

To: Local Coordinators, Bargaining Unit Presidents, Health and Safety Network Leads, and Joint Health and Safety Committee Members from the Executive Booklet

From: Andy Summers, Vice-President Region 3, Occupational Health and Safety Portfolio



Date: July 26, 2013

Re: Employer's duty under the *Occupational Health and Safety Act (OHSA)* as a sending hospital to disclose known risks

C: Board of Directors, District Service Teams, Provincial Services Team

At the Human Rights and Equity teleconference on June 25, as well as the Health and Safety Teleconference in November 2012, questions were asked regarding an employer's duty under the *Occupational Health and Safety Act (OHSA)* as a sending hospital to disclose known risks to the health and safety of workers employed at the receiving hospital.

This question arose in the context of the transfer of a client whose relative had a history of disruptive conduct at the sending hospital.

After consulting legal counsel, ONA has some advice that may assist you and your Joint Health and Safety Committee (JHSC) members when working with the employer to establish safety protections for workers at your facility.

- In certain circumstances, the duties imposed on employers in respect of workers by the *OHSA* may not be limited to the employer's own employees. Where other workers are working under its control or where its sphere of operations is contiguous with that of a second employer, risk of harm may give rise to an obligation for the first employer to provide information or take appropriate precautions to protect those workers.
- Where a client is transferred from one hospital to another, the work is contiguous and the employer arguably has a duty to the workers of the receiving hospital to disclose risks of workplace violence pursuant to s. 32.0.5 of the *OHSA* and/or to conform to the general duties of an employer under s. 25 of the *OHSA*. Disclosure of the known history of violent behaviour of a client's relative is arguably analogous to the practice of warning paramedics of a history of violence at a particular address, which has been recognized as a "reasonable precaution" required of an employer by its duties under the *OHSA*.
- Disclosure of personal health information from one health information custodian to another health information custodian is permitted by the *Personal Health Information Protection Act, 2004 (PHIPA)* under certain circumstances, including facilitation of a client's quality health care and reducing risk of physical harm. There is therefore no conflict between the *PHIPA* and the *OHSA* where information is exchanged between health information custodians within these limits and in compliance with an employer's duties under the *OHSA*.

- In the event of any conflict, an employer's duties under the *OHS*A prevail over the protection of privacy under the *PHIPA* or any other Act. Section 32.0.5 of the *OHS*A, for example, would in certain circumstances both permit and require an employer to make broader disclosure of personal health information than contemplated by the *PHIPA*, where such disclosure is reasonably necessary to protect workers from workplace violence.
- There is case law suggesting that an employer's duties under the *OHS*A are much narrower with respect to workplace harassment than workplace violence. However, a reasonable argument can be made that the *OHS*A in combination with the central Hospital Collective Agreement imposes duties on a hospital employer to inform workers of known risks of psychological harm, including from a person with a history of workplace harassment, that are analogous to its statutory duties with respect to workplace violence.

Conclusion and Recommendations

Based on the foregoing, we recommend that ONA leaders and JHSC representatives engage hospital employers through JHSCs to advocate a broad scope of employer duties under the *OHS*A, consistent with the following principles:

- Where it is aware of known risks associated with the transfer of a client's care, an employer owes duties under Sections 25 and 32.0.5 of the *OHS*A to protect workers at receiving hospitals.
- Disclosure of personal health information, including the identity and history of conduct of a client's relative, by one health information custodian to another is permitted by the *PHIPA* in order to facilitate safe, quality health care or in order to reduce risk of bodily harm.
- Where an employer is aware of a risk of workplace violence associated with the transfer of a client, it has a duty to disclose such information to workers receiving the client's care and/or the supervisor of such workers. The duties under the *OHS*A prevail over any resulting conflict with the prohibitions in *PHIPA* on disclosure of personal health information.
- "Workplace violence" is broadly defined and may include verbal utterances even where there is no evidence of "immediate ability" or even any "intent" to do physical harm.
- Read in the context of the *OHS*A, the harassment and occupational health and safety provisions of Collective Agreement impose, as a matter of reasonable contract interpretation, a duty on hospital employers to protect workers from both physical and psychological harm in the workplace. This reasonably includes a duty to inform workers of known risks of psychological harm, including from a person with a history of workplace harassment.

If you have any questions please speak to your LRO.