

# OPSEU Guide to Bill 168 regarding workplace violence and harassment

May, 2010

## Overview of Bill 168

Workplace violence and workplace harassment are now recognized in the *Occupational Health and Safety Act (OHSA or the Act)*. The amendments become law June 15, 2010.

### **New Definitions in *Occupational Health and Safety Act***

***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,*
- (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.*

### **Employer Obligations**

Employers must:

- Prepare policies to address workplace violence and workplace harassment
- Perform an assessment of the risks of workplace violence to workers and provide the results of the assessment to the Joint Health and Safety Committee (JHSC) or Health and Safety representative
- Develop and maintain a workplace violence program
- Provide information and instruction to workers on the content of the workplace violence and the workplace harassment policies and programs

- Both policies must be reviewed at least annually. The employer is required to reassess the risks of violence “as often as is necessary” to ensure the policy and program continue to protect workers.
- The workplace violence program must contain:
  - Measures and procedures to control risks identified in the risk assessment
  - Measures and procedures for summoning assistance when workplace violence occurs or is likely to occur
  - Measures and procedures for reporting workplace violence
  - Set out how the employer will investigate and deal with incidents or complaints of workplace violence
- The workplace harassment program must contain:
  - Measures and procedures for workers to report incidents of workplace harassment
  - Set out how the employer will investigate and deal with incidents and complaints

### **Domestic violence**

The new legislation requires employers to put measures in place to protect a worker from domestic violence that may enter the workplace. If an employer becomes aware of the threat of domestic violence, he/she will be expected to develop a safety plan to protect the worker(s) at risk. The safety plan might include things such as increased security measures, alternate work arrangements and/or an emergency communications plan.

Following is the new section of the Act:

**s.32.0.4** *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.*

### **Provision of information**

The amendments identify the employer’s obligation to warn workers about the threat of violence from individuals (“violence from a person”). This includes violence from any person that the worker can be expected to encounter in the course of their work – patients, doctors, families, clients, customers, residents, inmates, and other workers – if there is a risk that the worker will be exposed to physical injury. Employers and supervisors must also not disclose more

information than is reasonably necessary for the protection of a worker from physical injury.

This implies some sort of flagging system so that all workers who need to know about the hazard learn about it in advance. Note that duties under OHSA trump those of other legislation (See OHSA s.2(2): “*Despite anything in any general or special Act, the provisions of this Act and the regulations prevail.*”). The employer cannot refuse to communicate information about the hazard of violence by hiding behind privacy legislation.

Following is the new section of the Act:

**s.32.0.5(3)** *An employer’s duty to provide information to a worker under clause 25(2)(a) and a supervisor’s duty to advise a worker under clause 27(2)(a) include the duty to provide information, including personal information, related to a risk of workplace violence from a person 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 workplace violence is likely to expose the worker to physical injury.*

**s.32.0.5(4)** *No employer or supervisor shall disclose more personal information in the circumstances described in subsection (3) than is reasonably necessary to protect the worker from physical injury.*

## **Work refusals**

Workers now clearly have the right to refuse work if they have reason to believe workplace violence is likely to endanger them. The limited right to refuse for certain workers described in OHSA s.43(2), continues. There is no right to refuse because of harassment, unless you believe the harassment is likely to become physical violence.

## **What Bill 168 Does Not Do**

- It does not indicate how Ministry of Labour (MOL) inspectors might respond to dangerous situations such as working alone in workplaces such as a group home or a liquor store, travelling late at night, or travelling alone to isolated areas, how risk assessments are to be performed or whether MOL inspectors will review risk assessments for quality.
- It does not specifically address staffing levels or staff qualifications which may be a source of danger.

