

Violence and Harassment at Work

**Violence against workers
is the direct consequence
of an unsafe workplace.**

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Assaults, Threats, Harassment and Abuse It's not part of the job!

Violence at work is a reality in the working lives of many OPSEU members. Whether it's community housing workers who have to tell people that the waiting list to get housing is ten years long after they have waited an hour in a busy, crowded waiting room, or a hospital professional interacting with patients in hectic, stressful situations, workplace violence is an issue every day that puts workers' very lives at risk.

Krista Sepp, a young employee at a group home in Midland for young offenders, was stabbed to death while working the night shift alone on her first week on the job.

Margaret McGorman, a psychiatric nurse at Whitby Psychiatric Hospital, was stabbed repeatedly by a psychiatric patient wielding a pair of scissors. She survived but developed post traumatic stress disorder.

Pat Chapados, a residential counsellor at a facility for the developmentally handicapped, was pregnant with her first child when she was brutally attacked by a client. The client had repeatedly threatened to kill her unborn baby.

Bob Rusk, a correctional officer at the Brookside Youth Centre, was brutally beaten with an iron bar by three young offenders who were trying to escape. Bob was working alone on the night shift.

Jean Crawford, a support staff worker at Fanshawe College, has felt fear when students have lashed out in anger because loan money isn't available when they expect it. She and her co-workers have planned escape routes from their workplace in the event angry words become angry actions.

Every day, in workplaces across Ontario, workers are physically assaulted, threatened, sexually or racially harassed and verbally abused.

All too often employers have seen violence simply as part of the job – an unavoidable condition of employment and a risk that workers must assume in return for a job.

But violence is not a condition of employment that anyone agrees to accept when taking a job. Being assaulted or abused is not in anyone's job description.

Occupational Health and Safety Act amended

In 2009, after years of extensive lobbying and activism by OPSEU members and other unionized workers, the government finally was forced to make amendments to the *Occupational Health and Safety Act* to include recognition of violence and harassment as workplace hazards. This and the recommendations of the coroner's inquest into the workplace murder of Lori Dupont led to the enactment of *Bill 168: Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009*.

These amendments requiring employers to address the hazards of workplace violence and harassment in the workplace came into effect June 15, 2010.

The task ahead is to make the law a reality in the workplace and to insist that effective measures are in place to protect workers against all forms of violence, bullying and harassment.

Our objectives are clear:

- We want an end to all forms of workplace violence and harassment, before more workers are killed, injured, or psychologically harmed.

- We want employers to comply with the Act.
- We want written workplace policies that tolerate no violence, abuse or harassment.
- We want proper assessments of the hazard of violence in the workplace and regular reviews of those assessments, which includes consulting workers and Joint Health and Safety Committees or Health and Safety Representatives.
- We want effective procedures to assess potentially violent behaviour.
- We want effective programs and procedures to back up the policies and protect workers.
- We want our work and our work environment designed to protect and promote health and safety.
- We want an information system that gives workers timely and accurate information about persons with a history of violence.
- We want appropriate staff levels and scheduling to prevent and deal with violence.
- We want regular staff training in recognizing and defusing potentially violent situations.
- We want effective security measures and communication systems.
- We want protection plans for workers at risk for domestic violence that may enter the workplace.
- We want effective follow-up to violent incidents, including mandatory reporting and investigation.
- We want support for victims of violence and harassment that includes critical incident stress debriefing, counseling and when necessary, return to work modification and accommodation.

- We want the Ministry of Labour to enforce the Health and Safety Act in the area of workplace violence.

What is violence in the workplace?

The *Occupational Health and Safety Act* defines workplace violence as:

- a. The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- b. An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- c. A statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

OPSEU defines workplace violence as any act of aggression that causes physical or emotional harm.

Forms of violence include:

Assault: Any attempt to inflict physical harm on a worker, the worker's family or property, including aggressive acts which do not involve contact or result in physical injury.

Threat: Any verbal or physical action indicating an intent to inflict injury on a worker, the worker's family or property.

Domestic Violence: Violence from a current or former intimate partner that would likely expose a worker to physical injury that may occur in the workplace. The Act now requires employers to put measures in place to protect a worker from domestic violence that may enter the workplace. If an employer becomes aware of the threat of domestic violence, he/she will be expected to develop a safety plan to protect the worker(s) at risk.

What is harassment in the workplace?

The Act defines workplace harassment 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.

Forms of harassment include:

Verbal abuse: Unwanted comment that offends, humiliates or engenders anxiety or fear.

Bullying: Repeated, mistreatment, verbal abuse, or conduct which is threatening, humiliating, intimidating, or sabotage that interferes with work.

Sexual harassment: Any unwanted verbal or physical sexual attention including patting or touching, sexual invitation, leering, displaying pornography, stalking and rape.

Racial/religious harassment: Any unwanted comment referring to the worker's religious affiliation or racial background that attempts to humiliate or demean a worker.

What are the health effects of violence?

Violence at work can kill!

Between 2001 and 2005, Statistics Canada data shows 69 homicides occurred as a result of a worker's legal employment, an average of 14 workers killed each year on the job. The most common occupations of the victims were: taxi drivers (11), police officers (10), bar/restaurant employees (8), retail employees (8),

labourers (4), health or social service workers (3), inspectors or enforcement officers (3), security guards (3). The remaining victims worked in 19 other occupations.

The National Institute for Occupational Safety and Health (NIOSH) estimates that homicide is the third leading cause of fatal occupational injury in the United States

A few high profile incidents have increased awareness about on-the-job violence.

