

February 14, 2017

\$70,000 Fine Demonstrates Importance of OHSA Orders and Workplace Violence and Harassment Requirements

An Ontario employer has been fined \$70,000 (\$87,500 with the surcharge applied) after being convicted of failing to comply with seven Occupational Health and Safety Act (“OHSA”) orders issued to bring the company into compliance with workplace violence and harassment requirements. Under the OHSA, employers are required to assess the risk of workplace violence, develop policies on workplace violence and harassment, develop, maintain and implement a program to deal with workplace violence and harassment, and train their employees on these policies and programs. It appears that the employer in this case failed to meet the requirements and then failed to comply with resulting MOL order.

A Ministry of Labour (“MOL”) inspector attended at the workplace after a workplace injury and issued 10 orders – seven of which, as noted, related to workplace violence and harassment. It is not clear how much time the employer was initially given to comply. However, the inspector followed up with phone calls after the orders became overdue. Approximately five months after the orders were issued, the inspector returned to the workplace to verify compliance and determined that the employer had not complied with the orders relating to workplace violence and harassment. The employer was later prosecuted for failing to comply. The employer did not attend at the trial, so it was convicted and fined in its absence.

This is the first publicly-reported case in which an Ontario employer has been prosecuted and convicted for failing to comply with orders specifically related to workplace violence and harassment programs. The case is also notable because it is not clear that there were any incidents or complaints of actual violence or harassment before the orders were issued.

Though the result in this case would have been significantly affected by its particular circumstances, the case is a strong reminder that a party that is the subject of an OHSA order is required to comply with the order unless the order is set aside (typically, through a suspension and appeal process before the Ontario Labour Relations Board). The case also demonstrates that the MOL treats non-compliance with orders very seriously. In our experience, the MOL will almost always prosecute a party that fails to comply with an order – particularly in circumstances in which the order has remained outstanding for some time. Charges for failing to comply with an order are easily prosecuted and are difficult to defend because the correctness of the order cannot be challenged as part of the defence.

There are a number of steps that employers can and should take to ensure that OHSA orders are properly addressed. First, employers should ensure that a robust occupational health and safety program has been developed and implemented as that may reduce the number or severity of orders (perhaps even prevent orders altogether). That is because a robust health and safety program would include a system to identify and rectify non-compliance with the OHSA and its regulations.

Second, an employer should have a system in place to ensure that any and all orders are addressed. This means ensuring that someone has specific responsibility, on behalf of the organization, to ensure that all orders are reviewed and assessed (perhaps with the involvement of legal counsel) such that they can be complied with, appealed, or otherwise addressed within the proper timeframes.

Third, where possible, employers should have a dedicated contact person (which may be the same person who is responsible for ensuring orders are addressed) who is responsible for dealing with MOL inspectors. This person should develop a professional and cooperative relationship with the inspector as this kind of relationship can be beneficial in managing orders and the MOL’s compliance expectations. For example, it may permit the employer to request or negotiate a reasonable compliance time with the inspector.

Finally, the case is also an indication that the MOL will seriously enforce the workplace violence and harassment provisions of the OHSA. Employers have, and continue to be, prosecuted for alleged contraventions relating to incidents of workplace violence. This case confirms that employers who have not met the workplace violence and harassment provisions of the OHSA can face significant penalties for such non-compliance. Employers should pay particular attention to this aspect – particularly in light of the recent amendments to the workplace harassment requirements by Bill 132 – and should be verifying compliance with all elements of the workplace violence and harassment provisions of the OHSA.

For additional information and guidance on Bill 132, and other issues, please refer to our archived [webinars](#) and recent editions of [In A Flash](#)

If you have any questions about this topic or any other questions relating to workplace law, please do not hesitate to contact a [Mathews Dinsdale lawyer](#) or a [CompClaim Consultant](#).

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