

# BILL 168

## *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*

### **A Review of Employer Obligations Under the *OHSA* Amendments**

The material presented at this seminar is for purpose of general discussion and does not constitute legal advice or opinion which may depend upon the particular circumstances under review.

## INTRODUCTION

The *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*, or Bill 168 as it is commonly known, is an Act to amend the Ontario *Occupational Health and Safety Act* (the “Act”). In passing Bill 168, Ontario joins Quebec, Saskatchewan and the Government of Canada (in respect of federally regulated employees) in addressing harassment, bullying and violence in the workplace.

Bill 168 introduces obligations upon employers in respect of workplace harassment and workplace violence and contains other consequential amendments. The Bill was passed into law on December 15, 2009 and comes into full force and effect on June 15, 2010. While the *Act* comes into force on June 15, 2010, the obligations imposed upon employers will require employers to take various steps prior to that date to ensure compliance with the *Act* upon its commencement. The purpose of this seminar is to provide attendees with an overview of the Act’s obligations and to assist employers in complying with the *Act’s* requirements by June 15, 2010. The material in this booklet is organized as follows:

1. (a) Summary of Key Provisions of Bill 168,  
(b) The text of Bill 168, and  
(c) Occupational Health and Safety Branch, Ministry of Labour, “Workplace Violence and Harassment: Understanding the Law” (March 2010)
2. Bill 168 Compliance Checklists
3. Summary of Obligations Regarding Workplace Harassment
4. Summary of Obligations Regarding Workplace Violence
5. An Overview of the Risk Assessment of Violence provisions
6. An Overview of the other Bill 168 amendments

Employers should take steps to become aware of the new obligations pursuant to Bill 168 and are advised to take the necessary steps to meet their obligations under the new legislation. Non-compliance with the new provisions may result in significant fines and penalties under the *OHS Act*.

**SUMMARY OF KEY BILL 168 AMENDMENTS**

	Workplace Harassment	Workplace Violence
Bill 168 introduces definitions of “workplace harassment” and “workplace violence”	s. 1(1) Workplace harassment means vexatious comments or conduct that is known or ought reasonably to be known to be unwelcome	s. 1(1) Workplace violence includes a threat, an attempt, or an exercise of physical force
Bill 168 requires the development and implementation of Workplace Harassment and Workplace Violence Policies	s. 32.0.1 prepare and post a written policy review the policy at least annually [policy does not need to be written in workplaces with 5 or few employees unless inspector orders otherwise]	s. 32.0.1 prepare and post a written policy review the policy at least annually [policy does not need to be written in workplaces with 5 or few employees unless inspector orders otherwise]
Bill 168 requires the development and implementation of Workplace Harassment and Workplace Violence Programs	s. 32.0.6 develop a program to implement the policy the program shall cover reporting incidents, and investigating and dealing with incidents	s. 32.0.2 develop a program to implement the policy the program shall cover controlling risk, summoning immediate assistance, reporting incidents, and investigating and dealing with incidents
Bill 168 requires employers to provide	s. 32.0.7	ss. 32.0.5(2) – (4)

<p>workers with information regarding their Workplace Harassment and Workplace Violence Policies and Programs</p>	<p>the employer shall provide the worker with appropriate information and instruction on the contents of the policy and the program</p>	<p>the employer shall provide the worker with appropriate information and instruction on the contents of the policy and the program</p> <p>the employer and the supervisor have a duty, in certain circumstances, to provide a worker with information (including personal information) about the risk of workplace violence from a person with a history of violent behaviour</p> <p>the employer and the supervisor shall not disclose more personal information than is reasonably necessary</p>
<p>Bill 168 requires employers to specifically address domestic violence in their Workplace Violence Policy</p>		<p>3. 32.0.4</p> <p>the employer shall take every reasonable precaution to protect workers from domestic violence in the workplace</p>
<p>Bill 168 requires a Risk of Workplace Violence to be assessed and communicated</p>		<p>s. 32.0.3</p> <p>assess the risk of workplace violence</p> <p>advise the joint health and safety committee, the health and safety representative, or the workers (as applicable) of the results of the assessment</p> <p>reassess as often as necessary</p>
<p>Right to refuse work expanded to include</p>		<p>s. 43(3)(b.1)</p> <p>a worker may refuse to work</p>

