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# Prevent, Protect, Compensate

Response  
by the  
Ontario Federation of Labour

It's Never Okay:  
An Action Plan to Stop Sexual Violence  
and Harassment

May 2015



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## INTRODUCTION

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle for better working and living conditions. With most unions in Ontario affiliated, membership includes nearly every job category and occupation.

The OFL is Canada's largest provincial labour federation.

The strength of the labour movement is built on solidarity and respect among workers. We commit ourselves to the goals of worker democracy, social justice, equality and peace. We are dedicated to making the lives of workers and their families safe, secure and healthy.

We believe that every worker is entitled, without discrimination, to a job with decent wages and working conditions, union representation, free collective bargaining, a safe and healthy workplace, and the right to strike.

We believe that we, as members of society, are entitled to basic human rights, political freedom, quality public services, good democratic government, a safe and sustainable environment, a just and equitable society, and a peaceful world.

We believe that diversity in our society must be protected, promoted and celebrated. We believe that every worker is an equal member of the human family, regardless of gender, gender identity, colour, creed, ethnic origin, disability, sexual orientation or age. We stand for inclusiveness. We stand against abuses of human rights in our workplaces, our communities, our country, and around the world.

Organized labour, as the voice of working women and men, promotes their interests in the community and at national and international forums. We speak out forcefully for our affiliates and their members to employers, governments and the public to ensure the rights of workers are protected and expanded.

In all our work, we defend and promote the principles of democracy and equality and hold true to the ideal of human rights for all.

We are sisters and brothers who, in solidarity, always pursue social, economic and political justice – the goals on which the labour movement was founded.

As a province-wide central labour body, the OFL works to develop and coordinate policy as passed at our conventions and by our executive bodies.

We applaud the government's commitment to end sexual violence and harassment and welcome the opportunity to comment on the Ontario government's Action Plan.

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This will be a massive undertaking to end harassment and sexual violence. There are significant and unique problems facing our Aboriginal sisters. From the murdered and missing indigenous women and girls to the lack of supports and access to psychological professionals for all people in Northern Ontario. More resources for women shelters and transition homes are also needed.

Women also need to have the right to take time from work as they transition out of abusive relationships. Some of our affiliates have suggested the Australian model as one worth looking at.

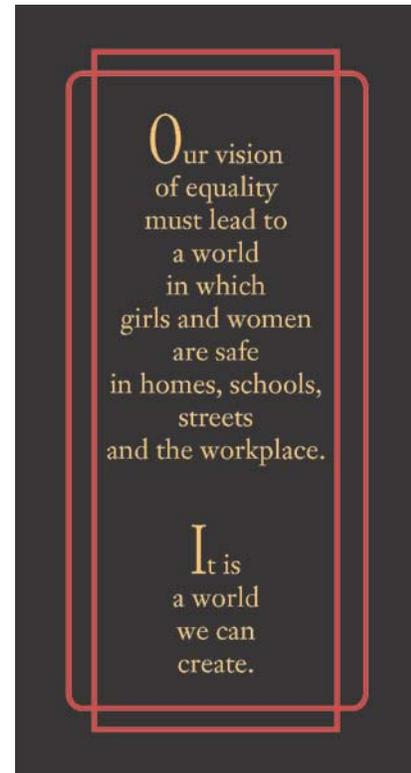
Aboriginal women and women of colour face double abuse from both racial and sexual harassment. These women, along with immigrant or disabled women, may also suffer the additional stressors from isolation, poverty or difficulties in communication. The intersectionality of discrimination needs to be recognized and addressed.

Language, religion, sexuality, and traditional dress can also be factors in why certain people may be targeted for harassment. The LGBTQ<sup>1</sup> community faces discrimination, harassment and threats of violence in the community they live and the places they work. The same applies to individuals who are not gay or lesbian but because of their mannerisms and the way they dress are perceived by others as if they were.

Our own work with the LGBTQ community suggests that a high percentage of LGBTQ workers opt to stay “in the closet” and do not “come out” to their colleagues or employer for fear of being ostracized, demoted or fired. While the *Ontario Human Rights Code* and the *Occupational Health and Safety Act* (OHSA) explicitly prohibit harassment and discrimination, incidents too often go unreported, unacknowledged and unenforced.

LGBTQ families struggle with Canada’s immigration policies. As they age LGBTQ families face discrimination trying to stay together in nursing homes, etc.

Tackling bullying in schools is also an important initiative. Making an impact on the mindset of our next generation is key to having an impact and driving a paradigm shift in our society. According to research we have seen 55% of young men who were bullies in high school went on to have criminal records by the time they were 24 years old. We provide an abstract on this research in the appendix.



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<sup>1</sup> Lesbian, gay, bisexual, transgender and queer.

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While all of these issues and more will need to be addressed if the government is to achieve its' goal, there are others in a better position to discuss them in detail. We intend to focus our energies on the role of the workplace in this action plan.

The ILO/World Health Organization defined occupational health in 1950. We have edited it as follows,

*"Occupational health is the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to a workers' physiological and psychological capabilities; and, to summarize, the adaptation of work to people and of people to their jobs."*

This is a definition labour has long supported. The government should keep this definition in mind during their development of the Action Plan.

### **ACTION PLAN OVERVIEW**

In the section entitled "Safer Workplaces" it states, ALL EMPLOYEES are entitled to a safe and healthy workplace, free from sexual violence and harassment. Our government takes this very seriously."

The following points make up the Workplace H&S component to this plan:

- Introduce legislation to strengthen the *Occupational Health and Safety Act* to include a definition of sexual harassment. The legislation would set out explicit requirements for employers to investigate and address workplace harassment, including sexual harassment complaints in the workplace, and include an obligation for employers to make every reasonable effort to protect workers from harassment, including sexual harassment, in the workplace.
- Create a new Code of Practice for employers under the *Act* that will describe steps employers can take to comply with the law and assist employers in making their workplaces safer for all employees.
- Establish a special enforcement team of inspectors trained to address complaints of workplace harassment, including sexual harassment, and enforce the *Act's* harassment provisions across the province.
- Develop educational materials to help employers create a safer workplace, free of harassment.

