

Ministry of Labour

2010/11 Safe at Work Ontario Priorities Heightened Enforcement Foci and Bill 168 Compliance

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What is the Role of the MOL?

The Ministry of Labour sets, communicates and enforces the Occupational Health and Safety Act & Regulations.



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Sector Strategy Components

Health and Safety Record (LTIs, NLTIs)

Sector Specific (Hazard Focus)

Partnerships

Firm Identification

- Use of WSIB data to identify worst firms in sector based on LTIs, NLTIs, cost
- Firms identified for proactive inspection from MOL

- High hazards in sector
 - blitzes, zero tolerance
- MOL enforcement history
- Complaints received by MOL
- High potential for injuries

- Integrated delivery
- Prevention Focus
- Educational focus by SWAs
- SWA referral of firms to MOL
- WSIB WorkWell audits
- Working with workplace parties

Inspection Focus

Internal Responsibility System (IRS)

Increased Compliance

- ✓ Decrease in LTIs
- ✓ Solid functioning IRS
- ✓ Decrease in critical injuries/fatalities
- ✓ Health and Safety Leadership in the workplace

Results

Safer Workplaces

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Heightened Enforcement Focus

(Formerly known as Blitz Activity)

- | | |
|---------------------------------|----------------|
| 1. Falls of a Person | May 2010 |
| 2. <u>New and Young Workers</u> | May – Aug 2010 |
| 3. MSD | Sep – Oct 2010 |
| 4. Conveyor Guarding/Lockout | Nov 2010 |
| 5. Loading Docks | Feb 2011 |

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Workplace Violence Prevention

Overview of Current Operational Approach and Bill 168 Amendments to the Occupational Health and Safety Act (OHSA)

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Agenda

- The Current Approach (Pre-Bill 168)
 - Workplace Violence and Types
 - Application of the Occupational Health and Safety Act (OHSA)
 - High Risk Work Activities and Workplaces
 - Key Employer Duties
 - Ontario's Human Rights Code
- A New Approach
 - Status of Bill 168
 - Key Elements of Bill 168
 - Roles – MOL and Police
- Workplace Violence Prevention Resources
- Questions and Contacts

Current Approach (Pre-Bill 168) - Workplace Violence

- Prior to Bill 168 there were no requirements in Ontario's *Occupational Health and Safety Act* (OHSA) which specifically referred to workplace violence or harassment.
- The general duty clause in the OHSA (that employers have a general duty to take every precaution reasonable in the circumstances for the protection of a worker) has been interpreted to include a duty to protect workers from the hazard of workplace violence.
- Up to June 15, 2010, Ministry of Labour health and safety inspectors will continue to rely on the OHSA general duty clause to require employers to protect workers from workplace violence.
- The MOL currently treats workplace violence as the attempted or actual exercise by a person of any intentional physical force that causes or may cause physical injury to a worker. It also includes any threats which give a worker reasonable grounds to believe he or she is at risk of physical injury.
- Workplace harassment and/or bullying currently do not fall within the current scope of the OHSA, unless the worker is physically injured or has reasonable grounds to believe he or she is at risk of physical injury.

Types of Workplace Violence

Examples:

- Workplace parties:
 - E.g., worker/worker, supervisor/worker, employer/worker.
- External and internal clients:
 - E.g., customer/worker, worker/worker, patient/worker, student/worker.
- Domestic violence when it enters the workplace.



Current Approach (Pre-Bill 168) – Application of the OHSA

- The general duty clause in OHSA requires employers to take every precaution reasonable in the circumstances for the protection of a worker. The MOL interprets this to include workplace violence, until Bill 168 is in force.
- MOL occupational health and safety inspectors may issue orders under the OHSA and/or its regulations regarding the development of programs, measures and procedures to address the hazard.
- A workplace under the OHSA includes any location at, upon, in or near which a worker works and includes for example, where truck drivers, salespersons, home care workers, etc. work.

High Risk Work Activities

The risks of workplace violence are generally greater in work that involves:

- Handling cash
- Protecting or securing valuables
- Transporting people and goods
- Mobile workplaces (such as vehicles)
- Public or community contact
- Working with unstable or volatile people
- Working alone or with just a few people
- Working late at night or very early mornings.

High Risk Workplaces

Generally, the risks of violence are greater in workplaces that involve:

- Health care
- Social services
- Retail
- Hospitality
- Financial institutions
- Education
- Transportation
- Police, security and corrections.

The nature of work might also be evolving in many sectors:

- More workers with laptops using vehicles as an office
- Changing demands for services in the community e.g., health care service providers entering client's homes.

Current Approach (Pre-Bill 168) - Key Employer Duties

- Employers are required to take all precautions reasonable in the circumstances for the protection of workers.
 - This may include protecting workers from the risk of workplace violence.
- Employers are required to provide information, instruction and supervision to a worker to protect the health and safety of the worker.
 - This may include instructing any worker who may be exposed to the risk of workplace violence on:
 - Policies, measures and procedures concerning workplace violence prevention.
 - Reporting, investigation processes and documentation of incidents of violence.

