



*Health and Safety
Complaints*

***THE REALITY
OF
SPEAKING OUT***



SOCIAL SCIENCES
School of Labour Studies



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Introduction

This Guide was written to provide workers with useful and reliable information about raising health and safety concerns with an employer. The law in Ontario requires employers to protect their workers' health and safety and encourages workers to raise any health and safety concerns including refusing unsafe work. The law prohibits an employer from punishing a worker for raising a health and safety concern or seeking the enforcement of their rights under the *Occupational Health and Safety Act*.

Despite these guarantees, workers are often afraid to speak up. Workers fear that they will be fired and that nothing will change.

This Guide was developed from the experiences of hundreds of workers in Ontario who made the decision to speak up, who asked and, in some cases, insisted that their employer address a health and safety concern. These workers were punished for exercising their rights. Most were fired. They then took further action and made a claim at the Ontario Labour Relations Board (OLRB) as provided by the *Occupational Health and Safety Act*. Most of them settled for modest monetary compensation.

If you have been punished or fired by your employer for raising health and safety concerns, you have the right to claim compensation and, if you were fired, reinstatement. This Guide provides background information that you might want to consider and advice on how to take action.

Who are We and Why? LOARC

The Labour OHCOW Academic Research Collaboration (LOARC) was formed in 2010 when a group of worker health and safety activists got together with staff from the Occupational Health Clinics for Ontario Workers (OHCOW) and university researchers to examine the effectiveness of workers' rights to protect themselves from hazards at work. It was the 30th anniversary of the Ontario health and safety legislation that gave these rights to workers. LOARC reviewed the evidence that workers' participation was critical to health and safety success and the changes that had occurred in Ontario workplaces that had made worker participation challenging.

LOARC conducted teach ins and research to explore how workers effectively use their health and safety rights. This guide is the result of another research project "*Protecting Workers from Reprisals for Making Health and Safety Complaints at Work*" that was funded by the Ministry of Labour in 2016 and completed in January 2019.

Why Health and Safety Matters

Every day it seems there is news that a worker was seriously injured or killed on the job. Or another survey shows that many workers are exposed to violence or harassment. Even well-known hazards like asbestos are still found in buildings.

Many of the workers we interviewed had raised their voices to defend themselves and their co-workers from serious health and safety concerns. They told us,

... I wanted to be safe but I also wanted the people around me to be safe because here's the problem when people around you don't care and it's happened to me where I was almost blown up by a panel because of people.

It was on my mind that I didn't want this stuff to happen to anybody else. It could be the next newbie coming in and he could be as green as grass and he doesn't know his rights and by me doing what I did maybe they'll think twice next time and that's what I wanted. I wanted that put forth. You know, you can't step on people's toes like that. It's too dangerous. I'm all about health and safety and I still am and that's what worried me."

I was called into the office...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.

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... And I was going to take it all the way because it wasn't right.

Worker health and safety has always been important to Ontario workers. Since the Industrial Revolution began, there has emerged a documented history of struggle and improvement. This struggle has moved governments and society to address workplace violence and to reduce exposures and injuries in order to improve working conditions. The evidence shows that worker participation makes work safer and healthier.

Workplace safety does not improve by itself. Workers move forward knowing that the root of their struggle lies in improving health and dignity in every aspect of our lives. Occupational health and safety is a key part of that vision. Encouraging workers to speak up about their health and safety is essential to making work safer.

Why is there Conflict over Health and Safety?

On its face, the answer seems obvious. It is a matter of costs.

Addressing health and safety issues often raises conflict because work is the exchange of labour for wages between two parties with different power and control. The employment relationship consists of employers who extract effort from workers in exchange for pay in order to maximize business success. How much effort, the amount of pay, the cost of training, the cost of preventing injuries, are influenced by the pursuit of profits. Decisions in the workplace about health and safety are made by employers and balanced against other concerns especially costs. This gives employers a lot of power over what happens and can make many resistant to worker safety demands.

Today, the conflict is made worse by governments who put company and business profits before fair work. This encourages employers to cut corners and see what they can get away with. These employers threaten other employers who get drawn into the same way of thinking. As a result, the conditions of work deteriorate.

Many of the rules and procedures that protect workers' health and safety were designed years ago when conditions were very different. Full-time long-term jobs were more the norm. Many workers were protected by unions. Health and safety inspectors had more authority. Today's circumstances are different. While many hazards remain, others have emerged. A growing number of workers are in temporary and contract jobs and are reluctant to raise concerns. There are many threats of cutbacks and layoff. Workers are subject to more reporting, monitoring, surveillance and harassment. The stress has made mental health a major concern for workers.