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In addition to the above points the government has committed to:

- Develop up-to-date training for front-line workers in the health, community services, education and justice sectors to better support survivors of sexual assault and harassment and develop training for workers in the hospitality sector to empower them to know how to help when they encounter high-risk situations.
- Establish a permanent roundtable to make Ontario a leader within Canada on issues of violence against women<sup>2</sup>.

**Roundtable**

The Roundtable on Violence Against Women has been created to provide advice to the government on emerging issues of gendered violence. This Roundtable is also to assist with the implementation of the Action Plan. The OFL is represented on this Roundtable and will bring a workplace perspective to the table.

**Workplace Bullying and Harassment**

A part of the Action Plan is to make changes to the *OHSA*. We have some ideas regarding changes to legislation and regulations that can be made.

We feel that adding a provision to the section dealing with the Powers of the Minister should include the power to promote the prevention of workplace harassment and sexual violence.

According to information provided by the Canada Safety Council 72% of workplace bullies are people in positions of authority. The victims tend to be the ones who lose their job with 64 per cent quitting or being terminated. Another 13 per cent are transferred out of that job. In only 23 per cent of the cases did the employer punish the bully<sup>3</sup>.

**Throne Speech**

“To further ensure fairness for workers and their families, legislation to increase Ontario’s minimum wage annually at the rate of inflation and to increase protections for vulnerable workers will also come before this House.” July 3, 2014

We need additions to the duties of employers and supervisors under the *OHSA* to make it illegal for them to engage in harassment or sexual violence. Our proposed language is provided in the appendix. Employers should have a clear duty to take steps to prevent harassment in the workplace.

Two decisions at the *Ontario Labour Relations Board (OLRB)*<sup>4</sup> which dealt with reprisals due to harassment complaints covered this point. The decisions stated,

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<sup>2</sup> Government of Ontario, “It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment (March 2015)

<sup>3</sup> <https://canadasafetycouncil.org/workplace-safety/working-bully>.

<sup>4</sup> OLRB Case No. 3990-10-OH and OLRB Case No. 0852-13-OH.

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*“In the case of an employee who complains that he has been harassed, there is no provision in the OHS Act that says an employer has an obligation to keep the workplace harassment free. The only obligation set out in the Act is that an employer have a policy for dealing with harassment complaints. The Legislature could very easily have said an employer has an obligation to provide a harassment free workplace but it did not.”*

We have proposed that the language not be limited to workers but include other persons in the workplace. We are thinking of other situations where workers of other employers would enter a workplace. For instance an office tower with many employers may have cleaning staff hired by the building company to clean the offices after business hours. One of the female cleaning staff is sexually harassed by a manager in one of the offices. The onus to ensure the cleaning staff is protected should not rest entirely on her employer so we have proposed an additional duty on employers to ensure that the conduct of its’ supervisors does not harm workers or other persons.



An employer can have the best harassment policy and procedure but if it is the CEO of the organization that is the bully, the policy and procedure will mean little to the workers being bullied. The worker could follow the complaint and investigation procedure but if it is the CEO that has the final say most workers will become one of the 64 per cent mentioned above. Unionized workers can file a grievance, but again, if the employer is the bully and has the final say on the grievance the arbitration process can take a year or more leaving the victims to be targeted by their abuser.

Bad behaviour by employers and owners of companies is an issue we hear about all too often. One recent case before the OLRB<sup>5</sup> dealt with the owner of a company who had humiliated and then fired a worker. The OLRB found that the owner,

*“...throughout the dismissal process acted in a manner that was unfair and in bad faith, being both untruthful, misleading and unduly insensitive”.*

Section 57 of OHS Act deals with powers of inspectors and should be amended so that the inspectors will have the authority to issue cease and desist orders. The OFL has provided suggested language for this in the appendix.

Cease and desist orders may be effective for abusive managers who remain in the workplace. There is then the question of what to do about predators who go from workplace to workplace

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<sup>5</sup> OLRB Case No. 1560-13-OH.

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starting the cycle of abuse each time and leaving a trail of broken and psychologically damaged people behind them.

Harassment and abuse in the workplace creates a poisoned work environment for all workers who witness the actions. It does not just impact the target of the abuser.

The role of the *OLRB* will also need to be expanded. Currently if there has been no reprisal involving financial loss by the worker(s), the *OLRB* is unable to provide a remedy. In dealing with a complaint by a worker who suffered a reprisal for making a complaint about harassment at work, the *OLRB* stated the following,

*“While the Act obligates employers to have a policy that enables workers to bring complaints forward, and the Board has the authority under section 50 to protect individuals who invoke that procedural right, the Board does not have any general authority to remedy the underlying workplace harassment that gave rise to the complaint in the first place.”<sup>6</sup>*

### **Defining Sexual Violence**

The definition under *OHSA* for workplace violence is restrictive and is limited to acts which causes or could have caused physical harm.

Incidents of sexual abuse in the workplace should become part of the mandatory reporting requirements under section 52 of *OHSA*.

The definition for sexual violence needs to include sexual abuse that causes psychological harm and that is consistent across ministries. This should be added to the current definition of workplace violence.

One example provided to us on the inconsistent use of the term “sexual abuse” involves a long term care facility. The employer posted a notice for employees notifying them that sexual touching by a resident against another resident was considered sexual abuse but if the resident did the same acts upon the staff it was not considered sexual abuse.

We have been advised by one of our affiliates that they had a situation where a personal support worker suffered psychological trauma when a man she was providing support for grabbed her and performed a sexual act on her. She was not physically harmed but the employer’s only response was to tell her to wash her clothing.

