

# Workplace Violence and Harassment: New Obligations for Long Term Care Homes

There has been a great deal of recent focus on issues related to resident violence and abuse in long term care homes, and the need to ensure that appropriate systems are in place for the prevention and management of such incidents. This is reflected, for example, in the extensive requirements under the *Long Term Care Homes Act* (LTCHA), which is now law (but not yet in force), and proposed regulations that require long term care homes to have policies, programs and training in place. What is not addressed in the legislation is workplace violence and abuse.

Employers have always been under a general obligation to protect the safety of staff and others in the workplace. It is also recognized that health care environments are inherently dangerous workplaces, with health care workers being at increased risk for violence, abuse and harassment in the workplace. New amendments to the *Occupational Health and Safety Act* (Ontario) (OHSa) through Bill 168, which will come into effect as of June 15, deal specifically with workplace violence and harassment. They will have significant implications for all employers, particularly long term care homes.

The impetus for this legislation stemmed in part from concerns raised following the 2005 death of Lori Dupont, a nurse who was fatally stabbed in the workplace by Marc Daniel, an anesthetist at the hospital where they both worked. The nurse and the physician had been in

a personal relationship, which had ended. A coroner's inquest was held and the jury released 26 recommendations related to domestic and workplace violence. Bill 168 was part of the response from the Ontario Ministry of Labour to protect workers in the workplace.

## What does the Bill cover?

The OHSa amendments include key definitions relating to workplace harassment and workplace violence.

- **Workplace harassment** is defined as "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." Thus, the definition of workplace harassment is very broad. It extends beyond the protections found under human rights legislation to include other types of behaviours such as bullying.
- **Workplace violence** includes the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury or an attempt by a person to do so; or a statement or behaviour that is reasonable for a worker to interpret as a threat to cause physical injury to the worker.

## Obligations on employers

The amendments impose new obligations on long term care homes, including:

### Policies

With the exception of employers with five or fewer employees, all long term care homes must develop written policies with respect to workplace violence and workplace harassment. These should be posted in a conspicuous place in the workplace. Policies must be reviewed as often as necessary, but at least once a year. In addition, each employer must develop and maintain a program to implement the policies.

### Programs

Each long term care home must develop programs relating to workplace violence and workplace harassment that include, among other things, measures and procedures:

- to control identified risks that are likely to expose a worker to physical injury;
- for summoning immediate assistance when workplace violence occurs or is likely to occur;
- for workers to report incidents of workplace violence or harassment; and
- that set out how the employer will investigate and deal with incidents or complaints of workplace violence or harassment.

### Risk assessment

Every long term care home is required to assess the risks for workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work. In doing so, the assessment must take into account circumstances that would be common to similar workplaces, as well as circumstances specific to that particular workplace. A number of tools and resources are available that deal with such risk assessments.

There is an obligation to advise the joint health and safety committee or workers of the results of the risk assessment. The risks for workplace violence should be reassessed as necessary to ensure that employers' policies continue to protect workers from workplace violence.

### Domestic violence

The new obligations under the OHSa go beyond workplace violence *per se* and extend to situations where a long term care home becomes aware that domestic violence is likely to expose a worker to physical injury in the workplace. In these circumstances, the long term care home is required to take every precaution reasonable to protect the worker. The long term care home may need to put a safety plan into place for the worker

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and take additional security and legal steps to protect the worker from harm.

### **Provision of information**

As with other obligations under the OHSA, long term care homes have an obligation to provide information and instruction to workers to cover the contents of the workplace violence and harassment policies and programs.

One of the most significant obligations under this legislation is the duty to provide information to workers. This includes providing personal information related to a risk of workplace violence from a person with a history of violent behaviour, if a worker can be expected to encounter that person in the course of his or her work. In other words, this provision requires long term care homes to advise a person's co-workers if they are working

with a person who has a history of violent behaviour in the workplace. It is not clear how far back this obligation extends and whether it extends to violent behaviour

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outside of the workplace if it results in a risk of workplace violence. As of yet, there is little guidance as to how this obligation may be interpreted.

### **Work refusal**

The legislation also specifies that the right

to refuse unsafe work extends to situations where workplace violence is likely to endanger the worker. This is subject to exceptions relating to the nature of the work environment. The OHSA sets out rules governing the investigation of work refusals.

### **Implications**

Even long term care homes with existing workplace violence and abuse policies will have work to do to ensure that their policies comply with the new obligations under the OHSA.

Others will need to develop appropriate policies relating to workplace violence and harassment, including programs, measures and procedures; conduct a risk assessment relating to workplace violence; and provide information and instruction to employees on these matters. **LTC**