



Evans, Philp LLP  
Barristers and Solicitors

Breakfast Series:

**Bill 168**

*Getting Ready*

# Bill 168

## *Getting Ready*

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# Introduction

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- Bill 168 is an Act to amend the *Occupational Health and Safety Act* so as to address workplace violence and harassment.
- This seminar provides an overview of the new obligations the Act places on employers.

# Workplace Violence Defined

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Workplace Violence is defined as:

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

# Workplace Violence

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Note: the definition simply refers to violence to a worker in a workplace.

Therefore it captures more than just acts of workers committed against other workers, but could include violence committed by customers or members of the public, provided such acts actually occur in the workplace.

# Workplace Harassment Defined

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Workplace Harassment is defined 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”.

This is the same wording used in the *Human Rights Code* but Bill 168 harassment is not restricted to harassment based on prohibited grounds of discrimination such as sex, race or age.

# Workplace Harassment

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Again, it should be noted that this definition can include harassment committed against workers by the public.

# Employer Obligations

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There are three main areas of employer obligation:

1. Policies
2. Programs
3. Other Duties



# Policies

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Every employer must prepare a workplace violence policy *and* a workplace harassment policy.

They must be reviewed 'as often as necessary' but **at least annually**.

If the workplace employs 5 or more workers (or if ordered) the policies must be in writing and posted conspicuously.

Workers must be trained on the contents of the policies.

# Programs

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Every employer must develop a comprehensive program to implement the violence in the workplace policy.

# Violence Program

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A Violence Program must have measures and procedures to:

- a) control risks that are likely to expose workers to injury as identified in an assessment (more on assessment later);
- b) summon immediate assistance when violence occurs or is likely to occur;
- c) report incidents and threats of violence to the employer or supervisor;
- d) set out how the employer will investigate and deal with incidents and complaints of violence; and,
- e) include any other elements prescribed by regulation.

# Risk Assessment

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An Employer must assess the risk of workplace violence that may arise from the nature of the workplace, the type of work and conditions of work.

The assessment must take into account: circumstances common to similar workplaces, those specific to the workplace in question and any factors that may be prescribed by regulation.

# Risk Assessment cont'd

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The Employer must report the results of the assessment and provide a copy to:

- a) The Joint Health and Safety Committee;
- b) A Health and Safety Representative; or,
- c) The Workers if there is no Committee or Representative (with copies provided on request).

# Risk Assessment cont'd

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Re-assessments are required as often as necessary to ensure the Policy and Program continue to protect workers.

Therefore we would recommend re-assessment at least annually.

Same disclosure obligation applies to re-assessment.

# Harassment Program

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Employers must also develop a program to implement workplace harassment policy.

A Harassment Program must:

- a) Include measures and procedures for workers to report incidents of harassment to the employer or supervisor;
- b) Set out how the employer will investigate and deal with incidents and complaints of harassment; and,
- c) include any other elements prescribed by regulation.

# Harassment Program cont'd

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Note the reference to incidents as well as complaints.

This suggests a duty to respond to and be aware of incidents beyond those that are the subject of employee complaints.

This is also true of violence.



# Other Duties

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Bill 168 also sets out additional duties. These include:

- a) Information and Instruction;
- b) Domestic Violence Protection; and,
- c) Expansion of existing *OHS*A duties.

# Information and Instruction

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Employers must provide

“information and instruction that is appropriate for the worker on the contents of the policy and program as well as any other information prescribed by regulation” [for both violence and harassment].

Read: [Training](#).

# Domestic Violence

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“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.”

The Act does not define “domestic violence.”

# Expansion of Existing *OHSA* Duties

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- Employer duties are set out in section 25 of the *OHSA*;
- Supervisor duties are set out in section 27; and
- Worker duties are set out in section 28.

Such duties now apply as appropriate with respect to workplace violence.

# Expansion of Existing *O*HSA Duties

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This would include such activities as:

taking every precaution reasonable in the circumstances for the protection of a worker (s. 25(2)(h));

providing information and instruction to protect the health or safety of a worker (s. 25(2)(a)); and,

a supervisor advising a worker of the existence of any actual or potential danger to the worker's health or safety of which the supervisor is aware(s. 27(2)(a)).

# Providing Information

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Bill 168 specifies that the duty on employers and supervisors to provide information (s. 25(2)(a)) or to advise (s. 27(2)(a)) includes disclosing information, including personal information, related to a risk of violence from someone with a history of violent behaviour if:

- a) The worker can be expected to encounter that person in the course of his or her work; and,
- b) The risk of violence is likely to expose the worker to physical injury.

No more personal information shall be disclosed than is reasonably necessary to protect the worker from physical injury. Note: this applies to violent people **not just co-workers**.

# Providing Information

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If a worker is disabled from performing his or her normal work or requires medical attention due to an incident of workplace violence the employer must report the incident within four days of its occurrence to the Joint Health and Safety Committee or the Health and Safety Representative or the union, if any, and if an Inspector requires it, to the Director (under the *OHSA*) as well.

# Right to Refuse Work

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Under Bill 168 a worker can refuse work under the additional ground that he or she has reason to believe that:

“workplace violence is likely to endanger himself or herself”



# Right to Refuse Work cont'd

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Additionally, an employee does not have to remain at his or her workstation during an investigation, but must

- remain in a safe place as near as reasonably possible to his or her workstation; and,
- be available to the employer or supervisor for the purposes of the investigation.

# Enforcement

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Bill 168 does not create a new cause of action for employees to claim compensation for workplace harassment or violence as under the *Human Rights Code*.

The duties placed upon employers are procedural – implement programs, take precautions, etc.

# Enforcement cont'd

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A failure to do these acts can be the subject of normal inspection/enforcement proceedings under the *OHSA* .

Fines for infringement of the *OHSA* are up to \$25,000 for individuals (and/or 12 months in jail) and \$500,000 for corporations.

# Enforcement cont'd

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Just as with accidents under the *OHSA*, if an incident of violence does occur then the employer's actions in meeting its obligations would be material.

It is likely that something similar would happen if someone reported harassment to the Ministry.

# Regulations

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The Bill provides the government the power to enact regulations setting out:

- a) Elements required in policies;
- b) Restrictions, prohibitions or conditions with respect to workers or workplaces relating to risks of workplace violence;
- c) Requiring an employer to designate someone as a “workplace co-ordinator” and setting out the duties of such a person;
- d) Specifying situations in which workplace violence is inherent in someone’s work (exempting them from work refusal); and,
- e) How this law applies in the taxi industry.

# Practical Notes

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- Discipline employees for violations of the policies created pursuant to Bill 168.
- Keep detailed records of all incidents of violence and harassment.
- Ensure proper security measures are in place to protect workers from members of the public.
- Practice violence response procedures.

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*Thank you for coming!*