Then there are workers who face bad behaviour from the public. Retail workers who get yelled at for the store’s return policy, medical secretaries who are bullied because of long waits for the doctor or lab tests or social workers threatened by clients or the families.

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<sup>6</sup> OLRB Case No. 0852-13-OH.



What has really been getting media is a trend where men seem to feel sexually harassing female TV news reporters is a new sport. These men are invading the workspace of these reporters, sexually harassing them and they think it is funny. Sexual harassment is no joke.

Many of the perpetrators are not juveniles they are grown men some, with good jobs and a university education. If they behave this badly in front of TV cameras, then we have a very long way to go before we can end sexual harassment in our workplaces.

### **Temporary Foreign Workers Program**

The migrant workers in this program are particularly vulnerable to abuse and exploitation. They are tied to one employer and cannot leave to seek employment elsewhere as this would violate their permit and they would be repatriated back to their home country. These workers typically owe fees to recruiters for the jobs. These fees are owed even if the worker loses their job. Recruiters use job blackmail to keep these workers from making complaints. If they complain they will not get to come back, their family may be black listed. Entire villages may be threatened with exclusion by the recruiters if just one worker is sent back. The employer can have a worker repatriated with little notice and without justification. Their housing is typically provided by the employer.

All of these conditions make women in the program especially vulnerable to sexual harassment and sexual violence by those in positions of authority in the workplace.

In a case at an Ontario food processing plant<sup>7</sup> 42 female workers from the program came forward with complaints of sexual violence by the employer. The employer was charged with 23 counts of sexual assault and 5 counts of common assault. In a plea arrangement the employer plead guilty to common assault.



The fact that these workers were subjected to sexual abuse in this situation is not a surprise. What is surprising is that they had the courage to come forward. They had recently joined a Union and the support from the Union gave them the courage to speak out together.

This was an exceptional case which also makes the point of intersectionality of discrimination and abuse that needs to be recognized and addressed. It also demonstrates the importance of vulnerable workers understanding their rights and having opportunities for their voices to be heard.

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<sup>7</sup> Presteve Foods, Wheatly, Ontario.

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### **Domestic Workers**

Currently the *OHS*A excludes servants from the legislation. Domestic workers are vulnerable to harassment, sexual harassment and sexual violence. The government should remove this exclusion from *OHS*A. In 2010 an Expert Panel reviewing Ontario's prevention system<sup>8</sup> suggested a review of this exemption.

### **Working Alone**

Working alone or in isolation places workers, women workers in particular at risk of sexual harassment or sexual violence. The OFL has prepared regulatory language to address working alone situations. The proposed regulation can be found in the appendix.

### **Code of Practice**

The Action Plan includes the use of codes of practice under the *OHS*A. The Canadian Standards Association (CSA) partnered with the Mental Health Commission of Canada to develop a standard on psychological health and safety in the workplace. Labour, employer and government representatives worked with professional mental health providers to develop this standard<sup>9</sup>.

The CSA standard should be adopted by the MOL as a code of practice under the *OHS*A.

The CSA and Mental Health Commission of Canada has also developed a guide to implementing the standard. Both the CSA standard and the guide are available to the public free of charge. Another resource available to workers and employers is the Mental Injury Toolkit (MIT)<sup>10</sup> which was developed by the Occupational Health Clinics for Ontario Workers (OHCOW). This resource provides tools to measure stress in the workplace and provides possible solutions.

### **MOL Inspectors**

Inspectors will need comprehensive training on harassment issues. The MOL will also need to be sensitive to cultural and religious restriction which will prevent women from interacting with male inspectors during investigations. Women who have been harassed or suffered sexual violence in the workplace will need to be provided with the option of speaking to a female inspector. Inspectors will need to have additional training on interview skills and investigative techniques, etc.

As we have seen with other legislative and regulatory changes it is effective enforcement that will drive real change.

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<sup>8</sup> Expert Advisory Panel on Occupational Health and Safety, Report and Recommendations to the Minister of Labour, December 2010, pg 58.

<sup>9</sup> CAN/CSA-Z1003-13/BNQ 9700-803/2013 Psychological health and safety in the workplace – Prevention, promotion, and guidance to staged implementation.

<sup>10</sup> <http://www.ohcow.on.ca/en/MIT>

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Elements of an effective enforcement system include:

- A highly visible inspectorate;
- Inspectors who are given a clear mandate to enforce the law and supported to issue orders and penalties for violations.

Inspectors must be provided with the enforcement tools which have an immediate impact such as summons, offense notices, and an administrative monetary penalty system. They should also have the power to order reassessments for violence and harassment.

An effective enforcement system is the best deterrence. There needs to be a strong deterrence so employers will live up to their duties to protect workers. In 2009, Malcolm K Sparrow had this to say about deterrence,

*“The magnitude of a deterrent effect depends, according to criminologists, on a potential perpetrator's assessment of three factors:*

*(a) the likelihood of getting caught (i.e. the probability of being detected or reported),*

*(b) the probability of being convicted once detected, and*

*(c) the severity of the punishment if eventually convicted.*

*This hearing clearly focuses on the third, and I certainly support the notion of effective punishment for white collar crimes, particularly those that involve an abuse of the public's trust and diversion of public funds.*

*But I would urge the committee in its deliberations to consider the first two factors equally seriously. The third—severity of punishment—can be set or altered by statute or by adjusting sentencing guidelines. The first two are harder to change, as they depend on the underlying capacity of the detection apparatus and the capacity of the criminal justice system to deal with cases that come to light. The most obvious weaknesses in health care fraud control lie with these first two. Criminologists argue, in fact, that the first two—the probability of detection and conviction—weigh more heavily in the calculus of would-be-perpetrators than the severity of sentences because (assuming a low enough probability of detection) criminals like to believe they will never face sentencing<sup>11</sup>.”*

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<sup>11</sup> Malcolm K. Sparrow, Professor of the Practice of Public Management. John F. Kennedy School of Government, Harvard University. Speaking to the Senate Committee on the Judiciary: Subcommittee on Crime and Drugs on May 20th, 2009 <http://www.hks.harvard.edu/news-events/news/testimonies/sparrow-senate-testimony>.

