

How Safe is Your Office?

A compliance check-up for a harm-free workplace

BY MICHAEL H. CLIFTON

IT'S BEEN JUST OVER six years since amendments were made in December 2009 to Ontario's *Occupational Health and Safety Act* (OHSA), which introduced a new range of duties for employers to help address issues of workplace violence and harassment. For a while, it was the talk of the town in many legal seminars and publications, as everyone sought to understand their obligations (which became effective in June 2010).

Hopefully, by now, everyone has done—and is continuing to do—exactly what they are supposed to, including:

1. Conduct risk assessments (and reassessments) to determine the degree of vulnerability of the workplace to incidents of violence; [These assessments must take into account not just the actual circumstances of the specific workplace, but risks that might be common in any similar workplace.]

2. Develop policies pertaining to workplace violence and harassment which, among other things, should (i) take into account the results of the risk assessments, (ii) set out protocols to be followed in the face of violent behaviour and (iii) establish guidelines and procedures for reporting and investigating harassment complaints; [A workplace where more than five workers (broadly defined in the OHSA to include almost anyone from a paid employee or contractor to a high school volunteer) are regularly employed must not only have such policies, but must have them in writing and posted at a conspicuous place in the workplace. Each workplace's policies are to be reviewed annually.]

3. Develop a program to implement the workplace violence policy, including



measures and procedures for controlling risks, obtaining assistance when violence occurs or is likely to occur, and for the reporting and investigation of violent incidents.

4. Instruct or train workers with respect to the workplace policies and programs.

5. Inform a worker if a person likely to be encountered in the workplace is a known violent offender, or if the worker is at risk of physical injury as a result of such potential encounter. [Note, this is to be done somewhat regardless of usual privacy considerations, but employers should only disclose as much personal information about the known violent offender as is reasonably necessary to protect the worker from injury. Employers should ensure their privacy policies don't contradict this obligation.]

An employer who is uncertain whether these things are being done is advised to consult with legal counsel. For each

workplace (meaning, anywhere at, near or upon which a worker works) some requirements might differ in some ways due to its particular characteristics. But when it comes to effectively addressing issues of violence and harassment, it's important to consider not only whether the policies and protocols of your workplace meet the technical requirements of the law, but whether the conduct and character of its constituents meet the law's purposes and intent. These considerations apply to all workplaces without exception.

In last year's Ontario Labour Relations Board (OLRB) case *Thompson v 580062 Ontario Inc. (Slainte Irish Gastropub)*, 2015 CanLII 76907, a restaurant employee was subjected to psychological and verbal abuse and violence by the restaurant's owner. The mere presence of policies, protocols or procedures could not help. Likewise, the OLRB has noted in other cases that the OHSA does not provide a

remedy for every act of harassment or violence that might occur.

This isn't a flaw in the law. The fact is that what is really needed to prevent workplace violence and harassment cannot be legislated or programmed; it can only be learned and implemented willingly by individuals in the workplace. For the most part, this begins with the conduct and character of the workplace leaders.

In his book, *Resilience: Hard-won Wisdom for Living a Better Life* (Houghton Mifflin Harcourt, 2015), former Navy SEAL Eric Greitens points out that the principles that most often improve the substance of our lives cannot be learned effectively solely from books (or, in this case, from posted policies), but are best obtained by the observation of exemplars. He says, simply, "You know what a good thing is by seeing what the good person does."

Over and above making policies and programs, establishing a violence- and harassment-free workplace requires that its lead players—its supervisors and other senior staff and executives—exemplify relevant characteristics, such as respect for self and others, patience, understanding, empathy and kindness. Complying with the technicalities can help—the process of assessing risks and inventing policies can turn supervisors' minds to these issues more deliberately and may serve to refine their understanding, awareness and concern about them—but it is only through their personal adoption of those traits and other principles that promote a non-violent and non-harassing environment that they really serve the best interests of the workplace and its workers.

It sometimes seems trite to contrast the "spirit" of the law and its "letter" in this way, but the fact is that for areas of law like this one, which deal directly with personal safety and security, as well as genuine job satisfaction and performance, whenever practices are inconsistent with the law's spirit, its letter can never be properly observed. **OHB**

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