



## WORKPLACE VIOLENCE: COMPLYING WITH THE OCCUPATIONAL HEALTH & SAFETY ACT

*The Ontario Occupational Health and Safety Act (OHSA) sets out employer responsibilities for addressing violence and harassment in the workplace*



As of September 8, 2016, the OHSA has new provisions to explicitly include protection against sexual harassment. For employers, important changes include; modifying the current definition of “workplace harassment” and imposing additional obligations on employers concerning their workplace harassment policies, programs and investigations.

This PSHSA Fast Fact provides an overview of existing statutory requirements for workplace violence and harassment under OHSA and the extended obligations arising from legislative changes. The information aims to guide corporate compliance and help employers effectively manage risk in the workplace.



## DEFINITIONS FROM THE ACT

### WORKPLACE VIOLENCE

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

### WORKPLACE HARASSMENT

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

### WORKPLACE SEXUAL HARASSMENT

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

The OHSa amendments specify that a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

## TYPES OF WORKPLACE VIOLENCE

Violence in the workplace is growing in all sectors. There can be four types of workplace violence:

**TYPE I. (External Perpetrator):** The violent person has no relationship to the worker or workplace.

**TYPE II. (Client/Customer):** The violent person is a client at the workplace who becomes violent towards a worker or another client.

**TYPE III. (Employment Related):** The violent person is a worker or has / had some type of job-related involvement with the workplace.)

**TYPE IV. (Domestic Violence):** The violent person has a personal relationship with an employee or client.

## EMPLOYER RESPONSIBILITIES

Under the OHSa, the employer has ultimate responsibility for preventing workplace violence and harassment. Listed below are key actions they must take.



1. Prepare a written\* workplace violence and harassment policy and post it in the workplace (\*unless five or fewer workers are employed).

2. Develop and maintain a program to implement the workplace violence policy as follows:

- Assess the risks that may arise from the nature of the workplace, type of work performed or conditions of work, as it applies to your workplace and those common to other places doing similar work;
- Share the assessment results with the joint health and safety committee (JHSC) or health and safety representative (HSR). If results are in writing, provide the JHSC or HSR with a copy;
- Introduce measures and procedures to:
  - Control identified risks of workplace violence;
  - Summon immediate help when workplace violence occurs or is likely to occur;
  - Report incidents of workplace violence;
  - Investigate and deal with incidents and complaints of workplace violence
- Reassess the risk of workplace violence as often as necessary to ensure the policy and program continues to protect employees and share results with the JHSC/ or HSR.

3. Develop and maintain, in consultation with the JHSC/ HSR, a written program to implement the workplace harassment policy as follows:

- Measures and procedures to report incidents and complaints to the employer or supervisor;
- Measures and procedures to report incidents and complaints to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;
- How incidents or complaints of workplace harassment will be investigated and dealt with
- How confidentiality during investigations will be maintained, including that identifying information about any individual involved will not be disclosed unless the disclosure is necessary for the investigation, corrective action or is required by law;
- How a worker who has allegedly experienced workplace harassment and the alleged harasser (if he or she is a worker of the employer) will be informed of the results of the investigation and of corrective actions taken.

The employer must also ensure:

- An investigation is conducted that is appropriate in the circumstances
- Worker and alleged harasser (if the alleged harasser is another worker in the same workplace) are informed in writing of the results of the investigation and corrective actions taken or to be taken.

**Note:** An inspector from the Ministry of Labour may order an employer to have an investigation and report completed by an impartial third-party, at the employer's expense.



4. Provide information and instruction to the employees on the contents of the workplace violence and harassment policy and program. This information must include information (including personal information) about a person with a history of violent behaviour, if an employee can expect to encounter the person and be exposed to physical injury (they may not disclose more information than is necessary to protect a worker from physical injury).
5. Take every precaution reasonable to protect an employee from physical injury in the workplace if the employer becomes aware or ought reasonably to be aware that domestic violence is a risk.
6. Notify the JHSC or HSR within four days if an employee is disabled from performing his/her own work or receives medical attention resulting from an incident of workplace violence.
7. Review its workplace violence and harassment policy and program as often as is necessary, but at least annually.

## **RIGHT TO REFUSE UNSAFE WORK**

The right to refuse unsafe work includes workplace violence. An employee may refuse unsafe work if he/she has reason to believe that workplace violence is likely to endanger them. Existing work refusal limitations for police, firefighters, healthcare workers, ambulance services, and correctional institutions still apply (inherent in work/normal condition of employment, directly endanger the life, health or safety of another person). Until the investigation into a work refusal is complete, the employee must remain in a safe place as close to her/his workstation as possible (unless assigned other work). She/he must also be available during normal working hours for any investigation.

## **HOW TO COMPLETE A RISK ASSESSMENT FOR WORKPLACE VIOLENCE**

The OHSA requires employers to complete a risk assessment for workplace violence. As a leading practice, this should include all four types of violence. Below is a checklist for completing your assessment.

1. Review past incidents of workplace violence in the organization including:
  - a. Employee incident reports, complaints, and grievances
  - b. Client/customer incidents/complaints,
  - c. Security reports,
  - d. Emergency response reports,
  - e. Unusual occurrence reports, and
  - f. EAP usage.
2. Review workplace violence risks specific to your workplace, sector and physical location.
3. Determine employee perception of workplace violence and harassment.



4. Assess environmental factors such as:
  - a. Staff travel/parking lots,
  - b. Lighting,
  - c. Signage,
  - d. Building exterior/general appearance,
  - e. Access to the facility, and
  - f. Security measures (panic buttons/surveillance/ communication devices).
  
5. Review risks related to work setting, clients and work practices, including:
  - a. Working alone or at night;
  - b. Working in the community;
  - c. Working with high-risk clients or the public;
  - d. Emergency response procedures;
  - e. Point-of-care work practices (person-centered care, gentle persuasive approach, therapeutic alliance and collaborative recovery model); and
  - f. Employee education.

## RESOURCES

Occupational Health and Safety Act, R.S.O. (1990) c.O.1.: <https://www.ontario.ca/laws/statute/90o01>

Additional information on workplace violence and the role of OHSa can be found on <https://workplace-violence.ca/>

Ministry of Labour Code of Practice to Address Workplace Harassment:  
<https://www.ontario.ca/page/code-practice-address-workplace-harassment>