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Bill 168: Workplace Violence and Harassment June 15th Deadline Fast Approaching

By Ronald S. Minken

On December 15, 2009, the Ontario Government amended the *Ontario Health and Safety Act*, by passing *Bill 168: Violence and Harassment in the Workplace*. This Bill has created numerous new responsibilities and duties that all employers in Ontario must adhere to by the fast approaching deadline of June 15, 2010. Failing to do so leaves workers unnecessarily exposed to violence and harassment in the workplace, and employers open to possible fines to a maximum of \$500,000.00 for corporations and a maximum of \$25,000.00 or six months imprisonment for individuals.

Generally, Bill 168 provides that an employer must fulfill the following duties prior to the June 15, 2010 deadline: conduct an assessment of the workplace in regards to the potential violence that may occur; reassess the workplace for violence as often as necessary; prepare policies with respect to violence and harassment in the workplace; review the policies as much as necessary with the workers, but at least annually; and, develop and maintain programs to implement these policies. Although these are the main highlights of Bill 168, a closer examination of each of these responsibilities is required.

Bill 168 requires an assessment to be done outlining the risks of workplace violence that may arise from the nature of the workplace, the type of work performed by the workers or the conditions of the workplace. The results from the assessment are to be used to help prepare both the policy on violence in the workplace, as well as the program to implement this policy in the workplace. Furthermore, an employer is required to have the workplace

reassessed as often as necessary in order to ensure that the policy and program relating to workplace violence is up to date and continuing to protect their workers. It is interesting to note that Bill 168 does not require such assessments to be done in regards to workplace harassment. While Bill 168 does not state the qualifications of an assessor we must presume that certain criteria are required.

Additionally, employers are also required to prepare workplace policies regarding violence and harassment in the workplace based on the assessment. The definitions of Workplace Violence and Workplace Harassment provided by Bill 168 are a helpful starting point in determining what should be addressed in these policies. Carefully drafted policies are necessary as Bill 168 places all the obligations on the employers and none on the employees. It is critical that this imbalance be addressed in the policies. However, legal assistance will be necessary to ensure that the policies are in complete compliance with the requirements of Bill 168. Furthermore, Bill 168 requires that these policies must be reviewed as often as necessary, but at least annually. Employers must also prepare programs to implement these policies in the workplace.

Bill 168 also requires employers to protect their workers from domestic violence in the workplace. Other than providing that an employer is to take every precaution reasonable in the circumstances to protect their workers from such violence, Bill 168 does not provide any further guidance as to how an employer is to fulfill this potentially difficult responsibility. While attempting to fulfill this duty, an employ-

er may be met with various difficulties, including accusations that they are overstepping their bounds in regards to the worker's personal life.

Similarly, an employer may be faced with such accusations when they attempt to fulfill their further obligation under Bill 168 of informing workers of a co-worker's history of violence. Bill 168 requires that such information be provided to workers who are expected to encounter the co-worker in the course of his or her work, and the risk of violence in the workplace is likely to expose that worker to physical injury. However, the disclosure of such personal information by the employer is restricted to only what is reasonably necessary in order to protect the worker from physical injury.

Given the number of new responsibilities that Bill 168 requires of all employers in Ontario and the potential lengthy process it may take for an employer to ensure compliance with each of these new responsibilities, employers must act immediately to ensure Bill 168 compliance prior to the June 15, 2010 deadline. **MB**

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