What is a Québec employer's duty to intervene when family violence makes its way into the office?

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New legal requirements

Since October 6, 2021, the obligation to **prevent physical and psychological violence**, including spousal, family or sexual violence has been introduced[1] into the chapter on the employer's general obligations in section 51 of Québec's *Act respecting occupational health and safety* (AOHS).

In addition, the AOHS provides in its new paragraph 16 of section 51 that in the case of a **situation of spousal or family violence,** the employer is required to take the measures if they know or ought reasonably to know that the worker is exposed to such violence.

Although the general obligation to prevent violence is clearly set out in the AOHS, the legislator did not specify the extent of the duty of prevention and the scope of the employer's power to take concrete action when they know or ought reasonably to know that a worker is exposed to this type of violence.

In *Trivium Avocats inc. c. Michel Rochon*, a decision rendered on Dec. 2, 2022, the Superior Court of Québec ruled on the duty of an employer to intervene when it becomes aware that one of its employees is exposed to a situation of psychological family violence in the workplace. The Honourable Justice Daniel W. Payette, hearing an application for a protection order in favour of an employee who was a victim of family violence, granted the application and issued a protection order and a permanent injunction for a period of three years.

The decision

In this case, an employee was subjected to aggressive, harassing, and violent behaviour by her son, particularly at work. The son called his mother at work several times a day to threaten and intimidate her and demand money. This violent behaviour had been going on for many years and had disturbed the employee to the point of

making her unfit to perform her duties, despite the help offered and provided by the employer.

In this context, the employer applied to the Court for an injunction to prevent the son from visiting his mother's workplace and from communicating with her or any other employee. In its analysis, the Court concluded that the evidence clearly demonstrated the existence of a context of family violence occurring in the workplace. The evidence also showed that the employer's concerns were based on reasonable grounds that justified the issuance of a protection order.

In commenting on section 51(16) of the AOHS, the Court wrote that it was precisely for this type of situation that the legislator enshrined in the law the obligation for an employer to intervene in a context of family violence. It added that in the present context, the law confers on the employer both the obligation to intervene to protect the employee from her son in the workplace and the interest to act to request a protection order.

For these reasons, the Court granted the employer's request and issued a protection order and a permanent injunction for a period of three years.

Key takeaways

The protection of employees who are victims of family violence is a new reality introduced with the modernization of the occupational health and safety regime in Québec in 2021.

The scope of the employer's duty to protect remains unclear in that the legislator did not specify its intentions regarding the measures to be taken by the employer. The above-mentioned decision certainly confirms the importance of the employer's new protection obligations, but cannot, in our opinion, be interpreted as a standard to be followed in all cases of family violence in the workplace, as judicialization of the issue is not always warranted.

Québec employers should immediately put in place a policy on family violence that includes an affirmation of the employer's commitment to maintaining a violence-free workplace, regular training on the subject, a procedure to follow in the event of a complaint (including a referral to specialized external resources) and the implementation of an individualized action plan when necessary.

On its website, the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* outlines a violence prevention process in which employers are invited to identify, correct and control the risks present in the workplace. Although these recommendations remain general, they are a useful starting point to help employers meet their new obligations.

Contact us

If you have any questions about this article or wish to discuss any other workplace violence concerns, we invite you to contact the key contacts listed below or one of the Montréal lawyers in the Labour and Employment Group.

[1] *An Act to modernize the occupational health and safety regime*, SQ 2021, c 27 (also known as Bill 59)

By

Stéphanie Desjardins

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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