Why is Worker Participation so Important?

Workers' health and safety rights are embedded in laws, constitutions and international conventions. Workers who do not know the hazards they face or who cannot raise concerns about the hazards they face are at an increased risk that something negative will happen to themselves and others. It is that simple.

Many know about health and safety rights. It should have been part of your high school education. It should have been part of your orientation to your job. It is part of training programs in college or on the job. Ministry of Labour bulletins remind workers that you have the right to know, the right to complain and the right to refuse unsafe work. Workers are encouraged by their teachers, by the government and by the law to use their health and safety rights.

Most hazards are widely known; especially the negative health impacts of occupational violence and stress. There are tools available to help assess these hazards. Workers need to be involved so that they can contribute to improving their conditions at work. There are options to get specific information from reliable sources like the Canadian Centre for Occupational Health and Safety (CCOHS), the Occupational Health Clinics for Ontario Workers (OHCOW) and the Workers Health and Safety Centre (WHSC).

Whether the hazard is coming at you fast or slow, capable of causing immediate or long-term harm, whether it is a pile of goods stacked too high, or a toxic work environment of harassment, you have the right to a safe and healthy workplace. If you do not do anything, it will not get better and you, or a colleague, may get hurt.

LORAC'S FIRST RESEARCH PROJECT

Our first research project as LOARC was to study what made worker health and safety representatives effective. We surveyed 888 worker health and safety representatives of whom 100 did not belong to unions. We did 51 follow-up interviews. The study identified successful strategies and advice in improving health and safety conditions in the workplace.

We published a summary of our results in our first guide "*Writing the Workers Back In.*" We described ten principles underlying effective participation that arose from those workers' experiences. We reported the experiences of workers who used them.

The Challenge for Workers Concerned about their Health and Safety

Despite all the training and encouragement, workers often fear to speak up and raise health and safety concerns. Research has shown that many workers fear that if they raise a concern they will be fired and that their concerns will not be addressed.

To better understand why, we did some more research. This time we did a study of workers who took the risk and suffered a reprisal from their employer to see what kind of protection the law provided and what motivated workers to take action. We interviewed 25 workers who had made formal complaints in order to understand their experiences and motivations. We reviewed 700 files of workers who had complained to the Ontario Labour Relations Board that they were fired or disciplined for raising health and safety concerns to examine the nature of workers' complaints and how the problem was resolved.

Here is what we found:

- Workers suffer reprisals for raising legitimate health and safety concerns.
 - 93% described a physical hazard including being harassed, exposed to work hazards or violence at work, or refused to do unsafe work
- Workers suffer reprisals for using their health and safety rights.
 - 43.2% claimed that acting in a health and safety capacity or calling in an inspector regarding a safety issue, was a key factor that led to a reprisal
- Workers suffer reprisals for being sick or injured.
 - 26.6% claimed that having a health issue was a key factor that led to a reprisal. This included having been sick, injured, needing accommodation or having mental health issues that affected their ability to work.
- Inspectors are required to respond to reprisals and when they do, they often support what the worker says.
 - The inspector's report aligned with the applicant's complaint in 73.0% cases.
- However, according to the Ministry of Labour Operations Policy Manual, inspectors can only investigate the underlying safety or health concern and not why the worker was fired.
 - In 51.6% of cases where the applicant called the inspector, the applicant also claimed this was one of the reasons for the reprisal.

- The complaint process often results in financial compensation for the worker.
 - 85% of worker complaints in our study were settled with the agreement of the worker at the Ontario Labour Relations Board. In the majority of these cases, the worker received cash compensation.
 - 68.3% received a monetary settlement of \$5,000 or less. 31.7% received more than \$5,000. The average monetary settlement was \$5,461.
 - Compensation was paid in damages in 54.2% of settlements meaning the amount was not reduced by tax and benefit deductions.
- Employers are seldom penalized.
 - There are no prosecutions of employers for violating the law and making a reprisal against a worker.

There Are Times When You Have to Take Action

There is no way to sugar-coat the fact that workers suffer reprisals from employers for asserting their rights for safe and healthy workplaces. However, despite this, there are times when action must be taken. When we interviewed workers who had been reprised against and asked them why they took action, they told us:

It's not like I'm vocal really. I don't like speaking in front of the groups and that kind of stuff. I guess more cause I'm oppositional. More like, "No, these are things we have to do. Let's just do them kind of thing...Cause it's like social justice to me."

I first became a little bit more of an advocate and I spoke to one of my safety representatives. We had a safety concern in the plant. He brought the Ministry of Labour in.

