

BILL 168: VIOLENCE AND HARASSMENT IN THE WORKPLACE

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

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TODAY'S PANEL

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AGENDA

- Bill 168 overview — why it exists and the goals of the legislation.
- What's in the legislation?
- What you need to do to ensure your organization is in compliance with the law by the June 15, 2010, deadline.
- What's going on in other jurisdictions across Canada when it comes to similar legislation?
- 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)*

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

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.

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.

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.

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

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

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

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

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)

POTENTIAL PROBLEM AREAS FOR EMPLOYERS IN COMPLYING WITH BILL 168

- 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)

POTENTIAL PROBLEM AREAS FOR EMPLOYERS IN COMPLYING WITH BILL 168

- 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

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

LEGAL REMEDIES FOR VICTIMS OF WORKPLACE VIOLENCE, HARASSMENT

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.

LEGAL REMEDIES FOR VICTIMS OF WORKPLACE VIOLENCE, HARASSMENT

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

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.

LEGISLATION IN OTHER JURISDICTIONS

Quebec

- Legislation banning “psychological harassment” in the workplace since 2004.
- Does not require that harassment be connected with a prohibited ground of discrimination under human rights legislation.
- While there can be a fine line between “strong management” and “bullying,” the Quebec experience has shown employers have a right to manage the performance of employees.
- 97 per cent of psychological harassment claims in Quebec have been settled at the investigation stage or through early mediation. (Few end up in a formal hearing, though for the ones that do, the process can be quite lengthy.)

LEGISLATION IN OTHER JURISDICTIONS

Federal sector

- Employers are required to develop a workplace violence policy, identify and assess workplace violence risks, develop controls, provide training, regularly review workplace violence prevention initiatives and investigate incidents of workplace violence.
- Workplace violence includes “psychological violence.”

British Columbia

- Risk assessments must be performed in workplaces with a risk of violence, leading to policies and work arrangements which minimize the risk of violence.

LEGISLATION IN OTHER JURISDICTIONS

Saskatchewan

- Certain employers are required to develop workplace violence policy statements.
- Employers are also required to develop a written policy on workplace harassment.
- Provisions very similar to those in Bill 168 apply with regard to the duty to warn employees about violent individuals.

Nova Scotia

- Certain employers are required to implement violence prevention programs.

OPTIONS FOR MULTI-JURISDICTIONAL POLICIES

1. **Generic policies:** Refer to the applicable legislation or HR for further guidance.
2. **Meet minimum requirements:** Difficult to meet minimum requirements in *all* jurisdictions.
3. **Include specifics:** Spell out the requirements for each jurisdiction.
4. **Provide separate handbooks:** Have separate handbooks/policies for each jurisdiction.
5. **Cover the “primary” jurisdiction:** Include only the primary jurisdiction you operate within, along with explanations that the governing legislation elsewhere will prevail and/or that further information is available from HR for other jurisdictions; consider communicating one-off policies separately via email.
6. **Combination of above:** Use some combination of the above approaches.

BILL 168: FREQUENTLY ASKED QUESTIONS

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

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

BILL 168: FREQUENTLY ASKED QUESTIONS

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

BILL 168: FREQUENTLY ASKED QUESTIONS

Does Bill 168 require employers to conduct background checks?

- INSERT BULLET POINTS HERE

BILL 168: FREQUENTLY ASKED QUESTIONS

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?

BILL 168: FREQUENTLY ASKED QUESTIONS

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?

•INSERT BULLET POINTS HERE

QUESTIONS FROM THE AUDIENCE

We'll now throw the presentation open to questions for Brian and Ron.