From Knowledge to Action

A resource for members in health care and mental health facilities dealing with workplace violence

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Introduction

There are over 45,000 OPSEU/SEFPO members proudly serving the Province of Ontario in a variety of workplaces in the Health Care Sector. These include Hospitals, Long-Term Care Facilities, Mental Health and Addiction Facilities, and much more.

During the pandemic, there was an enormous amount of attention paid to these dedicated professionals as they continued to provide a vital public service in the face of the most challenging times of our lives.

However, what has been rarely discussed widely in the general public, is the continuous threat that is present in their workplace, seemingly on a daily and ever-increasing basis.

We are talking about the threat of workplace violence these professionals face EVERY DAY.

All forms of research indicate workplace violence is on the rise right across Canada and the impacts can be found in every area of the healthcare sector.

Unfortunately, the true extent of violence in the workplace remains unclear. Many attacks go unreported, and injuries reported to the Workplace Safety and Insurance Board (WSIB) may not be clearly reported as a violence-related occurrence. The available statistics on violence and harassment in the workplace are staggering.

In March 2022, Researchers from the Canadian Labour Congress and their partners at Western University and the University of Toronto released results from their survey on harassment and violence in the workplace.

From Knowledge to Action was developed to help OPSEU/SEFPO members throughout the healthcare sector, regardless of job description or title, build strength from within and organize effectively to protect everyone from workplace violence. It contains tools and information about your rights under the Occupational Health and Safety Act and can aid in the empowerment and mobilization of members to ensure employers fulfill their obligations, to properly assess the workplace and control the hazards of violence the workplace.

If you are reading our online version of this booklet, the **click here** links found throughout will redirect you to the associated webpage or related resource with a click of your mouse. If you are reading a hardcopy version, the QR Codes found throughout will also redirect you via your smartphone.

The OPSEU/SEFPO Worker Safety Unit is proud to stand with our members providing their invaluable talents, commitment and dedication in the healthcare profession and this publication has been created to assist and support every one of you.

- OPSEU/SEFPO Worker Safety Unit

The problem of violence

Thousands of OPSEU/SEFPO members know what it's like to face violence in the workplace.

In the health care field, our members go into work to provide professional care and treatment to people who need it. Yet incidents of violence are far from rare. In recent years, we've seen numerous incidents that have seriously injured health care workers on the job. In 2005, health care worker Lori Dupont was murdered.

The coroner's inquest into Ms. Dupont's death was one of the incidents that pushed the Government of Ontario to amend the *Occupational Health and Safety Act* (OHSA). After years of lobbying by OPSEU/SEFPO and other unions, the government made a number of changes to the law in 2010. Those changes require employers to take concrete action to control workplace violence.

Employer responsibilities: violence

As a result of the 2010 amendments, the OHSA now requires employers to:

- create workplace violence and harassment policies;
- post the policies in the workplace;

- assess the risk of violence in the workplace; and
- create a program that includes measures and procedures to control the risks of violence.

By law, these procedures must set out:

- how workers can summon immediate assistance;
- how workers shall report incidents of violence; and
- how employers shall investigate incidents of violence.

In addition, employers must have a process to inform workers about individuals the employer knows has a history of violence if workers are likely to interact with those individuals at work. Employers also must take every reasonable precaution to protect workers from domestic violence that enters the workplace.

Employer responsibilities: harassment

The 2010 amendments to the OHSA require employers to prepare and post a harassment policy. The policy must include:

- procedures for workers to report incidents of workplace harassment; and
- details on how the employer will investigate and deal with harassment complaints.

This toolkit is designed to give you, the frontline worker, the resources that will empower you to hold your employer accountable to reduce violence and harassment at work.

In September 2016, the *Sexual Violence and Harassment Action Plan Act* amended the OHSA further. The Act now adds sexual harassment to the definition of workplace harassment. Under these newest amendments, employers must:

- develop procedures for workers to report harassment, including sexual harassment, to someone other than the employer if the employer is the alleged harasser; and,
- conduct appropriate investigations into complaints.

Employers must inform complainants and respondents of the results of the investigation and of any corrective action taken. In addition, MLITSD inspectors have the authority to order employers to conduct (at their own expense) a harassment investigation using a third party.

Most workplaces in Ontario are at some level of risk for violence. However, studies from many jurisdictions, including Ontario, have demonstrated that the risk of violence is much higher in mental health facilities and workplaces which serve mental health clients. Although studies tell us that people suffering from mental illnesses are more likely to be the targets of violence than the perpetrators, the evidence is clear: workers in mental health workplaces are frequently the target of violent assaults.

There are multiple reasons for this, including:

- inadequate staffing levels;
- lack of therapeutic patient programming;
- inadequate physical environments; and
- inadequate risk assessments and communication of risk.

Perhaps most importantly, in recent years only the sickest of the sick are admitted to mental health facilities. This leads to health care units populated by many patients who are very unwell and whose behaviour may be highly unpredictable.

Although the workplace violence provisions of the OHSA have been in place since 2015, we have not seen a significant decrease in violence against health care workers, especially in mental health units or facilities. In fact, the number of violent incidents experienced by health care workers has seen a very sharp increase since the COVID-19 pandemic. Frontline workers and their unions continue to report that many employers are not doing enough to control workplace violence. In many cases, they are failing to perform adequate risk assessments and failing to put procedures in place to prevent violence.

Employers are also:

- failing to perform risk re-assessments following a violent attack;
- failing to train staff about workplace violence prevention measures:

- failing to communicate about patients with a history and risk of violence,
- inadequately reporting workplace violence events and
- failing to properly investigate workplace violence events; and
- failing to report workplace violence events to joint health and safety committees (JHSCs).

Giving you the tools to make your workplace safer

Many OPSEU/SEFPO members report that they do not feel confident about how to interpret the OHSA with respect to workplace violence.

They also report that employers often challenge their understanding of the legislation.

The aim of this toolkit is to educate members, particularly in the mental health sector, on what the OHSA says about workplace violence and the regulation of health care and residential facilities.

Understanding what the legislation means, and how to enforce it, builds our knowledge as activists. This toolkit is designed to give you, the frontline worker, the resources that will empower you to hold your employer accountable to reduce violence and harassment at work.

What is workplace violence?

In this section:

- **Definitions of workplace violence**
- **The OHSA prevails over other legislation**

It is important to look closely at the definition of workplace violence. Why? Because this definition determines the steps an employer must take to prevent and control it. Workers must also understand the definition to be able to discuss the hazard with employers and – when necessary – MLITSD inspectors.

Before examining the main components of *OHSA S. 1(1),* it is helpful to consider the idea of the "intention" to exercise physical violence against a worker.

OHSA Section 1(1) defines workplace violence as:

> a) *the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,*
>
> b) *an attempt to exercise physical force against a worker, in a workplace, that*

could cause physical injury to the worker,

c) *a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.*

The *Act* does not contain the word or speak to the idea of "intention." Nonetheless, some employers and others have taken the position that if a patient, client, or resident has not formulated an intention to perform a violent act, then no violent act has occurred. Using this interpretation, the violent actions of a person with dementia, under the influence of drugs or alcohol, or with delusions or psychosis would not be considered violent under the OHSA.

This is not what the OHSA says.

While the idea of intention is important in the criminal code, it is not part of the *Act*. Under the workplace violence provisions of the OHSA, intention does not matter. What matters is the behaviour. Let's break down the language of the definition:

- the exercise of physical force ***by a person:*** This means *anyone* in the workplace, including patients, family members, other workers, suppliers, contractors, other

visitors, doctors, supervisors, and managers.

- ***against a worker:*** The definition requires that the exercise or attempted exercise of force needs to be directed at a worker. However, this does not mean that other types of violence do not take place that need to be controlled. Workers may be called on to de-escalate patient-on-patient violence and other disputes in the workplace. The behaviour of stressed-out family members can be an issue as well. Because of these possibilities, employers should have clear policies on workers' roles and responsibilities to intervene (or not) in these situations and they must ensure that workers are safe if they do intervene. If a worker is at risk of physical violence in those situations, then the event will meet the definition under the OHSA.

Under the workplace violence provisions of the OHSA, intention does not matter.

What matters is the behaviour.

- ***in a workplace:*** *Section 1(1)* of the OHSA defines workplace as *"...any land, premises, location or thing at, upon, in or near which a worker works."* Therefore, if the worker performs duties in an office or facility, in a car, in the community, or in a client's home,

all are considered the workplace. The employer's obligations to protect workers who are working in clients' homes are more complex because employers do not automatically have the right to enter homes or control what goes on in private homes. However, the employer's obligations for the safety of the worker **do not** change. Employers are still obliged to identify potential risks and to take reasonable precautions to protect workers – no matter where their work takes them.

- ***that causes or could cause physical injury:*** Physical injury is not defined in the OHSA. However, the term means any physical injury and is not limited to serious injuries or injuries that prevent workers from performing work. A physical injury could be a bruise, a cut, or a muscle strain.

Additionally, the clause refers to events that "could" cause injury. When looking at the situation, the possible result of the exertion of physical force should be assessed. If a patient lunges toward a worker but the worker moves to avoid being struck, then this event meets the definition. It is important to consider incidents that could have caused injury or "near misses." OPSEU/SEFPO recommends that near misses should trigger reporting and possibly an investigation as well.

Click here for our **Near Misses Tip Sheet**

- ***an attempt to exercise physical force:*** This should be understood in the same way as the earlier advice about "near misses." If a patient or client attempts to strike or to harm a worker by physical force, it is a violent act which should trigger a report and possible investigation.
- ***a statement or behaviour:*** Written or verbal statements such as "I'm going to hurt you/ break your leg/kill you/cut you/choke you" meet the definition of violence if the patient/client/ resident has the capacity to carry out the threat.

Patient behaviours such as punching their fist into their hand, raising their fist or hand in the air with an angry expression, hitting their head on the wall, pacing, and agitated actions, should be considered as violent.

If a patient or client attempts to strike or to harm a worker by physical force, it is a violent act which should trigger a report and possible investigation.

- ***reasonable for a worker to interpret as a threat to exercise physical force:*** Reasonable grounds have been defined as *"...a set of facts or circumstances which would satisfy an ordinary cautious and prudent person that there is reason to believe, and which goes beyond mere suspicion."* A person's past behaviour and history of violence combined with their current situation and their actions and words may lead a worker to develop a reasonable belief that there is a real threat. For example, a worker may perceive a threat of violence if they know, or has reason to believe, that a patient is not taking their medication as prescribed, or if the patient is agitated or has a history of violence.