The fundamental belief that I can stand up for myself on health and safety concerns

I joined the Joint Health and Safety Committee to try and help out. Prevention is better than cure and on the committee I felt like I would have a good platform to bring my concerns and actually be able to do something in order to propel change.

Am I going out looking for trouble? It's not like that. Everywhere we go there is something and it's my right to always raise these points. Just because there's ten jobs it's my right at every workplace to see and if it's founded or there's grounds for it then I won't be labeled by the ministry or the government, "Oh trouble-maker there."

It's just mind boggling that people don't have the time to save their own lives. ... people don't – they take the shortcuts.

Be Wary of The Type of Employer You Are Dealing With

Every employer will tell you they care about your health and safety. Some employers do. Some may say all the right things but refuse to spend any money to address it. Some employers do not want to hear from you about it. There are warning signs. Here is what the workers that we interviewed experienced,

People were at odds because a number of people were fired or put off.... All of sudden the rules that we played by were changed.

The organization had changed while I was gone. I was no longer with just a manager. I was micro-managed. So, I had a manager underneath a manager underneath a manager.

And she just refused and refused and refused to answer. She said. "That's my business not your business. You don't need to know that," which was very strange and then she got so upset that she said "Don't make me come over there and kick your ass."

I said to him, "You're not supposed to touch me and like, how can you do this?" I was so like pissed off and he was taken aback. He didn't expect me to do that, "Oh, oh, no. I didn't mean it. I didn't mean it," and I said, 'No. You know what? You can't do this.'"

Despite the fact that I was bandaged from wrist to elbow I was told I had to come back to work. So, at 4:00 in the morning with unusable arms I had to come back to work and complete my shift till 8:00 in the morning.

There were very strict timelines that you had to meet. Lots of pressure in terms of how you did your work and what you were you getting done. They would have a shame sheet on the wall for when you made errors.

I couldn't believe that somebody would ever treat me like that... and then I also just think it's the industry, it's not uncommon at all actually. Not the pushing part but sort of the abusive language.

It's almost like it's more acceptable for us to get hurt in this industry. "You deal with dangerous patients. Well, it's part of your job. So, just deal with it."

Understand that Your Rights Are A Tool, Not A Guarantee.

Yes, you have rights. Your right to complain that something is unsafe or something is making you sick is guaranteed by law but not in practice. Our research showed that many workers do get disciplined, mostly fired, when they raised a health and safety concern with their employer.

Health and safety can be a matter of negotiation. Sometimes workers can get more protections if they approach their employer in numbers. It can be harder to reprise against a group. Or workers can appeal to the employer's compassion or common sense. Some employers want their organization to be seen as a leader so will invest a bit more in health and safety. Whatever the case may be, how your employer approaches health and safety may be the key to how workers can achieve improvements in workplace safety.

Practice knowledge activism. Our previous Guide "*Writing the Workers Back In*" talked about this and why it was more effective in making changes to conditions at work. Knowledge activism is about thinking and acting strategically, gathering and presenting evidence, educating and building support. Don't just rely on the regulations.

Learn more. There is a strong and supportive health and safety movement across Ontario. You can easily find out more about us. We are visible in many news stories about workplace deaths and injuries, occupational violence, cancer and work. There are individuals in unions, injured workers groups, and workers' action centres who are linked to the movement in many communities. We are in many workplaces. We are in community legal clinics, occupational health clinics, and at the worker health and safety training centre. We are in labour studies programs in colleges and universities. Many of us are just a Google search away. There are some specific contacts to get you started listed at the end of this Guide.

Build Awareness, Training, and Capacity

Some workplace hazards are immediately threatening and action has to be taken right away. Even in these cases, support from coworkers and others can help bring attention to the concern and get it addressed. Co-worker understanding and support becomes even more important when you are concerned about longer term effects, for example the risk of injury because of repetitive motion or risk of mental illness because of constant harassment. The other workers, who are similarly exposed as you, should be supportive of improving the conditions. It is not always the case and can lead to confrontation. Be aware of your coworkers' perspectives.

Encourage your coworkers and others to learn about the hazard that concern you. Share your concerns and the responsibility to take action.

Protection against Reprisal – Section 50

There are no guarantees but there are steps you can take and things you can do to strengthen your position and get the needed action if you are disciplined or fired.

Keep a Personal Record

It helps to keep records at every step of the process. Workers submitted letters, emails, texts, photos and videos in support of their claims. Document what the problem is and what is happening and then keep copies in a personal file outside the workplace. Smart phones are useful tools. Do not keep your personal records on a company phone or computer.

Is there a committee or health and safety representative in your workplace?

