

BILL 168: VIOLENCE AND HARASSMENT IN THE WORKPLACE

WHAT EMPLOYERS NEED TO DO TO PREPARE FOR ONTARIO'S NEW HEALTH AND SAFETY LEGISLATION

May 26, 2010

MINKEN
EMPLOYMENT LAWYERS



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

TODAY'S PANEL

Speakers:

Ronald S. Minken, Senior Lawyer & Mediator
Minken Employment Lawyers

rminken@minken.com

(905) 477-7011 www.employmentlawissues.ca

Sara A. Kauder, Associate
Minken Employment Lawyers

skauder@minken.com

(905) 477-7011 www.employmentlawissues.ca

Patrick M. Ogilvie, Senior Consultant
King-Reed & Associates Inc.

pogilvie@kng-reed.com

(416) 449-8677 www.king-reed.com



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

AGENDA

- Bill 168 overview — why it exists and the goals of the legislation.
- What's in the legislation?
- What are the penalties for not complying?
- What you need to do to ensure your organization is in compliance with the law by the June 15, 2010, deadline.
- Common questions and answers about Bill 168
- Q&A from the audience

BILL 168 OVERVIEW: WHY THE LEGISLATION EXISTS



OC Transpo employee Rob Fowler carries flowers that were given in memory of his slain co-workers at the transit station in Ottawa, April 7, 1999. Former bus driver Pierre LeBrun shot and killed four employees before taking his own life at the station. *Photo: Jim Young (Reuters)*



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

BILL 168 OVERVIEW: WHY THE LEGISLATION EXISTS



Nurse killed at Windsor hospital

On Nov. 12, 2005, Marc Daniel, an anesthesiologist at Hotel-Dieu Grace Hospital in Windsor, Ont., fatally stabbed his former romantic interest, Lori Dupont, a nurse at the hospital.

Violence in the workplace

According to Statistics Canada, nearly **one-fifth** of physical assaults, robberies and sexual assaults happen in the workplace.

There were more than **356,000** violence incidents in Canadian workplaces in 2004 and **66 per cent** were committed by someone known to the victim.

Source: *Criminal Victimization in the Workplace*, Statistics Canada



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

BILL 168: WHAT'S IN IT?

Under Bill 168, employers will be required to:

Develop policies

Develop written policies with respect to violence and harassment in the workplace, post those policies and review them at least annually.

Develop programs

Develop programs to implement and maintain those policies. Programs must include measures which control risk, provide for assistance to be summoned immediately in the event of violence, and deal with incidents of violence, threats and complaints. The contents must be communicated to workers.



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

BILL 168: WHAT'S IN IT? (continued)

Conduct risk assessments

Assess the risk of workplace violence and communicate results to the joint health and safety committee, a health and safety rep or the workers themselves.

Prevent domestic violence

Take reasonable precautions where the employer is aware (or ought to be aware) that domestic violence is likely to expose worker(s) to the risk of physical injury in the workplace.



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

BILL 168: WHAT'S IN IT? (continued)

Warn workers about violent individuals

Provide information about an individual with a history of violence where workers are likely to encounter that person in the course of their work and where there is risk of physical injury.

Refuse unsafe work

Allow work refusals where workplace violence is likely to endanger the safety of workers.



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

COMPLYING WITH BILL 168

Who does Bill 168 apply to?

All employers:

- Five or fewer workers – no requirement for policies being in writing
- More than five workers – policies must be in writing

Unionized and Non-Unionized work environments

Independent Contractors

Dependent Contractors



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

COMPLYING WITH BILL 168

How does the legislation define workplace harassment?

“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 harassment includes:

- bullying or psychological harassment
- sexual harassment
- racial/ethnic harassment
- harassment based on any protected ground under human rights legislation



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

COMPLYING WITH BILL 168

How does the legislation define workplace violence?

•“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,

(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.



DEVELOPING POLICIES

What should be in the policies:

Some elements include:

- Definition of Workplace Violence
- Definition of Workplace Harassment
- Employer does not permit such conduct in the Workplace
- Reporting procedure
- Investigation procedure



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

DEVELOPING PROGRAMS

What should be in the programs:

Some elements include:

- Measures and procedures to control the risks identified in the assessment and reassessments required
- 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 other individuals if employer is who the complaint is about
- Set out how the employer will investigate and deal with incidents or complaints of workplace violence or harassment
- And any other prescribed elements



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

WORKPLACE VIOLENCE RISK ASSESSMENT

Who is qualified as a Workplace Assessor under Bill 168?

