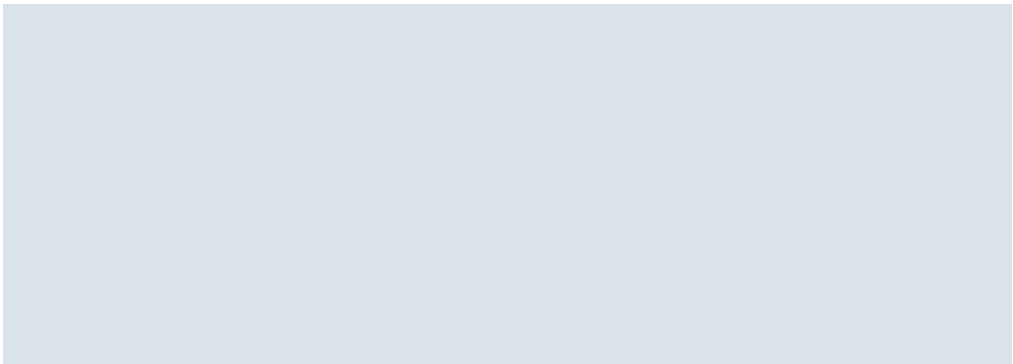




**HUMAN RESOURCES
LAW AND ADVOCACY**



Preventing Workplace Violence and Bill 168 – A Guide for Employers

May 2010

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Introduction

Bill 168, which amends the *Occupational Health and Safety Act* (OHSA) to require worker protection from violence and harassment in the workplace, will come into effect on June 15, 2010.

For some years now, the Ministry of Labour (MOL) has taken the position that the general duty under the OHSA on employers to take every precaution reasonable in the circumstances to protect the health and safety of workers includes taking reasonable precautions to prevent workplace violence. However, while many jurisdictions in Canada have specific requirements regarding workplace violence in their respective occupational health and safety legislation, there was no similar explicit requirement in the OHSA or its regulations.

Accordingly, Bill 168 imposes new and express obligations on employers.

Bill 168 – Definitions

1) Workplace Harassment

“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.

This definition is broader than the existing duty to address harassment under the Ontario *Human Rights Code*. It addresses harassment whether or not it is based on a protected personal characteristic such as sex, race or sexual orientation.

2) Workplace Violence

“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.

This definition focuses on the use or the threatened use, of physical force. It does not capture psychological harm. There is no requirement that the exercise of physical force is intended to injure. This is intended to address the fact that certain individuals with psychological conditions or disabilities may not intend to injure, but may nonetheless exercise physical force against workers. In other words, intentional and unintentional physical force is considered workplace violence.

The Obligation to Prepare Policies

Bill 168 requires an employer, who regularly employs more than five workers at a workplace, to prepare written policies with respect to workplace violence and workplace harassment.

The policies must be posted in a conspicuous place in the workplace. The policies must be reviewed as often as necessary and at least once a year.

Although Bill 168 does not define the content of those policies, in our view, the policy should:

- include the definition of “workplace harassment” and “workplace violence”;
- indicate that the employer will not tolerate workplace harassment or workplace violence;
- identify that there will be consequences for breaches of the policy;
- identify an individual to whom suspected breaches of the policy should be reported.

A policy may also include a list of duties and responsibilities, as well as the employer’s investigation process. Given that the policy must be reviewed at least annually and must be posted in the workplace, employers may want to consider outlining responsibilities and processes in a procedure, rather than a policy.

A sample policy is attached.

Risk Assessment

Employers are required to assess the risks of workplace violence that may arise from:

- (i) the nature of the workplace;
- (ii) the type of work; or
- (iii) the conditions of work.

That assessment must take into account:

- (i) circumstances that would be common to similar workplaces; and
- (ii) circumstances specific to the workplace.

Bill 168 does not require an assessment for risks of workplace harassment.

Bill 168 does not specifically require the employer to involve the joint health and safety committee, the health and safety representatives or any trade union in the risk assessment process; although some employers may permit that involvement in order to minimize later challenges. Health Care and Residential Facilities have a requirement to consult with the joint health and safety under OHSA Regulation 67/93. Employers should also consult their respective collective agreements.

The results of the risk assessment must be shared with the joint health and safety committee or the health and safety representative.

A sample risk assessment checklist is attached. For more information, employers may want to refer to the Occupational Health and Safety Council of Ontario's *Developing Workplace Violence and Harassment Policies and Programs: A Toolbox* at http://www.labour.gov.on.ca/english/hs/pdf/wvps_toolbox.pdf

The Obligation to Develop Workplace Violence and Harassment Programs

Employers are required to develop and maintain programs to implement both the workplace violence policy and the workplace harassment policy.