A legal right which workers have in many workplaces is the right to select a health and safety representative or committee members to represent them with management on health and safety matters. If there are more than 6 but less than 20 people regularly employed at your workplace, there should be a worker appointed health and safety representative. Where there are 20 or more, there should be a joint committee with management in which half the committee members are representatives of workers selected by workers or, when there is a union, by the union on the workers' behalf.

Does your workplace have such a committee? Do you know their names? Have they dealt with your health and safety issue before? Will they act on your behalf?

Contract, temporary and casual employees are often excluded from these committees. In these cases, workers must rely on support from the Health and Safety Inspector.

Contact a Union

Workers who are union members have several advantages. Your union can represent you in dealing with the employer. Can you identify who is the local union representative in your workplace and ask her or him for support?

Many unions have health and safety resources available for members. Check out your union's web site.

Contact an Inspector [1-877-202-0008]

Some workers that we interviewed contacted the Ministry of Labour for advice while raising a health and safety concern with their employer,

I called the Ministry 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.

If your health and safety is threatened and nothing is being done, calling an inspector or refusing to work may be your only option. In either case, make sure that the inspector responds and does a worksite inspection.

What If You Get Punished for Raising the Concern – Fewer Hours, Transferred or Fired?

If you have not already contacted an inspector, you should do so as soon as possible. Tell the call centre what happened, what the health and safety issue is, and insist that an inspector be sent to inspect the workplace. Do follow-up calls if needed. Most workers that we interviewed received support from an inspector who responded to the worker's call and inspected the workplace. However, one worker reminded us that the initial reaction is not always friendly sounding,

“So, I phoned and I was made very much to feel like I was simply being vindictive. The complaint wasn't necessary.”

She got the impression from the call centre at the Ministry of Labour that they did not think her complaints were worth a visit. She persisted. An inspector contacted her to get her side of the story and did visit the workplace subsequently. The inspector filed a report that supported her claim and then followed up with her afterwards with the results.

Do not be turned off by what you might hear at first from the call centre or from an inspector. Be prepared and be persistent. Clarify your concern and its potential impacts on you and others working with you. It is important that the inspector responds and makes a report about your complaints.

Make a Claim

It is important to make a reprisal claim to get compensation. Any worker who suffers a health and safety reprisal is entitled to make an application to the Ontario Labour Relations Board (OLRB). Those workers who are not union members can get free legal advice and representation on their application from the Office of the Worker Advisor and community legal clinics.

If you are a union member, you may use the OLRB or your workplace's internal grievance process to resolve the reprisal and you are entitled to union representation. You will not be able to proceed in both forums at once. Call your union for advice.

You may be entitled to a settlement to compensate you for any wages lost as a result of the reprisal. If you have been fired, this settlement should include an additional amount based on the length of time you have been with the employer. It is unlikely that you will get your job back unless you have a union. It is also important to note that if you have lost your job, you have an obligation to make a reasonable effort to find new employment. This is called the duty to mitigate. Failing to make a reasonable effort to find new employment may reduce the amount of money you are entitled to.

If you have been the subject of a health and safety reprisal, contact the Office of the Worker Advisor or consult a local community legal clinic for advice. Check out OLRB Information Bulletin #14 on health and safety reprisals

Confidentiality

Most workers do not want their experience to become public. Many workers told us that they were afraid that they would not get hired again if word got out that they had filed a health and safety complaint against their employer.

Our study showed that employers do not want it known either because it affects their reputation as well. All of the settlements that we reviewed required the parties to keep the terms of settlement confidential.

When a claim is filed with the Ontario Labour Relations Board, both the name of the worker and the name of the employer are registered. At some point, the file will be closed, and a public record kept of the disposition. Access to the file including the application and response is restricted.

All of the information collected in this study was done with strict confidentiality so that neither the identity of the complainant nor respondent was known.

Conclusion

None of us have a crystal ball to see what will happen at work if a hazardous situation is allowed to continue. Will we get injured or sick or never get home that day? What about a colleague? Will something happen to them? Is every day a gamble? Gambling with our health doesn't just affect us, it affects those who rely on us or who love us.

These are questions that workers wrestle with when deciding whether to speak up about health and safety. Everyone – government, employers, the law, policy – says that a worker should not be punished by their employer for raising a health and safety concern. Our research confirms that, despite these promises, reprisals do happen.

Reprisals are not inevitable. There is support and resources available to help workers make tough decisions. For those who complain, there is modest compensation. Hopefully this guide gives you some tools and advice about speaking up about health and safety in the workplace – how to do it, why to do it, what might help, and what to do if a reprisal happens.