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Mr. Sparrow spent 10 years in the British Police Service rising to the rank of Detective Chief Inspector before leaving to take a position at Harvard.

Employers are ultimately responsible for ensuring a safe and healthy workplace. Knowing that they will be held accountable and prosecuted for not maintaining a safe and healthy workplace will force employers to fulfil their responsibilities under the *Act*. It will also provide good reason for them to deal with the joint health and safety committees in good faith.

### **Health and Safety Committees and Representatives**

The role of joint health and safety committees (JHSC) and health and safety representatives (HSR) needs to be expanded. They need to have the right to investigate incidents of violence in the workplace and make recommendations to the employer. Currently this right only exists if a worker is killed or critically injured. As previously mentioned the definition of workplace violence should be expanded to include sexual violence and abuse. The OFL has proposed wording for expanding the right to investigate these incidents. It can be found highlighted in the sections which currently exist and is provided in the appendix.

There should also be an obligation on the employer to consult with the committee and representative in the development of policies and procedures for the prevention of harassment and violence.

### **Self-Directed Injury and Death in the Workplace**

We have heard from a number of our affiliates of workers who attempted suicide or committed suicide in the workplace. Some of these injuries and deaths have had a workplace harassment or bullying component to the action.

The *OHSA* is clear, JHSC and HSR have the power to identify situations that maybe a source of danger to workers and make recommendations to the employer. *OHSA* also says that JHSC and HSR have the right to,

*“investigate cases where a worker is killed or critically injured at a workplace **from any cause** and one of those members may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director and to the committee.”*  
*(Emphasis added)*

While there is sometimes reluctance from our members to get involved in something seen as very personal those who have tried have been blocked either by the MOL or the police.

There are a number of examples where harassment or bullying has led to murder/suicides at the workplace.

The JHSC and HSR should have the right and support to investigate these injuries and deaths where workplace harassment, bullying or violence has contributed to the self-inflicted injury or death.

### **Administrative Monetary Penalties**

The inspectors should also be provided with the authority to issue Administrative Monetary Penalties (AMPs). This enforcement tool will allow higher penalties than issuing tickets, is more cost effective than a prosecution and allows the MOL to keep the money paid. This will provide more resources to the MOL to do more training of inspectors and invest more in prevention. AMPs can also be set up to increase the penalty each day or week that the employer fails to come into compliance. The use of AMPs will provide a stronger deterrence.

The introduction of AMPs was one of the recommendations made by the Expert Panel<sup>12</sup>. The government committed to acting on all the recommendations. We are approaching the 5<sup>th</sup> anniversary of the release of the report and the government has yet to act on this and a number of other recommendations.

### **Educational Materials**

Educational materials and training in particular those that relate to the workplace health and safety should be prepared and instructed by a recognized training provider as approved by the MOL.

### **Precautionary Principle**

The precautionary principle is an approach to eliminating hazards before they cause harm. Simply put, the philosophy behind precautionary principle reads, *“when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.”*

The precautionary principle has been used internationally, primarily around issues of environmental concern. One of the most important times the principle was used was at the 1992 United Nations Conference on Environment and Development.

The precautionary principle was incorporated into a declaration passed at the conference which stated:

*“In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.”*

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<sup>12</sup> Expert Advisory Panel on Occupational Health and Safety, Report and Recommendations to the Minister of Labour, December 2010, Recommendation 27, pg 44.

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The principle of precautionary action has four parts:

- People have a duty to take action to prevent harm before it happens. If there is a reasonable suspicion that something bad may happen, then there is an obligation to try to prevent it.
- The burden of proof of harmlessness of a new technology, process, activity, or chemical lies with those who wish to use or introduce it, not with the general public.
- Before using a new technology, process, or chemical, or starting a new activity, people have an obligation to examine a full range of alternatives including the alternative of doing nothing.
- Decisions applying the precautionary principle must be opened, informed, and democratic and must also include affected parties.

The precautionary principle is not really new. The essence of the principle is captured in common sense aphorisms such as *“an ounce of prevention is worth a pound of cure”*, *“better safe than sorry”*, and *“look before you leap”*.

Parents do not need to know with 95% certainty that their child is going to be hit by a car when they tell the child do not play in the street. They just need to know there is a reasonable danger to that child. We, as a society, need to take precautionary action for prevention to keep people out of harm's way.

Justice Archie Campbell headed the SARS Commission. His number one recommendation:

1. That the precautionary principle, which states that action to reduce risk need not await scientific certainty, be expressly adopted as a guiding principle throughout Ontario's health, public health and worker safety systems by way of policy statement, by explicit reference in all relevant operational standards and directions, and by way of inclusion, through preamble, statement of principle, or otherwise, in the *Occupational Health and Safety Act*, the *Health Protection and Promotion Act*, and all relevant health statutes and regulations.

He called this his take home message.

This government has an opportunity to become proactive in the approach to protecting the health of working people and their families. This can be done by adopting the precautionary principle approach in occupational health and safety.

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**WSIB Coverage**

The *Workplace Safety and Insurance Act* (WSIA) prohibits claims due to chronic harassment including sexual harassment. This discriminates against workers who have developed gradual onset psychological injuries. The WSIB does provide compensation benefits to workers who develop gradual onset physical injuries such as Repetitive Strain Injuries (RSI).

This unequal treatment of work-related disablements has been found to be a violation of Canada’s Charter of Rights and Freedoms.

Section 15 of the Charter guarantees that:

***“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”***

In a ground-breaking decision a Panel of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) refused to apply the legislation in a mental stress claim<sup>13</sup>. They rightfully decided that the section of the *WSIA* which prohibited the WSIB from recognizing disablements resulting from chronic mental stress and the WSIB policies that supported the legislation were in violation of section 15 of the Charter.

