

BONZA NEWS

Ontario Government Unveils Workplace Violence and Harassment Legislation

By Daniel Pugen and Ben Ratelband*

On April 20, 2009, the Ontario Government introduced Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)* 2009. If passed, Bill 168 would amend the *Occupational Health and Safety Act (OHS Act)* to impose new obligations on employers with respect to workplace violence and harassment.

Under Bill 168, employers must devise workplace violence and harassment policies, develop programs to implement such policies, and engage in assessments to measure the risk of workplace violence. In addition, work refusal rights and the duties of employers and supervisors under *OHS Act* have both been clarified to specifically apply to workplace violence.

The main features of Bill 168¹ are summarized below:

Definitions of Workplace Violence and Harassment

Bill 168 defines "workplace violence" and "workplace harassment" 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 (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; and/or (b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.

What is notable about the definition of "workplace violence" is that it only deals with physical harm or injury.²

The definition of "workplace harassment" is very broad. Unlike "harassment" as defined in the *Human Rights Code*, the definition of "workplace harassment" under Bill 168 may include conduct that is not related to a prohibited ground of discrimination, e.g., sex, age, ethnicity, religion, etc.

Workplace Violence and Harassment Policies

Bill 168 requires employers to prepare written policies dealing with workplace violence and harassment.

Workers must be trained on

these policies, which must be posted in workplaces with more than five workers and reviewed by the employer annually.

A Program to Implement the Policies

Under Bill 168, employers are required to develop and maintain a program to implement workplace violence and harassment policies.

The workplace violence program must include measures and procedures to:

- ◆ control the risks identified in the workplace violence assessment;
- ◆ call for immediate assistance when workplace violence occurs or is likely to occur, or when a threat of workplace violence is made;
- ◆ report incidents or threats of workplace violence to the employer or supervisor; and
- ◆ establish how the employer investigates and manages incidents, complaints or threats of workplace violence.

The workplace harassment program must include procedures for reporting and investigating incidents of workplace harassment.

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QUOTE

"Education costs money, but then so does ignorance."

– Sir Claus Moser

GOOD NEWS!

Canada, with Australia and the United Kingdom, is expected to be among the first of the advanced economies to emerge from recession, close its output gap and return to a normal rate of economic growth.

By analyzing business new orders data, a key indicator of growth, Goldman Sachs economists Peter Berezin and Alex Kelston said Canada, Australia and the U.K. would likely return to their long-term trend rate of economic growth sometime in the second half of 2010 or early 2011.

<http://www.financialpost.com/story.html?id=1616380>

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Workplace Violence Assessments

Bill 168 requires employers to assess the risk of workplace violence that may arise. In addition to taking into account its own workplace conditions, an employer's assessments must also take into account the conditions of other similar workplaces.

The employer must advise the joint health and safety committee or the health and safety representative of the results of the assessment. If the assessment is in writing, a copy must be provided. If the workplace does not have a joint health and safety committee or a health and safety representative, the workers must be advised of the results of the assessments and of how to obtain a copy of the assessment (if the assessment is in writing).

Workplace Violence Reassessments

Bill 168 requires that employers reassess the workplace for workplace violence risks "as often as is necessary" to ensure the workplace violence policy and program protects workers.

Domestic Violence

Bill 168 has specifically addressed the issue of domestic violence in the workplace by requiring employers to "take every precaution reasonable in the circumstances" to protect workers from domestic violence that would likely cause physical injury to workers in the workplace. This obligation on the employer arises only if the employer is aware, or ought reasonably to be aware, of the situation. What constitutes "domestic violence" is not defined.

Disclosure of Persons with a Violent History

One aspect of Bill 168 that may prove contentious is the obligation on employers and supervisors to provide information, including personal information, to a worker about a person with "a history of violent behaviour" if:

- ◆ the worker could be expected to encounter that person in the course of his/her work; *and*
 - ◆ there is a risk of workplace violence likely to expose the worker to physical injury.
- Bill 168 contains no guidance on who would be a person with a "history of violent behaviour." However, it is interesting to note that the person must have a history of "violent" behaviour (and not necessarily "harassing" behaviour) in order for the disclosure obligation to be triggered.

Work Refusals

Bill 168 clarifies that a worker may refuse to work where he/she has reason to believe that he/she is in danger of being a victim of workplace violence. The normal work refusal process would be triggered (i.e., the employer would investigate the refusal, followed by a Ministry of Labour inspector if necessary).

What Should Employers Do?

If Bill 168 passes into law, employers need to be diligent and develop a plan to address the risk of workplace violence and harassment in the workplace. For example, Employers should:

- ◆ create written workplace violence and harassment policies;
- ◆ train employees on such policies;
- ◆ undertake risk assessments

to determine the possibility or prevalence of workplace violence or harassment;

- ◆ disclose incidents of workplace violence and harassment with the joint health and safety committee and any risk assessments undertaken;
- ◆ provide ways for employees to report instances or risks of workplace violence and harassment;
- ◆ discipline employees for not following workplace violence and harassment policies or for committing workplace violence or harassment;
- ◆ offer a confidential employee assistance program to allow employees subject to workplace violence or harassment, or those with personal problems, to seek help;
- ◆ ensure that proper security measures are in place at the workplace to protect workers from members of the public or customers; and
- ◆ keep detailed records of any workplace violence or harassment, investigation or work refusal.

Given the Ministry of Labour's increased focus on workplace violence and harassment, and the fact that Bill 168 is a Government Bill, it is very likely that some version of Bill 168 will pass into law. Therefore, it is advisable for employers to review their current policies and procedures and consider how to address issues of violence and harassment in their workplaces in order to be well-positioned to implement changes that may be required under Bill 168 when it becomes law. **B**

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