- Only employers covered by the *Regulation for Health Care and Residential Facilities* are specifically obliged to consult with JHSCs or Health and Safety reps while developing policies, procedures and measures and while developing health and safety training under the amendments. While consultation is not specifically required in other regulations (such as the *Regulation for Industrial Establishments*), JHSCs and Health and Safety representatives should insist that employers consult with them throughout the process of developing the workplace violence program.
- It does not describe how training on the policies and programs is to be done; nor does it indicate how frequently it should be offered or reassessed.
- MOL inspectors will not be able to take much action around workplace harassment, other than to review whether an employer has developed a policy, a procedure for workers to report incidents of harassment, and a procedure for employers to investigate and deal with reports. Although inspectors will not investigate specific complaints of harassment, they can write orders if employers have not complied with the legislation. Workers can utilize their JHSCs, health and safety representatives, local union representatives, and local union processes such as labour management committees and grievances to ensure that workplace harassment protection meets legal requirements and adequately protects workers.

## **Steps to Implement a Workplace Violence Policy and Program**

The steps to implement the obligations in Bill 168 follow the same approach as with any health and safety hazard – identify, assess and control. And as with any control program, there is an additional step to assess whether the program is effective. The steps below are not described in the legislation, but they may be helpful as a way to organize what is required in your workplaces.

Although ultimately, developing and implementing the workplace violence policy and program is an employer responsibility, the JHSC or Health and Safety representative should be involved every step of the way. Strive to be consulted, insert yourself into processes such as the risk assessment and results, identify gaps and provide recommendations to improve measures and procedures, policy, and training.

### **Identify the Hazard**

#### **Step 1**

Collect information in your workplace. Depending on the size and nature of your workplace, you may use some or all of the sources below:

- review incident reports and WSIB reports
- conduct a staff survey about experiences and perceptions of workplace violence
- review JHSC minutes for trends and recommendations
- conduct focus groups of workers from different areas of workplace to start to identify highest risk areas
- review security logs, Code White reports, workplace inspection reports
- review EAP usage
- review grievances

Gather together existing policies and procedures which are related to workplace violence issues and review them – are they up-to-date, do they overlap, are they in compliance with the new legislation, are there noticeable gaps?

### **Assess the hazard**

#### **Step 2**

Some of the activities in Step 1 are components of the Risk Assessment. However, in addition to those activities, it is necessary to perform additional assessments.

Risk assessment can be divided into two parts:

- assess the physical environment of the workplace: This means looking at things such as lighting, furniture, tools and equipment that could be used as weapons, parking lots, facility entrances and exits, blind spots in the building, areas where workers work alone, public service counters, location of cash and medications, stairwells, washrooms, meeting rooms, and access to telephones or other communication devices.
- assess work practices and nature of work: This assessment should consider work practices such as working alone, whether workers in the field have a way of communicating with a supervisor in an emergency, whether a client population has a history of violence, how cash is managed in a retail environment, whether clients or the public has physical access to workers, if potentially violent persons are transported by workers, if an assessment for violence is part of the regular assessment process for new patients/clients, whether these assessments are communicated between staff and upon transfer, etc.

The physical risk assessment is the most straightforward part of the assessment process. Assessing work practices and nature of work is often more complicated for many reasons. For example in health care or social services workplaces, workers and supervisors are often reluctant to be seen as labelling

patients/clients as dangerous for fear of stigmatizing them further. In these sectors violence can be both intentional and “non-intentional,” so it is often helpful to focus on the “impact” of the violence rather than on “intent.” In some workplaces, workers and supervisors may have come to accept a certain level of violence as “just part of the job” making it difficult to assess risk. It is important to remember that a workplace that is safer for workers is also safer for clients or patients, so striving for less violence in the workplace benefits everyone. In most places, people get used to doing things in a certain way and putting in place new measures in response to the assessment may upset entrenched practices. Also, employers may be reluctant to fully assess risks, because they are worried that they may have to increase staffing levels or make physical changes to the workplace.

