

Deadline Approaches for Employers to Comply with Bill 168

With Bill 168 coming into effect on June 15, 2010, Ontario will be the third province in Canada (after Quebec and Saskatchewan) to implement specific legislation dealing with workplace violence and harassment. It will amend the *Occupational Health and Safety Act* (the “Act”) with respect to violence and harassment in the workplace and other matters. The amendments impose new responsibilities that affect virtually all employers, the likely result of which will render your existing human rights policy inadequate and in need of update.

Failure to comply with these new provisions, or with the *Act* generally, may result in fines and/or penalties imposed against you, which can be up to a maximum of \$25,000 or 12 months imprisonment for individuals and \$5,000,000 for corporate employers. This article will highlight some of the important aspects of Bill 168. With just over one month to go, as an employer you should immediately consider implementing changes to ensure that your workplace policies comply with the new requirements.

What is “workplace violence” and “workplace harassment”?

“Workplace violence” is 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 or (b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.

“Workplace harassment” is 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’ Responsibilities

Employers are required to develop written policies with respect to workplace violence and harassment, which must be posted in a conspicuous location in the workplace.

You must have a program to implement such policies, setting out procedures for:

1. identifying workplace violence or harassment;
2. controlling risks of workplace violence or harassment that may be general or specific to your particular workplace, as identified by risk assessments (discussed below);
3. providing immediate assistance in the event of workplace violence or harassment, for example, by identifying individuals responsible for providing such assistance;
4. facilitating reporting of incidents or threats of workplace violence or harassment by workers, which should provide various channels for an employee to make a report; and
5. investigating and dealing with incidents and complaints of workplace violence or harassment, including guidelines for discipline.

In addition, you must provide information and instruction about the policies and programs. We recommend that your policies, procedures and programs be drafted in easy-to-read, plain language. If appropriate, you may consider providing it in different languages to ensure that it is accessible to all of your employees.

These policies and programs must be reviewed as often as necessary, but at least annually, and should reflect the results of risk assessments, which are mandatory under the Act. The assessments review the risks of violence specific to the conditions in your particular workplace. The risks are likely higher in workplaces where cash or valuables are exchanged and where workers interact with the public, work alone or work late hours. The assessments need not be in writing, but in the event that you are audited by the Ministry of Labour, written assessments are the most practical way to produce evidence of your compliance. The results of these mandatory assessments must be reported to your Health and Safety Committee. If you do not have one, the results must be presented to the employees and, if the assessment was done in writing, must be posted in a conspicuous location.

Domestic Violence and Persons with a History of Violence

A controversial provision in the Bill imposes obligations on the employer to take reasonable precautions to protect a worker from incidents of physical injury due to domestic violence that the employer is aware of or ought to be aware of. This provision in particular finds its roots in an inquest into the murder of a nurse at Hôtel-Dieu Grace Hospital in Windsor, Ontario by her ex-boyfriend and co-worker, after hospital administrators scheduled the two to work together despite the administrators' knowledge of threats against the victim and of inappropriate behaviour by the ex-boyfriend. The spill-over of workers' personal lives into the workplace may be uncomfortable for employers, but this emphasizes the importance of having appropriate policies and programs in place to identify and deal with such incidents.

Another controversial aspect of the legislation deals with the extension of an employer's responsibility to inform a worker about a person with a history of violent behaviour if that 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. Employers must be careful to properly identify situations where such disclosure is necessary and, if disclosure is necessary, what personal information to disclose to fulfill this obligation, keeping in mind its obligations under privacy laws.

Work Refusals

In addition to existing work refusals, workers are allowed to refuse work if the worker has reason to believe that workplace violence is likely to endanger him or her.

Why You Need to Develop Policies and Programs

Undoubtedly, all employers are concerned about incidents of workplace violence and harassment. However, Bill 168 will require employers to formally articulate and address these concerns in writing. Developing policies and programs to comply with this forthcoming legislation can improve employee morale, with employees taking comfort in your concern about their well-being. Also, if faced with a complaint or incident of workplace violence or

harassment, you will have the tools in place to resolve the matter, minimizing the time that you spend trying to resolve such incidents, while potentially limiting your liability. From a practical standpoint, you may also minimize the likelihood of being audited by the Ministry of Labour, which has suggested that it intends to focus its audits on employers who do not have policies in place, and, consequently, the risk of facing fines and penalties.

For more information about developing policies or procedures in consideration of Bill 168 or of the Occupational Health and Safety Act, generally, please contact Dixie Ho at Morrison Brown Sosnovich LLP, phone (416) 368-0600, fax (416) 368-6068, email: dho@businesslawyers.com

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