

## Ontario Government Introduces Legislation Mandating Employer Action for the Prevention and Management of Workplace Violence and Harassment

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On April 20, 2009, the Minister of Labour for Ontario introduced Bill 168, An Act to amend the *Occupational Health and Safety Act* with respect to violence and harassment in the workplace. The Bill passed first reading and is expected to receive Royal Assent later this year. When the Bill becomes law, all employers operating in Ontario will be responsible for the prevention of violence and harassment in the workplace, as similar amendments to the *Occupational Health and Safety Regulations* under Part II of the *Canada Labour Code* came into effect in May 2008.

The proposed amendments under Bill 168 explicitly set out a positive duty for every employer to take specific steps to proactively prevent and manage workplace harassment and violence. The internal responsibility system and supervisor and worker duties will continue to apply, as appropriate, to workplace violence. Here is a brief overview of the key requirements.

### Definitions

The Bill defines workplace violence and harassment, as follows:

“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

“workplace violence” means, (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

In comparison to some other jurisdictions, Ontario has proposed fairly expansive definitions of workplace violence and harassment that include both the exercise and attempt to exercise physical force against another person as well as unwelcome comment or conduct. However, unlike the Federal legislation, proposed definition of violence does not include threats of violence.

### Policy and Program

The proposed amendments require every employer that regularly employs more than five workers to develop and post a policy addressing workplace violence and harassment. The employer must also develop a program to implement that policy. The program must

include measures to control risk of workplace violence and harassment, emergency response procedures, reporting procedures to be followed by workers, and procedures for the investigation of incidents and worker complaints.

Under the Bill, an inspector may order an employer with five or less regularly employed workers to also develop a policy and program respecting workplace violence and harassment.

### Assessment of Risk

Once all contributing factors are identified, the employer is obligated to assess the potential for violence at its workplace and implement appropriate controls to prevent and manage the risk for violence. The risk assessment must consider conditions of work at the employer’s own workplace and those common to similar workplaces. The employer must share the results of the risk assessment with the Joint Health and Safety Committee or the workplace health and safety representative.

The employer must reassess the risk of workplace violence so as to ensure its effectiveness in addressing the problem and any related issues that may arise at the workplace.

### Domestic Violence

The Bill also places a duty on an employer to take every reasonable precaution for the protection of a worker, if the employer knows or ought to reasonably know that there is a likelihood that the safety of a worker may be endangered at the workplace by an act of domestic violence.

### Provision of Information and Instruction

The employer will be required to provide information and instruction to its workers on its workplace violence and harassment policy and program. In particular, the employer will be required to disclose to its workers the risk of violence from a person with a history of violent behaviour who they may encounter in the course of employment. This disclosure obligation appears to apply only to a risk of physical violence and not harassment.

### Notification and Investigation

As with other serious incidents, the proposed amendments require the employer to notify the Ministry of Labour of an incident of violence as per section 52 of the Act.

### Right to Refuse Work

Bill 168 also proposes to amend the work refusal provisions of the Act to include workplace violence. The existing work refusal process under the Act would apply with the exception that the endangered employee is required to stay only “as near as reasonably possible” to his or her work station. The proposed amendments do not alter the limitation on essential public sector employees, such as firefighters and police officers, to refuse unsafe work that is inherent to their profession.

### Summary

In summary, the proposed amendments will require employers to estab-

lish an anti-workplace violence policy and a comprehensive program aimed at preventing and managing workplace violence. More specifically, employers will be required to take steps in identifying, assessing, and controlling hazards relating to workplace and violence harassment.

The human, legal, and economic costs of workplace violence can be profound, and therefore, risk management is key.

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For more information on Bill 168 or Gowlings Seminars on the Prevention and Management of Violence in the Workplace, please contact Norm ([norm.keith@gowlings.com](mailto:norm.keith@gowlings.com)) or Goldie ([goldie.bassi@gowlings.com](mailto:goldie.bassi@gowlings.com)). You may also visit our website for information on our consulting, training, and legal services at [www.gowlings.com/ohslaw](http://www.gowlings.com/ohslaw). ■

## Seminar on the “New” Workplace Violence Legislation Bill 168: An Act to amend the *Occupational Health and Safety Act*

This half-day seminar will provide a thorough review of the requirements under Bill 168 to prevent and manage workplace violence and harassment.

**Date:** June 23

**Time:** 9:00am - 12:00pm

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