A second panel at WSIAT has also made the same decision and allowed the claim<sup>14</sup>. Both of these claims were disablements arising from workplace harassment. We understand there are a number of similar claims making their way to the Tribunal.

In British Columbia and in Nova Scotia the courts have struck down discriminatory sections of the Workers’ Compensation Legislation because they violated section 15 of the Charter.

We should not have to wait for a legal challenge to strike down the discriminatory provisions of the *WSIA*. The government should act now to ensure workers who suffer a psychological disablement as a result of their working conditions are provided with benefits on a fair and equal basis as workers who suffer physical injuries.

We believe that Saskatchewan has the best legislative language and policies related to this issue. Ontario should follow their model.

Making this change will also shift the burden of medical treatment and counselling costs from our health care system to the WSIB. The WSIB is funded through employer premiums not from taxpayer revenues. The employers who are putting these workers in harm’s way should not be allowed to continue to off load the costs on all of us.

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<sup>13</sup> Workplace Safety and Insurance Appeals Tribunal Decision No. 2157/09.

<sup>14</sup> Workplace Safety and Insurance Appeals Tribunal Decision No. 1945/10.

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It is the employers who pay for the administration of the *OHS*A and Ontario's prevention system through their WSIB premiums. Many of the WSIB excluded employers are covered by the *OHS*A but are not paying their fair share for prevention and enforcement.

Dr. James M. Ham is considered by many to be the father of Ontario's health and safety legislation. In the 1970's he led a Royal Commission<sup>15</sup> looking into occupational health and safety concerns in the mining sector. He is often quoted when health and safety is discussed.

What is less known are his opinions on worker's compensation issues. He argued that disablements resulting from the psychological conditions in the workplace should be compensable as an occupational disease.

*"I believe it will prove to be profoundly socially healthy to take the view that industrial disease encompasses the dysfunctions and disablements associated with psychosocial conditions of work and related work organization<sup>16</sup>".*

*"My personal view is that workers' compensation must wrestle with the issues of disablement associated with psychosocial conditions of work as these are determined by the organization of work...<sup>17</sup>*

Clearly, he was thinking much more broadly than entitlement due to bullying and harassment.

### Quebec

In 1984, the Quebec Workers' Compensation Commission recognized stress due to sexual harassment as a compensable injury. In 2013, the last year that the data is available, there were 9 stress claims allowed resulting from sexual harassment. In the four years ending with 2013 there were a total of 38 claims allowed<sup>18</sup>.

In the case of stress claims related to sexual abuse there were a total of 8 claims allowed in 2013 and a total of 58 claims allowed to the same four-year period mentioned above<sup>19</sup>.

Stress claims resulting from psychological harassment were a little higher with 33 claims allowed in 2013 and a total of 159 in the four-year period mentioned above<sup>20</sup>.

All of the above claims involved a loss of earnings. In Ontario they would be referred to as Lost-Time claims

The Quebec Commission tracks loss of earnings claims from sexual violence but in the Report we saw they were lumped in with other acts of violence<sup>21</sup>.

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<sup>15</sup> Report of the Royal Commission on the Health and Safety of Workers in Mines, June 1976.

<sup>16</sup> Meredith Memorial Lecture, Aug 1, 1990 by Dr. James M. Ham.

<sup>17</sup> Ibid.

<sup>18</sup> Statistiques sur les lésions attribuables au stress en milieu de travail, CSST, 2010-2013.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

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### Saskatchewan

The Saskatchewan Workers' Compensation Board Report<sup>22</sup> lists sexual assaults, verbal sexual assault and sexual harassment together. There were two claims in 2013, both were no lost-time claims.

Other types of harassment are lumped together with assaults and acts of violence. There were 39 lost-time claims and 39 no lost-time claims in 2013.

The data from Quebec and Saskatchewan cannot be compared with Ontario as the WSIB does not report claims based on sexual abuse or sexual violence. The WSIB will need to change how it reports claims if we are to be able to track the number of work-related sexual harassment and sexual violence claims.

### Gaps

We have also identified a number of gaps in the legislation. One deals with reprisals. Under the *OHSA* workers have reprisal protection. No comparable protections exist in the *WSIA*. It should be illegal for employers to retaliate against a worker for filing a claim, reporting to the WSIB cases of claim suppression by the employer or other violations of the *WSIA*. This was identified as a gap by Harry Arthurs in his Report *Funding Fairness*<sup>23</sup>. His recommendation 6-2.4 reads,

*“The WSIA should be amended to more effectively deter and punish illegal conduct. Whistleblowers who report violations of the WSIA should be protected from reprisals”.*

Another gap is that it is not illegal for an employer to provide incentives to workers not to file claims. For example an injury may occur and the employer fulfills their duty by filing a Form 7 but encourages the worker to go on the employer's accident and illness insurance plan rather than WSIB. The worker then does not complete the Form 6 and the WSIB declares the claim abandoned. It is expected that this provision would help to reduce claim suppression.

The OFL has prepared draft legislative language to address these issues. They can be found in the appendix.

One other gap we have identified is the issue of WSIB coverage in Ontario. According to the latest information available<sup>24</sup>, as of 2013, some 26.45% of Ontario's workforce is not covered by the *WSIA*. So approximately ¼ of Ontario's workers could be victims of harassment, including sexual harassment or



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<sup>21</sup> Statistiques sur les lésions attribuables à la violence en milieu de travail, CSST, 2010-2013.

<sup>22</sup> Saskatchewan Workers Compensation Board Statistical Supplement 2013.

<sup>23</sup> Funding Fairness, A Report on Ontario's Workplace Safety and Insurance System, 2012.

<sup>24</sup> [http://awcbc.org/wp-content/uploads/2013/12/Industries\\_Occupations\\_Covered.pdf](http://awcbc.org/wp-content/uploads/2013/12/Industries_Occupations_Covered.pdf).

