

## **Emond Harnden Breakfast Seminar**

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# **Preparing for Ontario's New Workplace Violence and Harassment Legislation**

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1

## **Session Overview**

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- Definitions of Workplace Violence and Harassment
- Risk Assessment - How safe is your workplace?
- Policies on Violence and Harassment
- Implementation Programs – Putting safety measures in place
- Work Refusals – When the risks are just too great
- Compliance Timeline – Be ready in time for the new law!

2

## Bill 168

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- Amends the *Occupational Health and Safety Act* in Ontario to address workplace violence and harassment
- Effective June 15, 2010
- Imposes new obligations on provincially-regulated employers
- Similar obligations as Alberta, British Columbia, Manitoba, Nova-Scotia, Prince Edward Island and federal jurisdiction (*Canada Labour Code*)

## Definitions (OHS s.1(1))

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- Workplace violence defined:
  - The exercise of physical force that causes, or could cause, physical injury to the worker
  - An attempt to exercise physical force that could cause physical injury to the worker
  - A statement or behaviour that is reasonably interpreted as a **threat** to exercise physical force against the worker, that could cause physical injury to the worker

## Definitions (OHSA s.1(1))

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- Workplace harassment defined:
  - Engaging in a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome
  - NOT based on prohibited grounds

## Consequences of Workplace Violence and Harassment Can Be Costly \$\$\$

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- Health
- Stress
- Liability
- Grievances
- Productivity
- Morale
- Corporate Image
- Finances

## Statistics of Workplace Violence and Harassment

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- 2004 Statistics Canada
  - 2004 Statistics Canada survey reported approximately 356,000 incidents of workplace violence in a 12-month period across Canada
  - 49% of all violent workplace incidents occurred in commercial or office buildings, factories, stores and shopping malls
  - 31% took place in hospitals, prisons and rehabilitation centres
  - 10% occurred in schools or on school grounds
  - 10% occurred in restaurants and bars

## Statistics of Workplace Violence and Harassment (continued)

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- 69 homicides took place in “the course of legal employment” between 2001 and 2005
  - 11 taxi drivers; 10 police officers; 8 bar/restaurant workers; 8 retail employees; 4 general labourers; 3 inspection enforcement officers; 3 security guards
- Between April 1, 2008 and March 31, 2009
  - 417 field visits made by OHS inspectors;
  - 351 OHS orders related to violence in the workplace issued

## What is the Risk of Violence in your Workplace? Risk Assessments (OHS s. 32.0.3)

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- Requirement to conduct an assessment of the risk of workplace violence
  - Assessment must take into consideration circumstances that are:
    - Common to similar workplaces
    - Specific to the particular workplace
- Results must be provided to the JH&S Committee, health and safety representative or directly to the workers if no committee/representative exists
- Reassessments are required as often as necessary (and results provided to JH&S committee, representative or workers as appropriate)

## Employees Most at Risk

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- Health care employees
- Correctional officers
- Social services employees
- Teachers
- Municipal housing inspectors
- Public works employees
- Retail employees

## Risk Assessment – Who is at Risk?

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- Violence can happen in any workplace
- Consider the following factors that increase the risk:
  - Contact with the public
  - Exchange of money or other valuables
  - Delivery of passengers, goods or services
  - Working alone or in small numbers
  - Working late at night
  - Working in community-based settings
  - Mobile workplace (i.e. car)
  - Staying in hotels

## Risk Assessment Checklist

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- Review factors that contribute to risk of violence
- Review historical records and reports
- Research history of violence in similar workplaces
- Ask employees about their concerns – questionnaires
  - i.e.: how safe do you feel in your office/washrooms/corridors/  
stairwells/parking lot? What improvements do you suggest?
- Review workplace design to minimize risk and consider improvements
- Review work practices

## Risk Assessment Checklist

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Consider risks associated with the following:

- Parking lot:
  - possibility of control cards
  - lighting
  - vehicle theft/vandalism
  - security reminder signs
  - exits/entrances well signed

## Risk Assessment Checklist

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- Perimeter of the building security
  - is your location a high crime area or near banks, bars?
  - is your location isolated?
  - shared offices?
  - signs of vandalism?
  - previous break-ins?
  - controlled entry?
  - well lit?
  - security alarm – is it tested? adequate?

