



Employment Strategies. Working Solutions.™

## Bill 168

Employer duties and best practices to accommodate Ontario's amendment to the Occupational Health and Safety Act with respect to violence and harassment in the workplace.

### Abstract:

On June 15, 2010 Bill 168 took effect. The Bill aims to strengthen protections for employees from workplace violence and to address workplace harassment. The Bill requires employers to establish new policies, develop programs to implement such policies, and assess the risk of workplace violence. These new requirements for disclosure, work refusals and training are specific, and Ministry of Labour data indicates that many companies in Ontario have yet to meet the new requirements. This paper investigates these new requirements and gives employers tools to approach preparing their workplace to make necessary changes.

### This white paper also covers:

- Bill 168 definitions
- Employer obligation to prepare policies
- Risk assessment tools and requirements
- Development of workplace violence and harassment programs
- Liability laws
- Reassessment of workplace policies and programs
- Training requirements
- New on-the-job domestic violence laws

## Adapting to new legislation still a challenge

The world is full of dangerous business. The most recent Statistics Canada studies show that of all incidents of violence in Canada (including physical assault, sexual assault, and robbery) 17% happen in the workplace. Of these events, 71% are classified as physical assaults, while the remaining 24% were deemed sexual assaults<sup>1</sup>.

To protect Ontario's workers from some of that abuse, Bill 168 was introduced in June of 2010 and it requires employers with more than five workers per workplace to prepare written policies that address workplace violence and harassment<sup>2</sup>.

The purpose of this is to try to prevent workplace violence and harassment from becoming a more devastating plague, and so far Ontario is a world leader in this area. A recent article entitled *Workplace Violence and Harassment: a European Picture* shows that 40% of European managers are concerned by workplace violence and harassment, but just 25% of them have developed procedures to deal with it<sup>3</sup>.

So, Ontario is at an advantage, but do organizations know enough about Bill 168 to ensure they've met all expectations to pass Ministry of Labour inspection? Some research from the year-and-a-half since the law was passed indicates many businesses haven't acted. As Stuart Rudner, a partner at Miller Thomson LLP told *Law Times*, "There are a lot of people out there who think this is another piece of legislation where you can just adopt a wait-and-see approach. Many of them don't realize that Bill 168 requires positive steps on the part of employers. By waiting and seeing, they're breaching the legislation."<sup>4</sup>

Some Bill 168 dissenters believed the law change should only pertain to the occupations more susceptible to workplace violence and harassment—jobs such as correctional services agents and social workers—but the Statistics Canada study shows that beyond those professions, those working in accommodations, food services, and education are also among the staffers most plagued by violence. Physical assaults made up a higher proportion of all violent incidents in the workplace, representing 71% of all incidents of workplace violence. This compares to 57% of violent non-workplace incidents<sup>5</sup>.

And sadly, organizations still struggle to understand this new legislation and establish methods to train their employees and supervising staff. How should a company define "domestic violence"? How should an employee who feels unsafe be treated? Who in the company is responsible for ensuring that Bill 168 is observed? And if there is an incident at work, what comes next?

The good news is that it is possible for organizations to excel at answering these questions, and there are plenty of government resources and professional services available to companies that can help them bring their workplaces up to code. This paper discusses the details of Bill 168 and shows how an increased awareness of Ontario's law on workplace harassment and violence can help an organization better prepare itself for inspection, improve communication with employees and help ensure companies make the right business decisions, both for today's workforce and for the future.

<sup>1</sup> <http://www.statcan.gc.ca/pub/85f0033m/2007013/findings-resultats/4054152-eng.htm>

<sup>2</sup> [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2181](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2181)

<sup>3</sup> <http://osha.europa.eu/en/press/press-releases/workplace-violence-and-harassment-on-the-increase-in-europe-1>

<sup>4</sup> <http://www.lawtimesnews.com/201006147037/headline-news/few-ready-for-bill-168>

<sup>5</sup> <http://www.statcan.gc.ca/pub/85f0033m/2007013/findings-resultats/4054152-eng.htm>

## Understanding Bill 168's anatomy

### The History of Bill 168:

The introduction of Bill 168 was in large part caused by the death of two southwestern-Ontario women who were murdered by co-workers after being denied help from their workplaces. The first woman was Theresa Vince, who was killed in 1996 when a boss who had sexually harassed her for more than a year shot her in the face. She had filed a harassment complaint at work, but no response was ever issued.

The second woman, Lori Dupont, was killed by her ex-boyfriend at a Windsor, Ont. Hospital called Hotel-Dieu Grace in 2005. They both worked there and the hospital knew Daniel had been harassing Dupont. The Hospital also knew the abuse was escalating, but there were never any repercussions for Daniel. Both women's families had been campaigning for change on their behalf and called the Bill 168 a good start.

