

Bill 168

New Protection against Violence and Harassment in the Workplace and New Challenges for Employers



by Ella Forbes-Chilibeck

In 2008 the Ontario Ministry of Labour conducted a series of consultations focused on workplace violence and harassment, which determined the existing *Occupational Health and Safety Act* did not go far enough to protect workers from workplace violence. As a direct result of this consultation, Bill 168, *An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters* was passed on December 10, 2009 and will come into force in June of 2010.

In general, the bill strengthens workers' rights and imposes obligations on employers in relation to issues of workplace violence and harassment. Bill 168 outlines a framework for employers to follow when addressing the difficult issues associated with workplace harassment and violence, and continues the Ministry's *Internal Responsibility System* model.

"Workplace violence" is defined under Bill 168 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.

Under Bill 168, workplace violence is characterized as behavior that causes or could cause physical injury. It is noteworthy that this definition does not include psychological injury associated with workplace violence.

Under Bill 168 the definition of "workplace harassment" is much broader than that of "harassment" under the Ontario *Human Rights Code*. The *Code* requires that a complainant base his or her harassment complaint on a prohibited ground of discrimination such as race, sex, and so forth, whereas "Workplace harassment" is defined under Bill 168 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.

Intended to address violence and harassment in the workplace, Bill 168 introduces new challenges for employers, requiring them to assess the risks of workplace violence, create policies to respond to the assessed risk and create programs that include measures and procedures to control the assessed risks where a worker may be exposed to physical injury. The program must also include measures and procedures for summoning help and a process for reporting workplace violence to the employer and how the employer will investigate and respond to complaints of this nature. In the same vein, employers will have a new responsibility to take reasonable steps to protect their workers where the employer becomes aware or ought reasonably to be aware, that an employee is at risk of physical

injury in the workplace from domestic violence.

Under the new legislation employers have a duty to inform workers of a co-worker with whom they have contact who, in the course of the co-worker's employment, has a "history of violent behaviour" where that contact is likely to expose the worker to physical injury. Section 32.0.5 limits the release of personal information to that which is "reasonably necessary to protect the worker from physical injury".

In addition to these provisions, Bill 168 ensures that workers who have reason to believe that workplace violence is likely to endanger them are allowed to refuse to work and to remain in a "safe place as near as reasonably possible to his or her work station" until the investigation is complete.

While Bill 168 clarifies employer responsibilities to workers in addressing workplace violence and harassment, several challenges have arisen in terms of privacy concerns, implementing a domestic violence policy/program and, for some employers, creating the policy framework now required by the new legislation.

Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters, ch. 23, S.O., 2009

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