

Workplace Violence: Staying Ahead of the Curve

March 12, 2010 An employee who had been suspended from his job at Great West Chrysler in Edmonton, returned to the workplace with a gun. He shot two of his co-workers, killing one of them, before committing suicide.

November 12, 2005 Lori Dupont, a nurse at Hotel-Dieu Grace Hospital in Windsor, Ont., was murdered during her shift in the recovery room by a doctor who had been harassing and stalking her for eight months.

January 29, 2000 Anthony McNaughton, manager of a Starbucks coffee shop in Vancouver, was killed by the estranged husband of a female co-worker. While placing himself between his co-worker and her husband who had come looking for her wielding a butcher knife, McNaughton was stabbed and died from his injuries.

Although one may be forgiven for thinking of such incidents as “one-off” events that will never happen at one’s own workplace, the truth is that workplace violence is more prevalent than many of us would like to admit.

Why should workplace violence be on the top of the issues agenda of retirement residences operators? According to a Statistics Canada report entitled *Criminal Victimization in the Workplace*, one third of all incidents of workplace violence occur in the social assistance or health care sectors, including hospitals, nursing or residential care facilities – that is, approximately 118,000 incidents annually.

The report also stated that employees who have frequent contact with the public or clients are at increased risk of being victims of workplace violence. Retirement residence employees such as personal support workers and nurses fall squarely into this high risk category, so retirement residence operators are well advised to take a proactive approach to prevent workplace violence before it becomes a problem in the workplace.

Furthermore, Alberta, B.C., Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island and the federal Canada Labour Code have regulations that specifically address workplace violence. These regulations require employers to take measures to protect employees against violence and harassment in the workplace. Failure to comply with applicable legal requirements may result in unwanted attention from government inspectors and/or grievances from the union.

The newest legislation addressing workplace violence is Ontario’s Bill 168, *the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)* (the “Act”), which will come into force June 15. Every employer governed by the Act will be obliged to:

- undertake a risk assessment process to measure the risk of workplace violence;
- develop a workplace violence and harassment policy to address the risks identified; and
- develop programs and procedures to implement the policy.

What action should retirement residence operators take?

To protect employees and to comply with applicable legislation and regulations, a retirement residence operator may consider taking the following steps:

- Appoint a workplace co-ordinator to manage the development and implementation of policies, training and accountability;
- Develop a risk assessment tool;
- Conduct a risk assessment;
- Address any issue(s) identified in the risk assessment;
- Review existing workplace violence and harassment policies to ensure compliance with applicable legal obligations;
- Update or develop new workplace violence and harassment policies;
- Review existing complaint and incident reporting policies to ensure compliance with applicable legal obligations;
- Update or develop new complaint and incident reporting policies;
- Establish procedures to comply with any applicable disclosure obligations where a worker may come into contact with an individual with a history of violence;
- Develop and implement a record keeping protocol to document assessments, complaints, remedial action, etc.;
- Review and update discipline and other workplace policies to ensure that they comply and are consistent with new or revised violence and harassment policies;
- Plan and implement education and training programs for employees;
- In a unionized workplace:
 - Review the terms of any collective agreements to determine if any provision is affected by any applicable legislations or regulations;
 - Where possible, communicate with union representatives regarding proposed policy changes and compliance. This ongoing communication may reduce the risk of a future grievance directed at whether the employer has met its legal obligations

Bonny Mak is a lawyer with the management-side employment and labour law firm, Sherrard Kuzz LLP in Toronto. Bonny can be reached at 416.603.0700 (Main), 416.420.0738 (24 Hour) or by visiting www.sherrardkuzz.com.

The information contained in this article is provided for general information purposes only and does not constitute legal or other professional advice. Reading this article does not create a lawyer-client relationship. Readers are advised to seek specific legal advice from members of Sherrard Kuzz LLP (or other legal counsel) in relation to any decision or course of action contemplated.