

# Legislating against violence at work

Ontario employers will be responsible for implementing prevention and response measures

Violence prevention at work has emerged as a key priority across Canada. The McGuinty government has followed the lead of most provinces and the federal government with Bill 168, which proposes comprehensive amendments to the *Occupational Health and Safety Act*. The

*Health and Safety Act*. From a liability perspective, employers and management will be exposed to the act's remedial provisions in the event they fail to meet due diligence standards applicable to workplace violence prevention and harassment prevention.

of vexatious comment or conduct against a worker in a workplace that is known or reasonably ought to be known to be unwelcome." This definition has been borrowed from the human rights definition. The scope and subjectivity of the definition will import considerable uncertainty for employers as to what will be treated as "workplace harassment" under the *Occupational Health and Safety Act*.

## Employer responsibility for domestic violence

Bill 168 will impose a degree of responsibility and accountability on employers for the risk of workplace violence related to domestic violence issues. If the employer is aware or "ought reasonably to be aware" that a domestic violence matter could expose a worker to physical injury at work, the employer will be required to take reasonable precautions to protect this worker. At minimum, the provisions would require any employer with direct or indirect knowledge of a domestic abuse or dispute issue that suggests the potential for violence to pursue some degree of inquiry and develop a potential response, depending on the results of the inquiry.

## Implications for employers

Ontario employers can expect Bill 168 to become law in Ontario in 2009, given the high priority that workplace violence and prevention is attracting. Hopefully, there will be some further consideration of the definition of "workplace harassment" if the bill continues to create obligations with respect to workplace harassment.

It is unlikely that the elements of the prevention programs identified in Bill 168 will vary much from what exists elsewhere in Canada. The elements contemplated are consistent with those identified by most Canadian jurisdictions as key to mounting effective violence prevention programs and demonstrating due diligence. Further, the workplace harassment program components identified in Bill 168 are consistent with the historical due diligence expectations associated with an employer's obligations for workplace harassment prevention in the equality rights context.

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The discharge of an employer's due diligence obligations will likely demand, at minimum, that employers demonstrate full compliance with the detailed requirements of the legislative provisions prescribing the required violence prevention programs and harassment prevention initiatives.

## What is required of employers

Bill 168 would require every employer in Ontario with more than five employees to develop and implement a comprehensive violence prevention program. Mandatory elements include:

1. developing and implementing a workplace violence policy, to be posted at a conspicuous place in the workplace
2. initiatives to assess and identify the risks of workplace violence particular to the organization
3. developing and implementing measures and procedures to control or minimize risks identified in the risk assessment process
4. developing procedures for workers to report incidents of workplace violence or threats of workplace violence; and appropriate investigative procedures
5. establishing and communicating reporting procedures
6. developing and communicating procedures for investigating and addressing incidents or threats of violence
7. an obligation to provide a copy of the results of the risk assessment to the joint health and safety committee (or safety representative or workers)
8. training with respect to the violence prevention program

## Definition of harassment

The definition of "Workplace Harassment" in Bill 168 will generate significant concern among employers. "Workplace harassment... means engaging in a course

proposed amendments will create serious and significant obligations for all Ontario workplaces with more than five employees to develop and implement comprehensive initiatives directed at preventing workplace violence and harassment.

The likelihood is that Bill 168 will be passed, given the prioritizing of the issues of violence and harassment in the workplace. Details of the bill defining employer obligations are no surprise. They reflect the legislative frameworks that have emerged in other Canadian jurisdictions. Bill 168 would

- introduce statutory obligations on employers for workplace harassment prevention beyond the protection from harassment already rooted in equality rights status
- codify employer obligations with respect to what has been characterized in common law developments as "personal harassment" or "psychological harassment"

The proposed statutory provisions addressing workplace violence and harassment would significantly expand employer responsibility and accountability for ensuring workplace environments and interactions consistent with a worker's health, safety and well-being.

It is important to highlight that the proposed employer responsibilities for workplace violence and harassment prevention will arise under the *Occupational*