Ontario employers must comply with many types of legislation. Sometimes, these laws may seem to contradict each other. One example of this is the Personal Health Information Protection Act (PHIPA), which employers frequently cite as a reason not to comply with *OHSA S. 32.0.5(3),* which requires employers to provide workers with information about persons with a history of violence.

OHSA Section 2 states:

> *1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board,*

commission, or corporation that exercises any function assigned or delegated to it by the Crown.

2) *Despite anything in any general or special Act, the provisions of this Act and the regulations prevail.*

Employers may also say that PHIPA requirements prevent them from providing injury notices pursuant to Section 52. Employers may also point to requirements under legislation such as the *Health Care Consent Act*, the *Long-Term Care Act*, or the *Mental Health Act* as reasons for not complying with sections of the OHSA.

On July 1, 2021, *Ontario Regulation 420/21* came into effect further enhancing and clarifying the obligations of the employer to provide information to the JHSC, local H&S Representatives and the Union subject to Sections 51 to 53.1 of the Act, including reports of fatalities, critical injuries, occupational illnesses and other incidents – including workplace violence.

OHSA *Section 2(2)* states that it prevails over other legislation. PHIPA states that it prevails *unless the other legislation prevails.* It's an important difference.

We understand this section of the OHSA to mean that employers need not fear that they are violating privacy legislation by reporting injuries or

information about a person with a history of violence, or by doing anything else required in the OHSA. *Worker safety must come first.* In health care workplaces, we have learned, time and time again, that patient safety ultimately depends on worker safety. If workers are afraid, under threat, or injured themselves, they cannot deliver safe and effective care to their patients.

This is true whether the hazard is workplace violence or infectious diseases or other hazards. Safe and healthy workers will deliver safe and effective care to their patients.

Know the definition of workplace violence. Check that your workplace violence policy uses the correct definition of workplace violence and that it includes threats.

Workplace violence policies

In this section:

OHSA requirements for workplace violence policies

What a workplace violence policy should say

> *"Policies change and programs change according to time. But objectives never change. You might change your method of achieving the objective. But the objective never changes." - Malcolm X*

What does the OHSA require employers to do?

The employer must develop a written policy for workplace violence (and another for harassment). This policy must be posted in the workplace in a conspicuous place. A conspicuous place is one where the posted policy will be noticeable and clearly visible to all. Depending on the size and layout of the workplace, this may require the employer to post the policy in more than one place. Everyone attending the workplace should be able to see the policy and read it.

OHSA Section 32.0.1 states:

> *Policies, violence and harassment*
>
> *An employer shall,*
>
> *(a) Prepare a policy with respect to workplace violence;*
>
> *(b) Prepare a with respect to workplace harassment; and*
>
> *(c) Review the policies as often as necessary, but at least annually.*
>
> *Written form, posting*
>
> *(2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.*
>
> *Exception*
>
> *(3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.*

What should the policy say?

The policy should clearly state the employer's duty to keep the workplace safe by preventing and controlling workplace violence. It should make clear that the employer has the ultimate responsibility to prevent incidents of workplace violence. Many policies also state that violence of any kind in the workplace will not be tolerated.

The policy should state that it applies to everyone who deals with the facility and with workers from the facility wherever they may be working.

Everyone must comply with the policy. This includes employees, contract employees, medical staff, interns, residents, tenants, volunteers, visitors, contractors, suppliers, consultants, vendors, and any others who may enter the workplace and have contact with workers.

The policy should refer to the required workplace violence program which implements the policy.

Although the policy does not have to provide a detailed description of the program it should, at a minimum, list the mandatory parts of the program, such as:

- measures and procedures to protect workers from workplace violence;
- a means of summoning immediate assistance;
- a process for workers to report incidents or raise concerns; and

- how incidents will be investigated and dealt with.

The employer must develop a written policy for workplace violence, and another for harassment.

The policy should also reference the employer's and supervisors' duty to provide instruction and information necessary for workers to protect themselves.

The policy must define the responsibilities and accountabilities of all workplace parties. The organization's top administrators are ultimately responsible for developing and implementing the policy and procedures to control violence in the workplace. Employers' and supervisors' responsibilities to take "all precautions reasonable in the circumstances for the protection of a worker" also apply to the hazard of workplace violence. Supervisors are required to follow the policy and to ensure that workers are complying with the workplace violence program. They should also investigate reports of workplace violence as well as those they may observe or hear about, even where not formally reported.

The policy should also describe workers' responsibility to comply with the policy and to report incidents or concerns about the threat of workplace violence.

Joint health and safety committee members should ensure that:

the employer has developed a workplace violence policy The written policy is posted in a conspicuous place or places in the workplace

Model workplace violence policies

The following is a policy template from the MLITSD website. Employers may use it as a guideline or use it as a model if developing a new policy:

> *The management of (insert company name) is committed to the prevention of workplace violence and is ultimately responsible for worker health and safety. We will take whatever steps are reasonable to protect our workers from workplace violence from all sources. (The workplace may wish to insert the definition of workplace violence and to list the sources of workplace violence).*
>
> *Violent behaviour in the workplace is unacceptable from anyone. This policy applies to (the workplace may wish to list who this policy applies to, especially if it applies to people other than workers such*

as visitors, clients, delivery persons and volunteers, etc.). Everyone is expected to uphold this policy and to work together to prevent workplace violence.

There is a workplace violence program that implements this policy. It includes measures and procedures to protect workers from workplace violence, a means of summoning immediate assistance and a process for workers to report incidents or raise concerns.

(The workplace may wish to specify and expand upon the components of the workplace violence program here.) , (insert company name) as the employer, will ensure this policy and the supporting program are implemented and maintained and that all workers and supervisors have the appropriate information and instruction to protect them from violence in the workplace.

Supervisors will adhere to this policy and the supporting program. Supervisors are responsible for ensuring that measures and procedures are followed by workers and that workers have the information they need to protect themselves.

Every worker must work in compliance with this policy and the supporting program. All workers are encouraged to raise any concerns about workplace violence and to report any violent incidents or threats. (The

workplace may wish to provide more information about how to report incidents and may wish to emphasize there will be no negative consequences for reports made in good faith.)

Management pledges to investigate and deal with all incidents and complaints of workplace violence in a fair and timely manner, respecting the privacy of all concerned as much as possible. (The workplace may wish to provide more information about how incidents and complaints will be investigated and/or dealt with.)

Signed by:

Dated:

The following is the workplace violence policy from the Michael Garron Hospital (MGH), formerly called the Toronto East General Hospital. Notice the hospital has chosen to have zero tolerance for violence, abusive and aggressive behaviour. Ontario's "Leadership Table," comprised of representatives of the MLITSD, the Ministry of Health and Long-Term Care, unions, and other system stakeholders, endorses MGH's policy as a model because MGH effectively reduces and controls the risk of violence in its facility in the hospital sector.

The Toronto East General Hospital (TEGH) is committed to ensuring a work environment that is safe, healthy, secure and respectful of each individual and that at

no time are staff, physicians, volunteers, students, contractors, patients and visitors exposed to any form of violent, abusive or aggressive acts or potential violent acts in the TEGH environment. TEGH is committed to the implementation of measures and procedures to prevent, control and minimize the risk of workplace violence. As a hospital community, we have a shared interest in the prevention of violent, abusive and aggressive behaviour. All members of the TEGH community (including patients, staff, physicians, students, contractors, volunteers, and visitors) share a significant interest, role and responsibility in connection with securing and maintaining a hospital environment that is free from any form of violence. TEGH is committed to exhibiting a ***zero tolerance for violence, abusive and aggressive behaviour.***

We believe that a safe workplace is built on a solid partnership and relationship between union representatives, union and non-union employees, privileged health care professionals and management.

This policy applies to all incidents of violence and potential violence involving employees, contract employees, students, interns, residents, medical staff, patients, visitors, volunteers, suppliers, contractors, consultants, vendors and tenants.

All workplace parties are accountable for complying with the policy, program, measures, and procedures related to workplace violence.

Click here to view The MLITSD guide "Workplace Violence and Harassment: Understanding the Law"

Workplace violence risk assessment

In this section:

- **OHSA mandatory requirements for risk assessments**
- **Identifying the risks**
- **Who does the risk assessment?**
- **Assessing the risks**

OHSA *Section 32.0.3* states:

> *Assessment of risks of violence*
>
> *32.0.3 (1) An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work. 2009, c. 23, s. 3.*
>
> *Considerations*
>
> *(2) The assessment shall take into account,*
>
> *(a) circumstances that would be common to similar workplaces;*
>
> *(b) circumstances specific to the workplace; and*

(c) any other prescribed elements. 2009, c. 23, s. 3.

Results

(3) An employer shall,

(a) advise the committee or a health and safety representative, if any, of the results of the assessment, and provide a copy if the assessment is in writing; and

(b) if there is no committee or health and safety representative, advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies. 2009, c. 23, s. 3.

Reassessment

(4) An employer shall reassess the risks of workplace violence as often as is necessary to ensure that the related policy under clause 32.0.1 (1) (a) and the related program under subsection 32.0.2 (1) continue to protect workers from workplace violence. 2009, c. 23, s. 3.

Same

> *(5) Subsection (3) also applies with respect to the results of the reassessment. 2009, c. 23, s. 3.*

The OHSA requires employers to assess the risks of workplace violence to workers. This is a necessary first step before developing an effective program with measures and procedures to prevent and control workplace violence.

A risk assessment (RA) for workplace violence follows the same steps as a risk assessment for any potential workplace hazard: identify, assess and control. However, when assessing workplace violence risks, the job is more complex: in addition to considering the physical environment, one must assess the risks from humans whose behaviours are changeable and dependent on many factors.

It is no secret that violence is a hazard in mental health workplaces. Many workers in mental health facilities and in the community have been severely injured. Many have never returned to work. Performing an adequate risk assessment is the first step in putting in place a program to control those risks.

This section on risk assessment does not provide a step-by-step guide to RAs. Instead, it briefly discusses the requirements of the OHSA section quoted above, provides guidance and tips for performing an effective RA, and suggests helpful resources that your JHSC can recommend to your employer. The section contains a brief section on "controls" which are sometimes included at the end of a risk assessment. Controls recommended to

address the risks identified in the assessment should be included in the "measures and procedures" section of the workplace violence program, as required by the OHSA.