- In 2005, Lori Dupont, a nurse at Hotel-Dieu Grace Hospital in Windsor was murdered by a physician co-worker and former partner after a protracted period of harassment.
- In 2002, a disgruntled 55-year-old government employee in Kamloops B.C. shot and killed his boss and a co-worker and then committed suicide, after he received a letter of discipline.
- In 1999, a former employee of OC Transpo killed four workers and then himself at a bus maintenance garage in Ottawa. An inquest found he had been harassed and bullied on the job.

Violence can cause more than physical health problems

Victims of workplace violence suffer more than physical injury and pain. Assault victims have a high risk of post-traumatic stress disorder (PTSD), an acute psychological reaction to extreme stress common among combat veterans and victims of terrorism.

Symptoms of PTSD can include severe anxiety, depression, fatigue, emotional preoccupations with the event, loss of concentration, flashbacks, and nightmares. It can impair ability to work and can damage family and social relations.

What are the health effects of harassment?

Workers who are subject to constant verbal abuse or harassment or who work with constant fear of assault are chronically stressed. They are at high risk for digestive disorders and heart disease.

A daily dose of emotional stress can lead to serious physical and psychological problems. Common symptoms include chronic fatigue, fear and anxiety, depression and substance abuse, and possibly even symptoms similar to those seen in post-traumatic stress disorder.

How extensive is violence in the workplace?

The true extent of violence in the workplace is not clear because many attacks go unreported and injuries reported to the Workplace Safety and Insurance Board may not be clearly reported as violence-related. However, the following reports given an indication of the prevalence of workplace violence:

- A 2004 Statistics Canada study showed that 33% of all workplace violence incidents involved a victim who worked in social assistance or health care services; 14% of incidents involved workers in accommodation or food services; and, 11% of incidents involved education workers.
- The same Statistics Canada study found that 17% of all self-reported incidents of violent victimization, including sexual assault, robbery and physical assault, occurred at the respondent's place of work. This represents over 356,000 violent workplace incidents in Canada's 10 provinces. It also showed that workplace violence against female victims was much less likely to come to the attention of police than violence against male victims (20% versus 57%).

- An Ontario Ministry of Labour study by Dr. Gary Liss in 1993 conservatively estimated that violent attacks against nurses could number about 5,000 per year or about 50 times higher than those filed and accepted by the WSIB.
- A recent study of violence against social service workers by the Canadian Union of Public Employees found that 30% had been assaulted.
- In 2008, the WSIB allowed 2,100 lost time claims for workplace violence-related injuries. Violence-related claims rose 40% between 1996 and 2005.

Myths About Workplace Violence

It is essential that workplace violence be seen as serious, recognizable and preventable – just like any other health and safety hazard. There are some myths about workplace violence that act as serious barriers to prevention. These need to be debunked.

Myth: Workers accept that risks are inherent in the job

Mental health, correctional and law enforcement work are viewed by some as inherently dangerous. It is assumed that workers who take these jobs are paid to accept the inherent dangers and shouldn't complain about something that cannot be changed.

The reasoning behind this is scientifically wrong. While violence cannot be completely eliminated, it can be significantly reduced. The fact that a job may be inherently prone to violence does not mean that nothing should be done. It only means that extra efforts need to be made to ensure the worker's security.

Myth: Workplace violence is random, unpredictable and therefore uncontrollable

In fact, most violent acts are predictable, even in non-violent jobs where “random” acts occur. Experience and research demonstrate that the potential for workplace violence can be assessed and measures can be put in place to reduce and even eliminate the risks. Experts in the field have developed a detailed list of risk factors that are good predictors of violence.

What factors contribute to the risk of workplace violence?

Environmental factors that predict violence include: workplaces in a violent neighborhood or in a location at risk of a violent crime, isolated workplaces or workplaces with little street life such as an industrial park.

Work practices that predict violence include: low staffing levels, working alone, long waits for services by clients or a lack of services and programs for clients. Having to say “no” to a client.

Human factors: Persons more likely to commit violent acts include: gang members, relatives or visitors of injured persons, drug users, people with a history of violent behaviour, and abusive former or current intimate partners.

Higher risk occupations include: workers who work with the developmentally handicapped; workers who provide care, advice and information such as health care workers, mental health workers, public health nurses, emergency services workers, admissions workers and social services workers; workers who deal with

public complaints such as welfare workers and unemployment workers; workers who enforce laws and conduct inspections such as children's aid workers, labour inspectors, law enforcement and corrections officers and security guards; workers who work alone or who work at late hours such as health care workers, custodians and inspectors; workers who handle cash or valuable goods.

Why are workers assaulted?

Violence is not an inevitable consequence of working with people who may be potentially violent. Violence is a consequence of an unsafe work environment - an environment in which the hazards are not assessed and controlled.

Patients or clients who may be frustrated, anxious, mentally disturbed or under the influence of drugs are potentially violent. They often lash out at whoever is closest – often the worker. Conditions resulting from cuts to health institutions and social service agencies often contribute to frustration. It's a vicious cycle. Cuts make it hard for workers to provide the care clients need. Clients suffer, become frustrated and lash out.

The following factors increase the risk of workplace violence:

- Understaffing, particularly working alone or in small numbers.
- Working at night or in the early morning hours.
- Service delivery delays that cause client or customer frustration and anger.
- Handling cash, goods or medications without effective violence prevention measures in place.
- Working with unstable or volatile clients particularly if they have little or no support.

- Working in a community-based setting such as home care or developmental services where workplace violence prevention policies and programs do not exist.
- Transporting people without effective violence prevention measures in place.
- Securing, transporting or protecting valuable goods without effective violence prevention measures in place.

