

# BILL 168: VIOLENCE AND HARASSMENT IN THE WORKPLACE

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

May 14, 2010

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# TODAY'S PANEL

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# AGENDA

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- 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



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# BILL 168 OVERVIEW: WHY THE LEGISLATION EXISTS

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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)*



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# BILL 168 OVERVIEW: WHY THE LEGISLATION EXISTS

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**HRRep**  
THE NATIONAL JOURNAL OF HUMAN RESOURCE MANAGEMENT  
A Carswellbusiness



The coffin carrying nurse Lori Dupont passes through an honour guard of nurses holding roses after her funeral in Amherstburg, Ont., in 2005. Dupont was stabbed to death by former boyfriend and co-worker Marc Daniel, who later committed suicide.

## Workplace violence stats 'tip of iceberg'

Victims more likely to have  
difficulty with daily tasks

BY SHANNON KLIE

NEARLY ONE-FIFTH of physical assaults, robberies and sexual assaults happen in the workplace, according to Statistics Canada's latest study on violence at work.

The study, *Criminal Victimization in the Workplace*, found based organizational consultant who specializes in violence prevention, agreed the study excluded many people who have been affected by violence at work.

The study's definition of workplace only includes commercial or institutional establishments.

## 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



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# BILL 168: WHAT'S IN IT?

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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.



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

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## **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.



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

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### **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.



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# COMPLYING WITH BILL 168

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## 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



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# COMPLYING WITH BILL 168

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## 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



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# COMPLYING WITH BILL 168

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## 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

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## 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



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# DEVELOPING PROGRAMS

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## 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



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# WORKPLACE VIOLENCE RISK ASSESSMENT

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Who is qualified as a Workplace Assessor under Bill 168?



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# WORKPLACE VIOLENCE RISK ASSESSMENT

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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)



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# WORKPLACE VIOLENCE RISK ASSESSMENT

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- 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?

# WORKPLACE VIOLENCE RISK ASSESSMENT

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## 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



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# WORKPLACE VIOLENCE RISK ASSESSMENT

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## 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

# WORKPLACE VIOLENCE RISK ASSESSMENT

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## 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



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# WORKPLACE VIOLENCE RISK ASSESSMENT

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## 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

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## 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

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## 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

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## 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

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- No Definition of “Domestic Violence”
- Reporting “Personal Information”
- Broadness of the Definition of “Harassment”
- Wording of Definition – “Workplace Harassment”
- No Definition for Assessment and Reassessment
- Strong Management vs. Workplace Harassment
- Increasing Regulation of Employment Relationships
- Reasonable Steps for Protection of Workers
- Determining the Scope of the “Workplace”
- Accommodation (HRC) vs. Discipline (Bill 168)



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# POTENTIAL PROBLEM AREAS FOR EMPLOYERS IN COMPLYING WITH BILL 168

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- Practicality of Remedies
- Overly Burdensome on Employers
- No Assessments or Reassessments required for Workplace Harassment
- No Worker Obligations to Inform

# BILL 168 VERSUS HUMAN RIGHTS CODE

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How are the duties under Bill 168 different than those under Ontario's Human Rights Code?

- Enumerated Heads under the *Human Rights Code*
- Bill 168 – No Enumerated Heads
- Monetary awards under the *Human Rights Code*
- No monetary awards for workers under Bill 168



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# LEGAL REMEDIES FOR VICTIMS OF WORKPLACE VIOLENCE, HARASSMENT

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

**Constructive dismissal:** Due to a highly poisoned work environment.

**Bad faith and punitive damages:** Awarded in addition to “ordinary” wrongful dismissal damages.

**Remedies under the law of tort:** Specific torts could include negligence, assault, battery, intentional infliction of mental suffering/nervous shock and defamation.

**Occupier’s liability:** Take reasonable steps to ensure that people who enter property are reasonably safe.



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# LEGAL REMEDIES FOR VICTIMS OF WORKPLACE VIOLENCE, HARASSMENT

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**Human rights legislation:** Harassment based on the prohibited grounds of discrimination (such as sexual harassment, racial/ethnic harassment and so on.)

**Health and safety legislation:** Penalties under the Occupational Health and Safety Act of up to \$500,000 for employers; \$25,000 and/or six months' imprisonment for individuals.

**Workers' compensation legislation:** Higher premiums for organizations and industries with high claim rates.

# LEGAL REMEDIES FOR VICTIMS OF WORKPLACE VIOLENCE, HARASSMENT

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**Criminal sanctions:** Criminal prosecution under Bill C-45 (the “corporate killing” law)

**Unionized environments:** Filing a grievance under the collective agreement for failure to provide a work environment free from violence and harassment.

**Disability benefits:** Self insurance and claims, potentially leading to higher premiums.



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# BILL 168: FREQUENTLY ASKED QUESTIONS

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

- Bill 168 does not explicitly require separate policies
- Workplace Harassment
- Workplace Violence



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# BILL 168: FREQUENTLY ASKED QUESTIONS

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**Are there any privacy implications with respect to the duty to warn employees about individuals with a history of violence?**

- Duty of Confidentiality vs. Compliance with Bill 168



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# BILL 168: FREQUENTLY ASKED QUESTIONS

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**Does Bill 168 require employers to conduct background checks?**

# BILL 168: FREQUENTLY ASKED QUESTIONS

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## What exactly is meant by the term “domestic violence”?

- No definition provided in Bill 168 for either “Domestic Violence” or the term “Domestic”

Actual or Threatened Physical Violence or Harm?

Sexual Assault?

Harassment and Intimidation?

Threats of Harm or Actual Harm Perpetrated Against Others?

Damaging, Destroying, or Threatening to Destroy Property Belonging to Victim or Other Individuals?



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# BILL 168: FREQUENTLY ASKED QUESTIONS

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**What are some of the causes of workplace violence? Which industries and what types of positions are particularly high risk in terms of the likelihood of workplace violence?**

# QUESTIONS FROM THE AUDIENCE

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