Assessment and considerations

The first two parts of *Section 32.0.3* require the employer to assess the risks of violence that may arise from **the nature of the workplace, the type of work or the conditions of work.** The employer is also required to take into account **circumstances that would be common to similar workplaces and circumstances specific to the workplace.**

The first requirement concerning nature, type and conditions of work means that the employer must consider in general what is going on in the workplace that could give rise to workplace violence. For example, if the workplace is an office setting with no face-to-face contact with patients or clients, where only administrative tasks are performed and all staff arrive at 9 a.m. and leave at 5 p.m., there may be little risk of workplace violence. This situation does not relieve the employer from the duty to perform a risk assessment, but it does give an indication of the risks and consequently the types of measures and procedures that will be created to address the risks.

Additionally, the employer must consider the circumstances common in similar workplaces and

those specific to their workplace. This requirement is helpful in cases where, for example, an employer might resist putting in place effective procedures because there have been few reported incidents of violence against staff in recent years. If the workplace is a mental health in-patient facility, we know that in "similar workplaces" the incidence of workplace violence is very high. In this example, the JHSC can argue that the employer must consider the "circumstances that would be common to similar workplaces" when performing the risk assessment and consequently must develop measures and procedures to address the risks.

This means that even if a workplace has no severe injuries due to workplace violence, the employer cannot ignore the fact that other facilities in the province have. OPSEU/SEFPO members can contact the Mental Health Division Executive or the OPSEU/SEFPO Health and Safety Unit for examples of injuries in other mental health facilities. OPSEU/SEFPO members may also contact other OPSEU/SEFPO locals to learn more about health and safety conditions and workplace violence risk assessments and programs in other facilities.

The MLITSD has created this resource, which contains additional information about the nature, type, and conditions of work as well as information about common and specific circumstances of workplaces.

Click here for more details on the MLITSD document

When assessing the exposure to the hazard of violence, it is not always possible to confirm the extent of the violence that has occurred in the past or is occurring. However, working in certain areas of a hospital or a mental health facility increases the potential to be exposed to violence. A good risk assessment takes into consideration the factors that increase workers' exposure and the risks.

A risk assessment (RA) for workplace violence follows the same steps as a risk assessment for any potential workplace hazard: identify, assess, and control.

The risk assessment must consider the following:

- the nature of the workplace;
- the type of work;
- the conditions of the work;
- circumstances that would be common in similar workplaces; and
- circumstances specific to the workplace.

Reassessment of workplace violence risk

The MLITSD recommends that the risks of workplace violence should be re-assessed as often as is necessary to protect workers from workplace violence. For example, employers must re-assess the risks if:

- the workplace moves or the existing workplace is renovated or reconfigured;
- there are significant changes in the type of work (for example, different types of admissions, processes, or services);
- there are significant changes in the conditions of work (rising patient acuity or population, changes in work pace or flow);
- there is new information on the risks of workplace violence; or
- a violent incident indicates a risk related to the nature of the workplace, type of work, or conditions of work was not identified during an earlier assessment.

The JHSC's expertise and knowledge of workplace health and safety within the workplace enhances the risk assessment process. The committee should be consulted.

As with the initial risk assessment, a copy of the re-assessment (and the results) must be provided to the JHSC if it is in writing.

Who does the risk assessment?

It is an employer's duty under the OHSA to do the risk assessment. The act does not require the employer to use any specific assessment tool or template.

While the Act does not mandate that the JHSC be involved in the risk assessment, a properly done RA in a large facility takes time and requires knowledgeable assessors.

The JHSC's expertise and knowledge of workplace health and safety within the workplace enhances the risk assessment process. The committee should be consulted. The JHSC should:

- ask to be involved in the risk assessment;
- make recommendations on how to control identified risks; and
- monitor those controls.

Some workplaces strike a special workplace violence committee that focuses only on the workplace violence requirements of the *Act*. Part of the committee's duties may be to participate in, or perform, the risk assessment and provide input on the safety procedures that flow from it. If formed, such a committee should have a link with and report to the JHSC. The union should select its own participants, and senior leaders in the organization must endorse and participate on the committee.

Other employers may hire outside agencies to complete the risk assessment because they lack the internal capacity to do it. Some employers do the risk assessment very quickly using free resources from the internet that have not been customized to what the work is actually like in a health care facility or community workplace. This is problematic: a generic assessment tool will probably not capture all of the factors in the work, the nature or condition of the workplace, the patient/client population being cared for, or the history of violence and near-misses.

The JHSC should consider making recommendations to the employer to conduct a risk assessment using healthcare-specific tools and/or an agency with health care expertise. It may

recommend that the JHSC or another workplace committee be involved in the RA.

The Public Services Health and Safety Association (PSHSA) has created assessment tools that can be used in health care workplaces. OPSEU/SEFPO and other health care unions helped develop the Organizational Risk Assessment and the Individual Client Risk Assessment tools. OPSEU/SEFPO believes that these are currently the best free resources that employers and the JHSC can use to conduct a workplace violence assessment. All of OPSEU/SEFPO's mental health facilities and community workplaces likely need to complete all sections of both tool kits.

The PSHSA will perform the RAs for a fee.

The risk assessments are broken down into the following categories:

1. Organizational risk assessment – the overall workplace violence risk assessment
    a. Physical environment
    b. Department or ward
    c. Direct patient care
2. Individual Client Risk Assessment – tools to use to screen patients at admission or at other points during care
    a. Broset violence assessment tool – client
    b. Community violence assessment tool
    c. Pre-travel assessment tool

d. Client home/community hazard assessment tool

CLICK HERE to access more PSHSA Workplace Violence related tools

The steps in a risk assessment

Doing a risk assessment properly requires collecting and evaluating many different types of information. A thorough risk assessment collects and considers the following items:

- workplace violence risks specific to the workplace or sector;
- environmental factors;
- workplace violence incident data;
- patient/client population;
- employee perceptions of workplace violence risk;
- concerns raised to the JHSC; and
- work practices.

Risks specific to workplace or sector

You can collect data and information regarding the health care sector from the MLITSD health care

sector plan, the PSHSA, the Institute for Work and Health, and the Workplace Safety and Insurance Board (WSIB). Any source, in Ontario or elsewhere, which has experience or describes the amount and severity of workplace violence in health care and mental health workplaces is useful.

Environmental factors

Environmental factors include physical location, lighting, communication systems, location of parking lots, entrances and exits, layout and design of the workplace.

Past incident data

A review of past incidents is an important step in the risk assessment. Identifying the frequency of near misses and the frequency and severity of violent events helps guide decision-making on what control measures will prevent incidents. Create a table or chart to visualize and identify any trends in the frequency, location, time and types of injuries that have occurred in the workplace.

Consider the following factors when analyzing the data:

- job classification of injured staff;
- time of day;
- location in the workplace;
- number of workers present;
- staffing levels;

- routine activity;
- previous concerns or incidents; and
- presence of security officers.

An examination of past incidents should lead to identification of locations, times, staffing levels, particular events, and other factors which may be associated with an increased risk of workplace violence. This analysis may also point to areas or events which are associated with increased severity of violence, not only an increased incidence of violence.

Some employers and supervisors may argue that if there are no recent incidents of workplace violence on a unit or workplace, then the level of risk to violence is low. As noted above, the risk of workplace violence is highest in mental health facilities, for many reasons:

- generally, the patient population represents the sickest of the sick;
- inadequate staffing levels are common; and
- poor risk assessments and poor communication of risk are the norm, not the exception.

The fact that there has been little or no recent violence on a specific unit is a factor to consider when assessing or re-assessing the risk of violence. However, a low incidence of recent violent events should not automatically lead to a reduction of the controls currently in place. It may indicate that that workers on this unit are a lower risk than those on

another, but this does not mean that the risk of workplace violence is not present or low. A small number of incidents of workplace violence could simply mean that the current controls are working.

Patient/client population

As discussed in the introduction to this tool kit, studies tell us that people suffering from mental illnesses are more likely to be the targets of violence than the perpetrators. Nonetheless, the evidence is clear that workers in mental health workplaces are frequently the target of violent assaults. There are many reasons for this, including:

- inadequate staffing levels;
- lack of therapeutic patient programming;
- inadequate physical environments;
- inadequate risk assessments and communication of risk; and
- (perhaps most importantly) the fact that in recent years only the sickest of the sick are admitted to mental health facilities, leading to health care units where many patients are very unwell and possibly volatile.

Employers often raise concerns about stigmatizing patients and persons with mental health illness if we state that mental health workplaces have higher rates of workplace violence. However, there is no intent to stigmatize patients by stating this reality. Workplace violence policies and programs developed to reduce the risk of violence protect

patients and clients alike, not only staff. A safe workplace provides an environment where workers are able to provide better treatment and care and where patients themselves feel safe.

Not controlling violence in a workplace leads to incidents where staff or patients may be injured. If these incidents are severe, they may be reported in the news media – which can further stigmatize patients.

Sometimes, a single new patient introduced into a workplace can increase the risk of violence significantly – even if the risk of workplace violence had been previously under control. In such a case, the employer must react quickly to modify controls or introduce new ones to address the heightened risk. Many health care facilities are developing "surge" policies and procedures that outline processes that will be followed if patient acuity or patient numbers rise suddenly.

These surge policies may provide additional staff or safety measures to respond to the rising risk.

Identifying the frequency of near misses and the frequency and severity of violent events helps guide decision-making on what control measures will prevent incidents.

Employee perceptions of workplace violence risk

It is important to keep in mind that in many workplaces, violent incidents and near misses are under-reported. The JHSC should ensure that the employer, contractor or workplace committee performing the assessment surveys listens to the experience of frontline workers. Workers know best what really goes on in terms of workplace violence.

If the employer is unwilling to conduct a staff survey or consultation as part of the risk assessment, the JHSC or health and safety representative should consider making a recommendation to the employer to do so. Whether or not a survey occurs, worker health and safety representatives or worker JHSC members should ask co-workers about their exposure to workplace violence when they are conducting workplace inspections. Discussions with workers throughout your workplace will keep them involved and help JHSC members identify hazards and make recommendations for appropriate controls.

Concerns raised to the JHSC

Another aspect of a risk assessment is to consider what concerns about the potential for workplace violence have been brought to the JHSC over the past few years. It is a good practice to review JHSC minutes looking for issues concerning workplace violence to see if and how they have been addressed.

Work practices

The risk assessment process must also examine work practices unit by unit and work area by work area.

Consider all work practices that can lead to exposure. For example, workers in the maintenance department have lower exposure risk to workplace violence when they perform tasks in their workshops. However, their exposure to workplace violence increases when they enter areas where patients are present.

Be aware: violence can happen anywhere in a facility. In one case, a management member of an Ontario mental health facility was struck in the face as the worker was walking out the front doors. A patient was entering the facility at the same time after having a cigarette and lashed out without warning. The risk assessment for that facility may have assumed that senior management was at a lower exposure risk to violence during their everyday work. But that does not mean there was no risk at all. When completing an assessment or attempting to identify potential risks of violence, it is important to remember that the potential risk of exposure to violence can be affected by where an employee is in the facility at any given time of the day.

