

Bullying And Harassment: The Treatment Of Complaints And Claims By WorkSafeBC And Employers

written by vickyp | December 1, 2015



Effective July 1, 2012, the *Workers Compensation Act* has included broader coverage for mental disorders arising from workplace incidents, including bullying and harassment. Consistent with its mandate to not only provide coverage for workplace injuries, but to also prevent such injuries from occurring in the first place, WorkSafeBC has implemented a series of prevention policies that dictate the kinds of measures employers, supervisors and workers must take in order to comply with the Act.

All of these changes have meant quite a lot of new work for employers as they sought to comply with the new rules. Fortunately, WorkSafeBC provided handy tools for employers to use in developing policy statements, reporting procedures, and investigation procedures, all of which are now required. WorkSafe also has an investigation guide, a number of training materials and a host of other tools and resources available at its bullying and harassment tool kit website.

If contacted by WorkSafeBC regarding a bullying and harassment matter, the first thing an employer should do is understand whether it is dealing with a claims issue or a prevention issue. This distinction is important because the WorkSafeBC officer will have considerably different mandates for each situation.

Are you dealing with a prevention issue?

If it is prevention issue, the prevention officer's goal is to ensure that the employer is in compliance with WorkSafeBC's prevention policies on bullying and harassment. Accordingly, the officer will ask questions like:

1. Has the employer implemented bullying and harassment requirements, such as having policies and procedures to train workers, to investigate, and to follow up on complaints?

2. Was the employer aware of the alleged bullying and harassment?

3. Has the employer conducted an investigation into the alleged bullying and harassment, made a finding, and reported its findings to the complainant and other parties?

4. Has the employer taken corrective actions to address the alleged bullying and harassment?

In many cases, the employer may not have known about the alleged bullying and harassment, and so it will have to conduct an investigation after it is contacted by WorkSafeBC. Do not hide this from WorkSafeBC. Instead, the employer should inform the officer that it was unaware of the issue and promise to carry out an investigation. It should then conduct its own investigation and report back to the prevention officer once the investigation is completed and all parties have been informed of the results. The prevention officer will be looking for and will appreciate updates on progress. This is particularly important if the investigation is delayed for some reason, such as if one or more persons is unable to participate because of illness, injury or vacation.

WorkSafeBC prevention officers have broad powers. They can instruct an employer to address the complaint or otherwise comply with bullying and harassment laws (i.e. they can order an employer to conduct an investigation, train employees, etc.). They also have the power to take other enforcement action and award penalties. For example, an officer may find that an investigation was inadequate and order the employer to interview or re-interview witnesses within a particular period of time.

Employers should be aware that the prevention officer's mandate does not include determining whether bullying and harassment actually occurred – that is the employer's role. Employers should also be conscious of exactly what they provide to the prevention officer. While officers have the power to compel production of documents, in many cases they do not actually want all material records. Consider privacy obligations and, as a general rule, disclose no more than what the officer requests, unless there is a strategic purpose for doing otherwise.

Prevention officers will also check to see if an employer has prepared and submitted the appropriate investigation reports to WorkSafeBC. While not all incidents require such reporting, as set out in s. 173 of the Act, employers have to investigate and report certain incidents, including where a worker suffers an injury and receives medical treatment, or suffers a minor injury or no injury but there was potential for a serious injury. While there is clearly some discretion in whether there was a potential for serious injury, you may wish to err on the side of reporting, as this can help show that your organization takes these issues seriously. WorkSafeBC provides an [online guide](#) on when to provide investigation reports, and what to include in them.

Are you dealing with a claims investigation?

If you are dealing with a claims investigation, the situation is quite different. For a bullying and harassment claim, the claims officer will conduct his or her own investigation, even if the employer has already done so. WorkSafeBC's practice has been to first determine whether bullying and harassment has occurred rather than determine whether there has been an injury. This means that a disruptive investigation may occur even though the claimant still has not proven a medical basis for the claim. Thankfully, WorkSafeBC investigators tend to understand that their actions can be disruptive to the workplace, and as a result they can often be convinced to meet at times that are sensitive to such considerations.

If an employer learns for the first time through a claims investigation that there has been an allegation of bullying and harassment, it must still carry out its own investigation, report to WorkSafeBC as necessary, and follow up with corrective action as required.

Employees often bear the brunt of disruptive bullying and harassment investigations. Employers are typically well served by advising employees of the pending WorkSafeBC investigation. Employers may also wish to inform employees of their right to have a representative attend with them at a WorkSafeBC investigation meeting. Finally, given that there may be a significant temporal gap between a WorkSafeBC investigation and the events being investigated, employers may consider providing employees with access to previous statements they have made, or other memory aids, to facilitate accurate reporting of past events.

As with all workplace investigations, proper documentation is very important. While employers should be documenting their steps and completing investigation reports, they must always be mindful about what they say in such documents, as they are all disclosable to WorkSafeBC. Finally, since bullying and harassment issues are often complex, and may involve human rights or other related matters, consider obtaining legal advice.

Article by Ryan Copeland