



I N A F L A S H

Quick Read Memos for Human Resource Professionals



November 27, 2012

Pilot Program for Reprisal Complaints under the *OHSA*

Due to recent changes to the *Occupational Health and Safety Act* ("*OHSA*"), Inspectors with the Ministry of Labour now have the authority to refer worker complaints of reprisal directly to the Ontario Labour Relations Board in certain circumstances, and with the worker's consent.

Section 50 of the *OHSA* prohibits employers from penalizing a worker because he or she has sought the enforcement of the *OHSA*. Traditionally, such complaints have been commenced by the worker directly with the Board.

Under a new pilot program, reprisal complaints can be given to Ministry of Labour Inspectors who will expedite the process by interviewing the worker and assisting him or her with completing the referral form. The Inspector will then pass this form along to the Board and the named parties to respond to the allegations. Once this is done, the Inspector no longer participates in the proceeding, and does not act as the worker's representative.

At this point, the employer will have ten (10) working days to provide a response to the referral, which is to be sent directly to the Board. Upon receipt of the response and/or the expiration of the ten (10) day period, the Board will schedule an expedited consultation or hearing to take place within two (2) weeks.

If the matter is not resolved at a preliminary stage, the Board will conduct a hearing into the substance of the allegations and, if the complaint is upheld, could make any of the following orders:

- Remove or change any penalty the employer may have imposed
- Reinstatement of the worker; and/or
- Compensation of the worker for related losses.

Employers should treat referrals received in this manner with the same degree of seriousness as those complaints brought directly through the Board's normal processes, as the potential consequences are the same.

If you have any questions about this new initiative by the Ministry of Labour, how to

respond to a reprisal complaint, or have any other questions relating to workplace law, please do not hesitate to contact a Mathews Dinsdale lawyer.

For more information on new developments in Workplace Law, please refer to our website at: <http://www.mathewsdinsdale.com/news-events/in-a-flash/>