In addition to the factors described above, employer actions or inactions may also contribute to an increased risk of violence against workers. If employers fail to ensure that the following steps are taken, violence risks may increase:

- Properly assess and identify hazards of violence.
- Develop and implement proper policies, controls and training programs.
- Warn workers about persons with a history of violence.
- Design safety into the workplace.
- Develop and implement emergency and communication procedures.
- Train workers to recognize and defuse potentially violent situations.
- Have a plan to protect a worker from domestic violence that might occur in the workplace

What are the employer's obligations with respect to workplace violence and harassment?

Under Section 32 (Bill 168 amendments) of the Act, the employer must:

- Prepare policies to address workplace violence and workplace harassment and post them in a conspicuous place in the workplace.
- Perform an assessment of the risks of workplace violence to workers and provide the results of the assessment to the Joint Health and Safety Committee (JHSC) or Health and Safety representative.
- Develop and maintain a workplace violence program.
- Provide information and instruction to workers on the content of the workplace violence and the workplace harassment policies and programs.
- The workplace violence and workplace harassment policies must be reviewed at least annually.
- The employer is required to reassess the risks of violence “as often as is necessary” to ensure the policy and program continue to protect workers.

The workplace violence program must contain:

- Measures and procedures to control risks identified in the risk assessment.
- Measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur.

- Measures and procedures for reporting workplace violence.
- Set out how the employer will investigate and deal with incidents or complaints of workplace violence.

Domestic violence

The employer must put measures in place to protect a worker from domestic violence that may enter the workplace. If an employer becomes aware of the threat of domestic violence, he/she will be expected to develop a safety plan to protect the worker(s) at risk. The safety plan might include things such as increased security measures, alternate work arrangements and/or an emergency communications plan.

Provision of information under workplace violence program

The employer must warn workers about the threat of violence from individuals (“violence from a person”). This includes violence from any person that the worker can be expected to encounter in the course of their work – patients, doctors, families, clients, customers, residents, inmates, and other workers – if there is a risk that the worker will be exposed to physical injury.

This implies some sort of flagging system so that all workers who need to know about the hazard learn about it in advance. Note that duties under OHSA trump those of other legislation; the employer cannot refuse to communicate information about the hazard of violence by hiding behind privacy legislation (Section 2 (2) OHSA).

Employers and supervisors must not disclose more information than is reasonably necessary for the protection of a worker from physical injury.

Workplace harassment policy and program

In addition to developing a workplace harassment policy, the employer must develop and implement a program.

The workplace harassment program must contain:

- Measures and procedures for workers to report incidents of workplace harassment
- Set out how the employer will investigate and deal with incidents and complaints

Employers, supervisors and workers have obligations to address workplace violence and harassment under other sections of the Act:

The workplace violence and harassment amendments to the Act clarify that existing duties of employers, supervisors and workers described in sections 25, 27 and 28 apply to the hazard of workplace violence. For example, employers are required to:

- **Take every reasonable precaution for the protection of the worker.**

Employers must ensure that staffing, training, and measures and procedures are adequate to protect workers from violence. The Adjudicator has ruled that health and safety inspectors have jurisdiction and a responsibility to assess adequacy of staffing levels and the power to order appropriate staffing. Inspectors have the power and responsibility to obtain relevant information about a client's propensity for violence in assessing the risk of injury (See Appeal Decisions: OHS 93/01A St. Thomas Psychiatric Hospital; 92/09 Adult Occupational Centre, Edgar). Additionally, inspectors may order risk assessments to be redone if there are changes to numbers of patients or their potential for violence or if staffing levels change.

- **Provide information, instruction and supervision to workers to protect their health and safety.**

The employer must ensure that you are trained and informed to deal safely with potentially violent situations and persons. Failing to do

this is a violation of the Act which may be reported to the Ministry of Labour.

- **Acquaint the worker with the hazard and how to handle it safely.**

The employer has a duty to assess whether a client has potential for violence, to warn you if this is so, and to instruct you how to deal safely with the client.

- **Appoint a competent person as a supervisor.**

The supervisor must have a working knowledge of the Act and regulations, the work being supervised and any actual or potential hazards.

- **Provide the Joint Health and Safety Committee or Health and Safety representative with copies of any health and safety report.**

And under Section 52 of the Act:

- **Report all incidents of violence disabling the worker from their usual work or requiring medical attention, to the JHSC or Health and Safety representative, and the union.**

These last two provisions together require the employer to give the union copies of all incident reports. Failure to do so is a violation of the Act.

Assessing and controlling workplace violence

The *Occupational Health and Safety Act* now requires employers to conduct a risk assessment for workplace violence and provide the results to the Joint Health and Safety Committee or Health and Safety representative. Assessing the extent of violence and the

conditions that cause and contribute to it is an essential first step in controlling this serious workplace hazard.

A risk assessment should include:

- 1. A review of all violent incidents, WSIB claims and accident reports.** This will give you some idea of the extent of violence and what may contribute to it. But remember, this may just be the tip of the iceberg. Violent incidents are frequently not reported. Where workers continue to experience injuries from workplace violence, the measures taken to control violence are clearly ineffective and need to be re-examined and improved.
- 2. A survey of all workers.** A questionnaire completed by workers is a useful device to get more information. The survey can indicate the extent of violence. It can also identify some of the factors that cause or increase the risk. Sometimes there are preconceived ideas of who is or is not exposed to violence and some workers may be overlooked. See page 32 for a model survey.
- 3. A review of the employer's policies and programs for controlling violence.** Are they being implemented? Are they effective and adequate? Are emergency and security procedures in place? Is there an effective means of summoning immediate assistance?
- 4. An inspection of the physical design of the work environment including parking facilities.** Assess it for both its security (for example, hidden corners, adequate lighting, isolated areas) and its potential effect on client behaviour (noisy, crowded).
- 5. An assessment of the organization of the work.** Does the way the work is done contribute to aggressive behaviour? Are shift schedules set up to minimize the risk of violence? Do workers work alone?

