

# Can executive employment contracts address possibility of violent attacks? | Frank Portman

By **Frank Portman**

Law360 Canada (October 29, 2024, 2:53 PM EDT) -- The Toronto business community was shocked to awaken to the news that two senior executives of GFL, a publicly traded company, were shot at overnight in early October in their homes within one hour of each other. Later reports also suggested that police were investigating up to three possible arsons linked to GFL company sites.

While no arrests have been publicly reported, and at least one of the targets now denies that the shooting had anything to do with business, the shootings pose an interesting question: Do employers have any legal obligation to proactively take steps to protect executives from the potential of violence, including employees or shareholders seeking retribution, gangs or those suffering from mental health problems?



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Executives are asked to make difficult decisions every day which can negatively impact the course of others' lives. A simple Google search reveals dozens of acts of violence every year that can be tracked back, at least in part, to layoffs, plant closures, promotion decisions and other executive acts.

When executives are the targets of violence, are employers obligated to protect them? And how can executive employment lawyers add such protections to an executive employment contract?

## **Is an employer required to protect an executive against personal violence?**

The *Occupational Health and Safety Act* (OHSA) requires that employers address the risk of workplace violence, which includes the application of physical force as well as the threat of physical force. Employers are obligated to take every precaution reasonable in the circumstances for the protection of a worker. This obligation includes taking reasonable precautions to protect the worker from the potential for workplace violence.

The one wrinkle is that the obligation to address workplace violence relates, specifically, to a workplace. Would this cover the type of violence in the type of attacks mentioned above?

The answer for executives and executive employment lawyers is unfortunately murky.

The OHSA excludes from its application work performed by an owner or occupant in a private residence. While this would seem to suggest that the OHSA has no interest in regulating an employer's conduct, the analysis may be more nuanced. This is because, in the event of a threat of workplace violence, the "work" that created the threat may not actually have a nexus to the work being performed at home. Instead, the threat is likely related to the entire body of the executive's work, most of which would be related to the workplace.

Furthermore, unlike some other obligations on the employer, the obligation to protect the worker with whatever precautions are reasonable in the circumstances is not expressly limited to the workplace.

Given the broad and purposive manner in which the OHSA must be interpreted, it is likely that some workplace threats could trigger the need for employers to take steps to protect executives even outside of the workplace. Regardless of whether it is required by the OHSA, it is also simply good risk

management. That's good news for executives and executive employment lawyers.

### **What is required to safeguard executives from personal violence?**

The OHSA has two both procedural and substantive requirements on employers to address the threat of workplace violence.

Procedurally, the employer is required to maintain a policy for how to deal with workplace violence as well as conduct assessments of risks of violence.

Substantively, the Act requires that the employer take whatever measures are "reasonable in the circumstances" to protect workers from threats including workplace violence. Functionally, this requires that the employer take the results of the workplace violence reporting and assessment process and respond with substantive measures. While employers are not required to "guarantee" safety, there is a high threshold for an employer to assert that a measure is not reasonable.

The reasonableness analysis functionally comes down to standard risk-assessment principles. What is reasonable will depend on the likelihood of the risk coming to fruition as well as the magnitude of the consequences if it does.

In the event an employer has a crystallized reason to believe that an employee, including an executive, may be at risk of workplace violence, it will almost certainly have the obligation to take proactive steps to address that risk.

This should always include, at a minimum, notifying the worker of a threat (if they are unaware). It may also include using legal means, such as making reports to the police or issuing trespass-to-property notices, and taking other legal steps to reduce risk.

On the extreme end, there are circumstances where a distinct, significant threat could require the engagement of private security services or other significant factors. While the situations in which this could be obligated by the OHSA are limited, there is no doubt that such a precaution, if reasonable, could be necessary given the circumstances.

### **What executives should know about their personal safety**

When difficult decisions are made, executives are often the focal point of stakeholder anger. Given the immense stakes and the impact on people's lives, this can be a recipe for irrational and dangerous responses. Executives in the public light must be aware of this potential for danger and, when necessary, ensure that the resources of their organizations are used to ensure reasonable protection.

For some executives, it may also be worthwhile to establish clear security expectations and obligations through an initial contract. This is particularly true for executives who are being brought in to head an organization in crisis. Establishing those expectations at the outset of an employment relationship and adding it to an executive employment contract will help avoid conflicts or difficult conversations after concerns manifest.

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