

New WorkSafeBC Policies On Bullying And Harassment – A Review Of The Duties Of Employers In BC



Introduction

On July 1, 2012, Section 5.1(1)(a)(ii) of the *Workers Compensation Act* (the “Act”) was enacted. Part of this new provision provides that a worker’s mental disorder is compensable under the Act where that disorder is caused by a work-related stressor, including bullying or harassment. Taken together with Section 115 of the Act, Section 5.1 requires employers to address bullying and harassment as they would any other hazard in the workplace by taking all reasonable steps in the circumstances to ensure the health and safety of their workers, and those workers present at a workplace where their work is being carried out.

WorkSafeBC’s Board of Directors approved new occupational health and safety policies which came into effect on November 1, 2013, establishing the duties of employers, supervisors and workers to prevent workplace bullying and harassment. The WorkSafeBC policies guide Board officers in their adjudication of claims by workers for compensation, and the inspection of workplaces to ensure compliance with safety obligations. The policy for employers sets out a number of specific requirements that employers must implement to prevent and address bullying and harassment in the workplace, and to ensure the safety and well-being of workers. The policies for workers and supervisors set out the obligations not to engage in conduct amounting to bullying or harassment, to report such conduct and to comply with the employer’s policies.

This article identifies the requirements of the new policy as it applies to employers, and discusses the steps to be taken by employers in BC to effect compliance with the policy.

Claims Experience under Section 5.1 to date

There had been concern raised that the change to the Act in 2012 would turn instances of workplace conflict related to progressive discipline, or other types of management interaction between supervisors and workers, into a flood of compensation claims. The experience to date, as reported in an October 30, 2013 article by Keven Drews of Canadian Press, is that about 700 claims have been received by WorkSafeBC since July 2012 where mistreatment or bullying was alleged, and of those about 40 have been

accepted. This experience was before the introduction of the policies by WorkSafeBC, which will now be used by officers in adjudicating claims. It is not clear what effect the policies will have on claims beyond identifying required actions by employers, and allowing for enforcement of these obligations under the Act.

The WorkSafeBC Tool kit

Worksafe has created a tool kit for employers to understand and comply with the changes to the legislation and the policies – replete with FAQs, videos and posters. Employers are directed to the WorkSafeBC website and tool kit for information and guidance on identifying and adjudicating the employer's duties as established by the new policy.

Policy Requirements for BC's Employers

The policy requires employers to do the following to address workplace bullying and harassment:

1. develop a policy statement with respect to workplace bullying and harassment not being acceptable or tolerated;
2. take steps to prevent where possible, or otherwise minimize, workplace bullying and harassment;
3. develop and implement procedures for workers to report incidents or complaints of workplace bullying and harassment including how, when and to whom a worker should report incidents or complaints. This must include procedures for a worker to report if the employer, supervisor or person acting on behalf of the employer is the alleged bully and harasser;
4. develop and implement procedures for how the employer will deal with incidents or complaints of workplace bullying and harassment, including investigations and the scope thereof, roles and responsibilities, follow-up measures, and record-keeping;
5. inform workers of the policy statement in (1) and the measures taken in (2);
6. train supervisors and workers to recognize the potential for bullying and harassment, respond to bullying and harassment, and be aware of procedures for reporting and dealing with incidents and complaints of bullying and harassment in (3) and (4) respectively;
7. conduct annual reviews;
8. not engage in bullying and harassment of workers and supervisors; and
9. apply and comply with the employer's policies and procedures on bullying and harassment.

The immediate requirements for employers are the creation of an anti-bullying and harassment policy statement, development of procedures around reporting and investigation of bullying and harassment-related complaints, and providing training regarding bullying and harassment.

Compliance with the policy is **mandatory**. In the case of a claim by a worker for compensation based on alleged bullying and harassment, any ensuing WorkSafeBC investigation would include a review of the measures taken by an employer to comply with the policy and ensure the health and safety of the worker. The findings of WorkSafeBC officers on the sufficiency of policies and practices put in place by the employer may result in orders made against the employer, and could in some cases lead to penalties under the Act where the employer has failed to comply with the Act and the policy.

Definition of Bullying and Harassment

The policy defines “bullying and harassment” as follows:

- a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but
- b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

This definition is important because it will be applied by WorkSafeBC officers in determining whether bullying and harassment has occurred. The definition limits the scope of conduct which could give rise to a compensable injury by recognizing the role of the employer in managing and directing workers, including disciplining workers, so long as such conduct is “reasonable”. The definition contains an exclusion for “any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment”.

