

employment and labour relations bulletin

December 2009

workplace violence and harassment new obligations under the *Occupational Health and Safety Act*

On December 9, 2009, Bill 168, an Act to amend the *Occupational Health and Safety Act* (the "OHS Act"), passed third and final reading in the Ontario legislature. This Bill will have a significant impact upon provincially-regulated employers in Ontario, as it incorporates two new concepts into the OHS Act:

1. **Workplace harassment** - 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 take note that this definition is similar to the definition of harassment in the Ontario *Human Rights Code*, however, the OHS Act concept is broader because it is not confined to harassment on the basis of a prohibited ground of discrimination such as race, gender or disability.

2. **Workplace violence** – Defined 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".

Employers who have been following Bill 168 will note that this definition has been expanded, as compared to previous versions of the Bill, to include threats of violence.

This Act to amend the OHS Act requires employers to take specific active steps to prevent and address workplace harassment and workplace violence.

overview of obligations

In general, Bill 168 imposes the following obligations upon employers:

- Assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, and report the results of such assessment to the joint health and safety committee, the health and safety representative or the workers (as applicable);
- Prepare and post written policies respecting workplace violence and workplace harassment;
- Develop and maintain a program to implement the employer's workplace violence policy, including measures and procedures respecting the following:
 - a) Controlling risks likely to expose a worker to physical injury, which were identified in the employer's assessment,
 - b) Summoning immediate assistance when workplace violence occurs or is likely to occur,
 - c) Reporting incidents of workplace violence to the employer or supervisor, and
 - d) Investigating and dealing with incidents or complaints of workplace violence;
- Develop and maintain a program to implement the employer's workplace harassment policy, which must:
 - a) Include measures and procedures for workers to report incidents of workplace harassment to the employer or a supervisor, and
 - b) Set out how the employer will investigate and deal with incidents and complaints of workplace harassment;
- Provide workers with training and information respecting the employer's policies and programs;
- Review policies at least annually, and reassess the risks of workplace violence as often as is necessary to ensure that the employer's policies and programs continue to protect workers;
- Take every precaution reasonable in the circumstances to protect workers from "domestic violence", if the employer becomes aware or ought reasonably to be aware that domestic violence may occur in the workplace and would likely expose a worker to physical injury; and

- Provide a worker with information about persons with a history of violent behaviour, if the worker could be expected to encounter such person(s) and there is a risk of workplace violence that could expose the worker to physical injury. This includes providing personal information about such person(s), but no more personal information than is reasonably necessary to protect the worker from physical injury.

In addition to the above obligations, Bill 168 clarifies that: (1) employers' and supervisors' general duties under the OHS Act apply, as appropriate, with respect to workplace violence; and (2) a worker's right to refuse unsafe work under the OHS Act applies in circumstances where workplace violence is likely to endanger the worker. The Bill also contains reporting obligations in the event that workplace violence occurs.

recommendations for employers

Given the intricacies of the obligations set out in Bill 168, employers would be well advised to contact their legal counsel to assist them with preparation of appropriate policies and programs, as well as conducting training for employees.

The good news is that many employers already have policies and training programs in place, which address workplace harassment and the employer's general obligation to provide a safe and healthy workplace. Although such policies and programs will need to be adapted to incorporate the specific requirements of Bill 168, entirely new policies and programs will likely be unnecessary for most employers.

Bill 168 will come into force six months after it receives Royal Assent (which has not yet occurred). Given the extent of the obligations contained in this amendment to the OHS Act, employers should begin taking steps now to comply with such obligations.

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a cautionary note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted. © McMillan LLP 2009.