FTR Now

Ontario Government Passes Workplace Violence Legislation

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On December 9, 2009, the Ontario Legislature passed Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009. Bill 168 will come into effect on June 15, 2010. Bill 168, which requires employers to develop policies to address workplace violence and harassment and to assess the risk of violence in its workplace, was amended before being ordered for Third Reading. Amendments to the Bill included redefining "workplace violence" and empowering Health and Safety Inspectors to order that risk assessments and reassessments be in writing or be posted in the workplace. In this *FTR Now,* we discuss the new requirements that will apply to employers in Ontario as a result of this legislation.

DEFINING "WORKPLACE VIOLENCE"

Bill 168 amends the *Occupational Health and Safety Act* (the "*Act*") to define "workplace violence" as:

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.

The definition of "workplace violence" was amended after Committee hearings to clarify that a threat of workplace violence could be either a statement or a behaviour that is interpreted by a worker as a threat to exercise physical force against the worker in the workplace. The overall focus of the section remains the same: there must be physical force, an attempt to exercise physical force or a statement or behaviour that could be interpreted as a threat to exercise physical force. There is no reference to psychological harm.

DEFINING WORKPLACE HARASSMENT

Bill 168 also requires that an employer have a policy posted in the workplace to address workplace harassment. The definition of "workplace harassment" is quite broad and includes conduct in the workplace that is known to be unwelcome by the worker.

"Workplace harassment" is defined as:

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;

Employers should note that existing harassment policies that focus on *Human Rights Code*-related harassment may not be broad enough to capture "workplace harassment" as defined by Bill 168.

PREPARING AND POSTING POLICIES

Bill 168 requires employers to prepare a written policy with respect to workplace violence and workplace harassment. The policies must be posted in a conspicuous place in the workplace. Different requirements apply to workplaces of five or fewer

employees.

The policies must be reviewed as often as necessary and at least once a year. The legislation also requires employers to provide information and instruction to employees on its workplace violence policy and program.

ASSESSING THE RISKS OF VIOLENCE

Bill 168 requires an employer to assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work.

The risks assessment must take into account common risks at other similar workplaces and risks specific to the employer's workplace.

A copy of the risks assessment and its results must be provided to the joint health and safety committee or health and safety representative. If there is no committee or representative, employees must be advised how to obtain copies of the assessment and its results and it must be provided to workers on request. Health and Safety Inspectors may also order that it be posted in the workplace.

REASSESSING THE RISKS OF VIOLENCE

In addition to doing an initial assessment, Bill 168 requires an employer to reassess the risks of violence as often as necessary to protect workers. The legislation does not provide any guidance on how often the employer must perform a reassessment.

IMPLEMENTING A WORKPLACE VIOLENCE PREVENTION PROGRAM

An employer will be required to develop and maintain a program to implement the workplace violence policy. The program must include measures and procedures:

- to control the risks identified in the risks assessment or reassessment;
- to summon immediate assistance when workplace violence occurs or is likely to occur, including when a threat of workplace violence is made;
- for workers to report incidents or threats of workplace violence to the employer or supervisor;
- to investigate and deal with incidents, complaints or threats of workplace violence; and any further elements required by regulation.

ADDRESSING DOMESTIC VIOLENCE

Bill 168 requires an employer to take all reasonable precautions in the circumstances for the protection of the worker if a domestic violence situation would likely expose a worker to physical injury in the workplace and the employer becomes aware or ought to reasonably be aware of the situation.

DISCLOSING PERSONS WITH A HISTORY OF VIOLENCE

One of the more controversial aspects of the legislation is the requirement to provide information, including personal information, about a person with a history of violent behaviour if:

a. the worker can be expected to encounter that person in the course of his or her work; and
b. the risk of workplace violence is likely to expose the worker to physical injury.

The legislation limits the disclosure only to information that is reasonably necessary to protect workers from physical injury.

This aspect of the legislation requires employers to establish some sort of notification procedure for persons with a history of violence (including patients or clients) so that workers who may encounter the person are aware of the risk of potential physical injury. Some employers may find this type of profiling problematic. Employers must also be cognizant of their obligations under the *Personal Health Information Protection Act* and other privacy legislation, as Bill 168 does not specifically override an employer's obligations under other legislation.

REFUSING WORK IF WORKPLACE VIOLENCE IS LIKELY TO ENDANGER

The legislation permits a worker to refuse to work or do particular work where he or she has reason to believe that workplace violence is likely to endanger himself or herself.

The *Act* currently prohibits certain workers such as police officers, firefighters, correctional officers and hospital employees from refusing work when the unsafe condition is inherent in the work or is a normal condition of employment. Bill 168 allows for a regulation to specify situations that define when an unsafe condition is inherent in the work or is a normal condition of employment.

REPORTING OBLIGATIONS

The legislation requires an employer to report and provide prescribed information on a workplace violence incident to the joint health and safety committee within four days of its occurrence.

The *Act* would still require the Ministry of Labour to be notified of a critical incident or a fatality in the workplace. Absent a critical injury or fatality, an Inspector may require an employer to notify the Ministry of Labour's Director of Occupational Health and Safety of a violent incident.

WHAT EMPLOYERS NEED TO KNOW

Employers need to prepare for Bill 168 by having a workplace violence and workplace harassment policy. Employers also need to assess the risks of workplace violence. The risks assessment and its results should be in writing and shared with the joint health and safety committee or health and safety representative. Workers also need to be instructed on the policy and any program developed by the employer to address the risks of workplace violence.

For some employers, Bill 168 will require detailed procedures, protocols and training for risks such as working alone, dealing with potentially violent patients, customers or students, security while traveling, or lock downs.

If you need any assistance in developing policies and procedures to address your obligations under Bill 168, please contact John J. Bruce at 416.864.7285, Kathryn Meehan at 519.883.3120 or your regular Hicks Morley lawyer.

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