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POLICY BRIEF - WORKPLACE LAWS TO COMBAT DOMESTIC VIOLENCE

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INTRODUCTION

Domestic violence does not only impact the personal sphere but can cause career interruption, absenteeism, and many other problems at work. Workplaces can and do make a difference in contributing to the safety and well-being of those experiencing domestic violence. Some countries are taking steps through national legislation to protect workers from domestic violence, while in others policies are in place at the company level. It is important that all countries address this issue so that women who suffer from domestic violence benefit from equal protection, regardless of the company they work for.

Based upon a recent report issued by the Kering Foundation, Led By HER and Thomson Reuters Foundation (with support from international law firm, Dentons), the comparative analysis presented here summarizes the existing legal mechanisms to protect or support workers in relation to family and domestic violence in selected countries (Australia, New Zealand, Canada - Ontario, the United Kingdom – England and Wales, Italy and France). It shows that multiple legal mechanisms exist to support workers in relation to family and domestic violence. From flexible working arrangements to paid or unpaid leave, measures taken across the different jurisdictions are often similar in nature but their conditions differ from one country to another. More rarely, protection against discrimination or against unfair dismissal exist. When they are adopted, such protective measures are often applicable only to employees, to the exclusion of contractors, consultants or volunteers in certain jurisdiction.

The research upon which this analysis is based has also revealed that, out of the selected countries, only one has implemented a positive obligation on employers to take steps to prevent domestic violence from occurring in the workplace and raise awareness about the risks and warning signs of domestic violence. While other jurisdictions have legislation protecting the health and rights of workers which can potentially be applicable in circumstances of domestic and family violence.

COMPARATIVE ANALYSIS

According to the World Health Organisation (WHO), almost one third of women worldwide who have been in a relationship report having experienced some form of physical or sexual violence from an intimate partner.¹ The problem is widespread in both developed and developing countries. Intimate partner violence (also known as domestic violence) is defined by the WHO as “*behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviours.*”²

I. COMPARISON OF LEGAL MECHANISMS TO PROTECT OR SUPPORT WORKERS IN RELATION TO FAMILY AND DOMESTIC VIOLENCE

Laws in Australia, New Zealand, Canada and Italy provide specific mechanisms to protect workers experiencing domestic and family violence. The protections across these jurisdictions are similar, including, for example, flexible working arrangements and paid or unpaid leave in line with the International Labour Organisation Convention (No. 190) concerning the elimination of violence and harassment in the world of work – 21 June 2019 (ILO Convention).³

Types of protections offered to workers in relation to family and domestic violence

- The ability for workers to take leave when they experience domestic, family or sexual violence (Canada, New Zealand, Australia and Italy).⁴ This can be in the form of paid leave (Canada, New Zealand and Italy) or unpaid leave (Australia). Some jurisdictions (Canada and New Zealand) require a minimum service period before an employee can take family or domestic violence leave (Canada – 13 weeks or 3 months’ continuous service depending on the type of leave taken, New Zealand – 6 months of continuous service).
- Flexible working arrangements for workers experiencing domestic and family violence (Canada, New Zealand).⁵
- Protection from discrimination (New Zealand), giving sufferers of domestic violence similar protections to those facing workplace discrimination on other protected grounds such as race or gender.⁶

- An obligation on employers to take reasonable precaution to protect workers (Canada). This protection is described more fully in the section below.

Offering leave and flexible working arrangements is in line with recommendation 206 of the ILO Convention.⁷ Some jurisdictions offer no such legal protections to workers experiencing domestic and family violence (UK and France). While individual employers in these jurisdictions have implemented policies offering workers similar protections, the lack of legislative coverage warrants reform.

Beneficiaries of these protections

Where the legal mechanisms described above exist, they generally extend only to employees, that is persons hired by an employer, and not to contractors, consultants or volunteers. The exceptions are:

- Canada, where under the Occupational Health and Safety Act (OHSA)⁸ Ontario requires employers to take reasonable precautions to protect workers, which extends to contractors and consultants. These protections are set out in the section below.
- Italy and New Zealand, where the protections extend to domestic or homeworkers. In New Zealand, a homemaker obtains protections by virtue of the fact that a person is an employer if they employ a homemaker.⁹ Autonomous and domestic workers in Italy are entitled to abstain from work where they are included in protection programs relating to domestic violence.¹⁰ These protections are not available to similar workers in the other selected jurisdictions.