Bill 168 requires the harassment program to include the following:

- measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
- the process the employer will utilize to investigate and deal with incidents and complaints of workplace harassment.

The requirements for the workplace violence program are more extensive and include:

- (a) measures and procedures to control the risks identified in the required violence risk 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 workplace violence to the employer or supervisor;
- (d) the process the employer will utilize to investigate and deal with incidents or complaints or workplace violence

Obviously, the two programs can be combined into one program.



Reassessment of Policies/Programs

Employers are required to reassess the risks of workplace violence as often as necessary to ensure that the policy and program continue to protect workers from workplace violence.

Training

Employers are required to provide “appropriate” training on the contents of the workplace violence and harassment policies and programs. The manner in which this training is delivered is left to the employer. However, it should be effective training and each employee’s participation in the training ought to be documented.

Domestic Violence

Bill 168 requires:

If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.

There is no definition of “domestic violence”. It may include only intimate partner violence (i.e. spouse to spouse or former spouse).

There are a number of challenges posed by this part of Bill 168. For example, the employer’s obligation to take precautions is not triggered by all domestic violence situations; but only those that will likely expose a worker to injury in the workplace.

As well, an employer is required to take precautions if it “ought reasonably to be aware of” a domestic violence situation that will likely spill into the workplace. Whether the employer ought to have been aware of a situation will depend upon the circumstances. For example, did other workers know about the situation? Was a former spouse harassing the worker at work by phone calls, showing up at the workplace or waiting in the parking lot on a regular basis?

To address these challenges, the policies/programs/training should clearly stipulate that employees who believe they are at risk of violence in the workplace including domestic violence must advise the employer and the employer should take appropriate steps which may include seeking the assistance of the local police. Supervisors and managers may need to be trained to recognize and handle domestic violence that affects the workplace.

Disclosing People with a Violent History

Employers are required to provide information, including personal information, to workers about a person with a history of violent behaviour if:

- (i) the worker can be expected to encounter that person in the course of his or her work; and
- (ii) the risk of workplace violence is likely to expose the worker to physical injury.

The employer is only permitted to disclose the amount of personal information reasonably necessary to protect the workers from physical injury.

There should be relatively few circumstances in which an employee acquires a “history of violence” because of a workplace incident without being terminated. This section appears to be directed towards non-employees with whom the worker may interact. Customers who fall within this category may need to be banned from the premises using trespass notices, security and notices to staff. The real challenge will be for employers, such as health care providers and educational institutions, who cannot easily exclude/remove persons who are potentially violent because of an obligation to provide services to these individuals.

Bill 168 does not define “a history of violent behaviour”. However, there is no reason why a single incident could not constitute a history of violent behaviour.

The more difficult issue may be determining whether there is a likelihood that a worker will be exposed to physical injury in the workplace. Take, for example, a student who gets into fights with other students at a university residence. Does that student pose a likely risk to workers? Or a worker who was convicted of an assault after a bar fight. Is this worker likely to expose another worker to physical injury? Each case will have to be assessed on its own merits. However, particularly in larger institutions, it will be important that all incidents of violence be reported and recorded in a central record so that, if a history of violence does exist, the institution, as a whole, is aware of it and the employer can put in place reasonable precautions in the circumstances for the protection of workers.

Work Refusals

Bill 168 amends the work refusal sections of the OHS Act to make it clear that employees can refuse to work where “workplace violence is likely to endanger” the worker.

As well, refusing workers are no longer required to remain near his or her work station until the investigation is completed. Workers are now only required to remain “in a safe place that is as near as reasonably possible to his or her work station and available to the employer or supervisor for the purposes of the investigation”.

Historically, certain classifications of employees (eg. hospital workers, fire fighters, police officers, etc.) are not able to refuse to work if the danger is inherent in the work or is a normal condition of employment, or where the refusal to work would directly endanger the life or health and safety of another person. Bill 168 does not change that limitation on the right to refuse to work.

Employers should consider creating a work refusal policy, if you have not already done so, and training supervisory staff on how to handle a work refusal in light of the new Bill 168 requirements.

New Notification Requirements

The OHSA currently requires employers to notify the Ministry of Labour of a critical injury or fatality immediately and file a written report within 48 hours. Absent a critical injury or fatality, an employer need not report a workplace violence incident to the Ministry of Labour unless ordered to do so by a Ministry of Labour Inspector.

Bill 168 requires the JHSC, the health and safety representative and the trade union, if any, be notified within 4 days of a workplace violence incident if a person is disabled from performing his or her usual work or requires medical attention because of the incident.

Appendix A - Sample Workplace Violence Policy

[Name of Company] believes in the prevention of violence and promotes a violence-free workplace in which all people respect one another and work together to achieve common goals. Any act of violence committed by or against any member of our workplace or member of the public, is unacceptable conduct that will not be tolerated.