- a. An assessment of staffing levels and ratios.** Heavy workloads and extended work days can compromise workers' ability to recognize and deal with potential violence. Staff shortages can lead to diminished care which can frustrate clients. Are staff assigned to work alone, and are precautions taken when this occurs?
- b. A review of the employer's client assessment process.** Does the employer have a process for evaluating a client's potential for violent and aggressive behaviour? Is there a procedure for notifying staff of a client's potential for violent behaviour? Are appropriate precautions put in place when dealing with a potentially violent client?
- c. An assessment of the employer's security system.** Are trained security personnel available? Are alarm systems in place? Are emergency response teams set up? Is an emergency code system in place? Are video cameras available? Are personal alarms, panic buttons and two-way communication devices available? Is police liaison established? Is a security plan available for workers who may be at risk from an abusive partner?
- d. An assessment of the employer's education and training program.** Is there an effective program to train staff about violence policies, recognizing and defusing potentially violent situations and how to implement appropriate safety measures? If necessary, is self-defence training provided?
- e. An assessment of the employer's post assault counseling and assistance program.** Is a specially trained counseling team or professional counselors available to assist a worker with possible post-traumatic stress? Is there a process of client re-assignment to accommodate an injured worker's return to work?

What measures can be put in place to control violence?

As with any other workplace hazard, the employer has the responsibility to put in place measures to minimize the likelihood of workplace violence.

Workplace violence can usually be prevented because it is a predictable hazard. In almost every case there are solutions. Some are easy and cheap, while others are more difficult and costly. Control measures may differ from occupation to occupation.

Workplace violence should be approached in the same way as other hazards. First, identify and assess the hazard. Next, develop control measures by applying the same hierarchy of controls used for traditional workplace hazards.

At the Source

Substitution: While we can't always substitute one client or patient for another one, in some cases, substitution may be possible. For example, it has become more common to house more violent patients or residents in settings that are not equipped to handle this level of risk. The physical facilities may not be adequate and/or staff trained for low risk clients may not be equipped to handle highly disturbed or violent clients.

In these cases, it may be necessary to transfer a high risk person to a facility better equipped to handle them.

At the Path

Engineering Controls: These may include elements such as security locks, plexiglass or other barriers, and devices such as panic alarms, closed circuit TV cameras, and mobile phones. Safety

should be an element of workplace design with consideration given to visibility of employees, isolated areas, counter height and depth, lighting, building access to employees and non-employees, employee escape routes or safe rooms that physically separate staff from clients.

At the Worker

Administrative Controls: These controls include workplace policies, procedures and work processes such as safe staffing levels, restrictions on working alone, client assessments, advising staff of potentially violent clients, recording all incidents of physical or verbal abuse including “near misses” and training in assessing and defusing potential violence. In some workplaces self defense training may be necessary. Note that training by itself will only create an impossible burden of responsibility on the employees for their safety. Training must be combined with other program elements.

What are your legal rights and protections?

The Occupational Health and Safety Act

The Ministry of Labour has a duty and responsibility to compel employers to take measures for the protection of workers from violence.

It is the employer’s responsibility under Section 32.0.1 to Section 32.0.7 of the *Occupational Health and Safety Act* to take specific steps to protect workers from the risk of violence and harassment. Also the employer has the responsibility under the *Act*, Section 25(2) (h) to take every precaution reasonable in the circumstances for the protection of a worker, with respect to the risk of violence.

1. File a complaint with the Ministry of Labour

Your employer has an obligation to comply with the new workplace violence provisions of the Act and also to protect you from specific potentially violent situations.

If you and other workers have been unable to resolve a workplace violence issue through your supervisor and your JHSC or Health and Safety representative, call the nearest Ministry of Labour (MOL) health and safety office to file a complaint. Request that a Ministry inspector come to the workplace to investigate your complaint. Follow this up in writing.

If you are assaulted or threatened in the workplace, depending on the circumstances, the police must be notified. Even if the police have been notified, you should also notify the Ministry of Labour which has a role to play to ensure that employers are in compliance with the Act. Tell the MOL that you wish to report a violation of the Act that has resulted in an assault, or a violation of the Act that places you at risk of physical harm. Ask them to investigate the workplace, write corrective orders or prosecute the employer for not protecting workers.

An internal policy of the MOL requires that all complaints and work refusals from workers with a limited right to refuse unsafe work, must be investigated on a priority complaint basis. Inform the MOL if this applies to you and remind them of the policy.

2. Exercise your right to refuse unsafe work

Most workers have an unrestricted right to refuse work they believe to be unsafe. And the Bill 168 amendments to the Act further clarified that workers have the right to refuse work when there is a hazard of violence.

However, under Section 43(2) of the Act the following workers have a limitation on their right to refuse:

- a person employed in a police force to which the *Police Services Act* applies;
- a firefighter;
- a person employed in the operation of,
 - a correctional institution or facility, place of secure custody or temporary detention under the *Young Offenders Act* or the *Youth Criminal Justice Act* or similar place.
 - a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,
 - a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,
 - an ambulance service or a first aid clinic or station,
 - a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or
 - a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service listed above.

