

Bill 168 amendments to the *OHSA* receive Royal Assent – workplace violence and harassment provisions to come into force June 2010

On December 15, 2009, Bill 168, which amends Ontario's *Occupational Health and Safety Act* ("*OHSA*") to address workplace violence and harassment, received Royal Assent. The provisions of Bill 168 will come into force in June 2010, at which time employers will have a number of new obligations under the *OHSA*. These new obligations include the requirement to conduct assessments of the risks of workplace violence and harassment, and the requirement to develop policies and programs to address and prevent violence and harassment in the workplace.

Readers of Focus will be familiar with many aspects of Bill 168 from its first reading in April 2009 (see "[Bill 168 amendments to the *OHSA* - Ontario tackles workplace violence and harassment](#)"). Nevertheless, there have been some modifications made to the Bill as it passed through the legislative process. Most notably, the definition of "workplace violence" has been broadened to include threats of violence; and the powers of Ministry of Labour health and safety inspectors to make orders in respect of workplace violence have been expanded.

HARASSMENT AND VIOLENCE POLICIES AND IMPLEMENTATION PROGRAMS

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

"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.

"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,
- (c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

Part (c) in the above definition of "workplace violence" is one of the modifications to Bill 168 since it was introduced earlier this year. It incorporates into the definition of "workplace violence" the threat of physical force that could cause injury to workers. For the purposes of the *OHSA*, the threat of physical violence is the same as actual physical violence.

Under Bill 168 employers are required to prepare policies relating to workplace violence and workplace harassment. The policies must be reviewed "as often as is necessary," but no less than once every year. Employers with six or more employees must post the policy in a conspicuous location in the workplace. All employers are required to provide workers with information and instruction in respect of the policies.

IMPLEMENTATION PROGRAMS

Employers must also 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;
- procedures for workers to report incidents of workplace violence to the employer; and
- a process for investigating and addressing incidents or complaints 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 be established by regulation at a later date.

ASSESSING THE RISKS OF WORKPLACE VIOLENCE

Bill 168 requires employers to conduct an assessment of the risks 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 or a health and safety representative, employers will be required to report the results of the assessment directly to the workers.

The assessment must 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 must take into account circumstances that are common to other workplaces, circumstances specific to the particular workplace, and any other factor that may be prescribed by regulation.

Reassessments will be required as often as is necessary to ensure that workers are protected from violence and that the workplace violence policy remains effective. Bill 168 provides Ministry of Labour health and safety inspectors with the authority to make orders requiring an employer's assessments and reassessments of the risks of workplace violence to be in written form.

DOMESTIC VIOLENCE

Although no other Canadian jurisdiction has legislatively addressed domestic violence in the workplace, Ontario does so with Bill 168. Under the 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 OHSА 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 *OHSА*—will be extended to apply, as appropriate, to workplace violence. Bill 168 also extends 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 is 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 amends section 43 of the *OHS*A which addresses a worker's right to refuse work in various circumstances. Currently, section 43 provides that some workers may refuse to work where the physical condition of the workplace or the machines and equipment that the worker must use are dangerous or in contravention of the *OHS*A. Bill 168 expands this right to refuse to work to include situations involving workplace violence. A worker will be able to refuse to work where he or she has reason to believe that "workplace violence is likely to endanger himself or herself..."

Where a worker has refused to work pursuant to section 43, Bill 168 removes the requirement for that worker to remain near the workstation until the resulting investigation is complete. Instead, the worker is required to remain "in a safe place that is as near as reasonably possible to his or her work station..."

It should be noted that certain occupations are not afforded the right to refuse to work under section 43 of the *OHS*A. For example, police, firefighters, and employees of nursing homes, hospitals, and mental health centres (amongst other workers specified in the *OHS*A) may not refuse to work where the dangerous circumstances are inherent in the work, or are a normal condition of the employment. Similarly, such workers may not refuse to work where the refusal would endanger the health or safety of another person. Bill 168 amends the *OHS*A to authorize the Lieutenant Governor in Council to make regulations specifying the situations in which dangerous conditions, which would normally give rise to the right to refuse to work, will be considered inherent in the worker's work or a normal condition of employment.

In Our View

As mentioned, the provisions of Bill 168 are scheduled to come into force in June 2010. The administrative burden of complying with the new requirements under Bill 168 will be significant. In order to ensure compliance with the amendments, employers should begin conducting risk assessments and begin developing their policies and implementation programs. Non-compliance with the new provisions may result in significant fines and penalties under the *OHS*A.

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

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