The new workplace safety rules calls on employers to tackle domestic violence when it reaches the workplace—this is the first law in the province that deals with that subject.

### Important definitions:

The Occupational Health and Safety Act defines “workplace violence<sup>6</sup>” 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.

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.

For more definitions, and to watch Ministry of Labour health and safety inspectors discuss employers' responsibilities around workplace violence and harassment, watch this video.

The Occupational Health and Safety Act defines “workplace harassment” as<sup>7</sup>:

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 harassment may include bullying, intimidating or offensive jokes or innuendos, displaying or circulating offensive pictures or materials, or offensive or intimidating phone calls.

### Preparing your policies:

Thanks to these changes any employer with more than five staffers must draw up written policies that address workplace violence and harassment<sup>8</sup>. While it may seem unfair, the

<sup>6</sup> [http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs\\_workplaceviolence.php](http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php)

<sup>7</sup> [http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs\\_workplaceviolence.php](http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php)

introduction of the bill gave all companies (no matter their size, risk level, or legal complexity) six months to come up with these documents. Now that the June 15, 2010 deadline has long since passed, written policies are the expectation for all firms in Ontario.

Once those guidelines are drawn up, each employee within the organization must have easy access to the policies. That might be by way of the company's internal website, or perhaps a hard copy delivered to them. But simply creating a policy isn't enough. The organization must revisit it annually to review the contents and ensure currency. With that law in mind, the spirit of the request is that whenever there is cause for review (which may be more than once a year) the employer should make an effort to review the policy.

### **What should the policy include?**

There are specific guidelines for developing workplace policies that specify what details businesses must cover and include. The Canadian Federation of Independent Business (CFIB) drew up template samples that offer help to businesses who want to draw up their own policies (a sample is included at the bottom of this section<sup>9</sup>), and the Ministry of Labour (MOL) also drew up some guidelines, templates and checklists.

The policy laid out for employee's use needs clear definitions of terms like "workplace violence" and "workplace harassment" and must emphasize that a zero tolerance policy towards these forms of abuse is in effect. The policy must outline the consequences for breaching it and make clear the person in charge of policing the rules. It should also include an outline of investigation policies and employer and employee duties and responsibilities, which should make clear the company procedure for dealing with these situations.

### **The new risk assessment:**

No only do employers need to have reactive strategies outlined for dealing with violence and harassment, but they must also proactively assess the potential for workplace violence that is specific to the nature of the workplace (be it a hospital, construction site, law office or daycare centre). Employers need to examine the type of work being done and show they have checks and balances that address the hazards they identified.

Where this becomes tricky is ensuring that not only have the risks specific to the employer's workplace been examined, but that there has been thought given to the common risks at similar workplaces, too. As the modern workplace evolves and job descriptions and companies flex and change, the employers need to reassess the risk of workplace often to be sure their policies protect the workers.

When these assessments have been made, the results need to be given to a joint health and safety committee for review (or a health and safety representative in the case of smaller companies). In the case of very small firms, or if there is no representative, the results must be put straight into the hands of workers.

### **Note from the government:**

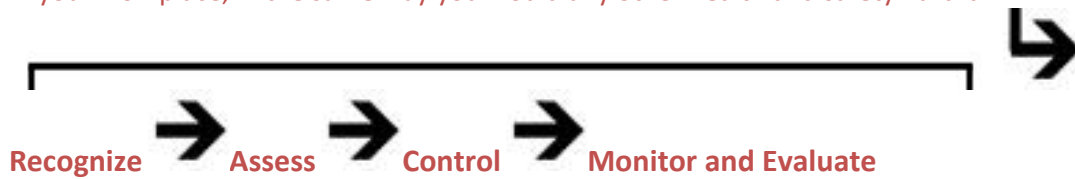
**Some workplaces are at greater risk of workplace violence occurrences. Extra attention to Bill 168 should be paid if you:**

- **Work in a community-based setting**
- **Work with unstable or volatile clients**
- **Handle cash**
- **Work in a mobile workplace**
- **Have contact with clients**
- **Work in high crime areas**
- **Secure/protect valuables**
- **Transport people and/or goods**
- **Work alone or in small numbers**

<sup>8</sup> [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2181](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2181)

<sup>9</sup> [http://www.labour.gov.on.ca/english/hs/pubs/wvps\\_toolbox/toolbox\\_7.php](http://www.labour.gov.on.ca/english/hs/pubs/wvps_toolbox/toolbox_7.php)

“Preventing and controlling workplace violence does not have to be difficult or complex. All you really need is the knowledge and ability to recognize, assess, and control the hazard of violence in your workplace, in the same way you would any other health and safety hazard.”



