

Preventing workplace violence and workplace harassment

Safe At Work Ontario
Enforcement > Compliance > Partnership >



Changes to Ontario's Occupational Health and Safety Act (OHSA) – effective June 15, 2010 – strengthen protections for workers from workplace violence and address workplace harassment. They define workplace violence and harassment and describe employer duties, and will apply to all workplaces covered by the OHSA.

Bill 168 amendments to the Occupational Health and Safety Act

Definitions

Workplace violence means:

- The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker
- An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker
- 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 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 harassment may include bullying, intimidating or offensive jokes or innuendos, displaying or circulating offensive pictures or materials, or offensive or intimidating phone calls.

Policies and programs

Employers must:

- Prepare policies with respect to workplace violence and workplace harassment,
- Develop and maintain programs to implement their policies, and
- Provide information and instruction to workers on the contents of these policies and programs.

Workplace violence programs must include measures and procedures for:

- Summoning immediate assistance when workplace violence occurs or is likely to occur, and
- Controlling risks identified in the assessment of risks.

Both workplace violence and workplace harassment programs must include measures and procedures for workers to report incidents of workplace violence/harassment and set out how the employer will investigate and deal with incidents or complaints.

Assessment

Employers must proactively assess the risks of workplace violence that may arise from the nature of the

workplace, the type of work or the conditions of work. Measures and procedures to control these risks must be included in the workplace violence program.

Domestic violence

Employers who are aware, or ought reasonably to be aware, that domestic violence may occur in the workplace must take every precaution reasonable in the circumstances to protect a worker at risk of physical injury.

Communication

Employers and supervisors must provide information to a worker about a risk of workplace violence from a person with a history of violent behaviour if the worker can expect to encounter that person in the course of work, and if the worker may be at risk of physical injury. Personal information may be disclosed, but only what is reasonably necessary to protect the worker from physical injury.

Work refusal

Workers have the right to refuse work if they have a reason to believe they are in danger from workplace violence. Reprisals by the employer continue to be prohibited. Certain workers continue to have only a limited right to refuse.

Enforcement

Ministry of Labour health and safety inspectors will enforce the new OHS provisions for workplace violence and workplace harassment and determine if employers are complying with their new duties. Employers and workers should always contact police first in emergency situations, if threats or actual violence occurs at a workplace.

Resources and tools for employers and workplace parties

Resource material is being developed by the occupational health and safety system partners – Health and Safety Associations (HSAs), the Ministry of Labour and the Workplace Safety & Insurance Board (WSIB) – to help employers assess workplace violence risks and develop workplace violence and workplace harassment policies and programs.

Ministry of Labour

A new compliance guideline – *Workplace Violence and Harassment: Understanding the Law* – will help workplace parties comply with the changes to the OHS. <http://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php>

New resources developed by the Occupational Health and Safety Council of Ontario (OHSCO): *Developing Workplace Violence and Harassment Policies and Programs: What Employers Need to Know and A Toolbox*. <http://www.labour.gov.on.ca/english/hs/pubs/index.php#workplaceviolence>

A revised *Guide to the Occupational Health and Safety Act* will include a section on workplace violence and workplace harassment. (Available summer, 2010)

Ministry of Labour website: <http://www.labour.gov.on.ca/english/>

Workplace Violence Legislation (Bill 168), full text
http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2181&BillStagePrintId=4499&btnSubmit=go

Health and Safety Associations

Ontario's HSAs are posting resources and training opportunities about workplace violence and workplace harassment on their website: <http://healthandsafetyontario.ca/HSO/Home.aspx>

Safe workplaces mean productive workplaces.

Bill 168 in action at union arbitration

The first important decision arising from the Bill 168 amendments to the Occupational Health and Safety Act (OHSA) held that verbal threats of workplace violence constitute just cause to terminate a worker's employment. Donna Hudson, a former employee of the City of Kingston, grieved the termination of her employment when she was dismissed for uttering a death threat against a co-worker. Although she admitted having "anger management problems," she unsuccessfully grieved the termination of her employment.

Canadian Union of Public Employees, Local 109, represented by Union counsel, Peggy Smith, argued that there is no just cause to terminate Hudson's employment. Christopher Edwards, counsel for the employer, relied upon the Bill 168 amendments to the OHSA, dealing with workplace harassment and violence, to uphold the discharge.

In hearing the arguments and evidence, Arbitrator Elaine Newman found, as a fact, that Hudson had a history of behavioural problems in the workplace, including her attendance at work. Hudson became aggressive, at one point, in a meeting to discuss the issue of her attendance. She put her hand very close to the face of the local union president, John Hale, with whom she had the meeting. Hudson was then given a three-day suspension for misconduct and referred to the employee assistance program.

Following her suspension, Hudson took a three-month sick leave.

Upon her return to the workplace, Hudson was involved in another incident of verbal abuse towards a co-worker, and was given a warning letter. One month later, she attended a three-hour session on Bill 168 awareness. Thereafter, the employer paid for Hudson to attend anger management classes and advised that if she remained discipline-free for one year, her disciplinary record would be wiped clean.

Two days following the completion of her anger management training, Hudson made a verbal threat of violence to Hale at the workplace. Hale took this threat seriously and Hudson's employment was subsequently terminated.

In her review of the facts and law with respect to this case, arbitrator Newman made four significant findings with respect to the Bill 168 amendments.

First, the arbitrator held that offensive language that is vexatious and unwelcome is harassment, and may in fact fit the definition of violence under the Bill 168 amendments.

The arbitrator went on to find that the conduct of Hudson met the definition of workplace violence under the Bill 168 amendments.

Second, the arbitrator held that the utterance of a threat is workplace violence and must be properly reported, investigated and addressed by the employer. The arbitrator held that the employer does not have the option of ignoring any incident of workplace violence. Further, the arbitrator held that the history of discipline, level of seniority, seriousness of the misconduct, impact of the misconduct, and likelihood of improvement of behaviour were all reasonable factors in assessing the appropriateness of discipline.

Third, the arbitrator held that Bill 168 provides direction on the weight or importance to be given to the factor of "the seriousness of the incident" in discipline. Bill 168 makes it clear that threats of violence should be considered as very serious and should not be tolerated in the workplace.

Fourth, the arbitrator applied Bill 168 to consider the risk of violence in relation to workplace safety. The arbitrator asked the question, "To what extent is it likely that this employee, if returned to the workplace, can be relied upon to conduct himself or herself in a way that is safe for others?" Further, the arbitrator asked the question, "To what extent is it predictable that the misconduct demonstrated will be repeated?"

In answering these questions, the arbitrator held that given the history of this particular griever, there was an intention to intimidate Hale. Further, although there was no physical assault, the threat actually did cause actual harm. Hale was shaken, emotionally distraught and took the threat seriously.

The arbitrator concluded, in upholding the termination, that "the emotional impact of a death threat is considerable, and constitutes actual harm upon its victim."

The arbitrator complimented counsel for their civility to the hearing process — a fitting contrast to the conduct of the griever.

There is no doubt that Bill 168 is a substantial and important amendment to the OHSA. The purpose of the OHSA is not only to prevent unintentional harm, but also intentional harm to workers in the workplace. The arbitrator's decision to uphold the termination of an employee with 28 years seniority demonstrates the importance to workers, union members, union leaders and employers of being aware of the Bill 168 amendments to the OHSA.