

Proposed amendments to legislation regarding reporting or speaking out about workplace violence

OCHU/CUPE is calling on the provincial government to amend both the Ontario Occupational Health and Safety Act and the Public Hospitals Act (Chapter 40, pages 13-16 and 24) to provide protection for employees who report or speak out about workplace violence. These proposed amendments specific to reprisal and whistleblower protection are necessary after North Bay Regional Health Centre fired a nurse in 2016, who spoke up about the general problem of violence.

Proposed revisions to the Ontario Occupational Health and Safety Act

50. (1) No person, employer, or person acting on behalf of an employer shall take a reprisal against a worker because the worker, in good faith:

- (a) acts or has acted in compliance with this Act or the regulations or an order made thereunder;
- (b) seeks or has sought advice about a possible contravention of this Act or the regulations or the enforcement of this Act or regulations; \
- (c) seeks or has sought the enforcement of this Act or the regulations;
- (d) assists or has assisted with the activities of a joint health and safety committee or health and safety representative;
- (e) seeks or has sought the establishment of a joint health and safety committee or the designation of a health and safety representative;
- (f) performs or has performed the function of a joint health and safety committee member or occupational health and safety representative;
- (g) refuses or has refused to perform an act or series of acts that they reasonably believe violate this Act or regulations;
- (h) gives or has given information to a joint health and safety committee, a member of the joint health and safety committee, a health and safety representative, a trade union, inspector, or any other person responsible for the administration of this Act or regulations; or
- (h) is about to testify or has testified in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act R.S.O. 1990, c. O.1, s. 50.

(2) For the purposes of subsection (1), a reprisal is any measure taken against a worker that adversely affects his or her employment and includes but is not limited to,

- (a) ending or threatening to end the worker's employment;
- (b) demoting, disciplining or suspending, or threatening to demote, discipline or suspend an employee;
- (c) imposing or threatening to impose a penalty related to the employment of the worker; or
- (d) intimidating or coercing a worker in relation to his or her employment.

Consider adding: layoff, transfer, discontinuation or elimination of a job, change of a job location, reduction in wages, change in hours of work.

Proposed amendments to the Public Hospitals Act (pages 13-16)

Whistle-blowing protection

10.1(1) No person shall retaliate against another person, whether by action or omission, or threaten to do so because,

- (a) anything has been disclosed to an inspector, investigator, or hospital administrator appointed under section 9.1 of the Act;
- (b) anything has been disclosed to the Ministry in connection with a hospital, including, without limiting the generality of the foregoing,
 - (i) if the Ministry has been advised of a breach of a requirement under this Act,
 - (ii) if the Ministry has been advised of any other matter concerning the care of a patient or operation of the hospital that the person believes ought to be reported to the Ministry; or
- (c) evidence related to a hospital has been or may be given in a proceeding, including a proceeding in respect of the enforcement of this Act or the regulations, or an inquest under the Coroners Act.

Interpretation, retaliate

(2) Without in any way restricting the meaning of the word "retaliate", the following constitute retaliation for the purposes of subsection (1):

- (a) dismissing a staff member;
- (b) disciplining or suspending a staff member;

(c) imposing a penalty upon any person;

(d) intimidating, coercing or harassing any person.

May not discourage reporting

(3) None of the following persons shall do anything that discourages, is aimed at discouraging or that has the effect of discouraging a person from doing anything mentioned in clauses (1) (a) to (c):

1. A hospital;
2. An administrator or board member of the hospital;
3. A staff member.

May not encourage failure to report

(4) No person mentioned in paragraphs 1 to 3 of subsection (3) shall do anything to encourage a person to fail to do anything mentioned in clauses (1) (a) to (c).

Protection from legal action

(7) No action or other proceeding shall be commenced against any person for doing anything mentioned in clauses (1) (a) to (c) unless the person acted maliciously or in bad faith.

Offence

(8) Every person is guilty of an offence who does anything prohibited by subsection (1), (3), or (4).

Complaint to Ontario Labour Relations Board

10.2 (1) Where a staff member complains that an employer or person acting on behalf of an employer has contravened subsection 10.1 (1), the staff member 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.

Inquiry by Board

(2) The Board may inquire into any complaint filed under subsection (1) and section 96 of the Labour Relations Act, 1995, except subsection (5), applies with all necessary modifications as if that section, except subsection (5), is enacted in and forms part of this Act.

Same

(3) On an inquiry by the Board into a complaint filed under subsection (1), sections 110, 111, 114 and 116 of the Labour Relations Act, 1995 apply with all necessary modifications.

Onus of proof

(4) On an inquiry by the Board into a complaint filed under subsection (1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 26 (1) lies upon the employer or the person acting on behalf of the employer.

Board may substitute penalty

(5) Where, on an inquiry by the Board into a complaint filed under subsection (1), the Board determines that a staff member has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Interpretation

(6) In this section,

“Board” means the Ontario Labour Relations Board; (“Commission”)

Obstruction

10.3 Every person is guilty of an offence who attempts, by any means, to prevent another person from providing information to an inspector, investigator, hospital supervisor or Ministry where the provision of the information is required or permitted by this Act or the regulations.

Public disclosure if situation is urgent

10.1(3) If a person, in good faith, believes that a matter constitutes an imminent risk of danger to the life, health or safety of persons such that there is insufficient time to make a disclosure under section 10.1, the person may make a disclosure to the public.

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Offence >> INCREASE THE FINES.

30 Every person who contravenes or is a party to the contravention directly or indirectly of any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$1,000. R.S.O. 1990, c. P.40, s. 30.