These workers **have the right to refuse work** that they believe is likely to endanger their health and safety, **except where:**

- the hazard is a normal condition of employment,
- or refusal to work would directly endanger the safety of another person.

Does this mean that these workers cannot refuse to be exposed to violence because the job carries the potential for violence?

No. These workers may have the right to refuse if the normal precautions or equipment to manage risk are absent or if the worker is untrained in the proper procedures and believes their safety is at risk. If an assignment requires the worker to deviate from established safe practice, and the worker believes their safety is at risk, they may also have the right to refuse (See Appeal Decision: OHS 94-21). Each situation must be assessed specifically.

Under what conditions can a worker refuse work?

Workers can refuse any work they have “reason to believe” is likely to endanger their health or safety. The danger does not have to be immediately life threatening. The right to refuse is not available to workers who are being harassed, unless there is a physical threat to their safety.

The worker does not have to be immediately exposed to the hazard. The Adjudicator has ruled that a refusal could be based on conditions which might endanger in the future (See Appeal Decision: OHS 85-22).

3. Appeal an inspector’s decision

An inspector’s ruling that a hazard is not likely to endanger, or that a worker cannot refuse particular work, may be appealed under Section 61 of the Act.

How are appeals dealt with by the OLRB?

Anyone who disagrees with an inspector’s decision or order can file an appeal with the Ontario Labour Relations Board (OLRB) in writing within 30 days of the decision.

All of the OLRB forms and Information Bulletins are available on the provincial government website. Look for the OLRB link on the Ministry of Labour's site. The Board will send a copy of the completed Appeal Form (A-65) and a blank Response to Appeal Form (A-66) to all the responding parties to the appeal. The parties to the appeal usually include the worker, the union, the employer and the inspector.

The Board may affirm or rescind an inspector's orders or substitute its findings. The Board's decision is final.

Contact OPSEU's Health and Safety Unit or Staff Representative as soon as possible when considering filing an appeal.

4. File a reprisal complaint

Section 50 of the Act prohibits employers from disciplining, penalizing, threatening or dismissing a worker for seeking protection under the Act.

A worker can file a complaint to the Ontario Labour Relations Board if they believe that their employer has reprised against them for their health and safety activities. The worker must file a Reprisal Complaint (A-53) with the OLRB providing the details of the complaint. Once this is filed, the Board will assign a labour relations officer who will meet with the parties, investigate and attempt a settlement. If no settlement is reached, the Board will hold a formal hearing at which the employer must prove it did not contravene the Act.

Contact the OPSEU Health and Safety Unit or Staff Representative for advice on filing a reprisal complaint.

The Workplace Safety and Insurance Act

File a Workplace Safety and Insurance Claim

If a violent incident results in any injury requiring medical aid or lost time from work, the employer must report it to the Workplace Safety and Insurance Board (WSIB) within 3 days and file a claim on your behalf. This is done using WSIB Form 7. You are entitled to receive a copy of this form from the employer and it is important that you do so. When you see your doctor or healthcare practitioner, inform them that the injury occurred at work and request that they complete a WSIB Form 8. A worker may also directly notify the WSIB of a workplace injury by completing WSIB Form 6 and sending it to the Board. The Board may also contact a worker directly requesting they file a Form 6.

Employers who do not report to the WSIB can be fined under the Act.

Workers are entitled to benefits for lost time due to injury or post-traumatic stress disorder.

The Criminal Code of Canada

File criminal charges against attackers

Assault is an offence under the Criminal Code of Canada. Under Section 265, a person commits assault by using force against another person without their consent, or by attempting or threatening to use force. When an assault occurs call the police to investigate and request that the police lay charges against the assailant.

If appropriate, file criminal charges against the employer

Bill C45 makes a clear statement in the Criminal Code that wanton or reckless disregard for the safety of workers and the public at

large in a workplace setting is a criminal offence and that corporate executives, directors and managers could be held criminally accountable. If appropriate, request the police to file charges against the employer. For advice on this matter, contact the OPSEU Health and Safety Unit or your Staff Representative.

The Compensation for Victims of Crime Act

File a claim with the Criminal Injuries Compensation Board

Under this Act, a person can claim compensation for injuries as long as charges have been laid. It is not necessary for the assailant to be prosecuted or convicted. The victim must:

- File the claim within two years;
- Have a medical examination at the time of the incident and another after recovery;
- Contact the police and submit a police report.

The Collective Agreement

File a grievance.

Many collective agreements (union contracts) now contain specific language on workplace violence, harassment and health and safety. Check the contract for violations.

The Ontario Human Rights Code

File a complaint with the Ontario Human Rights Commission

It is against the law for anyone to harass a person because of their colour, creed, citizenship, sex, sexual orientation, disability, age, family or marital status. Harassment includes offensive comments, jokes, unwanted sexual advances or touching.

The Code requires an employer to stop harassment at work. If harassment is not stopped, both employer and offender can be held accountable.

Workers who believe they have been discriminated against through such harassment can file a complaint with the Commission.

How can unions organize to ensure employers comply with the legislation and prevent violence and harassment at work?

A workplace free from violence and harassment should be the goal of every union member. As with every union goal, our success depends on how well we organize and involve our members.

1. Find out whether violence and harassment are problems in your workplace.

- Coordinate your activities around workplace violence and harassment with your JHSC or Health and Safety representative.
- Talk to members about their concerns.
- Develop a short survey (see sample on page 32).
- Encourage your members to complete the survey.
- Urge members to record and report all incidents of violence to their supervisor and the union (see sample Incident Report on page 30).

