

BRIEF SENIOR MANAGEMENT: Bullying & Harassment Cost Company \$1.21 Million



- ☒ Meredith Boucher, a former WalMart Canada Corp. assistant manager, sued the company and Jason Pinnock, her manager, for constructive dismissal. She claimed that she was forced to quit after suffering six months of mental abuse from Pinnock, who belittled and demeaned her job performance in front of workers she supervised and regularly spoke to her in a coarse and profane manner. She also alleged that she was subjected to an assault by an assistant manager, who punched her in the arm on more than one occasion. On Oct. 10, 2012, a jury found that Boucher was constructively dismissed, awarding her \$1.21 million in damages against the company and \$250,000 against Pinnock.

THE PROBLEM

Bullying and harassment have become widespread workplace problems. And the days of allowing employees' especially managers and supervisors' to rule by verbal, psychological and even physical intimidation should be over. Such conduct poisons the workplace and can lead to a psychologically unsafe environment. But some employers clearly haven't gotten the message. The Boucher case illustrates the consequences of allowing bullying and harassment to occur in the workplace, including the serious financial costs to the company and any members of management involved in the misconduct.

THE EXPLANATION

Every jurisdiction in Canada addresses workplace harassment and violence, including bullying, in some manner. For example, in Fed, AB, BC, MB, NL, NS, ON, PE and SK, the OHS laws specifically require employers to take steps to address workplace violence. The OHS laws in MB, ON and SK specifically require employers to assess and minimize the risk of workplace harassment. Québec imposes a similar duty to address workplace harassment in its labour standards law. And even in those jurisdictions that don't directly address workplace violence and harassment in their OHS laws, the 'general duty clause' likely requires employers to protect their workers from these hazards.

These requirements are all fairly new to the OHS laws and were enacted in recognition of a growing trend of increased bullying-like behaviour in the workplace. A survey conducted in 2012 by CareerBuilder.ca of more than 550 workers from across Canada found that:

- 5% of workers said they've felt bullied at work;
- A third reported suffering health-related problems due to bullying; and
- 26% decided to quit their jobs to escape the situation.

The workers who felt bullied identified their bullies as most often their co-workers (24%) or their boss (23%).

In fact, this state of affairs is so serious that the Mental Health Commission of Canada, the CSA and Bureau de normalisation du Québec developed CSA Z1003/BNQ 9700, the first Canadian standard for psychological health and safety in the workplace. The standard, which was released on Jan. 16, 2013, provides guidelines to help companies set up a psychological health and safety management system.

The heart of Boucher's claim was that Pinnock's conduct created a 'work environment in which no reasonable person

would be expected to continue.' For example, he made her count a row of skids in front of other employees to prove that she could count to 10. And he routinely yelled at her and called her stupid. In the end, the jury concluded that Pinnock's conduct left Boucher with no choice but to quit her job. And it condemned Wal-Mart for permitting this conduct.

Insider Says: Canada isn't the only country that has stepped up its regulation of workplace bullying. Read about a case from Australia in which a caf[], its owner, a manager, a waiter and a chef were convicted under the OHS law for viciously bullying a 19-year-old worker to the point of suicide.

THE LESSON

The damage award Boucher won was extraordinarily high for a constructive dismissal case and is being appealed by Wal-Mart. But regardless of the outcome of the appeal, the case should still give members of senior management pause as it shows that workers are becoming less and less willing to put up with bullying and harassment on the job'and they're finding sympathetic ears in juries that are happy to hit offenders with huge damage awards. So it's critical that senior management ensures that the company:

- Identifies and assesses the risk of workplace bullying in the workplace;
- Develops policies to address and prevent it; and
- Trains workers and supervisors on them.