II. COMPARISON OF THE POSITIVE OBLIGATIONS TO TAKE STEPS TO PREVENT DOMESTIC VIOLENCE FROM OCCURRING IN THE WORKPLACE AND/OR TO RAISE AWARENESS ABOUT THE RISKS AND WARNING SIGNS OF DOMESTIC VIOLENCE

Canada is the only jurisdiction that has implemented positive obligations on employers to take steps to prevent domestic violence from occurring in the workplace and raise awareness about the risks and warning signs of domestic violence.¹¹

While not imposing positive obligations on employers, Australia, New Zealand and Italy provide legal mechanisms to protect workers experiencing domestic and family violence, recognizing such violence impacts the “world of work”. Further, Australia, New Zealand, UK, France and Italy have enacted legislation aimed at protecting the health and rights of workers generally. These mechanisms are potentially applicable in circumstances of domestic and family violence. However, they are untested in relation to domestic violence. As such, this section of the comparative analysis focuses primarily on the obligations that exist in Canada.

Positive obligations to prevent domestic violence and raise awareness about the risks and warning signs of domestic violence

In Canada, employers have a positive obligation to prevent domestic violence. “Employers [are required] to protect workers when they become *reasonably* aware of any domestic violence or the risk of same”. This obligation requires employers to take every *reasonable precaution* to protect workers if they are aware, or ought to be aware of domestic violence. Determining whether precautions are reasonable depends upon the particular circumstances of each case.¹² Extensive actions may be required, such as¹³:

- specific measures and procedures to protect a worker (for example, summoning immediate assistance and reporting violent incidents);
- a safety plan (for example, escorts between workplace and vehicle, priority parking closer to the entrance of a worksite, and screening calls and emails for a worker);
- reasonable modification of work duties and flexible accommodations of work schedules; and
- relocating a worker to another area of the workplace.

These employer obligations are in addition to the requirement to create a workplace violence and harassment policy and program, and to provide domestic and violence leave to employees.¹⁴ Workplace violence and harassment policies must be reviewed annually, be posted in a conspicuous place in the workplace and signed by the highest level of management at the workplace.

Sanctions

In Canada, if an employer contravenes or fails to comply with the requirements of section 32.0.4 of the OHSA Ontario they may be liable for monetary penalties and/or imprisonment. An individual in breach of section 32.0.4 is guilty of an offence and on conviction is liable to a fine of up to \$100,000 or imprisonment for up to 12 months, or both.¹⁵ If a corporation is convicted under the same provision, the maximum fine is \$1,500,000.¹⁶

General obligations to protect the rights, health and safety of employees.

While only Canada has implemented positive obligations on employers specific to domestic violence, laws in Australia, New Zealand, UK, France and Italy place general obligations on employers aimed at protecting the health and rights of workers. These mechanisms are potentially applicable in circumstances of domestic and family violence and can be grouped as follows:

• Obligations of good faith

In New Zealand, employers are under an obligation of good faith pursuant to the Employment Relationships Act 2000.¹⁷ This obligation may extend to communications in relation to domestic and family violence which may impact an employee’s work.

• General protections, unfair dismissal and unlawful termination

In Australia, the Fair Work Act 2009¹⁸ provides that employers shall protect workplace rights and protect employees from unfair dismissal and unlawful termination. As domestic violence leave is a recently implemented workplace right, these provisions extend a positive obligation to protecting employees from domestic violence. UK legislation also provides employees with protection from unfair dismissal. However, there is no specific legislative protection for domestic abuse victims in circumstances of dismissal from employment.

• Reporting requirements

Australian non-public sector employers with 100 or more employees must submit an annual report to the Workplace Gender Equality Agency. This report includes a section that requires employers to outline how domestic and family violence issues are addressed in the workplace. Whilst the implementation of domestic and family violence policies is not a positive obligation on relevant employers (unlike that imposed in Canada), the reporting process aims to encourage positive action in relation to domestic and family violence.

• Duty of care

Australia¹⁹, New Zealand²⁰, France²¹, Italy²², and UK²³ laws impose upon employers a duty of care to employees in relation to their health and safety at work. The Australian Law Reform Commission and WorkSafe in New Zealand have recognized that risks posed to the health and safety of employees at work may include risks posed by domestic and family violence. However, in France and Italy there is doubt as to whether this duty extends to acts of violence committed outside the workplace and therefore may do little to impose obligations on employers to protect employees from domestic and family violence. Various governmental bodies in the UK have recommended that employers put in place specific family and domestic violence policies to uphold the health and safety duties owed by employers to employees in respect of domestic abuse survivors. However, these measures are not expressly required by law.

