with workplace violence are indirect and subtle. But these costs are real and can be documented fairly precisely. When a company experiences violence or the threat of violence in its workplace, it incurs higher costs in the form of increases in:

Absenteeism. According to the Initiative, worker absenteeism is a recognized by-product of workplace violence. Workers who perceive their workplaces as violent or potentially violent are likely to be stressed. And a number of studies show that workers under stress are likely to stay home. And the cost of absenteeism is growing significantly, averaging \$3,500 per worker per year.

Turnover. Workplace violence can drive otherwise happy workers from your workplace. When that happens, you not only lose valuable workers, but also incur administrative expenses related to replacing those workers. And replacement costs can be expensive. For example, one study estimated that it takes an average of 48 days and \$7,000 to replace a technical worker.

Stress. Working in the face of or under the threat of violence is stressful. And increased stress levels generally translate into increased costs for employee assistance programs, disability claims, etc.

Risk for safety-related incidents. The threat of workplace violence, whether actual or simply perceived, increases the risk of incidents and injuries. How? Workers worried about violence from a co-worker or another person at the workplace are more likely to engage in unsafe behaviour. For example, they may be distracted while working on machinery and so fail to follow your safety protocol. As a result, the workplace will have more safety-related incidents.

Liability. Workplaces that have experienced violence may face lawsuits from workers or bystanders injured or killed in the incident if victims believe that the employer didn't take proper steps to protect them.

Violence or the threat of violence in the workplace also hurts the bottom line by decreasing:

Productivity. Workers who believe their workplaces are dangerous or have the potential for violence are less productive than workers who are confident in the safety of their workplaces.

Morale. It's no surprise that morale will likely be low in workplaces that workers perceive as violent or having the potential for violence. And low morale generally translates into higher turnover and lower productivity.

Customer confidence. A well-publicized incident of workplace violence can seriously damage your company's image. As a result, customers may lose confidence in your company and so its revenue may take a hit.

RESOURCES

- ✿ “Criminal Victimization in the Workplace, 2004” by Sylvain de Léséleux; Statistics Canada; www.statcan.ca.
- ✿ “The Financial Risks of Workplace Violence” by Glenn R. French and Paul Morgan; The Canadian Initiative on Workplace Violence, www.workplaceviolence.ca.
- ✿ National Labour Survey, March 2000, The Canadian Initiative on Workplace Violence, www.workplaceviolence.ca.

APPENDIX

Workplace Violence & Harassment Resources

Many jurisdictions publish guides for employers on compliance with workplace violence and harassment requirements. Here are links to some of those guides:

National: *Workplace Violence and Harassment Report*, www.crvawc.ca/documents/WorkplaceHarassmentandViolencereport.pdf

AB: *Preventing Violence and Harassment at the Workplace*, http://employment.alberta.ca/documents/WHS/WHS-PUB_vah001.pdf

BC: *A Workplace for Employers and Workers: Preventing Violence*, www.worksafebc.com/publications/health_and_safety/by_topic/assets/pdf/preventing_violence_bk112.pdf; *Steps for Conducting a Violence Risk Assessment*, www2.worksafebc.com/PDFs/healthcare/violence_high_risk_communities_info_session_June08/sample_violence_risk_assessment_tools.pdf

NS: *Reference Guide to the Violence in the Workplace Regulations*, www.gov.ns.ca/lwd/healthandsafety/docs/WorkplaceViolence-ReferenceGuide.pdf; *Assessing the Risk of Workplace Violence*, www.gov.ns.ca/lwd/healthandsafety/docs/WorkplaceViolenceRiskAssessmentGuide.pdf

ON: *Violence in the Workplace*, www.wsib.on.ca/wsib/wsibsite.nsf/public/WorkplaceViolence

PEI: *Workplace Violence: Guide to Occupational Health & Safety Regulations on Prevention of Workplace Violence*, www.wcb.pe.ca/photos/original/wcb_wpviolence.pdf

SK: *A Sample Workplace Violence Policy*, www.labour.gov.sk.ca/Default.aspx?DN=aec29055-7eb0-46bb-9758-878af1139551; *Violence: A Guide to Developing a Violence Policy Statement*, www.labour.gov.sk.ca/Default.aspx?DN=3997c928-4c2f-4d85-90ab-9b43751d8f21; *Working Well: Employers' Guide to Preventing and Stopping Harassment in Saskatchewan Workplaces*, www.labour.gov.sk.ca/adx.aspx/adxGetMedia.aspx?DocID=978,976,94,88,Documents&MediaID=579&Filename=working-well-guide-aug25.pdf

Working Alone Resources

Some jurisdictions provide guidelines or other resources to help employers comply with working alone requirements. Here are a few of them:

AB: *An Explanation of the 'Working Alone' Requirements*, http://employment.alberta.ca/documents/WHS/WHS-PUB_wa002.pdf; *Working Alone Safely: A guide for Employers and Workers*, http://employment.alberta.ca/documents/WHS/WHS-PUB_workingalone.pdf

BC: *Guidelines Part 4 – Working alone or in isolation*, www2.worksafebc.com/publications/OHSRegulation/GuidelinePart4.asp#SectionNumber:G4.20.1

NL: *Working Alone Safely Guidelines for Employers and Employees*, www.gs.gov.nl.ca/ohs/safety-info/si-working-alone.stm

PEI: *Guide to Working Alone*, www.wcb.pe.ca/photos/original/wcb_work_alone.pdf



