



On June 15th, 2010, the amendments to the *Occupational Health and Safety Act*, (the “OHSA”) came into effect. These amendments place new obligations on condominium corporations throughout Ontario to create and update workplace violence and harassment policies and programs. It is worth noting that these obligations are in addition to existing obligations, such as the duty to protect workers from ordinary workplace dangers.

Definitions

The OHSA defines key terms, including “workplace violence”, “harassment”, and “worker”.

“Workplace violence” includes a. actual physical force against a worker, in a workplace that causes or could cause injury; b. attempted physical force against a worker, in a workplace, that could cause injury; or c. a statement or behaviour that could reasonably be interpreted as a threat of physical force that could cause injury.

“Workplace harassment” is defined as a course of vexatious comment or conduct against a worker, in the workplace, that is known or ought reasonably to be known to be unwelcome. It should be noted that this definition of harassment is broader than the definition found in other pieces of legislation, such as the *Ontario Human Rights Code* which is limited to harassment related solely to the prohibited grounds of discrimination, such as age, sex and religion.

“Worker” means a person who performs work or supplies services for monetary compensation. With this expansive definition, essentially any employee, contractor, subcontractor, or professional could qualify as a worker of a condominium. For example, this could include a property manager, superintendent, custodian, trades, and even a condominium’s lawyer or auditor.

Overview of the Process

The new obligations of every condominium are defined in Part III.0.1 of the OHSA. To summarize, every employer must a. assess the risk of workplace violence and harassment; b. develop and implement policies and programs to prevent and manage workplace violence and harassment; and c. provide information and training to workers about the assessment, and the policies and programs.

Step 1: Assessment

Before developing any workplace violence policy or program, a condominium must assess the risks of workplace violence that arise from the nature of the workplace, the type of work, and the conditions of work. The risk of domestic violence against a worker must also be assessed. The assessment must take into account the circumstances that would be common to similar workplaces, circumstances specific to the workplace, and any other prescribed elements which may be included in regulations in the future. The assessment should include interviews with workers, site inspections, and comparisons to other condominiums in the area. A condominium’s property manager will likely provide the greatest insight into the risks of violence within the condominium as he or she is often the one that conducts site inspections and will be able to compare the risks of violence within the condominium to those of other condominiums he or she may manage.

While the OHSA does not require an assessment of the risk of workplace harassment, it seems appropriate that a harassment assessment could be conducted at the same time the risk assessment for violence is conducted. This proactive approach could assist in a defence should the condominium be charged as it would establish the condominium took reasonable efforts to comply with the requirements and protect its workers from violence and harassment.

A condominium may decide to have the assessment conducted by a qualified consultant. This would be prudent, especially where there appear to be many risks present in the condominium. A copy of the report prepared by the consultant or board of directors must be provided to the workers or the workers' representatives. As mentioned, the definition of "worker" is quite broad under the OHSA, and as such, every condominium should ensure that its risk assessment is communicated to each contractor and/or subcontractor that enters the condominium property.

Finally, the condominium must reassess the risks of violence as "often as is necessary" to ensure that the policy and program continue to protect workers. Given that the violence policies must be reviewed at least once per year, it would seem appropriate to conduct a risk assessment just prior to the review of the policies to ensure that there has been no change in circumstances.

Step 2: Development & Implementation

Policies

Once an assessment is complete, a board of directors should develop policies and programs for dealing with both workplace harassment and violence. Unfortunately, the OHSA does not provide any guidance as to the specific content to be contained in the policies. At a minimum, the policies should: a. be consistent with the *Condominium Act, 1998*, and the declaration, by-laws and rules; b. define harassment and violence, which definitions may be more expansive than those included in the OHSA but not less; c. list the person or group responsible for developing, implementing and monitoring the policies; and d. describe the process for lodging complaints.

While the Act does not require policies to be written where there are less than five (5) workers, it is strongly recommended that every condominium prepare written policies. With the common term of a director being three (3) years, it is easy to see how a condominium's policies may be lost as terms expire. Where there are five (5) or more workers, a condominium must post its policies in a prominent location for all workers to see.

Programs

Once policies are developed, a condominium must implement them through the use of programs. The OHSA sets out minimum requirements for programs.

For workplace violence, the OHSA requires that the program:

- a. include measures and procedures to control the risks identified in the assessment as likely to expose a worker to physical injury;
- b. include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- c. include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;
- d. set out how the employer will investigate and deal with complaints of violence; and,
- e. include any other prescribed elements (which have yet to be prescribed).

For workplace harassment, the OHSA requires that the program:

- a. include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
- b. set out how the employer will investigate and deal with complaints of harassment; and,
- c. include any prescribed elements (which have yet to be prescribed).



While the contents of the policies will depend upon the particular condominium, standard elements should include security and surveillance equipment, emergency contact information and procedures, and a complaints recording system.

Step 3: Training & Information

The final requirement is that all workers be informed about the policies and programs. The OHSA requires the policies to be posted in a prominent location in the workplace where there are five (5) or more workers. While condominiums with fewer than five (5) workers are not required to post the policies, we generally recommend that all condominiums take a proactive approach to worker safety and post the policies in a prominent location where all workers can easily access them.

In addition to posting the policies, a condominium must also inform and train all workers on the policies and programs for both workplace violence and harassment. While the exact nature of this training is not specified in the OHSA, it should include, at a minimum, providing copies of the policies and programs and answering any questions which arise upon review of same.

In addition to informing workers of the policies and programs, a condominium must ensure that workers are aware of any other workers that may pose a threat. However, a condominium may only disclose information that is reasonably necessary to protect the worker from physical injury from the other worker.

Summary

Given the ambiguities and complexities in the OHSA, it is advisable that directors and property managers seek the advice of legal counsel and other qualified professionals to assist with the development and implementation of workplace violence and harassment policies and programs. Our fee for the preparation of both workplace violence and harassment policies and programs is \$1,500.00, plus applicable taxes and disbursements.

For more information, please contact our condominium practice group chair:

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