Case In Point

OLRB Considers Employer's Disclosure Obligations Under *OHSA* After Workplace Harassment Investigation

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The Ontario Labour Relations Board (the OLRB) has provided guidance on the extent of an employer's disclosure obligations under the *Occupational Health and Safety Act* (*OHSA*) when an investigation into workplace harassment has been conducted.

In *Shannon Horner v Stelco Inc. Lake Erie* (*Shannon Horner*), the OLRB considered, for the first time, an employer's disclosure obligations under section 32.0.7(1)(b) of the *OHSA.* Following the investigation of a workplace harassment incident, this section requires an employer to inform a worker, in writing, of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation.

In *Shannon Horner,* the applicant filed a complaint with her employer, Stelco, alleging that she had been subject to harassment on social media by several of her co-workers. The allegations were investigated and Stelco advised the applicant verbally and in writing that her complaint was upheld and corrective action had been, or would be, taken. Stelco also advised that it intended to implement retraining.

The applicant took the position that Stelco's response was deficient and did not comply with the disclosure obligations under s.32.0.7(1)(b) of the *OHSA.* Specifically, she claimed the closure letter did not name the respondents, did not identify who in particular was found to have engaged in harassment as alleged, and did not identify who would be subject to corrective action, nor what corrective action and training would be administered. The applicant also took issue with the fact Stelco did not distinguish between harassment and sexual harassment in the letter.

The OLRB found that Stelco's closure letter did not comply with s.32.0.7(1)(b) of the *OHSA* as it did not identify which of the named respondents were found to have engaged in harassment and did not identify the specific corrective actions which would be taken as a result.

The OLRB also noted, however, that this section did not require the employer to provide a report of the factual findings, indicate the specific acts of harassment that were found to have occurred or specify the level of discipline the employer may impose.

Key Takeaways for Employers

Upon completion of an investigation, an employer should provide the complainant with a closure letter that sets out the results of the investigation, the identities of the individuals who were found to have engaged in harassment, and the specific corrective measures which will be taken as a result.

An employer is **not** required to provide a fulsome "report" of the factual findings of its investigation or outline the specific acts of harassment that were found to have occurred. While the closure letter should indicate if disciplinary action has been imposed (as a corrective measure), the letter does not need to indicate the specific disciplinary penalty.