

Emond Harnden Breakfast Seminar

Preparing for Ontario's New Workplace Violence and Harassment Legislation

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**Colleen Dunlop
Kecia Podetz**

www.emondharnden.com

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Session Overview

- 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!

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Bill 168

- 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))

- 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))

- 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 \$\$\$

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

Statistics of Workplace Violence and Harassment

- 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)

- 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)

- 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

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

Risk Assessment – Who is at Risk?

- 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

- 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

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

- 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

- 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

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

Risk Assessment Checklist

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

Preparing Policies *(OHS s.32.0.1)*

- 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

- 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)

- 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

- 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)

- 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

(OHSAA s.32.0.2)

- 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

(OHSAA s.32.0.2)

- 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)

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)

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)

- 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)

- 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

- 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

- 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

- 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

- 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)

- 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))

- 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

- 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)

- 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)

- 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))

- “ 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))

- “ 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))

- “ 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))

- 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

- 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 !

Questions?