



Workplace Harassment Law: Ontario Overview

On June 15, 2010, the provisions of Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009* (the “Act”), will come into effect, and will impose significant and new obligations on employers in Ontario with respect to violence and harassment in the workplace. The Act was introduced to enhance protections against workplace violence and workplace harassment, by requiring employers to, among other things, create and maintain workplace violence and harassment policies and programs, and perform assessments to identify and measure the risks of violence in the workplace.

The following highlights some of the key provisions in the Act. Employers are strongly encouraged to begin taking an active approach, by reviewing their current policies and procedures, to determine what changes, if any, will be needed in order to comply with this new legislation by June 15, 2010.

What is workplace violence and workplace harassment?

The definitions of “workplace violence” and “workplace harassment” are set out in the Act as follows:

- **“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;
- **“workplace violence”** means:
 - the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
 - an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker,
 - a statement or behaviour that 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.

Bill 168 Checklist

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It is important for employers to remember that this definition of “workplace harassment” goes beyond what constitutes harassment under the *Human Rights Code* (Ontario). In particular, under the Act, workplace harassment may occur, even if it is not related to a ground protected by the Code.

Workplace violence and harassment policies and programs

Upon the coming into force of the Act, all employers will be required to prepare policies with respect to workplace violence and workplace harassment and to review these policies no less than once per year. In addition, where an employer regularly employs more than five employees at a workplace, the employer will be required to prepare these policies in writing, and post them at conspicuous places in the workplace.

Employers will also be required to develop and maintain programs to implement these policies, in accordance with the requirements of their workplace. At a minimum, the programs to implement workplace violence policies must include the following elements:

- measures and procedures to control the risks identified in the assessments (discussed below) as likely to expose a worker to physical injury;
- measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- measures and procedures for workers to report incidents of workplace violence to the employer or supervisor; and
- set out how the employer will investigate and deal with incidents or complaints of workplace violence.

The programs to implement workplace harassment policies, on the other hand, must at least include measures and procedures for workers to report incidents of workplace harassment to their supervisor or employer, and set out how the employer will investigate and deal with incidents and complaints of workplace harassment.

Employers will also be required to provide workers with appropriate information and

instruction on the contents of their policies and programs with respect to workplace violence and harassment.

Workplace violence risk assessments

In addition to the requirement to prepare and maintain policies and programs with respect to workplace violence, the Act also requires employers 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. These assessments must be conducted by employers as “often as is necessary” to ensure that workers are continually protected from workplace violence, and must take into account circumstances that would be common to similar workplaces, and those that are specific to the workplace. Once the results of the assessment, or any reassessment, are obtained, the employer must advise the joint health and safety committee or the health and safety representative accordingly, and provide copies of the assessment if in writing. If there is no such committee or representative, employers must advise the workers of the results directly, and provide copies of such results on request, if in writing.

Protecting workers from domestic violence

A unique and significant feature of the Act is that it requires employers to address the issue of domestic violence in the workplace. In particular, the Act requires employers to take every reasonable precaution to protect a worker, where it becomes aware (or ought reasonably be aware) that domestic violence is likely to expose the worker to physical injury in the workplace. Although the Act does not specifically define the scope of “domestic violence”, employers will nonetheless be required to take steps recognize any signs of domestic violence in the workplace, and respond accordingly.

Disclosure of persons with a history of violence

The Act will also require employers and supervisors to provide information (including personal information) to a worker about any

person with a history of violent behaviour, if the worker can be expected to encounter the person in the course of his or her work, and the risk of workplace violence is likely to expose the worker to physical injury. The disclosure of information, however, must be limited to information that is reasonably necessary to protect the worker from physical injury. In addition, employers are reminded that they still have obligations under applicable privacy and human rights legislation, which will continue to apply notwithstanding the coming into force of the Act.

Right to refuse work where health or safety is in danger

The Act amends certain provisions of the *Occupational Health and Safety Act*, which gives a worker the right to refuse work where his or her health or safety is in danger, to include the right to refuse work if he or she is likely to be endangered by workplace violence. Where a worker refuses to work, or do particular work, in these circumstances, he or she will be required to promptly report the circumstances of the refusal, and to remain in a safe place that is "as near as reasonably possible to his or her work station" for the purposes of an investigation.

It is important to note that the current provisions of the *Occupational Health and Safety Act*, which prohibit certain workers (such as police officers, firefighters, correctional officers and hospital employees) from refusing work when an unsafe condition is inherent in the work or is a normal condition of his or her employment, continue to

apply. However, the Act also allows for the enactment of regulations that would specify additional circumstances in which workplace violence is considered to be inherent in a worker's work or is a normal condition of employment.

What does the act mean for employers?

As noted above, the provisions of the Act will come into effect on June 15, 2010, and will apply to all employers in Ontario, regardless of the nature of their workplace, the type of work performed, or the conditions of work.

Employers are therefore strongly encouraged to begin taking active steps to comply with these new requirements by June 15, 2010. In particular, employers should review their current policies and procedures, to determine what changes, if any, will be needed in order to comply with the Act. At a minimum, employers will be required to update their policies, develop programs and conduct risk assessments with respect to workplace violence and harassment, and to ensure that their employees are trained accordingly.

Should you have any questions or concerns regarding the coming into force of the Act, please do not hesitate to contact a member of our Employment & Labour Group. We would be pleased to assist you in developing any policies, programs and procedures required to ensure that you meet your obligations under the Act by June 15, 2010.

For further information, please contact your Stikeman Elliott representative or any of the lawyers in our Employment & Labour Group listed at www.stikeman.com.

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Bill 168: Checklist

- Create workplace violence policy which:
 - Shows employer's commitment to protecting workers from workplace violence
 - Addresses violence from all possible sources (customers, clients, employers, supervisors, workers, strangers etc.)
 - Outlines roles/responsibilities of workplace parties in supporting the program/policy

- Develop a program to implement workplace violence policy which:
 - Identifies risks
 - Includes procedures for summoning assistance
 - Provides reporting and investigation procedures
 - Provides how the employer will investigate and deal with incidents of violence

- Perform risk assessment of workplace
 - Report results of assessment to the Joint Health and Safety Committee or health & safety representative
 - Assessment should be performed for each work location
 - Repeat assessment as often as necessary to ensure protection of workers

- Create or modify current workplace harassment policy which:
 - Shows an employer's commitment to addressing workplace harassment
 - Consider workplace harassment from all sources (customers, clients, employers, supervisors, workers, strangers etc.)
 - Outlines roles/responsibilities of workplace parties in supporting the program/policy

- Develop program to implement workplace harassment policy including:
 - Reporting procedure
 - Investigation procedure (consider procedure may need to differ from workplace violence procedure)

- Maintain the policies:
 - Put system in place to ensure policies reviewed annually