

Ministry of Labour

*Workplace Violence and Harassment
Requirements Under the Occupational Health and Safety Act*

October, 2012

Safe At Work Ontario
Enforcement > Compliance > Partnership >

Ministry of Labour

Historical Context

- Prior to Bill 168: No specific requirements in Ontario's *Occupational Health and Safety Act* (OHSA) re workplace violence or workplace 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) was interpreted to include a duty to protect workers from the hazard of workplace violence.
- June 15, 2010: Bill 168 amendments come into force respecting workplace violence and harassment.

An Overview – Amendments to the OHSA

The Bill 168 amendments:

- Establish minimum standards regarding an employer's duties to address workplace violence and harassment
- Require employers to address workplace violence: policy, program, assessment of risks, information and instruction, including information disclosure
- Extend work refusal section to include violence as a ground for refusing unsafe work
- Require employers to address domestic violence when it enters the workplace
- Require employers to address harassment - focus is policy, program, information and instruction
- Do not change the *Human Rights Code* or *Criminal Code*

Definitions - OHSA

"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.

Workplace Violence - Examples

- verbally threatening to attack a worker;
- leaving threatening notes at or sending threatening e-mails to a workplace;
- shaking a fist in a worker's face;
- wielding a weapon at work;
- hitting or trying to hit a worker;
- throwing an object at a worker;
- sexual violence against a worker;
- kicking an object the worker is standing on such as a ladder; or
- trying to run down a worker using a vehicle or equipment such as a forklift.

Source: MOL Guide, *Workplace Violence and Harassment: Understanding the Law*
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High Risk Workplaces

- Generally, the risk of workplace violence is greater in the following sectors:
 - Health care
 - Social services
 - Retail
 - Hospitality
 - Financial institutions
 - Education
 - Transportation
 - Police, security and corrections
- The nature of work is also evolving in many sectors:
 - More mobile workers, and workplaces, e.g., workers with laptops using vehicles as an office,
 - Changing demands for services in the community, e.g., health care service providers entering clients' homes

High Risk Work Activities

- The risk of workplace violence is 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 potentially violent people
 - Working alone or with just a few people
 - Working late at night or very early mornings.

Workplace Harassment - Examples

- Making remarks, jokes or innuendos that demean, ridicule, intimidate, or offend
- Displaying or circulating offensive pictures or materials in print or electronic form
- Bullying
- Repeated offensive or intimidating phone calls or e-mails; or
- Inappropriate sexual touching, advances, suggestions or requests

Source: MOL Guideline, *Workplace Violence and Harassment: Understanding the Law*

Key Requirements – Policies and Programs

- Employers must 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 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
- The workplace violence program must also include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur

Key Requirements - 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
- Employer also to consideration:
 - circumstances that would be **common to similar** workplaces
 - the circumstances **specific** to the workplace
- Program to include measures and procedures to control those risks identified in the assessment

Domestic Violence and OHSA

- Section 32.0.4 of OHSA requires 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
- Domestic violence not specifically defined under the OHSA, however, when domestic violence enters the workplace the OHSA would apply.

Domestic Violence and OHSA

- The MOL Guideline *Workplace Violence and Harassment: Understanding the Law*, provides information on how the OHSA applies to workplace violence and describes the following as domestic violence:

A person who has a personal relationship with a worker – such as a spouse or former spouse, current or former intimate partner or a family member – may physically harm, or attempt or threaten to physically harm, that worker at work. In these situations, domestic violence is considered workplace violence.

Domestic Violence and OHSA

- How might an employer become aware of domestic violence that may enter the workplace?
 - threatening emails and phone calls
 - incident takes place at work
 - concern of domestic violence reported
 - unwelcome visits at the workplace

Source: MOL Guideline, *Workplace Violence and Harassment: Understanding the Law*, Section 2.7 Domestic Violence

Provision of Information

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**.