- Check that your employer has complied with the workplace violence and harassment provisions of the Act.
- Check that your employer has completed Risk Assessments for workplace violence and shared the report with your JHSC or Health and Safety representative.
- Check that measures and procedures designed to control the hazard of violence identified in the Risk Assessment have been developed and implemented.
- Check that the measures and procedures are being followed and actually work. Check that a means of summoning *immediate* assistance works.
- Ensure that your Health and Safety representative or JHSC member are receiving and reviewing all relevant incident reports from the employer.
- Review data regularly and update members.
- Hold information meetings and put out bulletins.

2. Develop an action plan to get the problem addressed.

- Work with your JHSC member(s) or Health and Safety representative to form committees to research and develop solutions.
- Involve members in developing solutions, setting priorities and picking long-term and short-term goals.
- Use your JHSC or Health and Safety representative to make recommendations to the employer to improve safety.
- Meet the employer to present your documentation, survey results and demands.

- When the work or the workplace changes insist that the employer reassesses the risk of violence.
(See Sec. 32.0.3(4) OHSA)
- When a workplace inspection identifies the hazard of violence, or a review of incidents reveals that the hazard of violence is not properly controlled insist that the employer reassess the risk of violence and ensure that the workers are involved in the process.
- If you win, publicize your success.

3. What do you do if management refuses to correct the problem?

Local unions should always have a plan to deal with management's refusal to correct a problem. The plan should involve members in the activity.

- File complaints to the Ministry of Labour under the *Occupational Health and Safety Act* and demand an investigation.
- Encourage members to always carefully document and report incidents of violence.
- Exercise the right to refuse when the risk of violence has not been properly controlled.
- Call the police when a physical assault occurs and demand that criminal charges be laid.
- File grievances.
- Use the media to draw attention to the problem.
- Develop a slogan like "Violence is NOT part of the job." Use buttons and posters.

- Negotiate contract language to address the problem in your next contract. This is important even where legislation exists. Contract language allows you to address issues specific to your workplace such as
 - security systems and protective equipment
 - communications and information
 - client behaviour assessment
 - training
 - minimum staffing levels for areas or tasks.
 - working alone

Put the employer on notice that we seek enforcement at the workplace and will exercise our rights that under the *Occupational Health and Safety Act*, the *Workplace Safety and Insurance Act* and our collective agreements

What should local unions do when an assault occurs?

It is crucial that members and locals take action when an assault occurs. It's the only way to ensure that violent conditions will be addressed, that workers' rights to compensation will be protected, and that the victim receives support and assistance. Here are several measures that should be taken when a worker is assaulted.

Call it what it is. Assault is usually a crime; it is not a “negative interaction”! Employers often seek to downplay how the assault is characterized.

Support the victim. Ensure that medical attention is provided and that the victim receives emotional support and counseling.

Contact the union. Encourage all members to contact the union immediately after a violent incident.

Call the police to investigate and lay charges. Assault is a criminal offence and should be dealt with under the Criminal Code of Canada. See Page 22 for details.

Advise the victim. Victims may need post-traumatic stress counseling, legal advice and information regarding compensation and insurance benefits as well as their rights and protection under the Health and Safety Act and Criminal Code.

Photograph injuries. Take a colour photo of all injuries to show the extent of injury. Of course medical treatment takes priority over this step.

Investigate the accident/assault. Insist on a full investigation of all assaults by the JHSC or Health and Safety representative. Look for precipitating and contributing factors to uncover root causes. This documentation is essential to support the case for corrective measures.

Re-assign the client. A worker should not be required to work with the assailant. The victim is already distressed.

File an incident/accident report. Individuals and witnesses should document all incidents of assault. This documentation is essential to support a case for corrective measures. Encourage your members to file written reports of any assault.

Request any written reports about the incident from the employer. The Act requires the employer to provide a written report to the union and the JHSC or Health and Safety representative on all accidents requiring medical attention within four days of the incident.

If the injury is critical or there is a fatality, notice must be provided immediately and the MOL must also be notified. The union should keep its own record of incidents and encourage victims to report all incidents.

File a Workplace Safety and Insurance Board claim. If an assault injury results in lost time or medical attention, the employer must file a report with the WSIB within three days. At the same time the worker should claim for benefits for lost time due to any injury or post-traumatic stress.

File a complaint with the Ministry of Labour. Insist an inspector comes to the workplace to write corrective orders or prosecute if an employer has not taken precautions to protect workers. It is illegal for the employer to make reprisals against workers for making such a complaint. If the MOL inspector does not properly address the complaint, the decision can be appealed. Contact the OPSEU Health and Safety Unit for advice.

Exercise the right to refuse unsafe work. Most workers have a right to refuse if they may be endangered by violence. (Some workers have limitations on the right to refuse if the hazard is a normal condition of employment or if refusing would directly endanger another person.)

Apply for criminal injuries compensation. Victims of crime are entitled to claim for injuries caused by a criminal act. See Page 23 for details.

File a grievance. When a violent incident occurs workers should file a grievance against the employer under the collective agreement because the employer has failed to make reasonable provision for the health and safety of the employees.

For example, the Ontario Public Service Collective Agreement says that the employer must make “reasonable provision” for the health

and safety of employees and “cooperate fully with the union to prevent accidents and provide health and safety.”

Wording for such a grievance would be: “I grieve that the employer has failed to make reasonable provision for my health and safety.”

Many other collective agreements now include specific language on violence, harassment and health and safety. Consult your union steward on appropriate wording.

