Workplace violence and harassment prevention: A practical guide for employers

How to develop and implement a prevention program and policies that comply with legal requirements

Author: Adam Gorley
Editor: Yosie Saint-Cyr
First Edition: December 2009
Reviewed: October 2014

First Reference Compliance & Best Practices Guides
This guide offers general comments on developments of concern to business, and is written for informational purposes only. It is provided with the understanding that neither the author nor the publishers is engaged in providing legal advice.

The authors, publishers and all others directly or indirectly involved with the publication do not assume any responsibility or liability, direct or indirect, to any party for any loss or damage by errors or omissions regardless of the cause, as a consequence of using this publication.

Author: Adam Gorley
Editor: Yosie Saint-Cyr
First Edition December 2009
Last Updated: November 2013
Reviewed: October 2014

Value $79.00 CDN

Library and Archives Canada Cataloguing in Publication
Gorley, Adam, 1978–
Workplace violence and harassment prevention: A practical guide for employers/ by Adam Gorley.
At head of title: First Reference.

ISBN 978-0-9813602-0-1
Print ISSN 1923-8029
Online ISSN 1923-8037
# Table of Contents

## Introduction
- Prevalence of violence in the workplace

## What is workplace violence?
- Jurisdictional definitions

### Federally regulated workplaces
- Alberta
- British Columbia
- Manitoba
- Newfoundland and Labrador
- Nova Scotia
- Ontario
- Prince Edward Island
- Saskatchewan
- Other jurisdictions

### Bullying and harassment
- Manitoba
- Ontario
- Saskatchewan
- British Columbia

## Consequences of violence and harassment in the workplace
- Health
- Stress
- Liability
- Grievances
- Productivity
- Morale
Workplace violence and harassment prevention

Corporate image

Finances

Legal obligations and preparing a workplace violence prevention plan

Special considerations

Risk assessments

Legal requirements

Consultations

Reporting

Re-assessment

Policy and procedures

Considerations

Who faces the risk?

Who causes violence or increases the risk?

What does the violence look like?

Sources and conditions of violence

Physical environment

Other factors

Conducting a risk assessment

Policy and procedures

Consultations

Contents

Training

Domestic violence provisions in Ontario

Defining domestic violence

Identifying domestic violence in the workplace

Domestic violence policy and procedures

Domestic violence and privacy

Reduction strategy

Individual

Organizational
Workplace violence and harassment prevention

Education and training .................................................................................................................. 36
Response teams ............................................................................................................................ 39

Informing workers at risk and protecting employees’ rights ..................................................... 39
Duty to inform ................................................................................................................................. 39
Disclosure and collection of personal information ................................................................. 40
Human rights ................................................................................................................................. 40

Response, investigation and follow-up ..................................................................................... 41
First response ................................................................................................................................. 42
Reporting and investigating ........................................................................................................... 43
Follow-up ...................................................................................................................................... 44

Resources and solutions ............................................................................................................. 45
References ..................................................................................................................................... 46
Appendices ................................................................................................................................. 48

Appendix A: Sample workplace violence policy ........................................................................ 49
Appendix B: Sample workplace harassment policy ................................................................. 54
Appendix C: Sample violent incident report form ..................................................................... 60
Appendix D: Sample violent incident investigation checklist ................................................... 62
Appendix E: Sample workplace violence risk assessment form .............................................. 63
Appendix F: Sample violence in the workplace compliance checklist ...................................... 66
Introduction
As an employer, have you experienced violence in the workplace, either as a victim or a witness? Do you know how to recognize it? Do you know what you must do?

Employers have legal obligations to prevent incidents of violence in the workplace.

Employers must familiarize themselves with their obligations, and have a solid violence prevention plan and policy in place.

How can First Reference help?
This guide offers the methodology for building a violence prevention plan and highlights the legal/HR issues, policies and steps that must be taken.

Prevalence of violence in the workplace
According to Statistics Canada, in its first ever Criminal Victimization in the Workplace study (www.statcan.gc.ca/pub/85f0033m/85f0033m2007013-eng.htm), approximately 356,000 incidents of workplace violence took place in Canada in 2004. That number makes up 17 percent of all self-reported incidents of violence in the provinces. The figure would surely be higher if it could encompass unreported violence, or if respondents used the broad legal definitions of violence and harassment (discussed below) to guide their answers.

In addition, 71 percent of respondents classified violent workplace incidents as physical assault. Of the violent non-workplace incidents, only 57 percent were classified as physical assault. This difference points to a clear problem in Canada’s workplaces.

Further, according to Google Trends, more Internet searches on “workplace violence” come from Canada than anywhere else in the world, and five Canadian cities are among the top ten sources for those searches.

While it may be a few years before the public (or the Canadian government) gets a firm grasp on trends in workplace violence, what is clear now is that violence in Canada’s workplaces has numerous negative effects on Canadians’ personal and work lives, as well as business and society in general.