Keep in mind all types of workers during the assessment so that controls can be developed to protect everyone. Consider the following:

- Is it a mandatory practice for workers entering a unit to check at the nurses' station to ask if it is safe to proceed onto the unit and to find out if any special procedures are necessary?
- Is there a practice and policy prohibiting workers from doing patient rounds alone?
- Are there policies and procedures concerning which staff, and how many staff, are to apply and remove patient restraints?
- Are there policies and procedures concerning how many staff must always be on a unit?

These are only a few examples of work practices that should be considered when identifying the risks of violence to workers. OPSEU/SEFPO recommends that the RA tools from PSHSA cited above be used to assist with the process.

Workplace violence policies and programs developed to reduce the risk of violence protects patients and clients alike, not only staff. A safe workplace provides an environment where workers are able to provide better treatment and care and where patients themselves feel safe.

The workplace violence program

In this section:

> *OHSA Section 32.0.3 states:*
>
> *Program, violence*
>
> *(1) An employer shall develop and maintain a program to implement the policy with respect to workplace violence required under clause 32.0.1 (1) (a).*

Mandatory components of the workplace violence program

Every workplace violence program must:

1. include measures and procedures to control the risks likely to expose a worker to physical injury as identified in the risk assessment;
2. include a means to summon immediate assistance when workplace violence occurs or is likely to occur;
3. include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor; and
4. set out how the employer will investigate and deal with incidents or complaints of workplace violence.

The employer must provide information and instruction to workers about the contents of the workplace violence policy and program.

Controlling the violence

Once the risks have been identified and assessed, the risks need to be controlled. The employer (with the JHSC's input) must build the workplace violence program and specify controls to minimize each identified risk.

Types of controls:

- **Engineering controls.** These are controls that physically ***change the workplace*** or the work to minimize the hazard for the worker. These look to eliminate or substitute the hazard for something less harmful (e.g., glass panels, locked rooms, etc.). These are

the best type of controls but are not always possible, for example:

    - changing floor plans to make exits more accessible and visible;
    - improving lighting;
    - installing mirrors to see around corners;
    - installing metal detectors and emergency buttons;
    - controlling access to certain areas; and/or
    - enclosing the nurses' station.

- **Administrative controls.** These are measures that limit ***how work is done*** or that control the worker. They include policies on how to interact with escalating behaviour, code white policies, isolation room procedures, scheduling, etc. These are necessary controls, especially if the hazard cannot be "engineered out." They could include, for example:

    - procedures and tools for assessing and periodically reassessing patients' potential for violent behavior;
    - threat assessments when a patient is admitted and periodically afterwards;
    - code white policies;

- procedures for tracking and communicating information about patient behaviour;
- special procedures for patients with a history of violent behaviour;
- adequate staffing on all units and shifts; and
- policies and procedures that minimize stress for patients, visitors, and others.

The “hierarchy” of controls

Some controls are better than others, depending on where they are:

- **at the source**: addresses the hazard itself. Removing or eliminating the hazard is not always possible.
- **along the path**: does not remove the hazard, but rather puts a barrier or a protection between the hazard and the worker (e.g., a wide counter at triage, glass partitions, etc.).
- **at the worker**: does not remove the hazard or put up a barrier but gives the worker training or equipment to use to minimize or protect herself from the hazard (e.g., non-violent crisis intervention training, puncture-proof sleeves, training to use Pinel restraints). This is the least effective of the

controls and should only be considered as a last resort method.

The trouble with getting adequate controls

The general duty clause in the OHSA, often referred to as S. 25(2)(h), requires the employer to take every precaution reasonable to protect the health and safety of workers. This section was purposely added to the OHSA to cover all of the circumstances that were not covered by regulations. Lawmakers realized that they could not possibly identify all of the hazards, including violence in the workplace, that are present in workplaces – especially when work and workplaces are constantly changing. This section has been included to allow for the enforcement of minimum controls to protect workers from hazards that had not been specifically identified in other regulations.

Regulations, on the other hand, do not always specify precisely what the employer must do. These types of regulations are called performance-based regulations. As long as whatever the employer has done controls the hazard, they have complied with the requirements of the OHSA.

This is similar to frustration workers have when attempting to seek remedy or enforcement under Section 25(2)(h) of the OHSA. As long as the employer has implemented controls for a hazard that prevent injury to workers, they have complied

with the law. This can be an obstacle to making workplaces safer.

Here's how:

1) We ask the employer to provide a specific control for a hazard.
2) They say "no" because they have other controls in place.
3) We call the MLITSD and explain what we want but the ministry does nothing.

Sound familiar?

Many of our disputes with employers (and with the MLITSD) amount to one precaution versus another. Regrettably, the law does not specify the exact precautions to be used for workplace violence; instead, it states that "reasonable precautions" must be taken. This often leads to arguments about what precautions are actually reasonable. Many employers want to provide only the minimum amount necessary; workers, meanwhile, expect the best possible precautions. Therefore, **we must build our case and develop rationale** for why the precautions that we are suggesting are the "reasonable" ones required by the law. That means that we must assert all our rights under the OHSA to receive information and injury reports, investigate critical injuries, and make recommendations for prevention.

We need to change the conversation we are having with MLITSD inspectors. MLITSD inspectors have a policy and procedure manual that their employer expects them to follow. This is very similar to the

policy and procedure manual you have in your workplace. While the MLITSD inspector is supposed to be an independent decision maker, the MLITSD management places subtle and not-so-subtle pressures on them to make decisions in a certain way by following the manual. The manual is not the law, but as an employee of the MLITSD, inspectors need to follow policies and procedures as long as the direction is not illegal.

Workers must be prepared to point out the gaps and failures of existing controls to make the case for stronger precautions to prevent workplace violence. If the inspector is made aware of gaps in an employer's program, the inspector is more likely to see a violation of the OHSA and order the shortfall to be filled.

Summoning immediate assistance

The employer's workplace violence policy must specify how workers can summon immediate assistance.

Immediate means without delay. Assistance means adequate support to stop the workplace violence so potential injury can be prevented or reduced. When discussing "immediate assistance" with the employer, consider the following: While on assignment in the community, the worker is provided a cellphone to call 9-1-1 in case of emergencies. Does having a cellphone constitute "a

means to summon immediate assistance" as defined by the *Act*?

Depending on the nature, location, and level of risk, determining the right tool to use for summoning immediate assistance may be a challenge. When evaluating various types of communication equipment, it is important to consider the location (facility or in the community), time of day (number of available staff) and many other factors. Workers must have regular training in emergency communication procedures to be sure you and your co-workers utilize the equipment and the prescribed procedures effectively.

"Immediate assistance" in the facility

The most ideal system that is currently available to help workers call for help is a device (often a pendant) that can be activated that notifies security, the ward desk, switchboard, or others that a worker requires immediate assistance. There should be a way (or a small noise) for the worker to know that the alarm has been activated and that a response is coming. The system should be able to pinpoint the exact location of the worker. The system is wireless, and each worker is assigned a specific pendant. If the alarm is activated, workers designated to provide assistance know who has activated a panic alarm and where to locate the distressed worker. Other devices may include cellphones, noise makers, alerts, signals, intercoms, and radios. Whatever system is in place, it should

be monitored for effectiveness in routine checks as well as evaluated (and improvements made) when incidents occur.

“Immediate assistance” in the community

Perhaps the most commonly identified and used tool for summoning assistance in the community is the cellphone. Ideally, the cellphone **should be provided with clearly developed and written procedures to ensure its use will actually help summon IMMEDIATE ASSISTANCE to the worker** in need. The JHSC should recommend cellphones be equipped with GPS tracking or smartphone apps that automatically make loud noises, emit very bright flashes, or both. Attention must be given to the effectiveness of the devices considering dead zones or isolated areas where there may be no wireless signals.

> *Ontario Regulation 67/93 – Health Care and Residential Facilities states:*
>
> *Every employer in consultation with the joint health and safety committee or health and safety representative, if any, and upon consideration of the recommendation thereof, shall develop, establish and put into effect measures and procedures for the health and safety of workers.*

Communication radios, satellite phones, “spot” devices and walkie-talkies are just a few examples of portable devices that can be of some assistance to prevent violence while in the community. The regulation goes on to require that development and establishment of any procedures that may be put in place must be in writing.

Your JHSC can use the following guide while conducting a risk assessment in your workplace to assist with determining what tool may be appropriate for summoning immediate assistance.

P.A. systems

PRO’s

- Immediate, facility wide communication
- Useful for “code” alerts

CON’s

- May not be heard by those in noisy areas or quieted areas (such as meeting rooms)
- One-way communication only
- Restricts type of information that can be communicated (because of confidentiality concerns)

Fixed panic buttons

PRO’s

- Direct link to security or control room
- Easy to use
- Can be installed outside as well (parking

lots/walkway)

CON's

- Requires someone to be in the security office or control room at all times
- Fixed locations in the facility means staff may not be able to access in an emergency

Individual cell phone

PRO's

- Fast, direct one-to-one communication
- Can be used in facility or community
- Minimal range limitations
- Can be used to text messages
- Can be used for a variety of messages including 9-1-1

CON's

- Requires intended call/message recipient to be available
- Signal strength may be poor in elevators, basements or "dead zone" while in community
- If being attacked, employee may not be able to use – not enough time to dial

2-way radio (walkie-talkie)

PRO's

- Almost instant communication
- Strengths

- One-button use
- Can use voice or signal communication (if equipped)
- Can select specific recipient or numerous recipients
- Can be used for a variety of messages
- Few weak spots within range

CON's

- May need security or control room to be continuously staffed or select receivers always active (also may move about)
- Battery levels need to be closely monitored
- No access to 9-1-1

Personal alarms

PRO's

- Audible type (incapacitating sound) may deter attack
- Sound brings assistance to general area
- Non-audible type (transmits emergency signal to a receiver) may include two-way communication as well as identification
- Immediate, one button usage

CON's

- Use limited to extreme situations unless two-way communication included

- May take time to pinpoint location (if GPS not included)
- No access to 9-1-1

GPS tracking system

PRO's

- Continuous or signaled tracking
- May be included in personal alarms

CON's

- Requires continuous monitoring of all signals (additional staffing)
- Most expensive communication system
- No access to 9-1-1

The program must contain a method for workers to report workplace violence

Any workplace violence program must set out a method for workers to report workplace violence. Is the procedure clear and simple? Does it allow a worker to capture the necessary details of the incident? The JHSC should ensure, during regular committee meetings, that the reporting procedures are being followed and identify any problems with reporting. Workers must follow the procedures and employers and supervisors must ensure that workers follow these procedures.

