

BILL 168 RECEIVES THIRD READING: ADDRESSES WORKPLACE VIOLENCE AND HARASSMENT

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

Introduction

A 2004 Statistics Canada survey found that 17 per cent of violent incidents in Canada occur in the workplace. In response to these findings, and the Report of the Inquiry into the death of nurse Lori Dupont released in December 2007, the Ministry of Labour held a public consultation in the fall of 2008, to review the *Occupational Health and Safety Act* (the "OHS") and assess whether the Act's existing provisions appropriately address issues of workplace violence.

As a result of that consultation process, the Government introduced Bill 168 on April 20, 2009. The Bill, which has now passed third reading (on December 9, 2009), would make a number of significant changes to the OHS. The Bill has not yet received Royal Assent and will come into force only 6 months after it receives Royal Assent.

Highlights of Bill 168

1. Preparation of Workplace Violence and Harassment Policies

Under the Bill, employers are required to prepare written policies with respect to workplace violence and harassment. The policies need to be posted in a conspicuous location in the workplace. Although small employers are generally exempt from this requirement, an Inspector can make an order that even an employer with five or fewer employees prepare and post a policy. In addition, employers will be required to review the policies "as often as is necessary," but at least annually.

The terms "workplace violence" and "workplace harassment" are broadly defined in the proposed legislation. "Workplace violence" is defined in the Bill as:

- (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.

“Workplace harassment” is defined as:

... 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.”

Although employers may already have policies aimed at workplace violence and harassment, it will be necessary to ensure that such policies are consistent with the OHSA.

2. Risk of Violence Assessment

Under the Bill, employers are expressly required to carry out an assessment of the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work. The assessment must take account of circumstances that would be common to similar workplaces, circumstances specific to the workplace, as well as any other elements prescribed by regulation.

Employers will be required to advise the joint health and safety committee or representative of the results of the assessment and provide a copy of the assessment. In workplaces without a joint health and safety committee or representative, the employer will have to advise the workers of the results of the assessment and provide copies on request.

Employers would be obligated to reassess the risk of violence “as often as is necessary” to ensure that the policy and program continue to protect workers from workplace violence. The results of the reassessment have to be shared in the same manner as the results of the initial assessment.

3. Employers must Develop and Maintain a Workplace Violence Program

The Bill requires employers to develop and maintain a program to implement the workplace violence policy. Required elements of the program include:

- measures and procedures to control the risks identified in the workplace violence assessment;
- 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 supervisor;
- how the employer will investigate and deal with incidents or complaints of workplace violence.

4. Employer Obligations with respect to Domestic Violence

The Bill also requires employers to take precautions to protect workers from domestic violence. Employers are specifically obligated to take every precaution reasonable in the circumstances for the protection of the worker if an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace.

Employers need to become educated about domestic violence, including signs of it, recognizing situations where a person is at risk, and how they can help and respond. Employers should also be aware that the duty to take every precaution reasonable in the circumstances for the protection of the worker against domestic violence will not necessarily be confined to a single location. The term “workplace” is currently defined in the OHSAs as:

... any land, premises, location or thing at, upon, in or near which a worker works.

Accordingly, an employer’s duties to take reasonable precautions to protect a worker from domestic violence would not necessarily be confined to the employer’s main place of business, but would extend to anywhere that the worker works with the likely exception of the worker’s residence because the Act “does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence...” (OHSAs, section 3(1)).

5. Employers required to Provide Instruction and Information on the Workplace Violence Policy and Program

Employers will be required under the proposed legislation to provide appropriate information and instruction for workers on the contents of the workplace violence policy and program along with any other information or instruction prescribed by regulation. In addition, employers and supervisors will have a specific duty to provide information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour. If an employee can be expected to encounter a volatile person in his or her work, and there is a risk of workplace violence likely to injure the worker then the employee must be given relevant information about the person, including personal information (but no more than is “reasonably necessary to protect the worker from physical injury”).

6. Employers will be required to Develop and Maintain a Workplace Harassment Program

Under the new legislation, an employer is required to develop and maintain a workplace harassment program. Elements that would be required under the program include:

- measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor; and
- a process setting out how the employer will investigate and deal with incidents and complaints of workplace harassment.

Although many employers already have workplace harassment policies which include processes for reporting, investigating and resolving workplace harassment complaints, the inclusion of this requirement in the OHSAs means that when the amendments come into force, employers without policies may be exposed to enforcement mechanisms under the OHSAs.

Other Provisions

In addition, the amendments:

- extend the duties of employers, supervisors and workers, pursuant to sections 25, 27 and 28 of the Act to taking reasonable precautions to protect workers from workplace violence;
- would bring workplace violence situations under the “work refusal” procedures of the Act;
- require employers to give notice to the Director of Occupational Health and Safety of incidents involving workplace violence; and
- expand the Ministry’s regulation-making authority.

Please check back with our website for information regarding the coming into force of these amendments, or feel free to contact any of our lawyers to discuss how Bill 168 may impact your workplace.