



## Workplace violence obligations in work-related sports teams

Featured

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**Company-sponsored sporting events held outside the workplace can be a venue for workplace violence incidents. While the employer's responsibilities under these types of situation are yet to be clarified, the following tips and best practices can help employers minimize the risk.**

*Does an employer's obligation to take all reasonable precautions to protect workers from workplace violence extend to company sports teams that play off-site in independently-run leagues?*

Few would question an employer has a responsibility to protect its workers from violence or harassment in the workplace. However, the scope of this responsibility is less clear when workers are off the clock, participating in a voluntary, off-site, company-related sporting event. In this case, can physical force on the playing field constitute "workplace violence?" Does it matter if the physical force is the result of an intentional act, or in the normal course of playing the sport?

These questions have yet to be determined by a court or tribunal. However, depending on the degree of involvement of the employer in the sporting event, physical force, even unintentional force, may be found to fall within the definition of "workplace violence," triggering employer liability.

Ontario employers in particular ought to consider their legal responsibilities before rallying the staff to reach for their sneakers. This is because Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009, came into force on June 15, 2010. It requires all provincially-regulated employers in Ontario to protect workers against violence and harassment in the workplace.

### ***What is "workplace violence"?***

"Workplace violence" is defined in Ontario's act to include:

- The exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury.
- An attempt to exercise physical force against a worker in a workplace that could cause physical injury.
- A statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury.

The Ontario Ministry of Labour has also stated that "workplace violence" need not be intentional.

### ***Is a player a “worker”; is the playing field a “workplace”?***

“Worker” is defined as a person who is paid to perform work or supply services. “Workplace” is any land, premises, location or thing at, upon, in or near which a worker works. According to Ontario’s Ministry of Labour, if the worker is being directed and paid to be at or near a particular location, the location is a workplace.

On the basis of these definitions, consider the following factors when examining whether a player is a “worker” and the playing field a “workplace”:

- Are employees expected and not just encouraged to participate?
- Are employees paid to participate?
- Is the sports activity under the care and control (directly or indirectly) of the employer?
- Are games or practices held during work time?

If the answer to some or all of these questions is ‘yes’, an employer may be responsible to protect its workers from ‘violence and harassment’ in the course of playing the sport.

### ***Can an employer protect itself and its employees?***

For some employers a bit of risk may be a reasonable price for the benefits of having a company sports team. However, the risk of harm to workers — and the employer’s own liability — may be limited by seeking to structure participation so that players are not considered “workers” and the playing field is not considered a “workplace.” Even if this can be accomplished, though, there is no guarantee the Ministry of Labour will agree.

If an employer chooses to sponsor or support a company team and the sporting activity is organized and run independent of the employer, consider the following steps to help minimize risk:

- Participation should be voluntary and for recreational purposes.
- Workers should not be paid or receive any form of remuneration or benefit arising from participation.
- Practices and team meetings should not take place on the employer’s premises or company time.
- A workplace violence and harassment policy should be in place, in compliance with prevailing legislation. This must be preceded by a risk assessment to measure the risk of violence, and
- followed up with programs and procedures to implement the policy, ideally with the advice of legal counsel.
- Workers participating in the sporting event should understand and appreciate they are not permitted to engage in acts of violence and harassment, and appropriate behaviour is mandatory.
- Risk of violence and injury is almost always enhanced when alcohol is involved. Either prohibit consumption of alcohol at the event, or ensure the organizers limit consumption responsibly.
- Prior to participation in the sporting activity, each worker should be required to formally, in writing, release the employer from liability in the event an incident or injury occurs.
- The employer should inquire into the type and scope of insurance coverage the league or organizer has in place to protect participants; and also consult with its own insurance broker to ensure appropriate coverage.
- A written, workplace policy, regarding all of the above, should be in place and ‘signed-off’ by workers in advance of participation.

For more information on this topic contact [Sherrard Kuzz LLP](#).

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