Ask questions! Ask employer representatives how they ensure every worker has the means for "summoning immediate assistance" as per the Act. The OHSA does not state exactly what is required for every possible situation. It is up to the employer, in consultation with the JHSC, to come up with the right approach.

The PHSA has created a Personal Safety Response System Tool Kit and your JHSC can use this toolkit to analyze what the best solutions are for your specific workplace.

CLICK HERE to access the PHSA's Personal Safety Response System webpage

Workers also have a statutory duty to report hazards to the employer. This includes workplace violence events or near misses. Workers need to know about their important role and how critical it is to report any hazard, incident, or injury, no matter how small. Sometimes knowing that they have this responsibility to report helps alleviate workers' fears that they may have about reporting. Many employers have an internal incident form that they

use to track events or near misses that do not result in injury.

What should workers report?

The short answer is that workers should report **anything at work that could cause harm to the physical or mental health of a worker**.

Workers should report:

- hazards they see, smell, feel, hear, or taste;
- any malfunction of any workplace equipment, policy, procedure;
- any unusual event at work that could cause harm to persons or property;
- any injury, no matter how small – a first-aid occurrence, an injury with no time lost, or an injury with time lost;
- any occupational exposure of a biological, chemical, or physical hazard such as asbestos, mould, infectious disease, excessive noise, vibration (Note: WSIB has an exposure form on their website to fill out for this item as well. Always keep a copy for yourself).

Reporting isn't enough. Workers should keep records of their reports. That's easier said than done; many online reporting forms disappear the minute you click "send." Workers need to either keep a copy or jot down their own notes about it prior to hitting send. They can also take a picture of the screen.

Workers need to know about their important role and how critical it is to report any hazard, incident, or injury, no matter how small.

Workers should be prepared for their employer to say that "not all this stuff has to be reported." However, progressive employers will not say this. Progressive employers know that proactive action to address all concerns builds a healthy workplace safety culture where people feel that their employer cares about their health and safety. Unfortunately, not all employers understand this.

Workers must protect themselves and their health – even their future health if something happens resulting from this event years later. Vicarious trauma is the effect of witnessing, hearing about, or working within someone else's negative events. Day after day or year after year of immersing yourself in other people's trauma may have impacts on your own health. Workers may not report traumatic incidents because they occur often, even though any of these events may be the culminating factor or tipping point for their health. The best advice is that workers should fill out an incident report when any traumatic incident occurs or if the worker witnessed it.

Workers should:

- know what to report;

- know why they are reporting;
- know how to report; and
- stick to their rationale for reporting, even if a supervisor does not want to accept their report.

So why don't we have lots of reports?

There are many other reasons for workers not to report:

- healthcare workers often have little time to fill out paperwork due to staff shortages, workload etc.;
- workers may feel that the event that occurred was minor, and not worth reporting;
- workers may see the event happen so often that they are numbed by it and don't feel that the event is worth reporting;
- workers may have the perception that nothing will be done and that reporting is futile.

Not filling out a report harms everyone by:

- leaving the hazard free to affect someone else – maybe even more seriously;
- leaving the worker with no proof if the injury or illness manifests at a later date.

Reporting isn't enough. Workers should keep records of their reports. That's easier said than done; many online reporting forms disappear the minute you click "send."

This is what can happen with Hepatitis B or C exposure, or Post- Traumatic Stress Disorder, from experiencing trauma personally or vicariously (i.e., by witnessing the trauma of others);

- possibly causing a denial of a Workplace Safety and Insurance Board (WSIB) claim;
- helping the employer to think that it is not an issue – therefore ensuring it won't be addressed;
- creating a situation where workers are not doing their duty under the OHSA;
- reinforcing the status quo; and/or
- lessening the information available to the JHSC to do their work to identify and make recommendations to prevent hazards.

Ontario has web resources for vicarious trauma and post-traumatic stress disorder (PTSD):

Click here for Resources from the CMHA

Click here for Resources from the PSHSA

Click here for Resources for First Responders

Factors that prevent workers from reporting incidents of workplace violence should be identified by the JHSC and recommendations should be made to the employer to improve the reporting system. It is important that the workplace captures all incidents of aggressive and abusive behaviour. Without this information, the JHSC cannot determine if the controls that have been implemented are working. The employer should not be afraid to capture these incidents. JHSC members should look for reports that match the definition of workplace violence. Are attempts and threats of aggressive behaviour being reported? If not, the measures and procedures are not working.

Worker report after injury

After injury, workers need to fill out more than one report. They should fill out an internal employer incident report as well as the forms for workers' compensation. Sometimes workers think these are the same, but they are not. An employer internal

incident form is not the form that reports injuries to the WSIB.

There are three WSIB forms:

 **Click here to download** Worker Form 6 – this form is completed by the worker;

 **Click here to download** Employer Form 7 – this form is initiated by the employer when a worker gets injured;

 **Click here to download** Doctor Form 8 – this form is completed by a doctor when a worker informs their physician the injury was sustained at work.

As soon as the WSIB gets one of these forms it will go looking for the other two. If a worker gets injured and their employer says the forms are not necessary, the worker should obtain and complete a worker Form 6 and send it in to the WSIB on their own.

Alternatively, the worker can go to his or her doctor and say that the injury occurred at work and the doctor will complete a Form 8. This means workers do not need to argue with the employer about whether the employer starts a Form 7 or not. Workers can take steps to protect themselves and their own health.

Are attempts and threats of aggressive behaviour being reported? If not, the measures and procedures are not working.

The program must set out how an employer will investigate and deal with workplace violence

Under the OHSA, employer policies must identify how they will investigate – and deal with – incidents or complaints of workplace violence. "Investigate" means to carry out a systematic or formal inquiry to discover and examine the facts of an incident, allegation, etc., to establish the truth. **It includes collecting evidence, speaking with witnesses, taking photographs, writing reports, and so on. Someone needs to determine what has happened, why it happened, and what will be done to prevent it from happening again**. Investigations of workplace violence and health and safety incidents are integral to identifying gaps in our safety program.

We can also learn from the incidents that do not cause any injury. It is important to collect and report "near misses," or attempts by patients and others to strike out at workers. Investigating these events will help reveal how to prevent future incidents that may cause injury. Not all incidents of

workplace violence will need a comprehensive investigation, but these circumstances should be clear in the policy.

In some mental health facilities, incidents of workplace violence are so frequent that the manager or supervisor may have to spend considerable time investigating them. That is not a worker or JHSC problem. The law requires that the employer do this, and it is important to ensure that the employer is investigating all of these incidents.

The JHSC should request copies of all reports of workplace violence and the results from any investigation. The JHSC should encourage the employer to allow worker members to be involved with these investigations, but it is not required by the OHSA. [Note: Worker members of the JHSC do have the right to conduct their own investigation when a worker is critically injured: See *sections 9 (31), 25 ss, 2(e) & (l)]*

Investigation findings

After an investigation has been completed, the facts should be organized. They should be facts – not rumour or speculation. This is why it is important to document in writing what has been said during the investigation. This will help support the findings and give credibility to the investigation. The conclusions of the investigation will enable the JHSC to make sound recommendations to the employer to prevent reoccurrences.

Some of the findings that may be determined are:

- lack of training – de-escalation, non-violent conflict resolution, code white procedure, self-defence, prevention, and management of aggressive behaviour, Pinel restraints use, etc. *[S. 25(2)(a) of the OHSA*];
- lack of personal protective equipment – bite guards, gloves, face shields, blockers, etc. *[S. 25(1) (a); S. 10 Healthcare Reg. 63/97];*
- lack of information provided to the health care worker (no or inadequate flagging system) *[S. 25(2)(a)];*
- insufficient staff to carry out the care plan or de- escalation techniques *[S. 25(2)(h) or 25(2)(a)];*
- failure of the personal safety response system *[S. 25(1)(b)];*
- insufficient security *(S. 25(2)(h)];*
- assistance was not immediate *[S. 32.0.2(2)(b) or 25(2)(h)];*
- equipment failure – Pinel restraints, etc. *[S. 25(1) (b) or S. 44 Healthcare Reg. 63/97)];*
- treatment or care plan not updated or communicated *[S. 25(2)(a)];*
- procedures not followed (Reasons should be identified. This may be related to workload or lack of staff.) *[S. 25(2)(a)];*
- physical environmental issues – inadequate, inappropriate or broken equipment, including alarms or fixtures *[S. 25(2)(h) or 25(1)(b)];*

- use of contract staff who have not been provided adequate training or information about the current acuity on the ward *[S. 25(2)(a)]*.

After injury, workers need to fill out more than one report. They should fill out an internal employer incident report as well as the forms for workers' compensation.

After a proper investigation has taken place, the root cause of the violence should be clear. Based on the findings, recommendations to prevent similar events should be made. The findings should identify actions that will take place. A lack of training for one worker must be further investigated to ensure that the training is not required for more workers. Problems with equipment that the investigation finds to be broken, not functioning as designed, or beyond a required inspection or warranty date must be addressed.

If the equipment is used in other areas of the facility, it must also be inspected to ensure that a similar situation is not repeated elsewhere in the workplace.

Recommendations can be made to change the overall health and safety system so that workers will not miss training, information will be properly

communicated, and broken equipment will be fixed before it becomes a problem.

When an investigation is complete and a report is written, the JHSC should:

- ask for the results of the investigation or a copy of the report;
- ensure that the investigator(s) considered and evaluated all the data available, and that the investigation identified root causes of the violence that occurred;
- review investigation recommendations – they should include controls that, if implemented, could prevent a recurrence; and
- monitor the employer's implementation of the recommendations.

The JHSC's right to information

In this section:

Rights of the JHSC to receive:

Statistical summary of lost time/no lost time injuries

Results of reports about occupational health and safety

Injury notices

Critical injury/fatality notices

MLITSD reports

Entitlement to a statistical summary of injuries and occupational diseases

The role of the JHSC and health and safety representative is to identify hazards and recommend actions to prevent injuries. As such, it makes sense that the JHSC and health and safety representative have access to injury summaries and trends. Section 12 of the OHSA entitles the union, the JHSC, health and safety representative, or an employer to request a statistical summary of injuries for a workplace from the WSIB. The report will provide lost time and no lost time injury totals

for the year. **OPSEU/SEFPO recommends that JHSCs and health and safety representatives request summaries and compare and discuss them with the employer annually**.

