

Labour, Employment, and Human Rights Bulletin

April 2009

Fasken Martineau DuMoulin LLP

New Bill Introduced to Curb Workplace Violence and Harassment

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Ontario is looking to reduce violence and harassment in the workplace. To that end, Bill 168, *An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace*, received first reading on April 20, 2009. Bill 168, if passed, would amend the *Occupational Health and Safety Act* (“OHSA”).

The key components of Bill 168 are:

- workplace violence and harassment policies;
- workplace violence and harassment programs;
- workplace violence assessments;
- disclosure of information where there is a risk of violence; and
- work refusals upon threat of workplace violence.

Policies

Bill 168 would require employers to prepare a policy with respect to workplace violence and a policy with respect to workplace harassment.

“Workplace violence” is defined as the exercise of (or an attempt to exercise)

physical force by a person against a worker in a workplace that causes or 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.

Employers would have to review the policies at least annually and those with more than five employees would be required to post the policies in the workplace.

Programs

Bill 168 would also require employers to develop and maintain a program to implement the workplace violence and workplace harassment policies.

The workplace violence program would have to include measures and procedures:

- to control the risks identified in the assessment (described below) as likely to expose a worker to physical injury;
- for summoning immediate assistance when workplace violence occurs or is likely or threatened to occur;

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- for workers to report incidents or threats of workplace violence; and
- for investigating and dealing with incidents, complaints or threats of workplace violence.

The workplace harassment program would have to include reporting and investigation procedures.

Workplace Violence Assessments

In addition to implementing policies and programs, employers would also have to prepare a workplace violence assessment, to assess the risk of violence in the workplace. The assessment would be based on the nature of the workplace, the type of work and the conditions of work. Thereafter, employers would have to advise the workers, through the joint health and safety committee or otherwise, of the results of the assessment.

Particular Risk of Violence

Bill 168 would also require employers and supervisors to inform workers of a risk of workplace violence from a person with a history of violent behaviour if:

- the worker was expected to encounter that person in the course of his or her work; and
- the risk of workplace violence was likely to expose the worker to physical injury.

Further, if there was a risk of domestic violence in the workplace, the employer would be required to take every precaution reasonable in the circumstances for the protection of workers.

Work Refusals

Bill 168 would also amend Part V of OHSA so that workers would have the right to refuse or stop work where they felt endangered by workplace violence. As is the case with respect to work refusals generally, the worker's refusal to work would be investigated by the employer and, potentially, a Ministry of Labour inspector.

Implications for Employers

The OHSA already provides that employers must take every precaution reasonable in the circumstances for the protection of a worker. Bill 168 does not change that: it simply makes it clear that employers' and supervisors' duties in this respect would apply to workplace violence and harassment.

Although many employers will already have workplace harassment policies and programs in place as a result of their obligations under the Human Rights Code, employers may have to expand those policies and procedures. They would also have to develop specific policies and programs to deal with workplace violence. This will be particularly important in workplaces where the risk of violence is greater, such as in the health care, social services, retail, hospitality, financial institutions, education, transportation, and police, security and corrections industries.

For more information on the subject of this bulletin, please contact the author at ksargeant@fasken.com or 416-868-3475.

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