WORKPLACE VIOLENCE AND HARASSMENT: UNDERSTANDING THE LAW

Your Responsibilities as an Employer to Create a Respectful Environment
BACKGROUND

Deborah Vittie-Pagliaro

RETIRED TORONTO POLICE DETECTIVE
Principal Co Founder Investigative and Corporate Evaluation
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Suzanne Kernohan
RETIERED TORONTO POLICE
DETECTIVE
Principal Co-Founder Investigative and
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Talk to many a cop, and they will tell you that sex crimes are the worst. I know of one veteran reporter who sat in with Calgary officers who examine a relentless tide of child pornography—he lasted a day. And it’s not overreaching, it’s not film noir hype, to report that Suzanne Kernohan and Deborah Vittie-Pagliaro—both of whom worked about 30 years on the Toronto police force before they retired and went into business together—have checked out some of the sewer-dark blackness of the human condition. Vittie-Pagliaro, for example, was on the Holly Jones murder task force—the case back in 2003 when a 10-year-old girl went missing in Toronto, parts of her body later found in bags. The case haunted the city, with west end residents doing their own amateur patrolling while attempts were made to match other children that summer. Kernohan was a sergeant at the force’s 11 Division, which covered the neighbourhood where Holly lived. Eventually, her killer was caught, the invariable being asked: why? Why do such a horrible thing? He claimed he got himself worked up from watching child porn.

“And those are the things that don’t leave you,” says Kernohan, who calls it “heartbreaking” to deal with the family.

“Cops are generally fixers,” adds Vittie-Pagliaro. “There’s no fixing this. It devastated the family, the community, everything. There’s just no making sense of it.”
WORKPLACE VIOLENCE AND HARASSMENT

UNDERSTANDING THE LAW
THE LAW
THE LAW

• Occupational Health and Safety Act (Ontario)
  • Bill 168 (June 2010)
  • Bill 132 (Sept. 2016)
• Employment Standards Act
• Human Rights Code
• Criminal Code
Bill 132

An Act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters
BILL 132

WHAT HAS CHANGED?

WHO WILL BE IMPACTED?

WHAT DOES THIS MEAN FOR EMPLOYERS?

WHAT DOES THE EMPLOYER NEED TO DO?
BILL 132

What has changed?

Additional obligations imposed on employer to reinforce protection of employees from harassment and sexual harassment and violence in the workplace.
BILL 132

Who will be impacted?

Employers with more than one employee will affected by the new law.
BILL 132

What does this mean for employers? DUTIES!

• An investigation must be conducted
• Worker & Harasser: Informed in writing
• Program review as necessary, at least annually
BILL 132

What Does the Employer Need to Do?

CODE OF PRACTICE

• 4 Parts + Templates

1. Workplace Harassment Policy

2. Workplace Harassment Program

3. Employer’s Duties Concerning Workplace Harassment

4. Providing Information & Instruction on Workplace Harassment
PART 1
WORKPLACE HARASSMENT POLICY

A. In writing
B. Posted
C. Reviewed at least annually
D. Signed and dated by CEO
E. 7 Elements
PART II

PROGRAM

IN WRITING / DEVELOPED WITH JHSC

A) Reporting
B) Investigation and Handling of Complaint
C) Record Keeping
When employer or supervisor becomes aware of an incident or a complaint is made

7 INVESTIGATIVE STEPS
PART IV

DUTIES

Providing information & instruction on Workplace Harassment Policy & Program
BILL 132

WORKPLACE HARASSMENT DEFINITION

“A course of vexatious conduct or comment against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”
IF IT’S UNWANTED, IT’S 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 or

(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 the solicitation or advance is unwelcome.”
HOW YOU DOIN’?
MANAGEMENT VS. HARASSMENT
YOU ARE STILL THE BOSS!
Q. Who enforces the Act?
A. Ministry of Labour Inspectors.
  • Employers must assist and co-operate
  • May issue orders and / or charges against individuals and/or corporations for non-compliance
Individuals = $25,000 per offence and/or 12 months in jail

Corporations = $500,000 per offence
An inspector may order an employer to cause an investigation to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications.
WORKPLACE VIOLENCE
WORKPLACE VIOLENCE
DEFINED

The exercise of physical force or the attempt to exercise physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker,

A statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, that could cause physical injury to the worker.
WORKPLACE VIOLENCE
EXAMPLES

• Verbally threatening to attack a worker
• Leaving threatening notes at, or sending threatening e-mails to a workplace
• Shaking a fist in a worker’s face
• Wielding a weapon at work
MUSIC FESTIVAL OPENS

Vancouver
OHSA – Employer **must** provide appropriate information and instruction to workers on content of WP Violence policy and program
Supervisors may need additional instruction, if they are going to follow up reported incidents.
Supervisors may need to know how to respond sensitively to disclosures of WP violence which could include sexual assault.
Under OHSA employer has a general duty to provide information, instruction and supervision to protect a worker

- Supervisor has a duty to advise workers of actual or potential occupational health & safety dangers of which the supervisor is aware
Employer must tailor the type and amount of information and instruction to the specific job and the associated risks of WP violence.

Workers in higher risk jobs may require more frequent or intensive or specialized training.
DOMESTIC VIOLENCE

Any physical, sexual or psychological harm attempted or caused between persons involved in an intimate relationship

Not an anger management problem

A POWER and CONTROL issue
DOMESTIC VIOLENCE

What does this have to do with me as an employer?
DOMESTIC VIOLENCE

OHSA - Sec. 32.04

“An employer must take every precaution reasonable in the circumstances for the protection of workers when they are aware that domestic violence may occur in the workplace and that it would likely expose a worker to physical injury.”
CASE STUDY
TORONTO POLICE SERVICE CONT’D

- Female clerical employee
- Domestic Violence Occurrence
- Offender charged / No Contact Order
- Offender showed up at workplace
- Asked officer front desk to call “his wife” to come to lobby
WORK REFUSALS

OHSA

• A worker can refuse to work if has reason to believe may be endangered by workplace violence. Procedure must be followed

WORK CANNOT BE REFUSED ON GROUNDS OF WORKPLACE HARASSMENT
IMPORTANT DISTINCTION

Workplace Harassment can lead to Workplace Violence
BUT
Workplace Violence is NOT Harassment!
DISCLOSURES

Disclosures = Investigation
Your investigation must be……

• Commenced in a timely manner
• Comprehensive in scope / thorough
• Properly documented
• Communicated to all necessary parties
• Protects privacy & confidentiality of parties
• Suitable remedial action
COMPLAINANT SENSITIVITY

• Speak in a setting that provides privacy
• Always speak professionally and respectfully to all parties
• Be objective, do not offer personal opinions
• Do not judge or jump to conclusions
FAIRNESS & NEUTRALITY

Follow principals of fairness & neutrality: the key to the success of any investigation comes from maintaining fairness & neutrality with all parties involved!
YOU RECEIVE A COMPLAINT

Traditional Complaint:
By employee following employer policy

Non Traditional Complaint:
By “confidential” complaint, rumour, or anonymous complaint
PLANNING THE INVESTIGATION
YOU HAVE DECIDED TO CONDUCT A FORMAL INVESTIGATION

• Who will conduct the investigation?
• What documents will be looked at?
• Who will be interviewed?
• Standard information to be communicated to each person interviewed?
THIRD PARTY INVESTIGATORS
WHEN TO CONSIDER EXTERNAL INVESTIGATORS

• Bias or perception of bias
• Internal investigator is not sufficiently experienced
• Allegations are very serious
• Multiple complainants or respondents
• Parties are represented by counsel or a union
• Allegations involve delicate/difficult subject matter
• Parties are high profile within the organization
• Complaint arises in the department in which the internal investigator works or someone the internal investigator knows well
• There is high likelihood of legal challenge
REMEMBER...THE 3 W’S!!

1. WHAT DID YOU KNOW?
2. WHEN DID YOU KNOW?
3. WHAT DID YOU DO ABOUT IT?
GAME CHANGER

OPT vs. Presteve Foods Ltd.

• Until recently, damages for human rights infringements were relatively modest
• This award has surpassed all previous awards & the prediction is that other cases will soon follow
• This award also brings attention & awareness on the hardships/challenges that temporary foreign workers face
• A sign of the times EMPLOYERS BEWARE.
REMEMBER THIS GUY?
“A Respectful, Healthy, Workplace”

The Ultimate Goal
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THANK YOU