workplace violence		<p>where he or she believes that workplace violence is likely to endanger himself or herself</p> <p>ss. 43(5) and (10)</p> <p>until the employer's investigation or the inspector's investigation is complete, the worker shall remain in a safe place near his or her work station and be available to the employer, supervisor or inspector for the purposes of the investigation</p>
Bill 168 expands the duties of employers, supervisors and workers under the <i>OHS</i> A in respect of workplace violence		<p>s. 32.0.5(1)</p> <p>the employer duties in s. 25, the supervisor duties in s. 27, and the worker duties in s. 28 apply, as appropriate, with respect to workplace violence</p>
Bill 168 provides additional powers of inspectors regarding workplace harassment and workplace violence	<p>s. 55.1</p> <p>an inspector may order an employer with five or fewer employees to prepare and post written policies with respect to workplace harassment</p>	<p>s. 55.1</p> <p>an inspector may order an employer with five or fewer employees to prepare and post written policies with respect to workplace violence</p> <p>s. 55.2</p> <p>an inspector may order a written assessment or reassessment of workplace violence</p>
Bill 168 provides the Legislature with additional powers to implement new regulations regarding workplace harassment	<p>s. 70</p> <p>power to make regulations prescribing policy elements, requiring an employer to designate a workplace</p>	<p>s. 70</p> <p>power to make regulations prescribing policy elements, requiring an employer to designate a workplace</p>

and workplace violence	violence and harassment coordinator	violence and harassment coordinator, prescribing restriction, prohibitions or conditions with respect to workplace violence, and clarifying the risk to refuse to work
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**TO VIEW THE TEXT OF BILL  
168, PLEASE VISIT:**

**[http://www.ontla.on.ca/bills/bills-  
files/39 Parliament/Session1/b168ra.pdf](http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b168ra.pdf)**

**TO VIEW THE  
OCCUPATIONAL HEALTH AND  
SAFETY BRANCH, MINISTRY  
OF LABOUR, “WORKPLACE  
VIOLENCE AND  
HARASSMENT:  
UNDERSTANDING THE LAW”  
(MARCH 2010), PLEASE VISIT:**

[http://www.labour.gov.on.ca/english/hs/pdf/wpvh\\_gl.pdf](http://www.labour.gov.on.ca/english/hs/pdf/wpvh_gl.pdf)

**Bill 168 COMPLIANCE CHECKLIST  
FOR WORKPLACE HARASSMENT**

The following checklist sets out key employer obligations with respect to workplace harassment under Bill 168 and suggests timeframes for meeting these obligations.

	<b>Obligation</b>	<b>Completion Date</b>
1.	Workplace harassment policy to be prepared	As there are a number of steps that must be completed prior to June 15, 2010, the policy should be prepared as soon as possible
2.	Workplace harassment policy to be posted	Upon completion of the policy
3.	Develop a program to implement workplace harassment policy	Upon completion of the policy, the development of the program should commence promptly
4.	Information and instruction on contents of workplace harassment policy to be given to workers	This obligation requires providing both information and instruction to workers. Accordingly, employee training sessions on the workplace harassment policy and program should be scheduled prior to June 15, 2010
5.	Review workplace harassment policy annually	The workplace harassment policy must be reviewed "as often as is necessary" and no later than one (1) year from the date of its posting

**Bill 168 COMPLIANCE CHECKLIST  
FOR WORKPLACE VIOLENCE**

The following checklist sets out key employer obligations with respect to workplace violence under Bill 168 and suggests timeframes for meeting these obligations.

	<b>Obligation</b>	<b>Completion Date</b>
6.	Workplace violence policy to be prepared	As there are a number of steps that must be completed prior to June 15, 2010, the policy should be prepared as soon as possible
7.	Workplace Violence Policy to be posted	Upon completion of the policy
8.	Assessment of the risks of workplace violence	Following the development of the policy but before the development of the program to implement the policy, a risk assessment must be performed
9.	Advising of results of risk assessment to:  (a) Joint Health and Safety Committee or health and safety representative, and if in writing, provide copy; or  (b) Workers, if there is no JHSC or health and safety representative, and if in writing, provide copies on request or advise how to obtain copies	Following completion of the risk assessment
10.	Develop a program to implement workplace violence policy	After completion of the risk assessment and policy, a program to implement the workplace violence policy should be developed, which, among other things, must include measures to control risk of workplace violence identified in the risk assessment
11.	Information and instruction on contents of workplace violence policy and program to be given to workers	This obligation requires providing both information and instruction to workers. Accordingly, employee training sessions on the workplace violence policy and program should be scheduled prior to June 15, 2010
12.	Reassessment of risks of workplace violence	There is an ongoing obligation to reassess the risks of workplace violence “as often as is necessary”

13.	Domestic violence – obligation to take every reasonable precaution for the protection of the worker where domestic violence would likely expose a worker to physical injury that may occur in the workplace	This is an ongoing obligation in each instance where the employer becomes aware, or ought reasonably be aware, of this risk
14.	Review workplace violence policy annually	The workplace violence policy must be reviewed “as often as is necessary” and no later than one (1) year from the date of its posting

**TO VIEW THE POWERPOINT  
PRESENTATION FROM OUR  
APRIL 20, 2010 BILL 168  
SEMINAR, PLEASE VISIT:**

<http://www.filion.on.ca/uploads/File/April20.ppt>