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## **Bill 168 amendments to the OHS Act - Ontario tackles workplace violence and harassment**

On April 20, 2009, the Ontario government introduced amendments to the *Occupational Health and Safety Act (OHS Act)* to address workplace violence and harassment. Bill 168, *An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace*, will place a number of new obligations on employers. These will include requirements to assess the risk of workplace violence and to develop policies and programs to address and prevent violence and harassment in the workplace.

### **WORKPLACE VIOLENCE AND WORKPLACE HARASSMENT POLICIES**

Bill 168 provides the following definitions of “workplace violence” and “workplace harassment”:

“workplace violence” means,

- a) the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker,
- b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.

“workplace harassment” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Under the proposed Bill 168 amendments, employers will be required to prepare a workplace violence policy and a workplace harassment policy. Employers will be required to conduct reviews of these policies “as often as is necessary,” but no less than once every year. Employers with six or more employees in a workplace will be required to post the policy in a conspicuous location. The proposed amendments would also require employers to provide workers with information and instruction in respect of the two policies.

### **ASSESSING THE RISKS OF WORKPLACE VIOLENCE**

Bill 168 proposes to require employers to conduct an assessment of the risk of workplace violence, and report the results of the assessment to the health and safety committee, or a health and safety representative. For workplaces that do not have a health and safety committee, employers will be required to report the results of the assessment directly to the workers.

The assessment will consider the risks of violence that may arise from the nature of the workplace, and the type and conditions of the work. In conducting the risk assessment, employers will be required to take into account circumstances that are common to other workplaces, circumstances specific to the particular workplace, and any other factor that may later be prescribed by regulation. Reassessments of the risk of workplace violence will be required as often as is necessary to ensure that workers are protected from violence and that the workplace violence policy remains effective.

## IMPLEMENTATION PROGRAMS

Under the proposed amendments employers must develop implementation programs for both the workplace violence policy and the workplace harassment policy. In terms of the workplace violence policy, the implementation program must provide for:

- measures to control the risks of workplace violence identified in the assessment;
- procedures for summoning immediate assistance when workplace violence occurs, or is likely to occur, or when a threat of workplace violence is made;
- procedures for workers to report incidents, or threats, of workplace violence to the employer; and
- a process for investigating and addressing incidents, complaints, or threats, of workplace violence.

The implementation program for the workplace harassment policy is somewhat more limited in scope. It must include measures and procedures for workers to report incidents of workplace harassment, and must set out how the employer will investigate and deal with incidents and complaints of harassment.

Further requirements for both the violence and harassment implementation programs may later be established by regulation.

## DOMESTIC VIOLENCE

Although no other Canadian jurisdiction has legislatively addressed domestic violence in the workplace, Bill 168 does so. Under the proposed amendments, if an employer is aware, or ought reasonably to be aware, that domestic violence may occur in the workplace, the employer must “take every precaution reasonable in the circumstances for the protection of the worker.”

## EXISTING *OHS*A DUTIES EXTENDED TO WORKPLACE VIOLENCE

The various health and safety duties of employers, supervisors, and workers—currently contained in sections 25, 27, and 28 of the *OHS*A—will be extended to apply, as appropriate, to workplace violence. Bill 168 will also extend the duty of employers and supervisors to provide information to workers. In certain circumstances, an employer will be required to provide a worker with information, including personal information, about a person with a history of violent behaviour. This duty will be triggered if the worker can be expected to encounter a person with a history of violent behaviour in the course of his or her work, and if the risk of workplace violence is likely to result in physical injury. In fulfilling this duty, the employer will be required to only disclose personal information that is reasonably necessary to protect the worker.

## REFUSING WORK

Bill 168 also proposes amendments to section 43 of the *OHS*A, which currently addresses a worker’s right to refuse work in various circumstances. Under Bill 168, where a worker has reason to believe that workplace violence is likely to endanger him or her, he or she will be permitted to refuse to work. The proposed amendments will also remove the requirement for a worker who has refused work to remain near the workstation until the resulting investigation is complete. The proposed amendments state instead that such a worker will be required to remain “in a safe place that is as near as reasonably possible to his or her work station...”

## In Our View

Workplace violence was traditionally addressed under the *OHSA*'s "general duty provision" which required employers to "take every precaution reasonable in the circumstances for the protection of a worker." A consultation process conducted in 2008 by the Ministry of Labour indicated that some stakeholders felt that this general duty did not go far enough in preventing, and protecting against, workplace violence. Bill 168 is the government's response. If Bill 168 is passed, Ontario will join several other jurisdictions, including Alberta, British Columbia and the federal sphere, in having specific workplace violence prevention legislation. Organizations should begin familiarizing themselves with the new obligations that the proposed amendments will impose.

For further information, please contact [Colleen Dunlop](#) at (613) 940-2734

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