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Workplace violence laws could go into overtime for company-sponsored teams

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

ANSWER: On the face of it, the answer might appear to be no. However in certain circumstances, this may not be the case. Although violence resulting from off-site sporting activities does not take place within the physical confines of the workplace, if the sporting activity occurs within the context of the work environment, the employer may be responsible for taking all reasonable precautions to protect its workers.

Few would question an employer has a responsibility to protect 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 merely in the normal course of playing the sport?

Although these questions have not yet been answered by a court or tribunal, physical force, even unintentional force, may be found to fall within the definition of "workplace violence" depending on the degree of involvement of the employer in the sporting event.

Ontario employers in particular might have cause for caution before rallying the troops to reach for their sneakers, due to recent amendments



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ASK AN EXPERT

to the Ontario Occupational Health and Safety Act. Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009, came into force on June 15, 2010, and requires all provincially regulated employers in Ontario to protect workers against violence and harassment in the workplace.

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

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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.

If a player is a "worker" and the playing field is a "workplace," the exercise of physical force against a player/worker that causes or could cause injury may be found to be

workplace violence. This may be the case even where physical force is part of the game and anticipated.

In Ontario, for example, a "worker" is defined as a person who is paid to perform work or supply services and "workplace" is any land, premises, location or thing at, upon, in or near which a worker works. According to the province's Ministry of Labour, if the worker is being directed and paid to be there, or to be near there, the location is a workplace.

Is a 'player' a 'worker'?

On the basis of those definitions, consider at least the following factors when determining whether a player is a worker and the playing field a workplace:

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

If an employer sponsors a company team, it can reduce the risk of harm to its employees — and its own liability — by structuring employee participation so that players are not considered "workers" and the playing field is not a "workplace."

However, even if this can be accomplished from the employer's standpoint, there is no guarantee the Ministry of Labour will agree. That said, a bit of risk may be a reasonable price for the benefits of having a company team.

Tips to minimize liability

Accordingly, if an employer chooses to sponsor or support a

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Employees playing sports should sign formal waiver

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company team and the sporting activity is organized and run independent of the employer, consider the following steps to minimize risk to everyone involved:

- Participation should be voluntary and for recreational purposes with employees understanding this.

- Employees should not be paid or receive any form of remuneration or benefit arising from their participation.

- Practices and team meetings should not take place on the employer's premises or on company time.

- Risk of violence and injury is almost always enhanced when alcohol is involved. Should a violent incident occur and the employer's name is emblazoned on the uniform, the employer becomes an unwitting target. The same is true if an employee who has had too much to drink causes an auto accident on the way home. Short answer: Either prohibit consumption of alcohol at the event, or ensure the organizers limit consumption responsibly.

- A workplace violence and harassment policy should be in place, in compliance with 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.

- Prior to participating in the sporting activity, employees should be required to formally, and in writing, release the employer from liability in the event an incident occurs.

- Before sponsoring or supporting a team, an employer should conduct its own due diligence. For example, the employer should know what insurance the league or organizer has in place to protect participants. The employer should also consult with its own insurance broker to ensure appropriate steps have been taken to protect participants and the employer in the event of an incident, including coverage for everyone involved. Assumptions could be costly.

- Have a written, workplace policy regarding all of the above and require employees to sign off in advance of participation.

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