Remedies may vary, but you could ask for:

1. a declaration that you will not be required to work alone, or that specific measures will be instituted to address the particular situations that expose you to violence
2. that you be reimbursed for any lost money as a result of your absence
3. that you be reimbursed for any legal costs incurred.

RESOURCES

Sample Incident Report Form

1. Workplace _____ Union Local: _____
2. Name of victim: _____
3. Date of incident: _____
time pm/am _____
4. Location: _____
5. Witnesses: _____
6. Describe incident: _____

7. Was a weapon involved? _____

8. What kind of weapon? _____
9. Who was the attacker? _____
 patient client other
10. Were you injured? _____

11. Describe injuries _____

12. Was medical aid needed? _____

13. Will you lose time from work? _____

14. Was Workers' Compensation claimed? _____

15. Was this incident reported? _____
To whom? _____
16. Were police notified? _____
17. How could this have been prevented? _____

18. Has any action been taken to prevent a similar incident? If
yes, describe _____

Sample Survey Questionnaire

1. Local Union _____
2. Where do you work? _____

3. What is your job? _____

4. Are you: Male Female
5. Have you been subjected to a violent or aggressive act at work during the past 12 months?
 yes no
6. How many times has this occurred? _____
- * 7. Who committed the aggressive acts?
 Client
 Patient
 Child
 Student
 Other (specify) _____

* **Note** : Questions 7 - 12 inclusive must be repeated for each separate incident.

8. What was the nature of the aggression?

Struck

Kicked

Hit with an object

Cut with a sharp object

Verbally abused

Threatened with harm

Sexually assaulted

Other (specify) _____

9. Were you injured physically?

yes

no

10. Did you require medical attention?

yes

no

11. Did you lose time from work?

yes

no

12. To whom was the incident reported?

Supervisor

Police

Health and safety inspector

Workplace Safety and Insurance Board

Other (specify) _____

Incident was not reported

13. Prior to any of these incidents, did you request assistance to deal with potentially violent behaviour?

- yes no

14. Were your requests granted?

- Almost always
 Sometimes
 Almost never
 Never

15. Is your workplace equipped with the following:

- Alarm system for violent incidents
 Panic buttons to summon aid
 Personal alarms
 Two-way communication devices
 Video cameras
 Security personnel
 Emergency codes

16. Does your employer have a system for assessing potentially violent clients/patients?

- yes no

17. Does your employer have a system that conveys information about potentially violent clients?

- yes no

18. Does your employer warn you about a potentially violent client?

Almost always

Sometimes

Almost never

Never

19. What kind of special precautions does your employer take when potentially violent clients are identified?

Staff are added

Gives instruction on precautions

Effective devices for summoning assistance

Other (specify) _____

20. Are requests for another person to assist you granted?

Almost always

Sometimes

Almost never

Never

21. Are you assigned to work alone with potentially violent clients?

Almost always

Sometimes

Almost never

Never

22. Are you subjected to aggressive or violent acts while working alone?

- Almost always
- Sometimes
- Almost never
- Never

23. Do you receive specific training on recognizing and dealing with potentially violent persons or situations?

- Almost always
- Sometimes
- Almost never
- Never

24. What issues about violence have you raised with the employer?

- Working alone
- Poor staffing levels
- Communication systems
- Alarm systems
- No warnings about potential violence
- Training
- Other _____

25. Does your employer take corrective action when you raise issues?

- Almost always
- Sometimes
- Almost never
- Never

26. Does your employer have a policy and program to deal with violence?

- Yes
- No
- Don't know

27. Are there shortcomings in this policy and program?

- Yes
- No

28. If yes, identify the shortcomings.

- Not followed consistently
- Protective measures and equipment not in place
- Inadequate assessment of client behaviour
- No or little input from staff
- No money to implement it
- Other gaps (specify) _____

Sample Contract Language on Violence

This is sample language for contract proposals on violence in the workplace.

Contract language gives you rights you can grieve to enforce.

General clause

The employer shall take all necessary measures to protect employees from violence at work.

It is understood that violence includes any physical assault or aggression, verbal threats, and any unwelcome comment, conduct, gesture or contact which causes humiliation, physical harm or fear, or which compromises an individual's dignity or self-worth.

Employer policy for addressing violence at work

The employer shall develop written policies and procedures, in consultation with the union, to deal with violence at work. Such policies and procedures shall address, but not be limited to, the following:

- Prevention of violence at work;
- Management of potentially violent clients or situations;
- Initial and ongoing assessment of clients' propensity for violence;
- Regular evaluation of changes in the workplace that may contribute to violence;
- A procedure for detailed reporting of all violent or aggressive incidents involving staff;
- Providing the union with written reports of all incidents;

- Legal counsel and post-traumatic support to victims of violence;
- Procedure for calling police when a worker is assaulted.

Investigating violent incidents

The employer shall investigate all violent incidents, and agrees that the union has a right to participate in the investigation.

Risk Assessment

In consultation and co-operation with the Joint Health and safety Committee (JHSC) or Health and Safety Representative (HSR) the employer shall conduct an assessment of the risks for violence in the workplace using such tools as may be recommended by the JHSC or HSR.

The Risk Assessment shall be repeated in whole or in part as recommended by the JHSC or HSR and in any case not less than every _____ months.

The results of any Risk Assessment shall be provided to the Union and the JHSC or HSR.

Security

The employer shall conduct an ongoing security and safety assessment, and develop a security plan that shall include measures and procedures to protect staff, clients and the general public from aggressive or violent actions.

The security and safety assessment shall examine trends in aggressive behavior from all sources.

