

Are You Prepared For An Incident Of Workplace Violence In Your Workplace?



Many of us were stunned to witness Will Smith slapping Chris Rock live on stage at the 2022 Oscars award show. Fallout from that incident is still continuing to mount for Mr. Smith, although he has publicly apologized and announced his resignation from the Academy of Motion Pictures Arts and Sciences. While this blog will not be transitioning to cover arts and entertainment anytime soon, we do think this incident provides an interesting backdrop to discuss issues of workplace violence. As an employer, what would you do if your employee, Will, suddenly, in the middle of a workday, struck his co-worker, Chris?

Step One – Triaging the Situation

For many people, their immediate gut reaction to a situation like this would be to fire Will on the spot. While there is no question that violence of any kind in the workplace is unacceptable, firing an employee should never be the first step, no matter how egregious the behaviour.

In this case, the first step should be to ensure that all staff members are safe. That may include calling the police and/or summoning medical assistance if there is an ongoing threat of violence or risk of serious injury. In this context, contacting the authorities is likely not necessary, but Will should still be asked to leave the premises immediately. It is important to understand that sending Will home is not a disciplinary action, but an interim measure to prevent any further incidents. He should be advised that he is being sent home on a paid administrative leave while you investigate the situation and determine next steps. You should not allow Will to simply return to his desk and work out the remainder of the day, as this could place other staff members at risk.

You will also want to assess whether Chris is seriously injured. If Chris does require medical attention, you should ensure he is escorted to the hospital by a staff member and make a note of any reporting obligations you may have, such as to the Workplace Safety and Insurance Board or the Ministry of Labour. In this case, Chris appears to be relatively unharmed. You might offer Chris the option of going home for the remainder of the day and encourage him to let you know if he needs anything. If you have a benefits plan that includes an Employee Assistance Program, you would likely remind him that this is available to him as well.

You may also want to consider the impact of this incident on the workforce as a

whole. Make it known to your staff that the incident is being addressed, and advise them of what resources are available to them to address any impact this incident had on them.

Step Two – Determining Next Steps

Now that the dust has settled, it is time to assess next steps. First, you will want to review your Workplace Violence Policy. Ideally, this policy will outline for you the procedure to follow in the event of an incident of workplace violence. Even if the steps are vague (for example, 1. Ensure safety, 2. Investigate, 3. Discipline as appropriate), they will still help you to determine where you go from here.

Second, you will want to call your employment lawyer and let them know what has happened. While this sounds self-serving, serious incidents of misconduct that could lead to cause dismissal, like workplace violence, need to be carefully navigated. It will ultimately be less expensive to bring your lawyer in early in this process than waiting until a serious problem arises down the road.

It is a good thing you found your Workplace Violence Policy, as this is likely one of the first things your lawyer will ask you for! Your lawyer will likely also suggest that you prepare a letter to Will confirming that he has been placed on a paid leave of absence while you investigate the incident, and may also recommend that you send a letter to Chris letting him know that the incident will be investigated and addressed.

Step Three – Investigating

You will likely also discuss what type of [investigation](#) is necessary in the circumstances, including whether an external third party investigator is needed. An investigation does not always have to be a formal process and should be appropriate for the circumstances. In this case there is no question what happened – there are not only many witnesses, but the assault was captured on video. Your investigation may simply include documenting the incident and concluding that, based on the evidence, workplace violence did occur. Even where this conclusion is obvious, you still want to speak with Will to get his side of the story. You should always give an employee a chance to respond whenever there is an incident of misconduct. Their response may be relevant to your fact-finding investigation and/or when assessing the appropriate disciplinary response.

Step Four – Taking Action

Now that you have concluded that workplace violence did occur, you need to decide whether [disciplinary](#) or other action is appropriate in the circumstances and, if so, what level of action is necessary.

You may again be tempted to jump immediately to just cause termination at this point. However, it is crucial to remember that just cause is considered the “capital punishment” of employment law. The standard for establishing just cause is very high, and there are no “guaranteed offences” that automatically warrant cause termination. Instead, whether or not just cause exists must be assessed within the unique context of each case.

There is no question that Will’s conduct was absolutely unacceptable, and sufficiently serious that it could lead to the complete breakdown of the employment relationship. However, you will also want to consider other factors. Was Will a 30 year employee with no prior disciplinary history or a new hire with two previous incidents on his record? When given the chance to explain what happened, did he try

to downplay the severity and shift blame onto others, or did he apologize and promise that it would never happen again? You might also consider whether Chris was provoking Will before the incident occurred, or if there was a history of issues between the two employees.

Ultimately, you may still determine that, regardless of any mitigating factors, you simply cannot trust Will any longer, and termination for cause is warranted. Or you may determine there are too many mitigating factors to warrant termination for cause but still impose some other form of discipline, such as a final written warning. Finally, you may choose to still terminate his employment, but on a without cause basis and with a separation package.

Once that has been dealt with, you should reassess the risk of violence in the workplace, update your policies if necessary, and/or provide refresher training to all staff in the hopes of avoiding an incident like this in the future.

Conclusion

The incident at the Oscars could, and unfortunately does, happen in workplaces. Employers can best protect themselves by working with their employment lawyer to develop thorough health and safety policies, including with respect to Workplace Harassment and Violence, and updating them regularly. In addition, staff who are properly trained to understand and identify workplace violence are more likely to report a potential incident before actual violence occurs. In the worst case scenario, if workplace violence does occur, an employer with a well drafted policy will be prepared to take action.

Source: [Rudner Law](#)

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