## Risk Assessment Checklist

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- Reception
  - can receptionist clearly see incoming guests?
  - panic button alarm?
  - staffed at all times?
  - well lit?
  - physical barrier?
  - clearly marked entrances/exits?

## Risk Assessment Checklist

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- Lighting
  - areas too dark?
  - can access main light switch controls?
  - stairwells bright enough?
  - locked/unlocked storage areas?

## Risk Assessment Checklist

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- What would make it easier to see?
  - mirrors
  - angled corners
  - less shrubbery at entrance
  - more glass, windows

## Preparing Policies *(OHS s.32.0.1)*

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- Employers required to prepare both a workplace violence and a workplace harassment policy
- These policies must be reviewed “as often as necessary” but no less than once per year
- The policies must be posted in a conspicuous location (for employers with more than 5 employees)

## Policy Checklist

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- Secure management commitment
- Developed by both management and employee representatives
- Applicable to management, employees, clients; anyone with a relationship with the client
- Include clear definitions of harassment and violence
- State company's view and commitment to the prevention of workplace violence and harassment
- Provide examples of unacceptable behaviour

## Policy Checklist (continued)

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- How to report an incident of violence/threats
- Investigation of complaints
- Encourage reporting
- Outline procedures for investigating and responding to complaints and underscore confidentiality
- Indicate consequences
- Assure no reprisals
- Commit to provide support services to victims
- Commit to monitor and review policy regularly

## Providing Information and Training on Policies to Employees

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- Train employees:
  - on what to do in emergency situation
  - on how to summon assistance
  - on what to do if robbed/attacked
  - on emergency numbers
  - on techniques to defuse potentially violent situations
  - to use walkie-talkies/portable phones if moving around a large worksite on their own

## Providing Information and Training on Policies to Employees (continued)

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- not to enter any situation where they feel unsafe
- to plan escape routes
- to set up a buddy system
- to recognize, respond and report potentially violent situations
- on other precautions to eliminate risks of violence
  
- Explain roles and responsibilities of employees and management
  
- Maintain training records

## Workplace Violence Program

(OHS s.32.0.2)

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- Employers must develop and maintain an implementation program for workplace violence
- Workplace violence program must provide for:
  - A. Measures and procedures to control the risks of violence identified in the assessment
  - B. Measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur
  - C. Measures and procedures for workers to report incidents of violence
  - D. A process for investigating and addressing incidents or complaints of workplace violence

## Workplace Violence Program

(OHS s.32.0.2)

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- A. Measures to control the risks of violence identified in the assessment
  - Develop specific measures to eliminate or minimize the risks identified
  - Training and education
  - Improvements to workplace design, administrative and work practices

## Workplace Violence Program

(OHSAA s.32.0.2)

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### B. Procedures for summoning immediate assistance when workplace violence occurs or is likely to occur

- Have a specific plan that clearly outlines who to contact
  - Emergencies that require immediate response – report to employee's immediate supervisor/human resources.
  - Serious/immediate threat
  - Nature of incident, police may be summoned
- Does every area of the workplace have access to a mechanism to call for help?

## Workplace Violence Program

(OHSAA s.32.0.2)

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### C. Procedures for workers to report incidents of violence

- All incidents, real or threatened must be reported
- Develop a violence incident report form
  - Include name of person/department who report should be sent to and who is responsible for investigating
- Ensure no reprisals, privacy and confidentiality

## Workplace Violence Program

(OHSAA s.32.0.2)

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- D. A process for investigating and addressing incidents or complaints of workplace violence
  - Who is responsible for responding to and investigating incidents
  - Establish an incident response team (depending on size and nature of organization)
  - Ensure individual and/or members of team are qualified and properly trained

## Workplace Harassment Program

(OHSAA s.32.0.6)

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- Employers must develop and maintain an implementation program for harassment
  - Slightly more limited than workplace violence program
- Workplace harassment program must provide for:
  - Measures and procedures for workers to report incidents of harassment
  - A process for investigating and addressing incidents and complaints of workplace harassment