What is workplace violence?

Workplace violence is:

- (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.

Penalty

No employee or any other individual affiliated with this organization shall subject any other person to workplace violence or allow or create conditions that support workplace violence. An employee that subjects another employee, client, or other person to workplace violence may be subject to disciplinary action up to and including termination. Other persons may be removed from the workplace.

Report Incidents Immediately

If you witness or are a victim of violence in this workplace, please contact <insert 911 or Security> and <Human Resources or other named person> immediately. <insert name/department> will investigate the matter.

SIGNED

Date:

Appendix B - Sample Workplace Harassment Policy

<The Company> believes that all workers have the right to a respectful workplace. Workplace harassment is unacceptable and will not be tolerated.

“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.

If it occurs within the course of the employment relationship, workplace harassment may involve conduct that is verbal or non-verbal, a single incident or a series of incidents.

Workplace harassment can be directed at a co-worker, subordinate or manager. Workplace harassment does not include decisions or actions relating to the worker’s employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker’s employment.

Report Incidents

If reasonable to do so, workers are encouraged to try to resolve the situation with the person who is alleged to have engaged in the harassment. Where the situation cannot be resolved or the situation continues, workers shall report the conduct to their supervisor or Human Resources. The supervisor or Human Resources will investigate the complaint.

Penalty

No worker or any other individual affiliated with this organization shall subject any other person to workplace harassment. A worker that subjects another worker, client, or other person to workplace harassment may be subject to disciplinary action up to and including termination. Other persons may be removed from the workplace.

SIGNED

Dated:

Appendix C - Risk Assessment Checklist

- Do you have a workplace violence policy?
- Do you have a workplace violence prevention program (or parts of one)?
 - Does your program set out how to and to whom to report incidents of workplace?
 - Does the program detail an investigation procedure?
 - Does your program set out the duties and responsibilities of supervisors, managers and workers?
- Does your workplace violence program consider: working/travelling alone procedure; emergency / lock down procedure, aggressive behaviour training, security measures including panic buttons, security alarms, restricted access floors, etc.
- Has the physical workplace been surveyed (including parking lots, windows, doors, areas where medication/drugs/cash stored, meeting rooms, isolated areas, etc. for lighting, safety risks, proper functioning locking devices)?

- Have you reviewed previous incidents for the last two years including first aid, security and critical injury reports to determine if workplace violence occurred? If so, consider the following:
 - What was the frequency of violence?
 - What area or job classification was affected by an incident(s)?
 - Did a worker suffer a critical injury or fatality or lost time from work?
 - Who committed the violent incident? Customer? Co-worker? Spouse?
 - Were steps taken to prevent further incidents? What steps can be taken to prevent or reduce the risk of a similar incident?

- Are all workers able to summon immediate assistance if a workplace violence incident occurs?

- What risks have similar employers identified? What risks are commonly associated with the type/conditions of work (i.e. robberies? aggressive patient/student behaviour?)

- Do workers have a mobile workplace (i.e. enter other workplaces or private homes)? What precautions has the other employer taken to protect these workers if an incident occurs? Do your employees have the ability to summon assistance if necessary?

- Once you have identified areas of risks, consider the likelihood of a violent incident occurring (low, medium, high) and the severity of an injury if an incident did occur (first aid, lost work time of less than 5 days, critical injury, fatality) Consider what controls should be put in place to reduce or eliminate the risk of workplace violence (especially high risk situations where it is highly likely there could be a serious physical injury to a worker).

- Examples of controls include:
 - Policy or procedure
 - Personal protective equipment or devices like cell phones, personal alarms, plastic shields;
 - Restrict access to the workplace or area including physical barriers, plastic shields, card-only access, locked doors, etc.
 - Training which could include basic training on the workplace violence policy, how to report an incident or how to summon assistance or to deescalate aggressive persons (ONLY higher risk jobs that deal with aggressive behaviour)

Other Resources

Ontario Ministry of Labour

www.labour.gov.on.ca

- Ministry of Labour's Guideline *Workplace Violence and Harassment: Understanding the Law*
<http://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php>

- A Toolbox http://www.labour.gov.on.ca/english/hs/pdf/wvps_toolbox.pdf (Includes Suggested Risk Assessment Template)

Canadian Centre for Occupational Health and Safety

<http://www.ccohs.ca>

Ontario Safety Association for Community and Healthcare

<http://www.hchsa.on.ca>

- *Domestic Violence Doesn't Stop When Your Worker Arrives at Work: What Employers Need to Know to Help* - http://www.hchsa.on.ca/products/free_resource.shtml