#### **Approaching liability:**

With the introduction of a new law there must be, of course, punishment for breaking the law. As outlined in the Criminal Code, employers are responsible for taking steps to ensure the safety of workers and the public. Courts may impose penalties on the employer and manager, even if neither of the parties was involved in the harassment. Individuals can be fined up to \$25,000 or face up to one year in jail if found guilty of non-compliance. Corporate liability on conviction is up to \$500,000. As if businesses needed another reason to comply!

#### **Domestic violence:**

This is perhaps the trickiest part of the new legislation. Bill 168 points to the issue of domestic violence in the workplace by requiring employers to "take every precaution reasonable in the circumstances" to protect workers from domestic violence that would likely cause physical injury to workers in the workplace. As one report from Toronto-based law firm Stikeman Elliot notes: "This obligation on the employer arises only if the employer is aware, or ought reasonably to be aware, of the situation. What constitutes 'domestic violence' is not defined."<sup>10</sup> The management team should carefully consider the definition of domestic violence for the workplace, and determine what constitutes a reasonable precaution (most likely with help from the HR department).

#### **Improving staff training:**

While the introduction of Bill 168 mandated that all employees receive the appropriate training on the contents of the workplace violence and harassment policies and procedures, it left the actual training specifications up to the individual company. Each employer has the right to decide the training best suitable for his or her workforce. That said, the training must "be effective" and each employee's participation must be documented. That will help protect both parties.

#### **How to manage work refusals:**

When it comes to workers rights, all staff have the right to refuse any job that they feel could potentially expose them to injury, violence or harassment. As soon as an employee makes that decision, it must be observed, even if the employer wants to conduct an investigation. The employee shouldn't be forced to remain in his or her position (or around potentially dangerous colleagues) until a decision has been reached. Instead, that employee should be directed to remain in a "safe place" that is as close to their workstation as possible to avoid disrupting his or her job further.

<sup>10</sup> <http://www.stikeman.com/cps/rde/xchg/se-en/hs.xsl/13032.htm>

Bill 168 should give employees the confidence to create a work refusal policy if one doesn't already exist in their office (this new addition will amend Part V of OHSAA). In the same vein, management teams should also be trained on how to handle a work refusal situation to minimize conflict and disruption not only to the employee's work, but also to the whole office. In these cases, the worker's refusal to work would be investigated by the employer and perhaps a MOL inspector is required.

#### Exposing hires with a violent history:

Employers are also now obligated to provide any relevant (sometimes personal) information to employees disclosing if they are working with a person with a history of violent behaviour. That is, if the two will have contact over the course of their daily work. The information release would also be necessary if the employer deems the risk of violence is likely to expose their staff to injury. But the disclosure may only go as far as is needed to protect health and safety.

Again, the Bill 168 is not clear on who exactly would constitute a person with "a history of violent behaviour," but it should be noted that a standalone violent incident would likely not lead to this kind of record.

This issue presents employers with a real challenge in trying to decide what the chances are that a worker's health and safety will be compromised. Employers must ensure that they are consistent in addressing these threats as they come up and that all incidents are treated with the same amount of consideration.

#### Safety and Reporting:

Along with the new Bill's requirements for policy, there are accompanying rules for after-the-fact reporting. According to the Occupational Safety and Health Administration employers need to alert the MOL of any and all critical injuries right away and should file a report on the incident within 48 hours of its occurrence. If the injury is minor (no fatalities), the employer does not need to report the incidents unless ordered to do so by a visiting MOL inspector.

Bill 168 mandates that certain bodies need to be notified within four days if an incident of workplace violence prevents a worker from performing their routine tasks or requires them to seek medical attention. These groups include the joint health and safety committee, the trade union and health and safety representatives.

#### SAMPLE: Workplace Harassment Policy:

The management of \_\_\_\_\_ (insert company name) is committed to providing a work environment in which all individuals are treated with respect and dignity.

Workplace harassment will not be tolerated from any person in the workplace (**The workplace may wish to list the sources of workplace harassment**).

Everyone in the workplace must be dedicated to preventing workplace harassment. Managers, supervisors, and workers are expected to uphold this policy, and will be held accountable by the employer (**If the policy applies to other people in the workplace, they should also be listed**).

Workplace harassment means 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 (**The workplace may wish to list examples of unacceptable behaviour**). Harassment may also relate to a form of discrimination as set out in the [Ontario Human Rights Code](#), but it does not have to (**The workplace may wish to include information about what constitutes discriminatory harassment under the Ontario Human Rights Code**).

This policy is not intended to limit or constrain the reasonable exercise of management functions in the workplace (**The workplace may include examples of work functions that would generally not be considered workplace harassment**).