Because workplaces, work practices and the nature of work are so different from one workplace to the next, it is important to use an assessment tool that captures the kind of work and the working environment in your workplace. Employers and JHSCs may need to seek assistance when looking for the best tool for their workplace. (See the resources cited at the end of document)

### **Control the Hazards**

#### **Step 3**

Policy: If your workplace does not already have a workplace violence policy, creating one indicates your employer’s commitment to protecting staff from the hazard. And it is now the law. If your workplace does have a policy, review it and update if necessary to comply with Bill 168.

Measures and Procedures: Creating measures and procedures to control the risks identified in Step 2 will create the backbone of your program. For each identified risk, there must be a measure and/or a procedure to reduce risk. Your workplace may have many measures and procedures in place, or you may find very few. You may be able to build upon some existing control measures.

- Remember – in workplaces covered by the *Regulation for Health Care and Residential Facilities*, the employer is legally required to consult with the JHSC or Health and Safety representative as the measures and procedures are being developed.

The control measures should control risks associated with:

- physical aspects of the workplace such as installing cameras, locking doors, removing objects that could be used as weapons
- specific jobs such as working alone in clients’ homes
- specific situations such as transporting clients to appointments

- there must be a systematic method of assessing all new patients/clients or residents in healthcare and social services environments for the hazard of violence and designing specific measures and procedures to eliminate or reduce these risks.

The program must also include:

- measures and procedures for summoning assistance
- measures and procedures for workers to report incidents including threats
- how the employer will investigate and address incidents and threats

#### **Step 4**

##### Implement the program which includes the policy, measures and procedures

It may be necessary to make difficult decisions about which measures and procedures will be implemented first. It may also be necessary to implement interim measures and procedures in some cases.

During the Risk Assessment step, it may be valuable to prioritize risks as high, medium or low to assist with later decisions about implementation. For example, a high risk area might be defined as an area where the potential for a violent incident is high and the outcome of the incident is severe.

It will be useful if there are numerous risks to be addressed, to create an Action Plan tool to indicate responsibilities, timeframes and progress for each control measure.

#### **Step 5**

##### Information and Instruction to Workers

Bill 168 requires the employer to provide information and instruction on the policy and the program to all employees, including managers and supervisors. Workers in areas requiring specific measures and procedures must be instructed on those. For example, if an emergency response procedure is used in your workplace, all those affected by it – those who respond and those who might have to call for emergency assistance – should receive instruction about the process.

Remember – in workplaces covered by the *Regulation for Health Care and Residential Facilities*, the employer is legally required to consult with the JHSC or Health and Safety representative when developing, establishing and providing

health and safety training. This requirement applies to workplace violence and harassment training as well.

## **Monitor and Evaluate**

### **Step 6**

The legislation requires the employer to review the policy annually and to reassess the risks of workplace violence "as often as necessary" to ensure the policy and program is protecting workers.

The JHSC or Health and Safety representative should continually assess the workplace violence program by reviewing incident reports, WSIB reports, and by investigating incidents of workplace violence.

If there is a change in the workplace such as opening or closing a work area, a change to client/resident/patient/customer populations, a new shift added, or a change to staffing levels or mix, the risk assessment to the affected areas should be repeated. Existing control measures and procedures should be re-evaluated in light of change to the risk assessment.

## **Additional Resources**

Ministry of Labour guide to Bill 168:

<http://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php>

OHSCO Guide: [http://www.labour.gov.on.ca/english/hs/pdf/wvps\\_guide.pdf](http://www.labour.gov.on.ca/english/hs/pdf/wvps_guide.pdf)

OHSCO Toolbox: [http://www.labour.gov.on.ca/english/hs/pdf/wvps\\_toolbox.pdf](http://www.labour.gov.on.ca/english/hs/pdf/wvps_toolbox.pdf)

OSACH Fast Facts on Workplace Violence, Bullying, and Domestic Violence:

[http://www.osach.ca/products/free\\_fastfacts.shtml](http://www.osach.ca/products/free_fastfacts.shtml)