OHSA 25 (2), An employer shall:

> *(l) provide to the committee or to a health and safety representative the results of a report respecting occupational health and safety that is in the employer's possession and, if that report is in writing, a copy of the portions of the report that concern occupational health and safety; and*

Entitlement to the results of written reports regarding occupational health and safety

JHSCs and health and safety representatives are entitled to know about, and have a copy of, the results of any report that exists in writing that has to do with occupational health and safety.

OHSA 25 (2), An employer shall:

> *(m) advise workers of the results of a report referred to in clause (l) and, if the report is in writing, make available to them on request copies of the portions of the report that*

concern occupational health and safety.

Employers' reporting responsibilities to the union and JHSC under the OHSA and health care regulations states:

OHSA Section 12 (1)

> *For workplaces to which the insurance plan established under the Workplace Safety and Insurance Act, 1997 applies, the Workplace Safety and Insurance Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost work day cases, the number of lost work days, the number of non-fatal cases that required medical aid without lost work days, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.*

Posting of copy of summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers.

Again, these rights flow from the role of the JHSC and health and safety representative to identify hazards and recommend preventative measures to address those hazards. The JHSC and health and safety representatives act as auditors of the employer's health and safety program.

Worker JHSC members should rely on this section of the act to receive information on near misses and incidents of workplace violence that do not result in injury or illness. Again, receiving this type of information is paramount so that the JHSC can do its job. If a near- miss incident was investigated and evaluated, and recommendations were made, the issue should be addressed before any injuries occur.

If a near-miss incident was investigated and evaluated, and recommendations were made, the issue should be addressed before any injuries occur.

Injury notices

Notice of accident, explosion, fire or violence causing injury

OHSA Section 52

> *(1) If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:*

1. *The committee, the health and safety representative and the trade union, if any.*

2. *The Director, if an inspector requires notification of the Director. 2001, c. 9, Sched. I, s. 3 (12); 2009, c. 23, s. 5.*

Notice of occupational illness

> *(2) If an employer is advised by or on behalf of a worker that the worker has an occupational illness or that a claim in respect of an occupational*

illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker, the employer shall give notice in writing, within four days of being so advised, to a Director, to the committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed. . R.S.O. 1990, c. O.1, s. 52 (2); 1997, c. 16, s. 2 (12).

Idem

(3) Subsection (2) applies with all necessary modifications if an employer is advised by or on behalf of a former worker that the worker has or had an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker. R.S.O. 1990, c.O.1, s. 52 (3); 1997, c. 16, s. 2 (13)

Notice of death or injury

OHSA Section 51.

(1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any,

and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.

Critical injury/fatality notices

Entitlement to receive notice of critical injury or fatality

More serious injuries are called critical injuries and are defined by Ontario Regulation 420/21. The regulation defines a critical injury as: "critically injured" means an injury of a serious nature that,

(a) places life in jeopardy,

(b) produces unconsciousness,

(c) results in substantial loss of blood,

(d) involves the fracture of a leg or arm but not a finger or toe,

(e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,

(f) consists of burns to a major portion of the body, or

(g) causes the loss of sight in an eye.

The JHSC, health and safety representative, and the union are entitled to immediate notice of a critical injury or fatality of any person at a workplace. This means by telephone or other direct means. Knowing immediately is important because a critical injury also triggers the worker JHSC's and health and safety representative's right to investigate pursuant to the OHSA. Worker investigators are entitled to inspect the place where the injury or fatality occurred and to write a report with recommendations to the MLITSD and to the JHSC. The employer is obligated to also notify the

MLITSD and send a written report to them within 48 hours.

Keep in mind that the MLITSD and possibly the police will be investigating, and their investigations will likely have priority. You may not be privy to their investigation or to their reports. It is a good idea to let the employer know who the designated worker investigators are and to make arrangements for clearance to do the investigation in a timely manner. Some worker members provide a general sketch of their planned activities to the employer that helps them obtain the clearance they need.

Many workers think they must or should do the investigation jointly with the employer. That's fine, but in many cases, it is better to keep your investigation separate from the employer's. The employer investigates for many different reasons. Some are the same as ours, e.g., to find the root cause of the incident. But employers also investigate for other reasons – like protecting themselves from liability.

Ontario Regulation 420/21 specifies all the contents of a notice of injury or death an employer must provide. This is what the law calls '*prescribed information*'. In the event of a workplace injury or death, this Regulation outlines the employer must provide this information in a written report or written notice.

Ontario Regulation 420/21

The 'prescribed' information/particulars or contents the employer must provide as required by O. Reg. 420/21:

the employer must provide in a written report or written notice if,

> *(a) a worker is killed or critically injured from any cause at a workplace as described in subsection 51 (1) of the Act;*
>
> *(b) a worker is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence as described in subsection 52 (1) of the Act; or*
>
> *(c) the employer is advised by or on behalf of a worker that the worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker as described in subsection 52 (2) of the Act.*

(2) The information referred to in subsection (1) is the following:

1. The name, address and type of business of the employer.

2. The name of the worker referred to in clause (1) (a), (b) or (c).

3. The nature of the bodily injury or occupational illness.

4. For a written report involving a worker referred to in clause (1) (a),

> *i. the name and address of the constructor if the occurrence is at a project,*
>
> *ii. the address of the worker,*
>
> *iii. the nature and circumstances of the occurrence, including a description of any machinery, equipment or procedure involved,*
>
> *iv. the time, date and place of the occurrence, and*
>
> *v. the name and address of the legally qualified medical practitioner, registered nurse who holds an extended certificate of registration under the Nursing Act, 1991 or medical facility that is attending to or attended to the worker.*

5. For a notice involving a worker referred to in clause (1) (b),

i. the nature and circumstances of the occurrence, including a description of any machinery, equipment or procedure involved, and

ii. the time, date and place of the occurrence.

6. For a notice involving a worker referred to in clause (1) (c), a description of the cause or suspected cause of the occupational illness.

7. The names and addresses or other contact information of any witnesses to the occurrence.

8. The steps taken to prevent a recurrence or further illness.

Records

6. The employer or constructor shall retain a copy of a written notice or report required under sections 51 to 53.1 of the Act for at least three years after the date the notice or report is made.

Electronic form

7. For greater certainty,

(a) a requirement under sections 51 to 53.1 of the Act to send a written report or to give written notice to a Director may be satisfied by

submitting a form on a website of the Government of Ontario; and

(b) a requirement under sections 51 to 53.1 of the Act to send a written report or to give written notice to the committee, the health and safety representative and the trade union, if any, may be satisfied by providing the committee, the health and safety representative and the trade union with an electronic copy of the form referred to in clause (a).

The OPSEU/SEFPO Worker Safety Unit recommends that all JHSCs and health and safety representatives establish a systematic process to receive their statutory notices.

Ideally, the worker JHSC members should review the injuries during caucus time and draft any recommendations for prevention to take to the meeting for full committee discussion and finalization. OPSEU/SEFPO discourages JHSCs from using all the meeting time going through injury reports one by one. Sometimes we see this as an employer tactic to keep the committee busy with details to distract the committee from engaging in important discussions about controls.

Entitlement to accompany MLITSD inspectors and receive a copy of the report

Representative to accompany inspector

OHSA 54 (3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof.

OHSA 57 (10) Where an inspector makes an order in writing or issues a report of his or her inspection to an owner, constructor, licensee, employer or person in charge of the workplace,

(a) the owner, constructor, licensee, employer or person in charge of the workplace shall forthwith cause a copy or copies of it to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers and shall furnish a copy of the order or report to the health and safety representative and the committee, if any; and

(b) if the order or report resulted from a complaint of a contravention of this Act or the regulations and the person who made the complaint requests a copy of it, the inspector shall cause a copy of it to be furnished to that person.

When an MLITSD inspector visits a workplace, a worker JHSC member or a health and safety representative is entitled to be present and accompany the inspector. If the JHSC member is not available, then another person chosen by the union is entitled to attend. The employer must post a copy of the inspection report and provide a copy to the JHSC or to the health and safety representative.

In many cases it is better to keep your investigation separate from the employer's. The employer investigates for many different reasons. Some are the same as ours, e.g., to find the root cause of the incident. But employers also investigate for other reasons – like protecting themselves from liability.

Refusing unsafe work

In this section:

"Know your limits. Know when to give. Know when to demand. Know when to say no. Know when enough is enough."

- Author Unknown

It is a common belief in the health care sector – and some employers will say – that health care workers do not have the right to refuse unsafe work. **This is not true**. While health care workers do have some restrictions on their right to refuse, they are not excluded from the right to refuse unsafe work in Ontario.

Section 43 of the OHSA details workers' right to refuse unsafe work:

Refusal to work

OHSA 43 (3) A worker may refuse to work or do particular work where he or she has reason to believe that,

(a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;

(b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;

(b.1) workplace violence is likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

It is important to read the legislation carefully to see to whom the restrictions apply, and under what circumstances. Workers who have a restricted right to refuse are listed in S. 43(2). They include police, firefighters, correctional officers, some health care workers, and workers in some residential facilities.

Health care workers who have a restricted right to refuse unsafe work are those who work in hospitals, long-term care facilities, psychiatric facilities and rehabilitation facilities, ambulance services, and some laboratories (review this subsection of the act for a complete list).

Workers in health care workplaces do have the right to refuse work, when they believe that violence is likely to endanger them.

Workers who are employed by a community agency and perform work in the community are not listed and do not have restrictions on their right to refuse. However, those employed by a hospital or residential facility but who visit clients in their homes do have restrictions on their right to refuse.

Once we know to whom the restrictions apply, we must consider when they are applied – in other words, what conditions must exist for a health care worker to refuse unsafe work?

Unfortunately, there are few hard and fast rules which can be easily applied to questions about work refusals in environments where there are limitations on the right. Every single situation must be carefully considered in light of the legislation and the particular facts and circumstances of the

case. Below are some examples to help workers understand how the legislation works.

Restrictions on the right to refuse unsafe work

S. 43(1)(a) of the OHSA says that health care workers [and others listed in s.43(2)] do not have the right to refuse when a circumstance is inherent in the workers' work or is a normal condition of the worker's employment.

