



Ontario Has a New Workplace Violence and Harassment Law Is Your Business in Compliance?

Bill 168 came into force on June 15, 2010.

As with all other breaches of the Occupational Health and Safety Act, failure to comply with its requirements can result in charges being laid against business owners, directors, officers, and supervisors.

The law defines workplace violence quite broadly—“in addition to the exercise and attempt to exercise physical force, the definition includes 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.”

There is no exemption for small employers, employers that have never experienced a violent or harassing act in the workplace, or for employers with little risk of ever experiencing a violent or harassing act in the workplace. There is also no exemption for charitable or non-profit organizations.

Four steps you need to take to comply:

- Conduct a violence risk assessment for each worksite and prepare a risk assessment report for each worksite.
- Based on the violence risk assessment, develop a policy and an implementation program to prevent and manage workplace violence.
- Develop a policy and an implementation program to prevent workplace harassment.
- Implement the policies and programs by informing staff of the policy, posting the policies in a prominent location accessible to all staff, and training staff to understand their responsibilities under the policies.

Maximum penalties for an individual are \$25,000 plus imprisonment for not more than 12 months, and \$500,000 for a corporation. Ignorance of the law and lack of finances are not valid defences to a charge.

Labour + Employment
David M. McNevin 519.790.7476

Absent compliance with the above requirements, businesses, their owners, and management may also be exposed to civil lawsuits arising out of incidents of workplace violence or harassment. Personal liability of directors and officers (which may also include senior management) who failed to put the mandatory policies and programs into place is a realistic possibility.

If an employer simply puts a policy into place without conducting the required assessments in advance and does not tailor the policy to reflect the risk assessment, then the employer has not complied with the legislation and could expose itself and its management to potential liability.

The new law is unique in respect to the provisions which specifically address domestic violence. If an employer knows “or ought reasonably to be aware” that domestic violence would likely expose a worker to physical injury that may occur in the workplace, the law mandates that the employer “take every precaution reasonable in the circumstances for the protection of the worker.”

Individual safety plans may be required for individual workers at risk of domestic violence in the workplace even if the worker doesn't ask for or objects to such a plan. If the employer knows of the risk, the employer must act on that knowledge to protect the worker and to avoid liability.

The policies and programs must be reviewed annually or as often as necessary to ensure they are relevant in the context of each worksite.

To best protect the employees, the business, and management against potential liability, thoughtful and documented effort should be made to develop and implement tailored policies and programs. Finally, top off the project with prompt, effective response to any workplace incidents, coupled with a policy and program review annually or more often as needed. If you'd like some help, contact the author or Bob Baksi 519.561.7436.

