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LABOUR AND EMPLOYMENT COMMUNIQUÉ

CONSULTATION PAPER ON WORKPLACE VIOLENCE PREVENTION RELEASED BY ONTARIO MINISTRY OF LABOUR

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On September 17, 2008, the Ontario Government released its Consultation Paper on Workplace Violence and Prevention. The Consultation Paper provides background information on the current requirements under the Occupational Health and Safety Act (OHSA) and regulations that pertain to workplace violence. It encourages stakeholder input to assess whether these requirements should be refined or improved in order to adequately prevent and address workplace violence in Ontario. The 30-day review process recently concluded on October 17, 2008.

Specifically, the Ministry of Labour ("MOL") was interested to know what stakeholders thought about the prospect of including in the OHSA or its regulations: (i) a definition of workplace violence; (ii) a more explicit requirement regarding the development and implementation of a workplace violence prevention program; (iii) sector-specific requirements for high risk workplaces; (iv) a requirement that employers address the risk of domestic violence in the workplace; and (v) an expanded work refusal provision that would include violence or the threat of violence as grounds for a work refusal.

As it stands, there are no explicit requirements in the OHSA or its regulations concerning workplace violence. Yet despite this, employers do have a general duty under section 25(2)(h) of the OHSA to take every precaution reasonable in the circumstances to protect their workers, which includes taking every reasonable precaution to prevent workplace violence. Reasonable precautions may include identifying the risk of injury to workers from workplace violence and taking the appropriate measures to protect them. In addition, section 25(2)(a) of the OHSA makes it clear that employers are also obligated to provide information, instruction, and supervision to protect the health and safety of workers from workplace hazards, such as workplace violence.

In its Consultation Paper, the MOL explains that while workplace violence is not currently defined in the OHSA or its regulations, it has developed an operational policy that it would like feedback on which defines workplace violence as "...the attempted or actual exercise, by a person, of any intentional physical force that causes or may cause injury to a worker, and includes any threats which give a worker reasonable cause to believe he or she is at risk of physical injury." The MOL points out that this definition of workplace violence is focussed on the outcome to the worker, irrespective of the assailant, and is consistent with the definition used in most Canadian jurisdictions.

At present, an occupational health and safety inspector can, in certain circumstances, order an employer to perform a risk assessment of the workplace, implement workplace violence prevention measures and procedures, and provide training to workers. It has been suggested that a more explicit requirement regarding the development and implementation of workplace violence prevention programs could be based on the MOL's current expectations as well as: (a) a requirement to develop and implement a workplace violence response plan; (b) a requirement to address behaviours, such as bullying and teasing, that could contribute to workplace violence; and/or (c) a consideration of whether or not the program should distinguish between possible sources of violence.

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Another concern is that the risk of workplace violence has been identified as being higher in certain sectors such as correctional services, education, health care, hospitality, police, security agencies, social services, and transportation. There are also several work activities that have been identified as risk factors for workplace violence, such as handling cash, transporting people or goods, having public or community contact, working alone, and working late nights or very early mornings. Therefore, the MOL was interested to hear whether or not any explicit legislative or regulatory language should be developed that addresses the particular risks associated with activities performed in high-risk sectors.

As for the issue of domestic violence, the MOL was interested in finding out whether stakeholders thought there should be a specific requirement under the OHSA or its regulations that employers address the issue of domestic violence, and if so, whether or not these requirements should be dealt with as part of a more general, but revamped, workplace violence prevention program.

Finally, the MOL was interested in knowing whether or not the current work refusal provisions in the OHSA should be expanded to include violence or the threat of violence as grounds for a work refusal. The problem is that current work refusal provisions in the OHSA do not usually apply to incidents of workplace violence because concerns about violent behaviour, or the threat of violent behaviour, do not typically meet the criteria for refusing work in the OHSA. Those criteria only involve dangers posed by equipment, machines, devices, things or the physical condition of the workplace, according to section 43(3) of the OHSA. Also of particular importance to the MOL was whether a worker should be allowed to leave the workplace prior to the completion of the investigation in situations where there is a threat of physical violence.

To review the Consultation Paper on Workplace Violence Prevention, please visit the MOL's website at http://www.labour.gov.on.ca/english/about/consultation/wp_violence/index.html.

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