In Canada, employers owe a duty of care to persons to whom they direct work or require to perform a task. This duty is to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or those tasks. It is possible that an employer could face a criminal conviction²⁴ in the event that a workplace violence issue led to the death of a worker (including where the cause is domestic violence).

III. RECOMMENDATIONS

Based on the ILO Convention (No. 190) concerning the elimination of violence and harassment in the world of work – 21 June 2019 and its Recommendation (No. 206), States should take appropriate measures to mitigate the impact of domestic violence in the world of work such as:

- leave for victims of domestic violence;
- flexible work arrangements and protection for victims of domestic violence;
- temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences;
- the inclusion of domestic violence in workplace risk assessments;
- a referral system to public mitigation measures for domestic violence, where they exist; and
- awareness-raising about the effects of domestic violence.

Further Reading

- ILO and UN Women, handbook addressing violence and harassment against women in the world of work, 2019. <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/addressing-violence-and-harassment-against-women-in-the-world-of-work-en.pdf?la=en&vs=4050>
- Responding to violence against women, Guide for companies, CARVE. <https://asceps.org/makingprojects/carve-daphne/wp-content/resources/CARVEguideEN.PDF>
- Addressing domestic violence in the workplace: A handbook for employer outside of B.C., worksafeBC. <https://www.worksafebc.com/en/resources/health-safety/books-guides/addressing-domestic-violence-in-the-workplace-a-handbook-for-employers-outside-of-bc?lang=en>

ENDNOTES

- ¹ <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.
- ² Krug, Etienne G.; Dahlberg, Linda L.; Mercy, James A.; Zwi, Anthony B.; Lozano, Rafael (2002). World report on violence and health. Geneva, Switzerland: World Health Organization.
- ³ ILO Violence and harassment Convention, C190, 2019. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711570.pdf.
- ⁴ Employment Standards Act 2000 (Canada), Canada Labour Code (Canada), Holidays Act 2003 as amended by the Domestic Violence Victims Protection Act 2018 (New Zealand) (DPVA NZ), Fair Work Act 2009 as amended by the Family and Domestic Violence Leave Act 2018 (Australia), Legislative Decree no. 80, 2015 [Article 24] and INPS Circular no.65, 2016 (Italy).
- ⁵ Occupational Health and Safety Act, 1990 (Ontario) (OHS Ontario) and Employment Relationships Act 2000 (New Zealand).
- ⁶ Section 62A, Human Rights Act 1993 (New Zealand) as amended by the Domestic Violence Victims Protection Act 2018 (New Zealand).
- ⁷ ILO Violence and harassment Recommendation, R2016, 2019. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206.
- ⁸ section 1(1) of OHS Ontario.
- ⁹ Employment Relationships Act 2000 (New Zealand), section 5.
- ¹⁰ Law no. 232 of December 11, 2016, the so-called “legge di bilancio 2017”, published in the Official Journal no. 297 of December 21, 2016 and Law no. 205 of December 27, 2017, published in the Official Journal no. 302 of December 29, 2017. (Italy).
- ¹¹ section 32.0.4 of the OHS Ontario.
- ¹² The Honourable Mr Justice John R. Sproat, Employment Law Manual: Wrongful Dismissal, Human Rights and Employment Standards (Toronto: Carswell, 2019).
- ¹³ <https://www.ontario.ca/page/workplace-violence-prevention-health-care-guide-law-hospitals-long-term-care-homes-and-home-care>.
- ¹⁴ section 49.7 of the Employment Standards Act 2000 and section 206.7(1) of the Canada Labour Code.
- ¹⁵ section 66.1 of the OHS Ontario.
- ¹⁶ section 66.2 of the OHS Ontario.
- ¹⁷ section 4 of the Employment Relationships Act 2000 (New Zealand).
- ¹⁸ part 3-2 of the Fair Work Act 2009 (Australia).
- ¹⁹ Work Health and Safety Act 2011 (Australia).
- ²⁰ Section 36 of the Health and Safety at Work Act 2015 (New Zealand).
- ²¹ Article L 4141-1 of the Labour Code (France).
- ²² Legislative Decree no. 81 of April 9, 2008, published in the Official Journal no. 101 of April 30, 2008 (Italy).
- ²³ Health and Safety at Work Act 1974 (UK).
- ²⁴ section 217.1 of the Canadian Criminal Code.



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