A central concern for employers in developing compliant policies should be including a solid working definition of bullying and harassment and identifying unacceptable behaviour. A clear and precise definition will assist employees and others in the workplace to differentiate between acceptable and unacceptable behavior, and will form the basis for the conduct to be dealt with under the employer’s bullying and harassment policies. The above definition from the adopted WorkSafeBC policy provides a good starting point, but employers will want to consider additional components to the definition in their own policies. Employers should use a definition that retains the core of the policy version above, such as the concepts of: inappropriate behaviours and comments; humiliation and intimidation of a worker; and, an objective standard of reasonableness with which to gauge the action by the employer or supervisor.

The development of a definition will also aid in the development of the required policy statement, which should reference the definition adopted by the employer and state unequivocally that behaviours constituting bullying and harassment are not acceptable or tolerated in the employer’s workplace.

Policy Development

The development of anti-bullying and harassment policies will involve some expense and administrative burden for employers. Adding to existing policies will help employers minimize such costs while ensuring compliance with the WorkSafe requirements. An assessment of existing workplace policies that relate to bullying and harassment should be the starting point for employers who want to ensure their current workplace policies and practices comply with the WorkSafe requirements.

For example, for most employers existing workplace policies concerning sexual harassment, discrimination and/or the creation of a safe and respectful workplace will form the basis for new policies and allow employers to develop and implement compliant policies and practices around bullying and harassment. Employers must take care to ensure that existing policies are changed when necessary to include non-sexual forms of bullying and/or harassment contemplated by the policy, including behaviours that could reasonably cause a worker to be humiliated or intimidated.

When developing anti-bullying and harassment policies and practices, employers should

note that the definition of “bullying and harassment” in the policy includes inappropriate conduct or comment by a “person” towards a worker, whether or not that person is a member of the employer’s workplace. This broad definition contemplates persons within the employer’s direction and control, such as the employer themselves, supervisors, or co-workers, but also includes persons outside the employer’s direction and control, such as members of the public, clients, or anyone a worker comes into contact with in the course of performing his/her job at the workplace. Employers must ensure that policies include the possibility that such actions may originate with persons external to the workplace.

Reporting

An important part of the employer’s bullying and harassment policies will be the procedures for reporting incidents or complaints about bullying or harassment, and the process for investigating, following-up on, and keeping record of such reports and investigations.

Employers’ policies with regard to reporting must be clear on the steps required of workers who decide to report such incidents, and include at least two scenarios for each worker: one utilizing the regular organizational reporting structure, and another permitting an alternate method where the alleged “bully” or “harasser” is the worker’s supervisor or the employer. The former is unlikely to present a serious problem, and a reporting may map easily over the existing organizational structure. However, alternate reporting methods in smaller workplaces will have to be creative in devising ways for workers to inform superiors, the employer, or another designated person in the workplace about incidents or complaints.

Investigations

Policies related to the scope of investigations, roles and responsibilities of employers, supervisors, workers and others in the investigation process, responses and follow-up actions, and record-keeping will also need to be workplace-specific. Employers must take care to abide by all existing policies, employment contracts, and collective agreement terms when developing and implementing investigation policies. Records of investigations must be retained to evidence compliance with the policy in the same manner as records are kept of all other workplace accidents and injuries.

Training

Informing workers of the employer’s bullying and harassment policies, and providing workers and supervisors with bullying and harassment-related training, is required under the policy, and employers should consider how best to include such material in their existing training practices. Such groups as ARETE Safety and Protection Inc. (www.arete.ca) have developed specific training courses offered to employers to educate supervisors and workers regarding acceptable conduct in the workplace to comply with the policy.

Summary

WorkSafeBC’s new policies regarding bullying and harassment require employers to take immediate steps to ensure the safety of workers. WorkSafe has provided a comprehensive tool kit to assist employers to comply with the new policy requirements. By making use of this information, and drawing on efficiencies presented by existing workplace policies, most employers should be able to ensure that they comply with the new requirements without incurring significant additional cost. While the effect of the new policies on the adjudication of compensation claims under Section 5.1 of the Act is yet to be seen, the policy is mandatory and employers

must take steps now to ensure that they are in compliance.

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