WORKPLACE VIOLENCE RISK ASSESSMENT

Bill 168 requires employers to conduct a violence risk assessment to identify any existing or potential factors that could pose a threat of workplace violence. Under the law, the risk assessment must take into consideration the following elements:

- circumstances particular to the workplace in question
- circumstances that would be common to similar workplaces
- any other prescribed elements (this likely refers to any future regulations which might be passed)



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

WORKPLACE VIOLENCE RISK ASSESSMENT

- Employers must proactively assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work
- Measures and procedures to control these risks must be included in the workplace violence program
- Two important questions:
 1. What are known risk factors within your industry?
 2. What unique risk factors apply to your business?



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

WORKPLACE VIOLENCE RISK ASSESSMENT

The Formula:

1. Occurrences of workplace violence are generally not random, but are rather the absence of mitigation strategies including:
 - a. Physical Measures
 - b. Procedural Measures
 - c. Programs and Support

2. Detailing an organization's workplace violence and harassment policies and procedures



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

WORKPLACE VIOLENCE RISK ASSESSMENT

The Formula Continued:

3. The training and education of employees about acceptable and unacceptable behaviours
4. Offering programs that deal with and fully resolve worker and non-worker complaints and concerns
5. Offering resources to report occurrences of workplace violence and harassment



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

WORKPLACE VIOLENCE RISK ASSESSMENT

The Formula Continued:

6. Offering assistance to workers who are victims of workplace violence and harassment

7. Offering assistance to workers who need aid to stop their acts or thoughts of committing acts of workplace violence and harassment

8. Providing reasonable physical and procedural security measures to reduce the likelihood of a worker becoming a victim of workplace violence and harassment



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

WORKPLACE VIOLENCE RISK ASSESSMENT

The Formula Continued:

9. Providing workers with a resource to immediately call for help if they encounter workplace violence and harassment



WORKPLACE VIOLENCE RISK ASSESSMENT

What Steps Will Ensure Your Assessment is Complete:

1. Identify your threats and vulnerabilities to workplace violence and harassment through interviews with identified stakeholders and industry risk reports
2. Perform physical security reviews assessing the strengths and weaknesses of your physical security posture as it relates to workplace violence and harassment
3. Perform procedural security reviews through reviews assessing the strengths and weaknesses of your procedural security posture against workplace violence and harassment



WORKPLACE VIOLENCE RISK ASSESSMENT

What Steps Will Ensure Your Assessment is Complete Continued:

4. Documented findings ensuring that the risks have been identified and that recommendations as it relates to workplace violence and harassment are delivered

WORKPLACE VIOLENCE RISK ASSESSMENT

Frequently Asked Questions About Assessments:

- How long does an assessment take?
- How do I know if my industry is High Risk?
- What is truly achieved by this process?

POTENTIAL PROBLEM AREAS FOR EMPLOYERS IN COMPLYING WITH BILL 168

- No Definitions - Domestic Violence, Workplace, Assessment and Reassessment
- Reporting “Personal Information”
- Broadness of the Definition of “Harassment”
- Wording of the Definition for “Workplace Harassment”
- Strong Management vs. Workplace Harassment
- Increasing Regulation of Employment Relationships
- Reasonable Steps for Protection of Workers
- Accommodation (HRC) vs. Discipline (Bill 168)
- No Assessments or Reassessments for Workplace Harassment
- No Worker Obligations to Inform



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

LEGAL REMEDIES FOR VICTIMS OF WORKPLACE VIOLENCE, HARASSMENT

If a worker has been subjected to violence or harassment at work, what legal remedies are available to them?

- Constructive dismissal
- Bad faith and punitive damages
- Remedies under the law of tort – *vicarious liability, negligence, assault, battery, intention infliction of mental suffering or mental shock, defamation, negligent investigation and civil conspiracy*
- Occupier's liability
- Human rights legislation
- Health and safety legislation
- Workers' compensation legislation
- Criminal sanctions
- Unionized environments
- Disability benefits



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES

MINKEN
EMPLOYMENT LAWYERS

BILL 168: FREQUENTLY ASKED QUESTIONS

Does Bill 168 require employers to have separate violence and harassment policies?

Does Bill 168 require employers to conduct background checks?

QUESTIONS FROM THE AUDIENCE

MINKEN

EMPLOYMENT LAWYERS



THOMSON REUTERS



KING-REED
INVESTIGATION SERVICES