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sexual violence and are not entitled to benefits and if they lose time from work their lost time injury statistics cannot be tracked by the WSIB.

The government needs to act and expand WSIB coverage in Ontario so that these victims can receive benefits if they become disabled and lose time from work as a result of workplace harassment, sexual harassment or sexual violence.

**Public Information Campaign**

Ads are nice but more needs to be done. Changing the mindset of a society is a long process. The 15 minutes of fame has been reduced to a 15-second sound bite. Society seems to have a much shorter attention span than in previous years. If it is cute or funny it will get shared on social media, but there is nothing cute or funny about harassment or sexual violence. Getting through to people who are bombarded with corporate ads, charities broadening their reach will require some real creativity.

The OFL is prepared to be a part of the discussion on this campaign.

**Public Postings**

As part of the “It’s Never Okay” Action Plan, employers who are dealing with the public, ie. health care, retail, social services, etc. should be required to post a notice about how the staff should be treated. The notice should be required to be posted in a conspicuous location where it will come to the attention of the public, etc.

**Cyber-Bullying**

The growth of social networking websites allows people and organizations to connect and communicate in many useful ways. Unfortunately, some individuals use the technology to cause harm to others. There has been much discussion in the media about students cyber-bullying other students. Children are not the only victims of this abuse. Workers can also be the victim of cyber-bullying. While anyone can become victimized, it is a serious problem in sectors where workers are dealing with the public, students, patients, clients, etc. Teachers and other education workers can be victimized by students. Workers in health care can be victimized by patients, clients or irate family members.

Where a worker is a victim of cyber-bullying as a result of their work, the employer has a duty to complain to the owners/operators of the website with the view of having the offending material deleted. All the social networking sites the OFL has reviewed have policies regarding abusive and harassing content. They make it clear that they can remove inappropriate content. Many site operators will scan their sites for content of a pornographic nature but rely on complaints to deal with cyber-bullying. Similar policies exist for Internet Service Providers. Where the abuse is taking place with e-mails, the ISP should be contacted.

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Technology allows the bullying to reach beyond the workplace. E-mail allows those outside the workplace to reach into the workplace and abuse workers. There are no boundaries or borders to confine the abuse. The audience is not limited to the school yard or workplace. For cyber-bullying that takes place with the social networking sites the audience is global.

Home was once a safe haven for students and workers from bullying and abuse. Technology now reaches into the home. An employer who is also a bully can send a threatening email to workers Friday evening and leave the workers stressed for the entire weekend.



Work is being done to address the issue of cyber-bullying. Unions and some employers are struggling to deal with the abuse. Websites have been established to provide assistance and information for those trying to address the issue or deal with specific cases. Two examples the OFL is aware of are provided below. There is information on these sites on how to track the source of the abuse when fake names or some information in an e-mail is forged in an attempt to hide where it came from.

This issue will need to be addressed before the government can reach the goal of eliminating harassment.

<http://www.cyberbullying.ca/>  
<http://www.abuse.net/>

## **CONCLUSION**

The OFL welcomes the opportunity to provide further information and clarifications on our recommendations and looks forward to playing a meaningful role in assisting the government in their goal to stop sexual violence and harassment. We also believe it is never okay.

For more than 30 years, JHSCs and HSRs have been the cornerstone of improving health and safety in the workplace, but they need strong laws and strong enforcement to back them up. Preventing harassment and violence of all types in the workplace is the priority. Protecting those who are becoming victims will require new enforcement tools for the MOL Inspectors. Compensation for workers who have been psychologically harmed is a right that must be recognized.

As we have done for a century-and-a-half, we will continue to work to improve the living standards of our members and society as a whole. As trade unionists we are proud of our history. We have worked to stop the exploitation of women and children, protect workers from death and injury on the job, improve social conditions and had a hand in winning virtually every social program and benefit that exist in our province. We have earned a respected place in our

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common history here in Ontario. We look forward to a proud future where respect and civility in our workplaces and our communities is the norm.

RESPECTFULLY SUBMITTED BY,

**The Ontario Federation of Labour**

Cope343

# Appendix



PubMed

Abstract

Full text links

*Crim Behav Ment Health*. 2011 Apr;21(2):151-6. doi: 10.1002/cbm.806.

Full Text Online  
Wiley  
Online  
Library

## **Bullying at school and later criminality: findings from three Swedish community samples of males.**

Olweus D<sup>1</sup>.

### **Author information**

### **Abstract**

**AIM:** To examine whether being a bully at school predicts later criminality.

**METHOD:** Longitudinal, prospective associations are reported between bullying and later criminality over the 8-year period from age 16 to 24.

**RESULTS:** Bullying in early adolescence strongly predicted later criminality. The former school bullies were heavily overrepresented in the crime registers. Some 55% of them had been convicted of one or more crimes and as much as 36% had been convicted of at least three crimes in the studied period. Effect sizes in the form of Odds Ratios were substantial for both general crimes and violent crimes, varying between 3.47 and 7.79.

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PMID: 21370301 [PubMed - indexed for MEDLINE]



### **MeSH Terms**

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**Occupational Health and Safety**

**Legislative Amendments OH&S Act**

Current

**Powers of Minister**

4.1 (2) In administering this Act, the Minister's powers and duties include the following:

1. To promote occupational health and safety and to promote the prevention of workplace injuries and occupational diseases.
2. To promote public awareness of occupational health and safety.
3. To educate employers, workers and other persons about occupational health and safety.
4. To foster a commitment to occupational health and safety among employers, workers and others.
5. To make grants, in such amounts and on such terms as the Minister considers advisable, to support occupational health and safety.

Proposed

6. to promote the prevention of workplace harassment and sexual violence.

