

The Reality of Workers' Voice in Health and Safety

Section 50 of Ontario's *Occupational Health and Safety Act* prohibits an employer from punishing a worker who complains about a health and safety problem and seeks to enforce their rights. A worker who suffers such a **reprisal** from their employer may file a grievance if covered by a collective agreement or make an application to the Ontario Labour Relations Board (OLRB).

From 2016 to 2019, researchers from McMaster University studied the effectiveness of this protection by interviewing 25 people who had experienced a reprisal and completed a formal complaint or grievance, and by reviewing almost 700 OLRB cases filed between 2006 and 2017.

Workers raised a concern because:

- 93% said an occupational health and safety (OHS) hazard was a key factor that led to a reprisal. Workers were fired for complaining that they were being harassed, exposed to hazards, violence at work, and having to initiate a work refusal for health and safety reasons.
- 31% were fired for complaining about harassment.
- 28% were fired for refusing unsafe work.
- 26.6% described a health issue as a key factor that led to a reprisal. Workers were fired for being sick, injured, needing accommodation or having mental health issues.

One worker noted, "I was called into the office again to discuss the incident [a slip and fall] and I just said, 'You know my understanding is you weren't actually supposed to be putting things on the top shelf.' I think I just kind of stood up for myself. It's been awhile but I certainly expressed concern about the safety that was taking place."

Many workers were exercising health and safety rights when they were fired:

- 43.2% described acting as a worker OHS representative or calling in an inspector regarding a safety issue as key factor that led to being fired.

When asked what made them complain, one worker said, "Fear that somebody was really going to seriously get hurt. Me or others or kids. I wasn't going to have any more of that...I was going to take it all the way because it wasn't right."

Ministry of Labour (MoL) health and safety inspectors played a key role. They supported workers in most cases when they were contacted but were not permitted to protect workers from reprisals, not even when a worker was fired for calling an inspector.

- In 52% of the cases where an inspector was involved, the applicant also reported that calling the inspector contributed to being reprised. In 84.4% of the cases, reprisal included termination.
- In 73% of cases where an inspectors responded and filed a report, their findings aligned with the worker's description.
- Inspectors are aware that workers get fired for talking to an inspector. They know that workers will avoid speaking with inspectors for this reason. They may not speak to a worker for this reason.
- Inspectors are prohibited from investigating reprisals even when they are called to investigate the health and safety concerns MoL Policy Manual.

Contacting the MoL inspector was the right thing to do. "I called in [to MoL] all the time. I wanted to make sure that I understood what needed to happen, rights and those kinds of things. I was trying to do my due diligence," said one worker.

Representation Matters

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Dealing with a reprisal is not easy. There is emotional shock, loss of income, fears for the future. Good representation provides emotional and practical support through the process and in getting results. The Office of the Worker Advisor, community legal clinics and unions provide experienced representation. Injured workers organizations and workers action centres provide peer support.

The OLRB were generally able to resolve reprisal cases within 3 to 6 months of application.

- In 85.9% of the OLRB cases that the study reviewed, and in all but two of the workers interviewed, the worker consented to the result. The average settlement was \$5,000.
- Cases which did not settle were terminated by the OLRB either before a hearing (10%) for failure to follow procedures or because the written application was inadequate or by a formal hearing (5.8%) where two thirds were dismissed.
- None of the workers in this study whose case was resolved by the OLRB got their job back. Even union represented workers agreed to settlements rather than reinstatement because they did not want to go back to work as a target.

In theory, a worker who is fired for raising an OHS concern should at least get their job back and compensation for any wage loss. The reality is much different. Workers seldom get their jobs back. The average settlement is roughly equivalent to three months' pay on minimum wage.

There appear to be few implications for employers who penalize workers for exercising their health and safety rights. Reinstatement is largely a myth. Unions provide protection but not always.

Employers experienced:

- No penalties for punishing a worker for raising a health and safety concern.
- No penalties for punishing a worker who is acting as an OHS representative.
- No penalties for punishing a worker for calling an OHS Inspector.

Labour OHCOW Academic Research Collaboration (LOARC) is an association of worker health and safety representatives, practitioners and researchers working together to support effective worker participation in health and safety.

Andrew King, Wayne Lewchuk, Ellen MacEachen and Julia Goyal, *Making Worker Voice A Reality Under The Internal Responsibility System: The Limits Of Section 50 Protections For Workers Experiencing OHS Reprisals*, January 2019.

For more information about this study, contact the authors at: kingan@mcmaster.ca.

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