For more information, please contact the authors at kingan@mcmaster.ca or visit <https://labourstudies.mcmaster.ca/loarc>.

List of Resources and Support Groups

1) Canadian Centre for Occupational Health and Safety. www.ccohs.ca

This is Canada's national resource for information about health and safety. Based in Hamilton, funded by both provincial and federal governments and governed by representatives of employers, labour and government.

2) Labour Councils and Unions:

Local labour councils and unions can help workers who have experienced a reprisal by providing advice and peer support. They can put you in contact with the different community resources like workers' action centres, injured workers groups and health and safety activists. If you are a union member, they can help you contact your union's leaders and staff.

Labour councils are affiliated to the OFL (see below). There is contact information provided by the OFL website at <http://ofl.ca/about/labourcouncils>.

3) Labour Studies Programs:

McMaster University School of Labour Studies www.labourstudies.mcmaster.ca

Brock Labour Studies www.brocku.ca/social-sciences/labour-studies

Laurentian Labour Studies www.laurentian.ca/program/labour-studies

4) Ministry of Labour.

To contact an inspector, contact the Ministry of Labour call centre at 1-877-202-0008.

The Ministry website is an important source of information and guidance about what the law allows you to do and how it will protect you as a worker. Visit www.labour.gov.on.ca and check out the section on workplace health and safety.

5) Community Legal Clinics

There is a network of community legal clinics across Ontario that provide legal services to low income people. Clinics assist low income workers with a range of workplace legal issues including wages, compensation and health and safety reprisals.

One clinic located in Toronto specializes in health and safety claims and provides resources to other community legal clinics across Ontario – Workers Health and Safety Legal Clinic. Contact them by phone at 416-971-8832 (Local) or 1-877-832-6090 (Toll free). Email: whslc@lao.on.ca. Website: www.workers-safety.ca

6) Injured Workers Organizations - ONIWG – Ontario Network of Injured Workers

ONIWG is a provincial voice for workers who have been injured or made ill on the job. It has first-hand experience of the WCB/WSIB system, knows it needs improvement and takes united action to make this happen. Its 22 member groups across Ontario have strong community roots, working closely with other local groups and agencies to advance the interests of injured workers.

Injured Workers Online <https://injuredworkersonline.org>

This website is maintained by Injured Workers Community Legal Clinic (IWC) for the injured worker community. It is a collaborative effort of injured workers, legal advocates, labour, community activists and supporters, researchers, and health professionals. Together we seek better treatment for injured workers by the workers' compensation system, their employers and government.

7) OHCOW – Occupational Health Clinics for Ontario Workers

All clinics can be reached toll free at 1-877-817-0336.

If you think something about your workplace is putting you or your co-workers at risk, or if several people at your workplace have similar health problems, or if you simply want information about what the Occupational Health Clinics for Ontario Workers (OHCOW) do, contact the clinic nearest to you. For general information check out www.ohcow.ca.

8) OFL – Ontario Federation of Labour www.ofl.ca

Just as workers unite in a union to protect their rights, so also do unions unite in central labour bodies to fight for better working and living conditions. The Ontario Federation of Labour (OFL) is the province's "house of labour" and serves as an umbrella group for working people and their unions. If you want more information about the union that represents you or about how to contact the Labour Council in your area, the OFL can help you. There is lots of information on line and you can call them at 416-441-2731 or Toll-Free: 1-800-668-9138.

9) OLRB - Ontario Labour Relations Board www.olrb.gov.on.ca

The OLRB is responsible for deciding reprisal cases. Information about its processes can be found on the website. Reprisal complaints are specifically addressed in Bulletin 14 <http://www.olrb.gov.on.ca/english/infob/infbul14.pdf> .

If you are considering whether to make a complaint, contact the OWA or legal clinic for advice.

10) OWA Office of the Worker Advisor

If you think you have been the victim of an occupational health and safety reprisal and you are not a member of a union, the OWA can help by giving you advice, representing you or referring you to other sources of help. There is no charge for these services.

To speak to someone who can give you advice or information over the phone, please call 1-855-659-7744 (toll free) or 416-212-5335. For more information www.owa.gov.on.ca.

11) Workers' Action Centres

The Workers' Action Centre in Toronto can help you if you are not a member of a union and you are being treated unfairly. You can find out more about them at <https://workersactioncentre.org/>

12) Workers Health and Safety Centre - WHSC

As Ontario's designated health and safety training centre, the Workers Centre provides high quality training to workers, their representatives, supervisors and employers in workplaces of every size, sector and region of the province.

Call toll free from anywhere in Ontario 1-888-869-7950 or 416-441-1939. For more information www.whsc.on.ca.