**Duties of the employer and supervisor**

Duties of the employer

Proposed

25 (2) Without limiting the strict duty imposed by subsection (1), an employer shall,

(n) not engage in harassment or sexual violence against a worker or another person in a workplace

Duties of the supervisor

27 (2) Without limiting the duty imposed by subsection (1), a supervisor shall,

(d) not engage in harassment or sexual violence against a worker or another person in a workplace

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## APPENDIX

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### Additional duties of employers

Proposed

Additional duties of employers

26(1) In addition to the duties imposed by section 25, an employer shall,

- (m) establish procedures to ensure that the conduct of its' supervisors do not negatively affect the mental or physical wellbeing of a worker or another person in a workplace.

### Notice of accident, inspection by representative

**8(14)** The health and safety representative may, where a workers is,

- (a) killed or critically injured at a workplace from any cause and subject to subsection 51(2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings in writing to a Director and the trade union if any;
- (b) disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or **incident of workplace violence at a workplace**, but no person dies or is critically injured because of that occurrence, inspect the place where the accident, explosion, fire or incident of workplace violence occurred and any machine, device or thing, and shall report his or her findings in writing to a Director, if an inspector requires notification of the Director and to the trade union if any.

### Joint Health and Safety Committee

**9(31)** The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is,

- (a) killed or critically injured at a workplace from any cause and one of those members may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director, to the committee, and to the trade union if any,
- (b) disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or **incident of workplace violence at a workplace**, but no person dies or is critically injured because of that occurrence, inspect the place where the accident, explosion, fire or **incident of workplace violence occurred** and any machine, device or thing, and shall report his or her findings in writing to the committee, a Director, if an inspector requires notification of the Director and to the trade union if any.

Current

**Orders by inspectors where non-compliance**

57. (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

Proposed

57.1 In the case of a contravention of 25(2)(n) or 27(2)(d) the inspector may order the employer or supervisor to cease and desist.

**Proposed amendments to the Workplace Safety and Insurance Act**

**Employer or supervisor must not attempt to prevent reporting**

**16 (1)** An employer or a person acting on behalf of an employer must not, by agreement, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board,

- (a) an injury or allegation of injury, whether or not the injury occurred or is compensable under the insurance plan.
- (b) an illness, whether or not the illness exists or is an occupational disease compensable under the insurance plan
- (c) a death, whether or not the death is compensable under the insurance plan.

**No discipline, dismissal, etc., by employer**

**16 (2)** No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

## APPENDIX

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because the worker has reported an injury to the employer or applied for benefits under this Act, acted in compliance with this Act or the regulations, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations.

### **Offence, confidential information**

**150. (1)** An employer or employer's representative who contravenes subsection 16(1), 16(2), 37 (4), 59 (6) or 181 (3) is guilty of an offence.

### **Penalty**

**158. (1)** A person who is convicted of an offence is liable to the following penalty:

1. If the person is an individual, he or she is liable to a fine not exceeding \$100,000 or to imprisonment not exceeding one year or to both.
2. If the person is not an individual, the person is liable to a fine not exceeding \$500,000.

## **APPENDIX**

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### **DRAFT ONTARIO REGULATION**

#### **Being a Regulation under THE OCCUPATIONAL HEALTH AND SAFETY ACT**

#### **Respecting Workers Working Alone and in Isolation**

What the Ontario Federation wants to see in a Working Alone and in Isolation Regulation.

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### Workers Working Alone Regulation

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#### Definition

**1)** In this regulation,

- (a) "working alone" means the performance of any work function by a worker who,
  - (i) is the only worker for that employer at that workplace at any time, and
  - (ii) is not directly supervised by his or her employer, or another person designated as a supervisor by his or her employer, at any time and

includes work performed in the vicinity of members of the public or other individuals who do not work for the employer of the worker working alone.

- (b) "Working in isolation" means work performed in such a manner that access to another worker or any other individual is not readily available.

#### Securing Workers from Risks

**2)** Where a worker is working alone or in isolation under circumstances which may result in injury, health impairment, victimization through criminal violence or other adverse conditions, the employer shall provide and implement a plan as a means of ensuring, so far as is reasonably practicable, the safety, health and welfare of that worker from risks arising out of, or in connection with, activities in that workplace.

#### Development of Plan

**3)** For the purpose of section 2, the employer shall in consultation with the joint health and safety committee, where such a committee exists, or with the worker health and safety representative, where such a representative has been designated, and the worker(s) affected,

- (a) conduct a written assessment of the conditions or circumstances under which the worker would be working alone or in isolation;
- (b) develop and document a plan respecting the methods to be taken to ensure that every precaution reasonable in the circumstances is taken to protect the safety, health and welfare of the worker at that workplace where it is determined through the assessment that working alone is necessary or advisable to allow the work to be done.

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4) The written assessment referenced in section 3(a) shall include but is not limited to the following information;

- (a) name, address and location of the workplace;
- (b) nature of the business;
- (c) the current requirements of the work;
- (d) the details of when the worker would be working alone or in isolation;
- (e) the potential hazards;
- (f) the protective equipment or controls that are required or provided;
- (g) a summary of the accidents, incidents or near misses the employer is aware of that have occurred in the area the worker would be working alone or in isolation.

5) The employer shall provide copies of the written assessment to,

- (a) the joint health and safety committee or the health and safety representative;
- (b) the workers affected by the assessment.

6) Where it is determined through the assessment that working alone or in isolation cannot be carried out safely the employer shall not permit the worker to work alone or in isolation and shall ensure that a supervisor or at least one additional worker is readily accessible during the course of the work being carried out.

### **Plan Criteria**

7) The plan developed in accordance with section 3(b) shall include, but not be limited to, the following information:

- (a) name, address and location of the workplace;
- (b) nature of the business;
- (c) identification of possible risks to each worker who may be working alone or in isolation;
- (d) control methods developed to minimize each identified risk;
- (e) details of the plan to provide a means of securing assistance for a worker working alone or in isolation in the event of injury or other circumstance which may endanger the health or safety of the worker.

