

Understanding Your Legal Rights

For local governments, establishing a respectful workplace is a legal imperative. Every local government should have a harassment and bullying policy (within or as a companion to a respectful workplace policy) and a complaint procedure policy. If there is bullying, harassment or other disrespectful behaviour going on, it will become increasingly evident that there is a significant problem under the WorkSafeBC regulations as employees report their health issues to WorkSafeBC, as well as potential liability issues.

B.C. Occupational Health and Safety Regulations

Sections 4.24 – 4.26: Workplace Conduct and Sections 4.27-4.31: Violence in the Workplace focuses on the attempted or actual exercise of physical force and includes any threatening statement or behaviour that would give a worker reasonable cause to believe he or she was at risk of injury. This can be interpreted as including some, but not all, bullying and harassing behaviour.

Workers' Compensation Act

The coverage of claims for mental disorders in B.C. was expanded in 2012. It recognizes the importance of psychologically healthy workplaces, and the growing awareness of mental health issues and concerns in the modern workplace.

Section 5.1:

Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder

- (a) either
 - (i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
 - (ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,

(b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and

(c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

Criminal Code

A number of Criminal Code provisions affect all organizations, as well as the individuals who direct the work of others (commonly referred to as the "directing minds" of the organizations). These organizations include federal, provincial and municipal governments, corporations, private companies, charities and non-governmental organizations. In determining who is sufficiently important within the organization to be considered its directing mind, the Code refers to a "senior officer". This includes everyone who has an important role in:

- setting policy; or
- managing an important part of the organization's activities.

More specifically, section 217.1 provides that everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task." Sections 22.1 and 22.2 of the Criminal Code impose criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2).

Check out the Spring 2015 edition of *Exchange* for more articles and resources related to protecting yourself in a challenging work environment. Visit www.lgma.ca > Resources & Publications.

