

harassment in the workplace: limitations on an employer's responsibilities

The recent introduction of requirements for policies and procedures relating to harassment and workplace violence in Ontario's *Occupational Health and Safety Act* ("OHS") has increased the regulatory workload on employers. However, a recent decision by the Ontario Labour Relations Board (the "Board") appears to limit to some extent the scope of an employer's added responsibilities.

In *K. Annette Harper v Ludlow Technical Products Canada Ltd.*, an employee alleged that she was harassed at her workplace by co-workers who had circulated a petition regarding her activities in relation to a product safety issue. She complained to her employer, and then notified the Board that her employer had allegedly failed to investigate her concerns or comply with company procedure for the investigation of harassment complaints. The employee also claimed that, after filing a complaint with the Board, her employer had refused to appropriately process her claims for short-term disability or WSIB benefits in alleged violation of section 50 of the *OHS*, which prohibits reprisals against an applicant by his or her employer.

The employer requested that the application be dismissed on the basis that it failed to raise a *prima facie* violation of section 50 of the *OHS*. Under Rule 39.1 of the Board's Rules of Procedure, an application may be dismissed by the Board where the facts do not support the remedy or order requested, even if all the facts as

alleged by the claimant are true and provable. The employer contended that because neither it nor any party acting on its behalf was responsible for the alleged harassment of the applicant, and because the alleged harassment was claimed to be related to the applicant's product safety concerns (and complaints regarding product safety are not governed by the *OHSA*), the application should be dismissed. Further, the employer submitted that the application could not succeed, because the employer had prepared and posted a workplace harassment policy, developed and maintained a program to implement such policy, and provided workers with instruction on such policy, which are the only obligations of an employer under the *OHSA* with respect to workplace harassment, and there was no dispute that the employer had complied with these obligations.

Following an earlier case before the Board, *Investia Financial Services Inc.*, the Vice-Chair noted that under the *OHSA*, the employer has specific obligations and duties related to harassment and workplace violence, including an assessment of the risks of workplace violence; the establishment of a program to implement the employer's policy countering workplace harassment; and providing information and instruction to employees regarding the employer's workplace harassment policy and program.

However, there is no obligation on the part of the employer, and no jurisdiction provided to the Board, to ensure that the workplace is actually free of harassment. Similarly, the Board has no jurisdiction to ensure that a workplace harassment policy instituted by an employer is effective. Further, section 50 does not protect employees from reprisal in respect of a complaint about the effectiveness of the policy, where such a policy already exists. As a result, the Board dismissed the case as against the employer.

No employer wants to see harassment in its workplace. However, provided that policies and procedures are in place to counter workplace violence and harassment, the employer has complied with its obligations under the *OHS*A. The Board does not have jurisdiction to address complaints of harassment under the *OHS*A.

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a cautionary note

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