

Bill 168 Means New Obligations to Tackle Workplace Violence and Harassment

By Ryan Coles & Marcel Faggioni

Bill 168 has recently received royal ascent and will become law on June 15, 2010. The bill, entitled *An Act to Amend the Occupational Health and Safety Act with respect to Violence and Harassment in the Workplace and Other Matters*, will require that employers with over five (5) employees have policies, programs, measures and procedures in place to prevent and deal with cases of workplace harassment and violence. We can all agree that the prevention of workplace harassment and violence is incredibly important; however, the concerns of many employers are focused on whether they will indeed be compliant by June 15, 2010 under this new legislation.

According to the new legislation, most employers will now be required to have policies and programs regarding violence at the workplace and harassment, a prescribed procedure for reporting incidents of workplace violence, a procedure outlining a process for investigating reported incidents, a emergency response procedure for dealing with workplace violence and finally a process for dealing with incidents and complaints of violence at the workplace. In addition, employers will be required to conduct a complete risk assessment of workplace violence in order to properly identify possible hazards that may arise. This includes considering the nature of the workplace, the type of work being performed and the working conditions. Reassessments will also be required “*as often as is necessary to ensure*” that employees continue to be protected from workplace violence.

This new legislation certainly provides clarity around an employer’s responsibility around workplace harassment and violence. Its aim is to make the employer accountable in an effort to minimize such incidents. It also ensures that employers have a clear method for investigating and dealing with such incidents in the workplace, which ultimately sends a clear message that a laissez-faire attitude towards harassment and violence is not acceptable.

Bill 168 also outlines new definitions for workplace violence and workplace harassment. Under the new legislation, workplace violence is defined as:

- *“The exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury to a worker”*
- *“An attempt to exercise physical force against a worker in a workplace that could cause physical injury to a worker”*
- *“A statement or behaviour that 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:

- *“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.”*

Perhaps one of the more interesting aspects of Bill 168 surrounds domestic violence. *Section 32.0.4*, which outlines the employer's responsibility in such cases, reads as follows:

"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, the employer shall take every precaution reasonable in the circumstances for the protection of the worker."

This means that when an employer is aware of domestic violence and such violence may cross over to the workplace, the employer must take reasonable steps to protect its employees.

Finally, when an employee reports an incident of workplace violence and during the time an investigation is taking place, the new legislation lays out the fact that the employee must be kept safe in a location *"that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation."* An exception is also included, outlining that where the above is not possible, reasonable alternative work or other direction must be given to the individual.

Preparing for the statutory obligations of this legislation could be quite burdensome, especially for those employers who have not had any form of harassment policy or procedure in the past. Given the timelines attached to this piece of legislation, it is highly advisable that employers immediately undertake the necessary steps in drafting of policies and guidelines that will maximize legislative compliance.