

Violence in the Workplace Regulations

Questions and Answers

June 18, 2007

Q: If an organization has different departments, does each have to do an assessment and a plan?

A: No. The organization may do individual assessments and plans if it wishes, or it may combine several departments under one effort. So long as all violence risks are identified and addressed, the choice of how to do it is up to the employer, in consultation with the joint occupational health and safety committee or health and safety representative, if either exists.

Q: In a home care setting, does the employer have to do an assessment for each home?

A: Not necessarily. The employer may conduct a violence risk assessment and prepare a workplace violence prevention plan that covers similar workplaces collectively and takes into account whatever an employee is likely to encounter in at those workplaces. Note that the workplaces covered by a plan like this must be “similar” in terms of violence risk.

Q: Is Bullying “violence”?

A: For the purposes of the “Violence in the Workplace Regulations”, bullying is not “violence” unless the bullying leads the victim to reasonably believe that they are at risk of physical injury. However, bullying and harassment are known to lead to violence in some cases and we encourage employers to eliminate both from their workplaces.

Q: What if an incident starts at work but continues away from the workplace?

A: The “Violence in the Workplace Regulations” only oblige employers to deal with violence actually at a workplace. The legal duties end when the violence occurs away from the workplace. However, violence that occurs off-site can easily migrate to the workplace. Thus, we encourage employers to take all reasonable steps to deal with workplace-related violence wherever it occurs.

Q: Canada has a comprehensive Criminal Code. Why do we need these regulations?

A: The Criminal Code does deal with violence and sets out the appropriate penalties. However, the Code does not have requirements for employers to protect their employees from violence. Such requirements are found in the “Violence in the Workplace Regulations”. Together, the two complement each other well.

Q: If violence is a criminal act, should I not simply call the police if a violent incident occurs and let them investigate? Why do I have to investigate?

A: If you believe that a violent incident that breaks the Criminal Code has occurred, then by all means call the police. They are in the best position to deal with criminal acts. However, while the police will deal with the offender, you should still investigate from

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the standpoint of finding out what you could do to prevent similar incidents in the future.

Q: If violence is a criminal act, do I have to give Charter warnings to people I talk to as part of my investigation?

A: A Charter warning is the Canadian equivalent of the famous “Miranda warning” seen on American crime shows. It informs people who may be charged with a legal offence about their constitutional rights (such as the right to be silent, the right to a lawyer, etc.). However, an employer investigating a violent incident is not looking to charge anyone under a law. They are simply looking to find out why the incident occurred and how to prevent a recurrence. Thus, an employer does not need to inform an employee of their Charter rights.

Q: Where do I get the statistics I need to determine the significance of a violence risk?

A: Some statistics may be obtained from some local police agencies. For instance, on a general level, crime statistics for Halifax can be found at <http://www.halifax.ca/Police/CrimeStats/CrimeStats.html>. At a minimum, we expect people to be generally aware of things happening in their industry and their community. For instance, small retail store owners should be aware that small retail stores are a common target for robbery; taxi companies should be aware that taxi drivers are often attacked.

Q: What are “reasonable” precautions?

A: The “Violence in the Workplace Regulations” require an employer to take and document *reasonable* measures to minimize and, to the extent possible, eliminate the risk of violence. Reasonable means that:

- i) you address every health and safety risk that you know of or could foresee as possible, including violence risks
- ii) the extent to which you address the risk depends on the severity of the risk. That is, the more severe outcome if the “bad thing” ever happened, the more you do to address it.

“Reasonable” is not one thing or one set of rules you can follow.

Q: Does a violence risk assessment become part of the Joint Occupational Health and Safety Committee minutes?

A: No. Doing a violence risk assessment is an employer responsibility. While the Joint Occupational Health and Safety Committee or Health and Safety Representative must be consulted, it is not *their* assessment and does not have to be put in their minutes.

Q: If the definition of “violence” in the regulations is limited to physical violence, why does the workplace violence prevention statement have to mention “emotional

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harm”?

A: It is true that the definition of "violence" in the regulations is limited to physical violence. However, a physical injury can have a devastating emotional effect, such as a person would experience if a physical injury meant they could no longer walk. Violence has the same ability to cause emotional as well as physical harm, and both must be dealt with if the victim is to recover fully.

Q: The violence risk assessment must be completed by October 1, 2007. Given that:

- i) schools are common targets of violence**
- ii) the workplace violence prevention plan must be done in consultation with the Joint Occupational Health and Safety Committee and**
- iii) most school Joint Occupational Health and Safety Committees do not operate during July and August,**

how can schools possibly comply?