Key Employer Duties – OHSA (continued)

Key Considerations:

- Are there activities or conditions in your workplace that put workers at risk of violence?
- Have workers expressed concerns about workplace violence?
- Have you had any violence-related incidents, complaints, or lost-time claims in the past two years?
- Are work conditions changing that might increase the risks of workplace violence?

Current Approach (Pre-Bill 168) and Ontario's Human Rights Code

- With regard to harassment or bullying that may occur in the workplace, Ontario's Human Rights Code protects people in the province against discrimination and harassment, including sexual harassment, based on certain prohibited grounds in employment.
 - The prohibited grounds under the Human Rights Code include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, and disability.
 - For more information, go to <http://www.ohrc.on.ca/en>

Status and overview of the Bill 168 amendments to Ontario's Occupational Health and Safety Act (OHSA)

- Bill 168 introduced April 20, 2009 (1st Reading). Passed 2nd Reading on October 20, 2009, and received 3rd Reading on December 9, 2009.
- Royal Assent was received on December 15, 2009.
- In force date is six months after Royal Assent (June 15, 2010).
- Bill 168 amends the OHSA to enhance protections against workplace violence and address workplace harassment; the amendments will apply to all Ontario workplaces to which the OHSA currently applies.
- Amendments are broad enough to capture workplace violence and harassment from any person (strangers, customers, clients, patients, co-workers domestic/intimate partners).

The New Approach - Key elements of Bill 168

1. **Definitions** of workplace violence and workplace harassment in the OHS 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.

Key elements of Bill 168 (continued)

2. Requirement for employers to prepare **policies** with respect to workplace violence and workplace harassment, and to develop and maintain **programs** to implement their policies (and provide information and instruction to workers on the contents of the policies and programs)
 - Workplace violence and workplace harassment programs would:
 - 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.
 - The workplace violence program would also include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur.

Key elements of Bill 168 (continued)

3. Requirement for employers to 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

and include measures and procedures to **control** the risks in the workplace violence program.

4. Requirement for employers who are aware, or who ought reasonably to be aware, that **domestic violence** may occur in the workplace to take every precaution reasonable in the circumstances to protect a worker who is at risk of physical injury.

Key elements of Bill 168 (continued)

5. Specifies that existing duties on employers/supervisors to provide information/advise workers include providing information, including personal information about a **risk of workplace violence from a person** with a history of violent behaviour,
 - if the worker can be expected to encounter that person in the course of work, and
 - if the risk of workplace violence is likely to expose the worker to physical injury.
- No more personal information shall be disclosed than is reasonably necessary to protect the worker from physical injury.

Key elements of Bill 168 (continued)

6. **Extends the right to refuse** work to a worker who has reason to believe that workplace violence is likely to endanger him/herself. The limited right to refuse of certain workers will continue. **Reprisals** by the employer will continue to be prohibited.
7. Requires that the workplace **joint health and safety committee, etc. be notified** if a worker is disabled or needs medical attention due to workplace violence.

Roles – Ministry of Labour & Police

Ministry of Labour health and safety inspectors

- Ministry of Labour health and safety inspectors will enforce the OHSA provisions re workplace harassment and workplace violence.
- As the focus of the requirements regarding workplace harassment and workplace violence is on employer duties, Ministry of Labour health and safety inspectors will determine whether or not employers are complying with these duties.

Roles – Ministry of Labour & Police (continued)

Police

- Will continue to be contacted in emergency situations.
- Police will continue to investigate threats of, or actual physical violence that may occur at a workplace.
- Police will conduct investigations in these situations to determine what, if any, charges should be laid under the *Criminal Code*.

Resources

New Publications

- Safe at Work Ontario Fact Sheet – Workplace Violence and Workplace Harassment (available on the MOL website)
- MOL Health and Safety Guideline, “Workplace Violence and Workplace Harassment- Understanding the Law” (available on the MOL website)

Upcoming

- Resources developed with prevention system partners for developing workplace violence and harassment programs, and for conducting an assessment of risks with respect to workplace violence.
- Other resources from MOL, e.g., updated Guide to the OHSA, brochure

Workplace Violence Prevention Resources

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The MOL website is regularly updated to provide workers and employers with important workplace violence prevention resources and information:

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

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

Workplace Safety and Insurance Board:

<http://www.wsib.on.ca/wsib/wsibsite.nsf/public/WorkplaceViolence>

Health and Safety Associations:

<http://www.wsib.on.ca/wsib/wsibsite.nsf/Public/HealthSafetyCommunity>

Legislative Assembly (for a copy of Bill 168)

http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b168ra.pdf