### **Assessment or Plan Not Agreed Upon**

8) Where disputes arise as to the assessment or the plan developed in accordance with sections 3 and 7, the employer, a member of the joint health and safety committee, the health and safety representative may notify an inspector thereof who shall investigate and give a decision in writing to the employer, the joint health and safety committee or the health and safety representative and the affected worker(s).

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- 9) (1) Where the worker who will be working alone or in isolation is not satisfied with the provisions of the plan the worker may dispute the plan.
- (2) In the event of a worker dispute with the plan the worker shall contact the employer or supervisor who shall forthwith investigate the dispute and report in the presence of the worker and, if there is such, in the presence of one of,
- (i) a committee member who represents workers, if any;
  - (ii) a health and safety representative, if any; or
  - (iii) a worker who because of his/her knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union is selected by the workers to represent them,

who shall be made available and who shall attend without delay.

- (3) Where, following the investigation or any steps taken to deal with the circumstances that caused the dispute, the worker is not satisfied with the plan, the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof who shall investigate and give a decision in writing to the employer, the worker, the joint health and safety committee or the health and safety representative.

### **Plan Agreement**

- 10) Where the plan developed in accordance with sections 3 and 7 has been completed the employer shall,
- (a) provide a copy of the plan to the joint health and safety committee or the health and safety representative; and
  - (b) provide a copy of the plan to each worker who is required to work alone or in isolation, and to that worker's supervisor.
  - (c) post at a conspicuous location in the workplace a copy of the plan, in english and the majority language in the workplace.

### **Adherence to Plan**

- 11) Subject to section 9, where a plan developed in accordance with section 3 and 7 is put in place, the employer and the worker shall comply with the plan.

### **Plan to be Available to a Safety and Health Officer**

- 12) Where a plan has been developed in accordance with sections 3 and 7, the employer shall maintain at the workplace a current signed copy of the plan, and the plan shall be made available to an inspector upon request.

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**13)** Nothing in section 9 or 11 prevents a worker from exercising their right to refuse under section 43 of the Occupational Health and Safety Act.

**14)** Nothing in this regulation prevents certified committee members from exercising their rights under sections 45 to 49 of the Occupational Health and Safety Act.

**15)** Nothing in this regulation prevents an inspector from issuing an order for a contravention of this regulation

**16)** The assessment and plan referred to in this regulation is to be developed by utilizing information contained in "The Code of Practice for Workers Working Alone or in isolation".

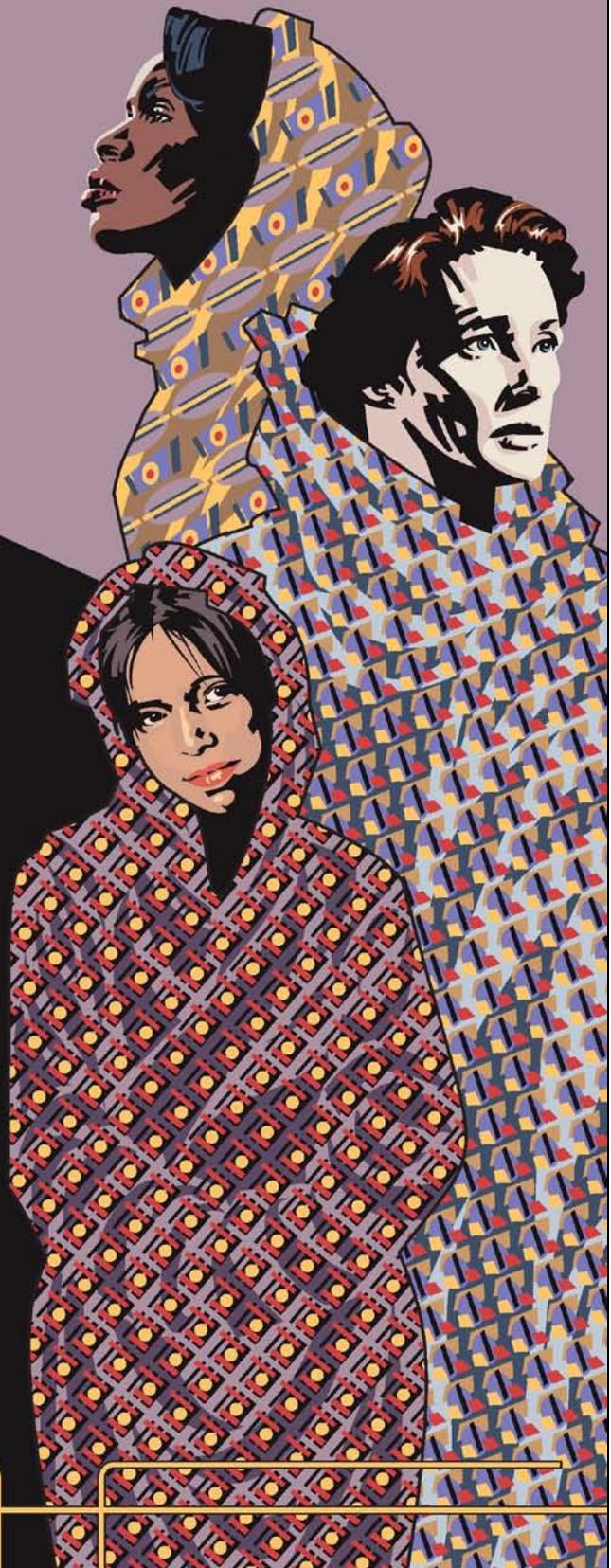
### **Exemption**

**17)** Where the Lieutenant Governor in Council has adopted another regulation which is in effect and has established work procedures for a worker working alone or in isolation, this regulation does not apply.

# Notes

# Notes





Our vision  
of equality  
must lead to  
a world  
in which  
girls and women  
are safe  
in homes, schools,  
streets  
and the workplace.

It is  
a world  
we can  
create.

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