Refusal to work
Non-application to certain workers

43. (1) This section does not apply to a worker described in subsection (2),

> *(a) when a circumstance described in clause (3) (a), (b), (b.1) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or*
>
> *(b) when the worker's refusal to work would directly endanger the life, health or safety of another person.*

Idem

(2) The worker referred to in subsection (1) is,

(a) a person employed in, or a member of, a police force to which the Police Services Act applies;

(b) a firefighter as defined in subsection 1 (1) of the Fire Protection and Prevention Act, 1997;

(c) a person employed in the operation of,

(i) a correctional institution or facility,

(ii) a place of secure custody designated under section 24.1 of the Young Offenders Act (Canada), whether in accordance with section 88 of the Youth Criminal Justice Act (Canada) or otherwise,

(iii) a place of temporary detention under the Youth Criminal Justice Act (Canada), or

(iv) a similar institution, facility or place;

(d) a person employed in the operation of,

(i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,

(ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,

(iii) an ambulance service or a first aid clinic or station,

(iv) a laboratory operated by the Crown or licensed under the Laboratory and Specimen Collection Centre Licensing Act, or

(v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv).

Inherent circumstance. The concept of "inherent circumstance" is controversial in many workplaces where the right to refuse is limited. While exposure to the potential of violence may be inherent in many workplaces, **the overarching intention of the OHSA is to protect workers from workplace hazards** and to put in place systems where employers and supervisors take all reasonable precautions to protect workers from hazards. Accordingly, "inherent" means that **while the potential hazard may be inherent, the actual hazard can be controlled**. Therefore, workers in health care workplaces do have the right to refuse work when they believe that violence is likely to

endanger them. Existing case law and MLITSD orders support this understanding.

Normal condition of the worker's employment. Also, a bit tricky to interpret is the phrase *"a normal condition of the worker's employment."* As discussed above, while there may be a potential for violence in a workplace, actual exposure to physical violence cannot be considered an inherent or normal condition of employment.

That's why workplace violence programs including measures and procedures, means of summoning assistance, and rules for reporting, instruction, and training. The following two examples explain the distinction between a "normal condition" where a worker probably does not have the right to refuse and an abnormal one where a worker likely does.

- **Example of a normal condition:** An agitated patient starts pounding a wall with his fist and shouting threats at nearby workers. A code white is called, and "Jane" is a member of the code white response team. All five of the response team members respond quickly to the call; all have been fully trained, and the appropriate equipment is on hand. The team leader, after failing to de-escalate the patient's agitation, makes the call that the patient will be moved to his room and restrained. As a team member, Jane is expected to assist in moving the patient and when the patient is in the room, Jane is asked to apply a restraint to one limb. In a case like this, Jane would probably not

have the right to refuse to perform the task of applying the restraint, since the circumstances would be considered "normal."

- **Example of an abnormal condition:** In a similar circumstance, the agitated patient, after pounding the wall and shouting threats at the workers, runs for the unit door to leave the unit. The door is not locked, but the patient does not have off-unit privileges. Your unit supervisor shouts at Jane to block the doorway to prevent the patient from leaving. A code white has been called but the team has not yet responded. Jane is in the doorway and the patient is running at her shouting to get out of his way or he'll harm her. This is clearly not a "normal condition of [Jane's] employment" so Jane should have the right to refuse this unsafe order. It is complicated, however, by lack of knowledge about the patient's intentions when the patient leaves the unit. Keep in mind that the additional restriction on the right to refuse is whether the refusal will "directly endanger the life, health or safety of another person." However, even if the patient has articulated his intention to harm someone, there are many measures that can be quickly put in place to prevent that from happening other than Jane trying to personally stop the patient. We believe that Jane's right to refuse this unsafe work would prevail.

Directly endangering the life, health, or safety of another person

What is work that can "directly endanger, the life, health, or safety of another person"? This concept can also be open to interpretation. However, the following simple example will help to explain the concept. In this case, a health care worker is required to administer a once-daily blood pressure medication to a patient. The patient is in her room and is severely agitated, pacing and talking in a loud voice. There is no one else in the room and it appears that the patient is responding to voices that only the patient can hear. When the worker approaches the doorway bringing the medication, the patient sees the worker and starts to shout directly at the worker in a threatening manner. In this case, the worker does have the right to refuse to enter the room to deliver the medication to the patient. The worker is afraid that they the patient will be struck by the patient. The worker also knows that the medication is only given once daily and knows that if it is delivered late by a few hours that the patient's life, health, or safety will not be endangered. Accordingly, the worker reports to the supervisor, the worker is refusing to perform this specific task at this time.

This situation may not be treated as a formal work refusal at this moment; however, if the supervisor orders the worker to perform the task now, in spite of the potential danger, it will become a work refusal. Keep in mind that each case has to be

assessed according to the particular circumstances and facts.

Steps and stages of a work refusal

Workers need to be aware of their rights to refuse unsafe work so that if they are faced with an unsafe situation, they know what to do and know the process they must follow. The best resource to use in Ontario for work refusals in the health care sector is the Guidance Note on Workplace Violence developed by the Section 21 committee.

Click here to access the Committee Guidance Notice

Stage One

OHSA 43(4) states:

Report of refusal to work

Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

(a) a committee member who represents workers, if any;

(b) a health and safety representative, if any; or

(c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them, who shall be made available and who shall attend without delay.

If a worker has a reasonable belief that conditions in the workplace pose a risk to his or her health and safety, the worker must report the concern to their supervisor. The supervisor must respond promptly and begin to investigate the situation accompanied by a worker health and safety committee member or rep (or another person chosen by the union because of knowledge and training). It is the supervisor or employer's duty to ensure that a worker representative is made available and can attend promptly. When the supervisor arrives, the refusing worker should explain the situation calmly and professionally, detailing specifically why she/he believes it is not safe. The worker or the worker representative should keep notes of this conversation and the overall situation as it may be fluid and the notes may be helpful later.

The investigation should not be conducted in a manner that makes the worker feel intimidated. The supervisor is free to ask questions in an attempt to understand the worker's concerns and the overall situation for the purposes of clarification, but the

worker should not be made to feel they are being interrogated for exercising their legal rights.

Remember: just because the situation may have existed for a long time, or several other workers have performed the same task with without raising a concern, this does not mean the worker may not refuse to perform it. The problem may be something no one else thought of or was fearful of identifying. It is the supervisor's responsibility to remedy the situation and after discussion and investigation by the supervisor it is not unusual for either party to propose plausible solutions that would enable the employee to safely resume work. Keep in mind that the supervisor may suggest a solution which the workers do not think is ideal but does address the hazard. It should be given due consideration and may have to be accepted as adequate.

If the remedy presented by the supervisor resolves all the safety concerns as raised by the worker, the worker should return to work. These resolutions may only be "interim solutions" to enable the employer to immediately continue operations.

That too is acceptable, for the time being. Workers should keep their detailed notes from this encounter as there may be recommendations arising from the situation which should be forwarded to the JHSC. In turn, the committee can request the introduction of permanent measures for the protection of workers in similar situations.

The purpose of the stage one is to outline the concerns and attempt to agree on a solution to resolve them so that the work can be done safely.

Click here to view our Work Refusal Flow Chart

OHSA S. 43(5) states:

Worker to remain in safe place and available for investigation

Until the investigation is completed, the worker shall remain,

(a) in a safe place that is as near as reasonably possible to his or her work station; and

(b) available to the employer or supervisor for the purposes of the investigation.

The worker is entitled to remain in a safe place (e.g., by not doing the refused work) and the worker should be close by to participate in the investigation. Exactly where the safe place is may become more complicated when the hazard is workplace violence, and the dangerous person is moving around the unit or workplace. It is helpful for the JHSC and for staff on individual units to develop procedures that address what should be used as a “safe place” in the event of the threat of workplace violence when a patient is not restrained or cannot be confined to their room or area.

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Get the facts!

Health care workers do have a right to refuse unsafe work if they have a reasonable belief that something in the work will endanger them. However, healthcare workers cannot refuse:

if the circumstance is inherent to their work; or

if the circumstance is a normal condition of work; or

if the refusal will endanger the life, health or safety of another person.

Stage Two

OHSA S. 43(6) and S. 43(7) state:

Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or

do particular work, the worker has reasonable grounds to believe that,

(a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;

(b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself;

(b.1) workplace violence continues to be likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker, the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

Investigation by inspector

(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c).

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person.

Idem

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c).

If the refusing worker, the worker representative, and the supervisor are unable to resolve the situation, the work refusal may enter what is known as Stage Two. However, while Stage One of the work refusal requires only a "reason to believe," the worker at Stage Two has a higher onus because the worker has now heard the supervisor's point of view and likely considered the supervisor's suggested solutions (if any) to resolve the work refusal. To continue to refuse, the worker should have "reasonable grounds" to believe that the circumstances remain dangerous even after the

initial investigation. While the term “reasonable grounds” is not defined in the act, it is usually understood that the worker following the Stage One investigation and discussion will have a more complete understanding of the hazard and the reasons why it is dangerous to perform the work and will be able to explain this.

Stage Two involves the MLITSD. The employer, the refusing worker, or the worker representative must notify the ministry and request that an inspector arrive at the workplace to assist to resolve the situation. **OPSEU/SEFPO advises, if possible, that the refusing worker or the worker representative should make the first phone call to the ministry.** There have been situations in the past where the employer has made the call and the work refusal situation has not been fully explained, leading to problems with having an inspector assigned, or having the inspector come to the workplace with an incorrect understanding of the situation.

An MLITSD inspector should be dispatched to the workplace to investigate the refusal in consultation with all three parties. Occasionally, an inspector will attempt to deal with the refusal over the telephone. This is not the best way to proceed – the worker and the worker representative should insist that the inspector be at the workplace to investigate. When the Inspector’s investigation is completed, the inspector will determine whether the situation is “likely to endanger.” The inspector is required to issue a written report of this decision “as soon as is practicable” and provide a copy to the employer.

The employer is required to post the orders and/or the report in a conspicuous place or places so that workers will see it.

The employer must also provide a copy of the MLITSD report to the JHSC and to the refusing worker if the refusing worker requests a copy.

Keep in mind that an inspector rules on a work refusal to determine whether the refused work is "likely to endanger" or not. Sometimes the inspector will decide that the work refusal is not valid and will decide to treat the issue as a complaint. This is not necessarily a bad thing, although workers are often very frustrated when this happens. **Determining that there is no right to refuse does not preclude the inspector from writing orders to the employer to address the hazard.** Whatever the inspector decides to do or write, keep in mind that both the union and the employer have the right to appeal the decision, the order(s), or the failure to write orders.

It is helpful for the JHSC and for staff on individual units to develop procedures that address what should be used as a "safe place" in the event of the threat of workplace violence.

Can the employer assign the work being refused to another worker?

