

# BC Employers' OHS Obligations to Address Workplace Bullying and Harassment



Workplace bullying and harassment is a significant issue for employers in British Columbia. In 2021 alone, WorkSafeBC received 3400 inquiries related to workplace bullying. The organization also noted that most employers did not know how to handle complaints effectively.

This blog post focuses on BC employers' occupational health and safety ('OHS') obligations to address workplace bullying and harassment under British Columbia's *Workers Compensation Act* (the '*Act*'), and related complaints or claims that employees may file with WorkSafeBC. (This post does not address other potential legal issues arising from alleged workplace bullying and harassment, such as claims of constructive dismissal, human rights complaints, or grievances filed under a collective bargaining agreement.)

## **Employers' Obligations to Prevent and Address Workplace Bullying and Harassment**

Section 21(1)(a) of the *Act* imposes a duty on BC employers to ensure the health and safety of their workers. This includes a duty to take reasonable steps to prevent or otherwise minimize workplace bullying and harassment.

WorkSafeBC defines bullying and harassment to include 'any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated'. Examples of bullying and harassment include:

- verbal aggression or yelling;
- humiliating initiation practices or hazing;
- spreading malicious rumours;
- vandalizing personal belongings; and
- calling someone derogatory names.

Reasonable managerial action taken by an employer or supervisor, such as reasonable feedback, work evaluation, and disciplinary action, are not bullying and harassment.

Employers are legally required to prevent where possible, or otherwise minimize, workplace bullying and harassment. WorkSafeBC considers that reasonable steps by

an employer to accomplish this include the following:

1. **Developing a policy statement on bullying and harassment.** A policy statement should provide definitions and examples of bullying and harassment, and clearly state that it will not be tolerated.
2. **Taking steps to prevent or minimize bullying and harassment.** Simply responding to bullying and harassment complaints is insufficient. Employers must be proactive in preventing or minimizing risks of bullying and harassment, such as directing and supervising affected employees and training employees on managing difficult situations.
3. **Developing, implementing, and applying procedures for reporting and dealing with incidents and complaints.** Reporting procedures should include how, when, and to whom workers should report bullying and harassment. Investigation procedures should include a reasonable process for a prompt, fair and confidential investigation, the scope of investigation, and the roles and responsibilities of internal and external parties.
4. **Informing workers** of their policy statement and the steps taken to prevent bullying and harassment.
5. **Training workers and supervisors** to recognize the potential for bullying and harassment and to follow reporting procedures.
6. **Performing annual reviews** of their policy statement and procedures.

Notably, supervisors and employees also have obligations related to workplace bullying and harassment under the Act.

### **WorkSafeBC Claims and Complaints Relating to Workplace Bullying and Harassment**

Employees can make various types of claims relating to bullying and harassment to WorkSafeBC, including occupational health and safety complaints, claims for compensation, and prohibited action complaints.

#### **1. Occupational Health and Safety Complaints**

In general, WorkSafeBC will only inquire into allegations of workplace bullying and harassment where there are reasonable grounds to believe that an employer has failed to address the matter.

After an employee has reported their allegations to their employer and contacted WorkSafeBC, they may submit a Bullying and Harassment Questionnaire. WorkSafeBC will then decide whether to make further inquiries to ensure the employer has met their responsibilities regarding preventing and addressing bullying and harassment, including implementing the appropriate policies, procedures and training, and conducting fair and impartial investigations. A prevention officer may attend and inspect workplaces in connection with an OHS complaint. WorkSafeBC may impose various penalties and remedies if an employer is found to have failed to meet its obligations relating to bullying and harassment.

#### **2. Claims for Compensation**

WorkSafeBC also adjudicates workers' compensation claims for mental disorders arising from workplace bullying and harassment. The WorkSafeBC process for such claims is similar to any other mental disorder claim, but often involves a more significant investigation. Generally, the following criteria must be met for an employee to receive workers' compensation for a mental disorder arising from workplace bullying and harassment:

1. the employee has a mental disorder diagnosed by a psychiatrist or psychologist;
2. the mental disorder was a reaction to one or more traumatic events, or the mental disorder was predominantly caused by one or more significant work-related stressors, arising out of and in the course of their employment;
3. bullying and harassment constituted the traumatic event(s) or significant work-related stressor(s); and
4. the mental disorder was not caused by an employer's decision relating to their employment (such as a change in work, or termination of employment).

If an employee reports a mental disorder claim arising from workplace bullying and harassment, employers should, among other things, investigate as soon as possible, ensure any bullying and harassment is stopped immediately, and promptly report the claim to WorkSafeBC as a workplace injury.

Once the claim is filed, a WorkSafeBC entitlement officer will gather information, contact relevant parties, obtain relevant medical reports, and conduct any investigation required to establish the facts. Employers should respond promptly to WorkSafeBC's requests for information, and conduct and record incident investigations. If the entitlement officer accepts the claim, employees may be entitled to benefits such as wage-loss compensation, support for returning to work, and health care treatment.

### **3. Prohibited Action Complaints**

An employee who raises a health and safety concern to their employer, including a concern about bullying and harassment, and believes that their employer penalized them for raising this issue, may also submit a prohibited action complaint to WorkSafeBC. A 'prohibited action' is considered to have taken place when:

1. an employee notices a health and safety issue at their workplace;
2. they raise the issue with their employer, union, or WorkSafeBC; and
3. the employer takes a negative action against the employee because they raised the issue. A 'negative action' could include, for example: transferring the employees' duties to someone else, or coercing, intimidating, disciplining, reprimanding or penalizing the employee in some way.

Prohibited action complaints are often difficult to defend, even where the employer has not actually penalized the employee, because of a 'reverse onus' of proof that is applied. In essence, the *employer* is required to prove that its negative action towards an employee was *in no way* related to the fact that the employee raised a safety concern. For example, if an employee happens to mention a concern about bullying and harassment on Monday, and the employer terminates their employment on Tuesday for pre-existing and completely unrelated performance reasons, WorkSafeBC may *imply* that the termination was because the employee raised a safety concern, and the employer will have to prove that this played absolutely no role in its decision. Depending on the circumstances, this may be quite difficult to do.

If a prohibited action complaint is found to be substantiated, WorkSafeBC has the authority to reinstate employees and to order employers to pay compensation for lost wages and out-of-pocket expenses incurred by employees.

#### **4. Unsafe Work Refusals**

Workers also have the right to refuse to carry out any work process where the worker has “reasonable cause to believe that to do so would create an undue hazard to the health and safety of that person.” In some situations, a worker may allege that exposure to bullying and harassment creates an undue hazard. To exercise their right to refuse unsafe work, workers must follow certain procedures.

##### **Key takeaways**

Under the Act and WorkSafeBC policy, employers are legally required to have bullying and harassment policies and procedures in place, and to properly address allegations of bullying and harassment. Employees can bring various issues and complaints relating to bullying and harassment to WorkSafeBC. Employers should take proactive steps to meet their OHS obligations relating to bullying and harassment.

Authors: Laura DeVries , Diana Wang