## Workplace Violence and Harassment Program Checklist

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- Provide measures to control risks identified
  - Workplace design
  - Administrative practices
  - Work practices
- Include procedures for summoning immediate assistance
- Reporting procedures
- Investigating procedures

## Measures to Control Risks Identified

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- Workplace design
  - position reception or sales/service counter to be visible by other employees
  - position office furniture so the employee is closer to the door than the client
  - install physical barriers
  - minimize entrances to the workplace
  - use coded cards to control access
  - use adequate exterior lighting

## Measures to Control Risks Identified

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- Administrative practices
  - keep cash register funds to a minimum
  - use electronic payment systems to reduce amount of cash available
  - vary time of day that you empty or reduce funds in cash register
  - install and use a locked safe
  - arrange for regular cash collection by licensed security firm

## Measures to Control Risks Identified

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- Work practices
  - prepare daily plans so that others know where and when you are expected somewhere
  - identify designated contact at the office

## **Domestic Violence** (OHSA s.32.0.4)

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- If an employer is aware (or ought reasonably to be aware) that domestic violence may occur in the workplace, Employer to take every precaution reasonable to protect the employee
  
- Employers should:
  - educate employees about domestic violence, including signs of it
  - recognize situations where a person is at risk and how they can help and respond

## **Persons with a History of Violent Behaviour** (OHSA s.32.0.5(3))

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- Existing duties on employers/supervisors to provide information to or advise employees includes,
  - providing personal information regarding a risk of violence from a person with a history of violent behaviour, if
    - the employee is expected to encounter that person in the course of work,
    - the risk is likely to expose the employee to physical injury
- Need only disclose as much information as necessary to protect the worker from physical injury

## Additional Features of the Bill

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- Requires employers to report and provide written notice of a workplace violence incident to the joint health and safety committee, health and safety representative and trade union within 4 days of occurrence (*OHSA*, s 52(1))
  - Where disabled or requires medical attention
  - Inspector may require notification to the Minister of Labour's Director of OHS
  - In case of death or critical injury notification is immediately
- The Ministry of Labour Inspectors have the power to order employers to produce written risk assessments and policies, even if less than 5 employees (*OHSA* s. 55.1)

## Work Refusals (*OHSA* s. 43)

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- Expanded Right of Work Refusals
  - Includes right to refuse work where employee has reason to believe that workplace violence is likely to endanger him/herself
  - Removes requirement for worker to remain near workstation until investigation is complete (remain in safe place)
- Certain occupations are not afforded the right to refuse work:
  - Police, firefighters, employees of nursing homes, home for the aged, hospitals and mental health centers (amongst other workers specified in the *OHSA*)

## **Existing Obligations** (OHS s. 32.0.5)

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- The various health and safety duties of employers, supervisors and workers are extended to apply, as appropriate, to workplace violence

## **Duties of Employers** (OHS s.25(2))

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- “ an employer shall,
- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;
  - (h) take every precaution reasonable in the circumstances for the protection of a worker ”

## **Duties of Supervisor** (OHS s. 27(1) and 27(2))

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- “ A supervisor shall ensure that a worker,
- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations ”
- “ a supervisor shall,
- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware ”

## **Duties of Workers** (OHS s.28(1) and 28(2))

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- “ A worker shall,
- (a) work in compliance with the provisions of this Act and the regulations;
  - (d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows.”
- “ No worker shall,
- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.”

## Violations (OHS s.66(1) and 66(2))

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- MOL health and safety inspectors to determine whether employers comply – focus is on employer's duties
- The discharge of an employer's due diligence obligations will demand that they have complied fully with the legislative provisions
- Violations of OHS Legislation can result in significant fines:
  - Maximum fine of \$500,000 for corporations in contravention of the Act
  - Individual fines: personal liability of supervisors, managers, directors, officers of the company (maximum \$25,000 or no more than 12 months in jail)

## Compliance Timeline

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- February/March
  - Conduct risk assessment
- March/April
  - Modify/create policies
- May/June
  - Develop/implement programs
- June
  - Train and inform workers
  - Fully compliant by June 15, 2010 !

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***Questions?***