

Bill 168
**Occupational Health and
Safety Amendment Act
(Violence and Harassment
in the Workplace), 2009**

**For: Safe, Respectful & Inclusive Workplaces: Strategies & Stakeholders
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Current Approach

- No current requirements in *Occupational Health and Safety Act* (OHSA) specifically refer to workplace violence or harassment
- The general duty clause in the OHSA (that employers have a general duty to take every precaution reasonable in the circumstances for the protection of a worker) has been interpreted to include a duty to protect workers from the hazard of workplace violence
- MOL inspectors may issue orders to employers under the OHSA and/or its regulations regarding the development of programs, measures, and procedures to address workplace violence
- This enforcement approach has primarily been applied to higher risk workplaces

Context for Action

Impact on the Workplace

- Workplace violence and harassment may cause an increase in workers' lost time from work, by leading to damaged employee morale, engagement and productivity, and by increasing medical/health care expenses

Recent Coroner's Inquest Recommendations

- The Coroner's Jury in the Dupont/Daniel Inquest recommended that the MOL review the OHSA to examine the feasibility of addressing domestic violence, abuse and harassment

Other Jurisdictions

- Seven other Canadian jurisdictions now have specific legislative or regulatory requirements for workplace violence
- Three address harassment (and two others address only sexual harassment) in occupational health and safety or employment standards legislation/regulation

Context for Action

MOL Consultation on Workplace Violence Prevention

- The MOL launched a 30-day public consultation on workplace violence prevention, which included the release of a consultation paper on its website. The consultation period ended on October 17, 2008
- The purpose of the consultation was to seek input whether clarification and/or enhancement of the current requirements under the *Occupational Health and Safety Act* are needed to further protect workers from workplace violence
- The consultation paper posed questions related to the following topics:
 - The definition of workplace violence
 - Specific requirements for a workplace violence policy and program
 - Sector-specific requirements
 - Domestic Violence
 - Work Refusals
- The MOL received and reviewed nearly 200 thoughtful and detailed submissions from employers and employer groups, labour unions, women's organizations, individuals, and other ministries

Context for Action

MOL Consultation on Workplace Violence Prevention

In response to the questions raised in the consultation paper, the MOL heard that:

- The majority of respondents wanted workplace harassment to be addressed under the OHS Act
- The majority of respondents were supportive of workplace violence policy and program requirements as outlined in the paper (including assessment of risk, measures and procedures to control risks and respond to incidents, and training of workers) and wanted similar program requirements to address workplace harassment
- The majority of respondents wanted requirements to apply to all workplaces, not just certain sectors
- The majority of respondents wanted domestic violence to be addressed (either in the general program requirements or in a separate requirement)
- The majority of respondents were supportive of including workplace violence in the work refusal provisions

Bill 168 - Overview

- Bill 168 [the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009] was introduced April 20, 2009
- If passed, Bill 168 would amend the OHS Act to enhance protections against workplace violence and address workplace harassment
- Proposed amendments would apply to all Ontario workplaces to which the OHS Act currently applies
- Proposed amendments would be broad enough to capture workplace violence and harassment from any person in the workplace (strangers, customers, clients, patients, co-workers, domestic/intimate partners)

Key Elements of Bill 168, if Passed

1. Include **definitions** of workplace violence and workplace harassment

"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,
- (b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.

These definitions would include violence or harassment from any source, including a domestic or intimate partner, when it may occur in the workplace

Key Elements of Bill 168, if Passed (continued)

2. Require employers to prepare **policies** with respect to workplace violence and workplace harassment, and to develop and maintain **programs** to implement them

- Both programs would include measures and procedures for workers to report incidents of workplace violence/harassment or threats of violence
- Both programs would set out how the employer will investigate and deal with incidents, threats and complaints
- The workplace violence program would also include measures and procedures for summoning immediate assistance
- Employers would be required to provide information and instruction to workers on the contents of the policies and programs

Key Elements of Bill 168, if Passed (continued)

3. Require 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, and include measures and procedures to **control** them in the workplace violence program
 - This would be a proactive assessment that would take into account factors that are common to similar workplaces and circumstances specific to the workplace

Key Elements of Bill 168, if Passed (continued)

4. Require employers who are aware, or who ought reasonably to be aware, that **domestic violence** may occur in the workplace to take every precaution reasonable in the circumstances to protect a worker who is at risk of physical injury
 - Addresses need to balance the individual worker's right to privacy and an employer's obligations to protect the health and safety of workers
 - A reasonable precaution may be the development of a personal safety plan for an individual worker
 - In addition, the workplace violence policy and program would include mechanisms to summon immediate assistance and receive, investigate, and deal with complaints when workplace violence, including domestic violence, is threatened or occurs

Key Elements of Bill 168, if Passed (continued)

5. Specify that existing duties on employers/supervisors to provide information/advise workers include providing personal information about a **risk of workplace violence from a person** with a history of violent behaviour, if:
- The worker can be expected to encounter that person in the course of his or her work, and
 - The risk of workplace violence is likely to expose the worker to physical injury

Key Elements of Bill 168, if Passed (continued)

6. **Extend the right to refuse** work to a worker who has reason to believe that workplace violence is likely to endanger him/herself. The limited right to refuse of certain workers would continue. **Reprisals** by the employer would continue to be prohibited
7. Require that **joint health and safety committee, etc. be notified** if a worker is disabled or needs medical attention due to workplace violence
8. Proposed amendments would **come into force six months after Royal Assent**

Roles of MOL, Police and the OHRT

- Bill 168 does not change provisions in the *Criminal Code* or the role of the police. The police should be contacted for immediate assistance if an act of violence occurs in the workplace
- The MOL conducts workplace investigations to ensure compliance with the OHSA and its regulations (including requirements regarding workplace violence and workplace harassment if Bill 168 is passed), and to ensure that the internal responsibility system is working
- Bill 168 does not change provisions in the *Human Rights Code* or the role of the Ontario Human Rights Tribunal (the Tribunal)
- Workers who have harassment claims against employers, co-workers, etc. should pursue these through existing legal mechanisms as appropriate (i.e., the Tribunal, grievance arbitration, civil litigation, etc.)

Implementation

- If Bill 168 is passed, implementation would include
 - Development and revision of procedures for Ministry of Labour inspectors, including protocols for interacting with other enforcement agencies or organizations
 - Comprehensive training of Ministry of Labour inspectors
 - Development of explanatory materials for the public and workplace parties.
 - Development of resources and tools to support workplaces in implementing requirements, in co-operation with the safe workplace associations and other partners

Implementation

- In developing resources, materials and tools, the MOL will continue to work with its health and safety system partners, including:
 - The Occupational Health and Safety Council of Ontario (OHSCO), which is comprised of senior decision-makers from Ontario's occupational health and safety prevention system including the Workplace Safety and Insurance Board (WSIB), Workers Health and Safety Centre, Occupational Health Clinics for Ontario Workers, the Institute for Work and Health, and 12 industry-based health and safety associations (HSAs)
 - Other parts of government, including the Ontario Women's Directorate (OWD)