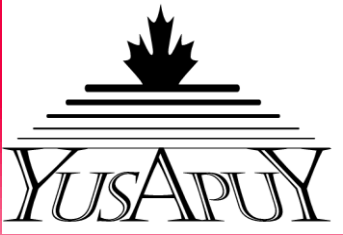


Dealing with Violence in the Workplace: Exploring Ontario's new Bill 168





Introduction to the Bill

On December 9, 2009 the Ontario legislature passed Bill 168, *The Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009*

The Bill **comes into effect June 15, 2010**, and requires employers to:

- Develop and maintain policies relating to workplace violence and workplace harassment;
- Post the policies in a conspicuous place in the workplace;
- Review the policies regularly (at least annually) and develop programs to implement them; and
- Promptly address incidents and complaints of workplace violence and harassment.



Who is Affected?

Bill 168 has the same application as the current *Occupational Health and Safety Act (OHSA)*, and is subject to the same exclusions. Thus, it applies to **all provincially-regulated workplaces in Ontario, except:**

- owners or occupants (or their servants) working in or on the grounds of a private residence (s. 3(1))
- most farm employees (s. 3(2))

Section 3(3) allows for regulations that limit the application of the Act to teachers, and s. 2 of the relevant regulation states that the OHSA applies to teachers, with the exception of the refusal to work sections, which do not apply when “the life, health or safety of a pupil is in imminent jeopardy.”



Definitions: Violence

The *OHSA* did not contain definitions of workplace violence or harassment prior to the passing of Bill 168 in December.

"Workplace violence" is defined in Bill 168 as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker; or
- 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.



Definitions: Harassment

“Workplace harassment” is defined in Bill 168 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.



Workplace Violence Assessments

The employer must assess the risks of workplace violence that may arise, having regard to:

- **the nature of workplace** (i.e. are there tools or equipment that could be used as a weapon?)
- **the type of work or the conditions of work** (i.e. are there workers who handle money or other valuables?)
- **the conditions that would be common to similar workplaces** (i.e. have there been incidents of violence in similar workplaces?)
- **the circumstances specific to the workplace** (i.e. have there been incidents of violence in the workplace in the past?)
- **any other prescribed elements.**

The employer must further advise the Health and Safety Committee of its assessment and provide it with a copy, if it is in writing.



Workplace Violence Program

An employer must develop a program to implement the workplace violence policy and give workers information and training on the policy and program.

The program **must**:

- include measures and procedures to control the risks;
- include measures and procedures to call for immediate assistance;
- include measures and procedures for workers to report incidents of workplace violence;
- set out how the employer will investigate and deal with incidents or complaints; and
- include any prescribed elements.

The employer must **re-assess** the risks of workplace violence “as often as is necessary” to ensure that the policy and program continue to protect workers from workplace violence.



Domestic Violence

The Bill recognizes that domestic violence can also occur in the workplace. This is especially true of a workplace that is easily accessible to non-workers, such as the University setting.

An employer is required to take **every reasonable precaution** to protect a worker from domestic violence where the employer becomes aware, **or ought to be aware**, that domestic violence which would likely expose a worker to physical injury may occur in the workplace.



Disclosure: Persons with Violent History

One of the duties prescribed by the Bill is the limited disclosure of personal information. The employer must provide a worker with information, including personal information, **related to a risk of workplace violence** from a person with a history of violent behaviour if:

- the worker can be expected to encounter that person in the course of his/her work; and
- the risk of workplace violence is **likely to expose** the worker to **physical injury**.

However, the employer cannot disclose more personal information than is **reasonably necessary** to protect the worker from physical injury.



Work Refusal

Currently, under the *OHSA*, a worker has the right to refuse to perform work where the worker has reason to believe that:

- a) any equipment, machine or device that she is supposed to use is likely to endanger her/himself or another worker; or
- b) the physical condition of the workplace is likely to endanger her/himself.

Under Bill 168 a worker will now have the right to refuse to work if **workplace violence is likely to endanger** her/himself.

Pending investigation, the worker must remain in safe place and available for the purposes of the investigation, unless the worker is assigned to “reasonable alternative work” during normal work hours, or given other directions.



Workplace Harassment Program

An employer must develop a program to implement its workplace harassment policy and must also give workers information and training on the policy and program.

The program must:

- include measures and procedures for workers to report incidents of harassment;
- set out how the employer will investigate and deal with incidents and complaints; and
- include any prescribed elements.



The Union's Role

Bill 168 does not impose any specific requirements on unions. However unions should be participating in the development of any new workplace harassment and workplace violence policies that will come into effect at our workplace as a result of the requirements of Bill 168.



Our Responsibility

While the University is responsible for preventing violence and harassment in the workplace, maintaining a **healthy and respectful work climate is everyone's responsibility.**

Unions, employees, supervisors and managers can all play a role in fulfilling the obligations set out by Ontario's new Bill 168.



Resources

Ontario Occupational Health and Safety Act: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm

Bill 168: <http://www.crvawc.ca/documents/Bill%20168.pdf>

York University's Policies and Procedures:
<http://www.yorku.ca/univsec/policies/>