Workers are encouraged to report any incidents of workplace harassment (**The workplace may wish to provide more information about how to report incidents and may wish to emphasize that there will be no negative consequences for reports made in good faith**). Management will investigate and deal with all concerns, complaints, or incidents of workplace harassment in a timely and fair manner while respecting workers' privacy, to the extent possible (**The workplace may wish to provide more information about how incidents of harassment will be investigated and/or dealt with**).

Nothing in this policy prevents or discourages a worker from filing an application with the [Ontario Human Rights Tribunal](#) on a matter related to the [Ontario Human Rights Code](#) within one year of the last alleged incident. A worker also retains the right to exercise any other legal avenues available.

Signed: \_\_\_\_\_ President / CEO Date: \_\_\_\_\_

The workplace violence policy should be consulted whenever there are concerns about violence in the workplace.

## From insight to action: how to handle Bill 168 at your company

In many ways, Bill 168 may seem straightforward and its policies easy to implement and tack on existing workplace rules and requirements. But a year after Bill 168 came into effect, the Ministry of Labour reported that 20% of large corporations that had been visited were not compliant, and 80% of small businesses did not pass inspection<sup>11</sup>.

That would indicate there's much more training and system updates that need to be performed in Ontario. The government's sample forms are helpful, but to ensure an organization is fully prepared it's helpful to compliance-based training should be delivered both to the employer and management team, and to the employees.

On top of bringing the office up to legal regulations, seeking expert input can also help catch useful workplace policies that are not required by the bill. An assessment for risks of workplace harassment (rather than violence), for example, is not required by Bill 168 but can be crucial for employees and HR representatives when dealing with workplace conflict and establishing consistency and precedent. Bill 168 may not require the involvement of a joint health and safety committee, the health and safety representatives or any trade union in the risk assessment process. However, employers are encouraged to permit that involvement as a means of avoiding future challenges. An outside consultant can determine how the organization can affordably establish this outside involvement.

And in the case of Bill 168, extra care must be taken surrounding the domestic violence policies where the employer is obligated to take precautions only if it "ought reasonably to be aware of" a domestic violence situation where there is a probability that it will carry over into the workplace. The employer might need to ask, for instance, were coworkers aware of the situation? Was a former spouse harassing the worker while at work via emails, phone calls? Thinking through these kinds of questions in advance of an incident can improve management response time in dealing with the situation.

To address these challenges, company policies, programs and training should firmly encourage employees who believe that they are at risk of domestic violence to inform the employer. The employer will be responsible for taking the appropriate steps, which may include contacting the local police for assistance or soliciting advice from an expert. Supervisors and managers may require training in order to recognize the signs of domestic abuse and it's effects on the workplace to address conflicts before they develop irreparably.

A workforce management services company should deliver this kind of training through specially trained professionals who can easily recognize holes in new policy. These professionals can also help train staff and management. These agencies are devoted to helping individuals and organizations better define and meet their goals.

## Conclusion

When it comes to workplace violence, the Ontario Labour Relations Board has interpreted Bill 168 to broaden the obligation on employers to take threats seriously.

The responsibilities that Bill 168 places upon employers include: preparation of workplace policies with respect to workplace violence and harassment; reviewing these workplace policies at least annually; developing a program at the workplace to implement the

---

<sup>11</sup> <http://www.royceassociates.com/tag/workplace-violence-and-harassment/>



violence policy; assessments by the employer of the risk of workplace violence occurring; and reporting the results of these assessments to either the joint health and safety committee or to a health and safety representative.

While Bill 168 is an amendment that will protect employees and benefit work environments it's only as strong as the policy in place at each of those companies and the weight placed on that policy by those in management who enforce it. But investing in training in the HR department and/or management and/or employees can pay dividends later through improved office relations and safe, happy employees. It also yields one added bonus: the feeling of calm when an inspector from Ministry of Labour walks through the front door.

### Additional information:

#### Preventing Workplace Violence And Workplace Harassment

[http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs\\_workplaceviolence.php](http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php)

#### Bill 168, Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009

[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2181](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2181)

#### News report: Ont. workplace harassment laws change

<http://www.cbc.ca/news/canada/windsor/story/2010/06/15/wdr-workplace-safety-bill-168-100615.html>

#### Profile of violent workplace victimization incidents<sup>1</sup>

<http://www.statcan.gc.ca/pub/85f0033m/2007013/findings-resultats/4054152-eng.htm>

For questions, concerns and to request further information, please contact:

Holly Murray  
Public + Media Relations Coordinator  
[HollyMurray@vpi-inc.com](mailto:HollyMurray@vpi-inc.com)  
905.624.3353 ext. 1071