Not all provinces and territories have legislation that explicitly covers workplace violence or that requires employers to develop and implement a workplace violence prevention program; but there appears to be a push by stakeholders and legislators across the country to tackle the issue. Newfoundland and Labrador amended its Occupational Health and Safety Regulations in 2009 to push employers to eliminate or minimize violence in their workplaces; Ontario passed a bill in 2010 that amends the province’s Occupational Health and Safety Act, offering employees clear protection against workplace violence and harassment and creating several new responsibilities for employers with respect to violence at their workplaces; and Manitoba recently added workplace psychological harassment to its Workplace Safety and Health Regulation.

Most employers know that general duty clauses and human rights legislation—at either the national level or in their province or territory—
Workplace violence and harassment prevention

protect employees from harassment based on various protected grounds, and this covers some aspects of workplace violence; but it is less clear where employers should look to understand their obligations when it comes to protecting workers (and their physical workplaces) from the full range of violent behaviour.

This guide looks at Canadian employers’ obligations with respect to workplace violence from the perspective of organizational occupational health and safety rather than human rights, and directs employers in their efforts to develop and implement a workplace violence prevention policy and program.

It appears that Canadians are getting the message about workplace violence, and our legislators are paying attention, too. It seems likely that sooner rather than later, every Canadian jurisdiction will enact occupational health and safety legislation or regulations explicitly covering workplace violence in some form or another, which will require employers to develop a workplace violence prevention policy and program.

Regardless of the inevitable legislative or regulatory requirements, if organizations like the International Labour Organization, The Canadian Initiative on Workplace Violence and the media are correct, and violence is in fact increasing in Canada’s workplaces, employers will have no choice but to take a close look at their own businesses to see whether their employees are engaging in or experiencing violent behaviour.

The main questions that employers must ask themselves are:

- What is workplace violence?
- What actions must we take (by law) to eliminate or minimize violence at our workplace?
- What costs will we face by either acting or not acting to prevent workplace violence?

Employers might also find it valuable to ask themselves how they can turn these legal obligations to their advantage.

**What is workplace violence?**

“An increase in awareness is usually accompanied by a decrease in tolerance for incidents of abuse.” (Preventing Violence and Harassment at the Workplace, WorkSafe Alberta)

There is no legislation in Canada that provides a single definition of “workplace violence” for the entire country. However, among the numerous legal and prescriptive definitions you can find in the provinces and in Canadian business’ policy manuals, the Canadian Centre for Occupational Health and Safety outlines the following helpful categories of workplace violence:

- Threatening behaviour — such as shaking fists, destroying property or throwing objects
- Verbal or written threats — any expression of an intent to inflict harm
- Harassment — any behaviour that demeans, embarrasses, humiliates, annoys, alarms or verbally abuses a person and that is known or would be expected to be unwelcome;
including words, gestures, intimidation, bullying or other inappropriate activities

- Verbal abuse — swearing, insults or condescending language
- Physical attacks — hitting, shoving, pushing or kicking

The Canadian Initiative on Workplace Violence offers a slightly different outline:

- Harassment
- Bullying and intimidation
- Physical assaults
- Theft and fraud
- Stalking

For specific definitions, employers must look to occupational health and safety legislation, regulations and case law in their jurisdictions. Legislation and/or regulations in **Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan** and in the **federally regulated jurisdiction** cover workplace violence directly.

Regulations or legislation in Manitoba, Ontario and Saskatchewan draw a line between workplace violence and harassment. In these provinces, the recognition of harassment as distinct from violence should encourage employers and their employees to consider and treat these offences as equally important and equally improper.

In the remaining jurisdictions, workplace violence and harassment are covered under the occupational health and safety legislation (OHS) general duty clause. In addition, human rights law in all jurisdictions covers workplace harassment based on any of the prohibited grounds of discrimination. These grounds vary by jurisdiction and may prohibit discrimination based on: age, sex, religion, disability, race, nationality, among others.

Further, Quebec’s employment standards legislation recognizes “psychological harassment”, which likely covers some of the above behaviours. The **Act Respecting Labour Standards** defines it as “vexatious behaviour in the form of repeated conduct, verbal comments, actions or gestures that are” a) hostile or unwanted; b) affect the employee’s dignity, psychological or physical integrity; and c) make the environment harmful.

A more detailed discussion of the jurisprudential requirements with respect to workplace violence appears below.

Regardless of whether the law spells it out or not, all Canadian employers are obliged to apply due diligence in their workplaces to protect their employees from harm while working. This clearly includes workplace violence. The CCOHS explains:

Applied to occupational health and safety, due diligence means that employers shall take all reasonable precautions, under the particular circumstances, to prevent injuries or accidents in the workplace. This duty also applies to situations that are not addressed elsewhere in the occupational health and safety legislation. (http://www.ccohs.ca/oshanswers/legisl/diligence.html)

**Jurisdictional definitions**

**Federally regulated workplaces**

PART XX, Canada Occupational Health and Safety Regulations (SOR/86-304) under Part II of the **Canada Labour Code** (http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/), defines “work place violence” as:

Any action, conduct, threat or gesture of a person towards an employee in their workplace that can reasonably be expected to cause harm, injury or illness to that employee.