

HR HealthCheck

Taking a Closer Look: From Ministry of Labour Inspections to the Wettlaufer Inquiry Report

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In this edition of *HR Healthcheck*, we discuss the Ministry of Labour's current inspection campaign which is focused on workplace violence prevention in long-term care homes, retirement homes and community care workplaces.

We also discuss the recommendations tabled in the report of the Long-Term Care Homes Public Inquiry, whose mandate was to inquire into the events leading up to the deaths caused by healthcare serial killer Elizabeth Wettlaufer, any contributing factors into those events and how similar tragedies can be prevented going forward.

Ministry of Labour Announces Focused Inspection Campaign on Workplace Violence Prevention in the Healthcare Sector (August 19 to September 27, 2019)

By: Nisha Dhanoa

As part of the province's Safe At Work Ontario compliance strategy, the Ministry of Labour recently announced a number of sector-specific initiatives aimed at raising awareness of workplace hazards and promoting compliance with the *Occupational Health and Safety Act* (OHSA) and its regulations.

In one of these initiatives, the Ministry announced a focused inspection campaign targeting workplace violence prevention in long-term care homes, retirement homes and community care workplaces.

Focused inspection campaigns in this sector are being conducted by inspectors from August 19, 2019 to September 27, 2019. The Ministry has identified the following items that inspectors will be checking for^[1]:

- a demonstrated commitment from senior executives to make workplace violence prevention a priority;
- employers are training workers on their workplace violence policy and program;
- employers are completing risk assessments and putting measures and procedures in place to control identified risks;
- workers are able to summon immediate assistance when workplace violence occurs;
- employers are providing workers with information and instruction related to a risk of workplace violence from a person with a history of violent behaviour;
- employers have measures and procedures in place on reporting incidents of workplace violence, and that those measures and procedures also explain how the employer will investigate and deal with violent incidents; and
- employers provide appropriate detail in the written notification of a workplace injury, including the steps taken to prevent reoccurrence.

In anticipation of this targeted inspection campaign, below we provide a refresher of the various employer duties related to workplace violence under the OHSA.

Policy and Program

The OHSA requires all employers covered by the statute to prepare a workplace violence policy and to review this policy, at least annually. Records should be kept of the annual review to demonstrate compliance. Where an employer regularly employs more than five workers, the policies must be written and posted in a conspicuous place in the workplace.

Employers must also develop and maintain a workplace violence program which implements the policy. The program must include:

- measures and procedures to control the risks likely to expose a worker to physical injury from workplace violence;
- measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- measures and procedures for workers to report incidents of workplace violence to the employer or supervisor; and
- the process that the employer will follow to investigate and deal with incidents or complaints of workplace violence.

Workers must be provided with information and instruction on these policies and programs, and should be able to demonstrate knowledge of the measures and procedures in place to report workplace violence and summon immediate assistance if asked by an inspector.

It is important to remember that the definition of “worker” under the OHSA is broad and encompasses independent contractors and sub-contractors working within an employer’s workplace, so all of these workers should be included in any training programs.

Risk Assessment of Workplace Violence

Employers must assess the risks of workplace violence that may arise from the nature of the workplace and the type of work or the conditions of work. The results of the risk assessment must be shared with the joint health and safety committee or the health and safety representative. Note that the obligation to conduct risk assessments is ongoing: they should be conducted whenever an incident or near-miss occurs, or when there is a change to the physical workplace, the type of work, or any other working conditions (such as hours of work). Following the risk assessment, employers should reassess their policy and program to ensure that they continue to protect workers from any risks identified.

Domestic Violence

If an employer becomes aware, or ought to reasonably be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer must take all reasonable precautions to protect the worker.

To address these challenges, employees should be specifically informed that they must advise their employer if they believe they are at risk of violence in the workplace, *including domestic violence*. Once advised, employers must take appropriate steps to address the risk, which may include seeking the assistance of the local police.

Disclosing People with a Violent History

An employer has a duty to provide information, instruction and supervision to protect the health or safety of a worker, and a supervisor has a duty to advise the worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware.

Conclusion

This focused inspection campaign on workplace violence provides a great opportunity to undertake a review of the policies and practices currently in place within your workplace to address workplace violence, and ensure that they remain both effective and compliant with the specific duties set out in the OHSA.

If you require further assistance in reviewing your organization’s policy or program, or otherwise assessing your organization’s compliance, please contact [your regular Hicks Morley lawyer](#).

[1] Health care sector compliance plan 2019-2020: <https://www.ontario.ca/page/health-care-sector-compliance-plan-2019-2020>

Wettlaufer Inquiry Report Released

By: [Jodi Gallagher Healy](#)

On July 31, 2019, the Honourable Eileen E. Gillese, Commissioner of the Long-Term Care Homes Public Inquiry, released the highly anticipated Inquiry Report (Report). Commissioner Gillese's Report included 91 recommendations aimed at preventing, deterring and detecting wrongdoing similar to that of healthcare serial killer Elizabeth Wettlaufer.

Many of the Report's recommendations are aimed at increasing funding and staffing for long-term care homes broadly. The key recommendations that are of direct relevance to human resource professionals in the sector are set out below.

1. Administrators and directors of nursing should receive training on various subjects, including:
 - best practices in the screening, hiring, management and discipline of registered staff;
 - conducting workplace investigations; and
 - their reporting obligations to the Ministry of Health and Long-Term Care and the College of Nurses of Ontario (College).
2. Employers in the sector should amend their contracts with medical directors to require them to complete certain training under the *Long-Term Care Homes Act, 2007* and to complete a specified medical director course within two years of assuming their role.
3. To ensure regular attendance at training, employers should pay the costs of training, cover staff salaries during training and backfill shifts as necessary.
4. Employers should adopt a hiring/screening process that includes robust reference checking and background checks in specified circumstances, including being fired from a previous job and close supervision during the probationary period.
5. Employers should require directors of nursing to conduct unannounced spot checks on evening, night and weekend shifts.
6. Employers must maintain a complete discipline history for each employee so management can easily review it when making discipline decisions.
7. Employers should limit the use of agency nurses and if agency nurses are required, the candidates must be thoroughly vetted to ensure they have the knowledge, skills and experience required to provide care in a lawful manner.
8. The College should strengthen its intake investigation process.
9. The College should educate employers and facility operators on their mandatory reporting obligations to the College.

The full text of the Report is [available online](#).

The Minister of Health and Long-Term Care responded to the Report by promising new funding to address its recommendations. The Ontario government also committed to tabling a report in the Legislature in a year's time to report on its progress implementing the Report's recommendations.

If you have questions regarding the impact of the Report in the long-term care or other healthcare sectors, please contact [your regular Hicks Morley lawyer](#).