

# Breakfast for Business

## Creating Workplace Violence and Harassment Policies and Programs

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# Introduction

- In April 2009 the Ontario government introduced Bill 168 which proposed to amend the OHSA and to introduce legislative provisions regarding violence and harassment in the workplace.
- On December 15, 2009 the Bill was passed into law. As a result, employers have until June 15, 2010 to come into compliance with the amendments.

# Scope of the Legislation

- These new legislative provisions set out employer and supervisor obligations in regards to “workplace violence” and “harassment” committed by a “person” at the “workplace”.

# Scope of the Legislation

- Workplace Violence is defined as being:
  - a) acts of physical violence;
  - b) attempted physical violence; and
  - c) threats of physical violence.
- Workplace violence does not include psychological violence (i.e. inappropriate gestures or teasing)

# Scope of the Legislation

- Harassment is defined as engaging in a course of vexatious comments or conduct that is known or ought to be known as unwelcome.
- This definition is the same as the definition of harassment under the Ontario *Human Rights Code*.

# New Employer Obligations

- Employers will be required to:
  - 1) Conduct Workplace Violence Risk Assessments
  - 2) Establish Workplace Violence and Harassment Policies.

# New Employer Obligations (cont.)

- 3) Establish Workplace Violence and Harassment Programs which implement the Policies.
- 4) Provide information to workers regarding workplace violence and harassment.

# New Employer Obligations (cont.)

- 5) Take reasonable precautions to protect workers from workplace violence related to domestic violence.
- 6) Allow and respond to work refusals related to workplace violence.

# Risk Assessment

- Employers will now have to conduct an assessment of the risk of violence arising as a result of the nature of the workplace and the type and conditions of the work done.
- There is no explicit requirement to conduct a workplace harassment or domestic violence risk assessment.
- To conduct a risk assessment employers are required to consider both its specific workplace as well as similar workplaces.

# Risk Assessment

- Conducting a risk assessment will generally involve:
  - Reviewing records and reports, including security reports, employee incident reports, health and safety reports, first aid records.
  - Meeting with, interviewing, and/or surveying some or all of the workers about concerns they have about work practices, public interactions or any other violence-related issues.
  - Conducting a worksite walk through to identify risks presented by the workplace itself.
  - Identifying the factors at the workplace and similar workplaces that may contribute to a risk of violence.

# Risk Assessment

- In order to identify any factors which may increase the risk of violence at a workplace, employers should consider if the work done by their workers involves:
  - Handling or exchanging cash or other valuables
  - Serving alcohol
  - Providing security services – such as protecting or securing persons or valuables
  - Contact with the public, including :
    - Working with unstable or volatile people
    - Working with people with a history of violence
  - Working alone or with only a few colleagues
  - Working early in the morning or extremely late at night

# Risk Assessment

- Factors that increase risks – the work done (cont.):
  - Transporting people or goods
  - Handling or selling weapons or objects that could be used as weapons

# Risk Assessment

- In addition, in order to identify the factors that increase the risk of violence at the workplace, employers should consider whether the workplace:
  - Is mobile (i.e. a taxi cab or a truck)
  - Is isolated (i.e. limited road access)
  - Is open to the public (i.e. a retail store)
  - Is in a community-based setting (i.e. the client's home)
  - Has security devices in place – i.e. proper lighting, working locks, surveillance cameras, an alarm system, etc.

# Risk Assessment

- Completed assessments have to be given to the company's health and safety representative or committee and if there is no representative or committee, to the workers.
- Reassessments must occur as often as is necessary.

# Workplace Violence and Harassment: Policies

- After conducting a risk assessment, employers will have to prepare workplace violence and workplace harassment policies.
- The policies must be reviewed at minimum annually.
- Employers with 5 or more workers are required to have written policies and to post them at the place of work.

# Workplace Violence and Harassment: Programs

- Employers also are required to develop and maintain a program to implement their workplace violence and workplace harassment policies.

# Workplace Violence and Harassment: Programs

- The workplace violence program must:
  - Establish a means of controlling the risks identified in the workplace risk assessment;
  - Establish procedures for summoning immediate assistance when workplace violence has occurred or is likely to occur;
  - Establish procedures to allow for workers to report incidents of workplace violence; and
  - Establish how the employer will investigate and deal with incidents or complaints of workplace violence.

# Workplace Violence and Harassment: Programs

- The workplace harassment program must:
  - Establish procedures to allow workers to report incidents of workplace violence; and
  - Establish how the employer will investigate and deal with incidents or complaints of workplace violence.

# Workplace Violence and Harassment: Duty to Inform

- Employers will have a duty to provide “appropriate” information and instructions regarding the workplace violence and harassment policies and programs.
- In addition, employers and supervisors will also have a duty to advise workers about an individual if: 1) the workers can be expected to encounter that person in doing their job and; 2) that individual presents a likely risk of workplace violence resulting in physical injury.

# Workplace Violence and Harassment: Duty to Inform

- Duty to inform where individual presents a risk of physical harm to worker (cont.)
  - The information provided to the workers about the individual can include personal information, such as that individual's history of violence.
  - The information disclosed must be no more than is reasonably necessary to protect the workers from physical injury.

# Domestic Violence

- Under the new provisions, where an employer knows of or should know of domestic violence which is likely to expose a worker to physical injury, that employer will have to take “every precaution reasonable in the circumstances” to protect the worker.
- Domestic violence is not defined.

# Workplace Violence: Work Refusals

- Section 43 of the current *OHSA* enunciates when a worker can refuse work due to a workplace hazard and what occurs if work is refused.
- Section 43 will be amended to allow for workers to refuse work where workplace violence is “likely to endanger him or her”.
- There is no amendment to section 43 to include work refusals based on workplace harassment.

# Workplace Violence: Work Refusals

- Under the amended section 43, when a worker refuses work, the worker will report the incident and an investigation will occur. During the investigation the worker is remain as reasonably close to his/her work station as possible and is to remain available for the purposes of the investigation.
- If following the investigation the worker still refuses to work, an MOL Inspector is contacted and an inspection is performed.

# Workplace Violence: Work Refusals

- No amendment will be made to the subsection of 43 regarding informing other workers of the refusal, so as to include an obligation to let other workers know before they continue to work with the allegedly violent individual.
- However, employers should keep in mind that the general duty in the *OHSA* for employer to inform workers of a risk of violence, may apply.

# Get in Compliance.

- Employers who are not in compliance with the new amendments may face fines and penalties.
- In order to ensure compliance by the June 2010 deadline, employers should begin conducting workplace violence risk assessments and commence developing their workplace violence and harassment policies and implementation programs.

# Get in Compliance.

- Wilson Vukelich can assist you as an employer with getting into compliance by:
  - Working with you in preparing for and conducting the Workplace Violence Risk Assessment. This would include providing a questionnaire based on possible risk factors to help you identify your workplace violence risks.

# Get in Compliance.

- Drafting Workplace Violence and Harassment Policies, tailored to the unique risks related to your business.
- Drafting Workplace Violence and Harassment Programs, which are in line with your policies and reflect the set up and structure of your business.
- Providing legal advice to help you avoid challenges under these new obligations and to help you deal with challenges as they may arise.

# Get in Compliance.

Wilson Vukelich LLP can help ensure you are in compliance with these new workplace obligations. Please contact:

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