A: Schools can and should start immediately on their violence risk assessments and get as much done as possible before summer. In addition,

- i) school safety staff can the work continue the work over the summer to have as much ready as possible to consult with the committees in September;
- ii) school boards can consider whether several schools have similar risks of violence, and could be covered by common violence risk assessments
- iii) school boards should review their existing violence policies and procedures. Given the pro-active stance many school boards have taken for many years, school boards may find they are in or very near compliance with the regulations already.

Q: The regulations say I must provide employees with information about the risk of violence. Does this mean I have to tell them this before I hire them?

A: No. The employer would normally inform staff of violence risks at the same time they inform them of other risks. That is, after hiring but before the employee is exposed to the risks.

Q: Do the regulations cover unintentional violence, such as violence from a person with diminished mental capacity?

A: Yes, the “Violence in the Workplace Regulations” cover both intentional and unintentional violence.

Q: The regulations require me to inform my employees of the risk of violence from a person who has a history of violent behaviour. How do I do that in a place like a jail where many inmates have such a history?

A: In places where the risk of violence is similar from many people, the information can be given generically - that is, the violence risk applies to all inmates in this area or patients

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in this wing. However, if there is one or a few people who pose a greater risk than the others, information on these few must be given separately.

Q: The regulations require me to inform my employees of the risk of violence from a person who has a history of violent behaviour. But various laws such as the Youth Criminal Justice Act and the Personal Information Protection and Electronic Documents Act (PIPEDA) bar me from releasing personal information. How do I comply with the regulations without breaking other laws?

A: The privacy laws work as a comprehensive whole to balance the personal right to privacy with an employee's right to be informed of a danger. However, the laws are complex at times. If an employer is in a situation where the regulations require them to inform employees about violent people, the employer should consult a lawyer as to how much to reveal.

Q: The Workers' Compensation Board has a great accident investigation form. The Government should develop its own accident investigation form specifically for violence.

A: We agree. We will develop such a form and post it on the Internet this summer.

Q: If the regulations cover employee-on-employee violence, do I have to research the background of all employees to see if they are a violence risk?

A: No. The regulations require to deal with employee violence if and when it arises, but employers are not obliged to do background checks on employees.

Q: Do I have to pay for health professionals and employee counseling?

A: The regulations require an employer to advise an employee who has been exposed to or affected by violence to consult a health professional of the employee's choice for treatment or counseling. There is no requirement for the employer to pay for the health professional or to grant paid time off work to consult a health professional.

Q: Are the costs of health professionals and employee counseling covered by the Workers' Compensation Board?

A: Where a WCB claim has been accepted for a workplace violence incident, the cost rules and policies that apply to other claims would apply to the violence claim. Where these policies allow for payments for health professionals and employee counseling, the WCB would make the payments.

Q: Must I advise contractors of the contents of my workplace violence prevention plan?

A: If they so request, you must allow a contractor, constructor, supplier, employee, owner or self-employed person at your workplace to read your workplace violence prevention plan.

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Q: I am not an expert in this. Is there anyone I can hire to do this for me?

A: While we cannot promote individual businesses, there are consultants available to advise you on the various processes required by the regulations. Before hiring anyone, you should consider the points made in our sheet “Evaluating a Consultant's Qualifications” (see <http://www.gov.ns.ca/enla/healthandsafety/consultants/qualifications.asp>) to determine if the proposed consultant has the knowledge and background you need. Also, regardless of whom you hire to help you, the employer remains responsible for all actions, reports and plans.

Q: Do these regulations apply to Volunteer Organizations?

A. No.

Q: How do organizations engage their Joint Occupational Health and Safety Committees or Representative?

A: The regulations specify that an employer must consult with any committee or representative established at the workplace when conducting a violence risk assessment and must provide the committee with a copy of the written report of the assessment.

An employer must also consult with any committee or representative established at the workplace when establishing, reviewing or revising a workplace violence prevention plan.

We also Recommend that whatever process you have established to consult the committees and representatives on other issues be used to consult them on violence issues.

Q: What if my primary business is not on the list in section 4, but I do carry on such a activity as a secondary business?

A: The regulations do not apply to organizations whose primary business is not listed in section 4 (even if they perform a listed activity on a secondary basis). However, such employers must still deal with issues of workplace violence, as they must deal with all other workplace hazards. The difference is that employers who are not covered by these regulations do not have to deal with violence issues in the way set out in the regulations.