The security plan shall include measures and procedures that include, but are not limited to, safety considerations related to all of the following:

- Physical design and layout of the workplace;
- The organization of work;
- Security personnel;
- Staffing levels and staff deployment;
- Training in appropriate response to violent behaviour.

Employer policy for addressing harassment and bullying at work

The employer shall develop a written workplace harassment prevention policy and program, in consultation with the union, to deal with harassment and bullying at work. Such policies and procedures shall address, but not be limited to, the following:

- Policy that all forms of harassment, abuse and bullying are unacceptable.
- A procedure for conducting investigations of harassment and bullying.
- A procedure for resolving valid complaints of harassment and bullying and preventing their recurrence.
- Training and Instruction in the policies and procedures.

Staffing Levels

The employer agrees to provide an adequate level of trained staff.

No employee will be required to work alone with a potentially violent client.

The employer agrees to notify employees of potentially violent or aggressive clients, and to provide another staff member to work with an employee who is required to work in such circumstances.

Workplace design

Where appropriate, the employer shall institute security measures including, but not limited to:

- Surveillance cameras;
- Restricted access by the public;
- Protective barriers;
- Safe rooms;
- Panic buttons to alert security personnel.

Two-way radios, alarms and paging systems

The employer shall provide two-way radios, alarms and/or paging systems or other means of summoning immediate aid where employees establish a need. All equipment shall be tested regularly, and all employees shall be trained in the operation of such equipment.

Training

The employer shall provide training to all staff including, but not limited to:

- Recognizing warning signs and triggers of violence;
- Defusing violent situations and verbal confrontation;
- Obtaining and reviewing client's history for violence;
- Critical incident debriefing;
- Strategies for avoiding physical harm;
- Detailed review of all employer safety policies and procedures.

Post-traumatic stress referral service

The employer shall provide counselling and support to all affected employees. The employer agrees to compensate affected employees for lost work days, counseling sessions, travel and other related expenses.

Prosecuting offenders

The employer shall assist an assaulted employee in all legal actions against the offender. Should the employer not support charges being laid, the employer shall provide a written explanation to the union and the employee of its decision.

Union rights

The employer agrees that the union has a right to bring into the workplace any union representative to assist in investigating health and safety conditions.

Resources:

OPSEU

The OPSEU health and safety unit can be reached through the OPSEU resource centre at **1-800-268-7376** or **416-443-8888**

- *A Workers Guide to the Occupational Health and Safety Act*
<http://www.opseu.org/hands/workers-guide-OHSA.htm>
- Guidance to members who work alone or in isolated areas.
<http://www.opseu.org/hands/tools/Working Alone OPSEU.pdf>
- Description of employer obligations to notify union, JHSC and health and safety representative of workplace injuries or illnesses
<http://www.opseu.org/hands/tools/OHSA notice provisions.pdf>
- A template to assist JHSCs and health and safety representatives develop health and safety recommendations for employers.
<http://www.opseu.org/hands/tools/Recommendation to Employer template.pdf>

The Ministry of Labour (MOL)

To make a health and safety complaint, contact the regional office applicable to you. There is a complete listing of MOL Regional Offices at the following link: **http://www.labour.gov.on.ca/english/about/reg_offices.php**. Complaints should first have been brought to the attention of the supervisor or employer, and to the Joint Health and Safety Committee, or to the Health and Safety Representative if there is one.

Tell them you wish to make a formal complaint that a hazard exists in the workplace and that it remains uncontrolled and that you want an inspector to investigate. You may also e-mail your complaint to **webohs@ontario.ca**. Request and response and provide your contact details in the e-mail.

You may also call the Ministry of Labour Health and Safety contact center at **1-877-202-0008**.

Resources from the MOL Website

The MOL has a number of workplace violence and harassment resources developed by the Occupational Health and Safety Council of Ontario (OHSCO) available on their website. These include a toolbox for Developing Workplace Violence and Harassment Policies and Programs and Workplace Violence and Harassment Prevention Tools. Many other useful resources are listed here.

<http://www.labour.gov.on.ca/english/hs/topics/workplaceviolence.php>

The Workers Health and Safety Centre (WHSC)

The WHSC offers high quality training developed and delivered by workers for workers.

1-888-869-7950 / 416-441-1939

<http://www.whsc.on.ca>

Occupational Health Clinics for Ontario Workers (OHCOW)

OHCOW is staffed by an interdisciplinary team of doctors, nurses, hygienists, agronomists, and researchers. They provide a variety of services free of charge to the workplace parties, including an

inquiry service to answer work-related health and safety questions and group prevention services for workplace health and safety committees and groups of workers.

1-877-817-0336 / 416-510-8713

<http://www.ohcow.on.ca/>

Criminal Injuries Compensation Board

Providing financial compensation for those who qualify under the Compensation for Victims of Crime Act, for victims and family members of deceased victims of violent crimes committed in the province of Ontario.

1-800-372-7463/ 416-326-2900

<http://www.cicb.gov.on.ca/en/index.htm>

The Canadian Center for Occupational Health and Safety (CCOHS)

has online workplace violence and harassment resources and an inquiry service.

1-800-668-4284 / 905-572-2981

http://www.ccohs.ca/keytopics/wplace_violence.html

Public Services Health and Safety Association (PSHSA)

has resources on workplace violence and harassment including a risk assessment tool for acute care hospitals.

<http://healthandsafetyontario.ca/bundles/pshsa/index.html>

This booklet is prepared to help local unions organize effectively to protect workers from violence and harassment. It contains the tools to press employers to fulfill their obligations to properly assess and control the hazards of workplace violence and harassment.