The employer may assign the work being refused to another worker once the Stage One investigation is completed and during the time while waiting for the MLITSD inspector to investigate and make her/his decision. To safeguard the health and safety rights of the potential replacement worker, **the employer must inform the replacement worker about the prior worker's refusal along with the reasons for the refusal.**

OHSA S. 43(11) states:

Duty to advise other workers

Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal.

This must be done in the presence of the refusing worker or the refusing worker's representative. The replacement worker may choose to perform the work or decide to refuse as well if the replacement worker also believes the work is unsafe. The right to refuse unsafe work is an

individual right and must be asserted by individuals, not as a group.

Can the employer assign alternative work to the refusing worker?

The worker is required to wait in a safe place available to the inspector doing the investigation, until the work refusal is dealt with. However, while waiting for the MLITSD inspector to arrive and complete her/his investigation, the employer can assign alternative work to the refusing worker (subject to the terms of a collective agreement) during the worker's regularly scheduled working hours. The work being assigned cannot involve using the same "equipment, machine, device or thing" involved in the originating work refusal and cannot prevent the refusing worker from being made available to the MLITSD inspector if so requested.

OHSA S. 43(10) states:

Worker to remain in safe place and available for investigation

Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation.

Exception

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

(a) assigns the worker reasonable alternative work during the worker's normal working hours; or

(b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

If no alternative work exists, the employer can give other directions to the worker, subject to section 50 of the OHSA (no reprisals). This means that an employer could send a refusing worker home if no work is available and if it is expected that the inspector will not arrive and/or complete the investigation that shift. However, since the clause states that this decision is "subject to section 50," it means that the employer's decision cannot be interpreted as punishment or a reprisal against the worker for the work refusal. We would understand this to mean that if the employer instructs the worker to leave the workplace because there is no alternative work, the worker should continue to be paid for the rest of the shift.

Determining that there is no right to refuse does not preclude the inspector

from writing orders to the employer to address the hazard.

Do the refusing worker and their representative get paid during a work refusal?

Both the refusing worker and their representative are entitled to be paid during both Stage One and Stage Two of the work refusal. Note that S. *43(10.1)(b)* discussed above references section 50, the "no reprisals" section, when describing how alternative work may be assigned. Workers – both the refusing worker and their representative – are considered to be at work and entitled to pay during the work refusal process.

OHSA S. 43(13) states:

> *Entitlement to be paid*
>
> *A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,*
>
> *(a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and*

(b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12).

Can I be disciplined by the employer for initiating a work refusal?

OHSA Section 50 states:

No discipline, dismissal, etc., by employer

(1) No employer or person acting on behalf of an employer shall,

(a) dismiss or threaten to dismiss a worker;

(b) discipline or suspend or threaten to discipline or suspend a worker;

(c) impose any penalty upon a worker; or

(d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or

the regulations or in an inquest under the Coroners Act.

Arbitration

> *(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.*

Employers are forbidden from intimidating, disciplining or threatening to discipline workers for asserting their health and safety rights under the work refusal provisions (and all other provisions) of the OHSA. It is important that workers understand they not only have a right to refuse what they reasonably believe to be unsafe work: this right is *protected by law*. If a worker feels that an employer has taken a reprisal against them for asserting health and safety rights, workers are entitled either to file a grievance under a collective agreement or to file a complaint at the Ontario Labour Relations Board (OLRB).

What if I disagree with a MLITSD inspector's decision?

If an inspector has issued orders, failed to issue orders, or made a decision that workers do not agree with, workers have the right to appeal that decision. Appeals of inspector decisions must occur within 30 days from the issuance of the report. However, an appeal is a formal process that must comply with specific OLRB rules of procedure. OPSEU/SEFPO members who want the union's assistance to appeal an inspector order (or non-order), should contact the Health and Safety Unit and fax a copy of the premise report and all supporting documentation and details as soon as possible. The unit can help assess the situation and may offer to assist with the appeal or suggest other ways of addressing the issue.

A Certified Member's right to call for a supervisor investigation of a dangerous circumstance – the start of a bilateral work stoppage

OHSA Section 45 (1) states:

A certified member who has reason to believe that dangerous circumstances exist at a workplace may request that a supervisor investigate the matter and the

supervisor shall promptly do so in the presence of the certified member.

One under-used section of the OHSA entitles the certified member to call for a supervisor to investigate a dangerous circumstance. A dangerous circumstance is a situation in which section 44(1) of the Act defines as:

a) *a provision of this Act or the regulations is being contravened,*

b) *the contravention poses a danger or a hazard to a worker, and*

c) *the danger or hazard is such that any delay in controlling it may seriously endanger a worker.*

The process by which a certified member may call a supervisor to investigate a situation is an important and often effective way to obtain quick action to address an imminent hazard. Even if the process ends here, and does not move to a bilateral work stoppage, a hazard has been addressed quickly. Certified members receive special training in occupational health and safety and may recognize dangerous circumstances in cases where workers may not. Certified members may also be more knowledgeable about the Act and how to get the hazard addressed.

If, after the investigation of the supervisor, the certified worker still believes that a dangerous circumstance exists, he/she may call for the other certified member to attend and assess the situation. If both certified members agree that a

dangerous situation exists, they may issue a stop work/bilateral work stoppage until the employer corrects the situation. As with a regular work refusal in health care workplaces, the work stoppage may not endanger the life, health, or safety of another person.

It is important that workers understand they not only have a right to refuse what they reasonably believe to be unsafe work: this right is protected by law.

Contacting the MLITSD

In this section:

How to make a complaint

What to know before contacting the MLITSD

Should I complain or refuse

Dealing with the inspector

> *"Don't be afraid to ask questions. Don't be afraid to ask for help when you need it. Asking for help is a sign of strength. It shows you have the courage to admit when you don't know something and then allows you to learn something new."*
>
> *– Barack Obama*

While complaints are not mentioned in the OHSA, the MLITSD will respond to workplace complaints called in by workers or the public.

Anyone can make a complaint: workers, JHSC members, health and safety representatives, union representatives, or employers. However, it is good practice to seek local action first, and then make a complaint if local efforts fail.

Document all your efforts. If you make a complaint to the MLITSD about an issue that has never been to the JHSC for resolution, the MLITSD will likely only make a preliminary investigation and advise the parties to try to resolve it at the JHSC.

MLITSD inspectors are almost always reluctant to write orders or recommendations on an issue that the JHSC has not attempted to resolve. This is because the MLITSD expects local workplace parties to try to resolve health and safety issues as they arise. The workplace parties' participation in health and safety is expected in what is known as the "internal responsibility system" (IRS) where every person in the workplace participates in health and safety prevention. The OHSA specifies participation for workers, supervisors, employers, JHSCs and health and safety representatives. **All have specific responsibilities for health and safety that are corresponding with the level of responsibility each party possesses in the workplace.**

If you make a complaint to the MLITSD about an issue that has never been to the JHSC for resolution, the MLITSD will likely only make a preliminary investigation and advise the parties to try to resolve it at the JHSC.

How do I make a health and safety complaint to the MLITSD?

Call the MLITSD and make the complaint verbally at the toll-free phone number: 1-877-202-0008. The call center personnel will ask questions about the purpose of the call – What has happened? What is the issue? What steps have been taken to deal with the problem prior to calling? – and perhaps several more. Call takers may ask the question, "Where does it say that?", so it is important to connect any health and safety complaint with a specific section of the OHSA or any of the other 26 regulations that go along with it. Make sure notes are kept about the issue and record who said what and when. Collect any documentation to help explain the complaint. This could include emails, photographs, injury reports, WSIB reports, or statements from workers or managers. It is important to get the facts straight before calling the MLITSD. Organize the events in a concise timeline so that any third party can obtain a quick understanding of what has occurred. Have the most relevant key documents appended.

The complainant should obtain (if possible) the inspector's name and fax number or email address. If the call taker is not sure which inspector will be assigned, the complainant should ask the call taker to write a note on the file for the inspector to call him or her (and leave a name and number).

Once the inspector calls, explain the unresolved issue and ask the inspector to inspect the workplace at a time when the complainant is available and can attend. Give the inspector the name and contact info of the worker rep you want to be present at the visit if it is not the caller.

Fax the inspector a short, concise package to provide background material on the issue. Make sure to keep a copy.

Try to schedule the inspector's visit at a time when the representatives or workers familiar with the issue are on duty – give the inspector the schedule or discuss possible dates.

Ensure that all worker members know information about the issue and be prepared to discuss and produce documents in case inspector arrives during their shifts. This can be arranged during your caucus before the JHSC meeting.

Keep following up by phone, email or fax until an inspector comes to the workplace. Keep good records of attempts.

Can complaints be made anonymously?

Yes, they may, but it is not ideal. Complainants do not have to reveal their identity, nor do they have to tell their employers. However, **the best complaint is a well- planned and researched one.** The best complainant has pre-arranged that the H&S rep/worker committee member is knowledgeable

about the issue since that is likely who will be accompanying the inspector pursuant to S. *54(3)*.

Do I tell my employer?

At times it may be a good idea to tell the employer that a complaint has or will be made to the MLITSD. Sometimes they will want to fix the problem instead of answering MLITSD questions.

Should I make a complaint or do a work refusal?

It depends. If a worker believes that a situation is likely to endanger them if not corrected, then workers have a right to refuse the unsafe work. As discussed above, many workers in health care have a limited right to refuse – e.g., they cannot refuse if the work is inherent in the job or if a refusal puts someone else in danger. In less urgent situations, gathering information and filing a complaint after exhausting the issue locally may be more effective.

The best complaint is well-planned and researched

Important information to have on hand when speaking to the MLITSD:

1. Identify what is the gap in the existing health and safety program:
    a. Collect injury and near-miss information. How many workplace violence incidents have occurred? Where have they occurred?
    b. Why have the incidents occurred? Look at the findings in the investigation reports.
2. What controls are currently in place for the specific hazard?
    a. Why are they not working?
        i. Lack of training?
        ii. Lack of equipment?
        iii. Lack of staff?

And remember … all health care facility employees must be protected by the Ontario *Occupational Health and Safety Act* and Ontario Regulation 67/93 (health care and residential facilities). The MLITSD inspector will enforce any employer violations of either piece of legislation.

Conclusion: knowledge is power

Being a health and safety activist in a mental health facility, or in any health care facility, is not for everybody: the legislation is complex, and the stakes are high. But so are the rewards. OPSEU/SEFPO members working in the healthcare sector provide a service that is absolutely vital to the well-being of our society.

Making sure those members walk into the safest possible workplaces every day protects them and their loved ones, and just as importantly, it protects their patients, clients, and residents, and gives them a chance to benefit from the care and treatment we provide.

Health and safety work is tough, it's true.

But it's worth it!

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