Limitation on Disclosure of Information

32.0.5(4) Limitation on disclosure

- No more personal information shall be disclosed than is reasonably necessary to protect the worker from physical injury
- Workers should already have been provided with information and instruction on the contents of the wpv policy and program with **additional personal information provided to workers as needed on a case by case basis and only when the circumstances of 32.0.5 (3)(a) and (b) are met e.g. worker at a reception area may need additional personal information**

JHSC & Incidents of Workplace Violence

- 51(1) JHSC/H & S Rep to be advised of a fatality or critical injury from any cause by telephone, telegram or other direct means
- 52(1) written notice containing the prescribed information to the JHSC/H & S Rep of an incident where a worker is disabled or requires medical attention but is not killed or critically injured

Enforcement Role of the MOL

- Enforces the new requirements of the OHSA effective since June 15, 2010
- Refers workplace parties to supporting partners as appropriate (e.g., a Health and Safety Association (HSA), the Human Rights Legal Support Centre, Ontario Women's Directorate, Ministry of Community & Social Services)
- Continues to focus on broader workplace health and safety
 - comprehensive workplace inspections
 - violence is just one of many hazards in a workplace

Enforcement Role of the MOL cont'd

- MOL does **not**:
 - Mediate specific issues between workplace parties
 - Endorse or provide quality reviews of employer's policies, programs and assessment of risks, other than determining if OHSA provisions complied with, e.g., does the program have all elements as legislated?
 - Request or undertake individual threat assessments

Roles of MOL, Police, and the Human Rights Tribunal of Ontario

MOL	Focuses on injury prevention and employer compliance with the OHSA
Police	Responsible for public safety including emergency response and the investigation of specific workplace violence incidents under the <i>Criminal Code</i>
Human Rights Tribunal of Ontario	Responsible for the administration of the <i>Human Rights Code</i> Responsible for the adjudication of some forms of harassment compensation

The Right to Refuse Unsafe Work

- The OHSA now extends the right to refuse work to a worker who has reason to believe that workplace violence is likely to endanger him/herself
 - The right to refuse work extends to incidents of domestic violence in the workplace
- The limited right to refuse of certain workers continues
- Reprisals by the employer continue to be prohibited

Extract of Retail Sector Plan 2012-13

The retail sub-sector is composed of liquor, beer, and wine stores; building materials; florist shops; food stores; pet stores; household furniture, confectionery and other retail stores.

Injury and Illness Trends

- There were 214 critical injuries reported to the MOL during the three years from 2009 to 2011. Nine fatalities were reported during the same period.
- The LTI rate per 100 workers dropped from 1.65 in 2008 to 1.43 in 2010. The highest LTI rate of 6.4 in 2009 occurred in the “mobile home dealers” sub-sector.

Major Hazards and Inspection Focus

Major hazards and key health and safety issues

Internal Responsibility System (IRS)

Workplace violence and harassment

MOL Industrial Health and Safety Program
inspection focus

Reinforcing duties under the Occupational
Health and Safety Act with orders as
needed to promote self-reliance

Workplace violence and harassment policy

Enforcement Statistics and Plans

- At the first quarter of 2012/13, inspectors investigated 90 workplace violence and 408 workplace harassment complaints. Ministry inspectors conducted 103 field visits and issued 70 orders associated with the workplace violence requirements for events identified as related to violence. During the same time period, inspectors conducted 428 field visits and issued 322 orders associated with the workplace harassment requirements for events identified as related to harassment.
- In 2011/12, inspectors investigated 361 workplace violence and 1,591 workplace harassment complaints. Inspectors issued 419 orders related to workplace violence provisions of the OHSA and 1,197 orders related to workplace harassment provisions during the same time period.
- In October and November of 2012, the Ministry of Labour will be conducting a blitz with a focus on manufacturing processes in the industrial sector. Inspectors will focus on several hazards associated with manufacturing processes as well as workplace violence and harassment.

Recent Issues

Occupational Health and Safety System Resources

- MOL Website: www.ontario.ca/workplaceviolence
 - **Brochure** – *Protecting Workers from Workplace Violence and Workplace Harassment*
 - **Fact Sheet** – *Preventing Workplace Violence and Workplace Harassment*
 - **Guideline** – *Workplace Violence and Harassment: Understanding the Law*
 - **Occupational Health and Safety Act**
- Health & Safety Associations websites:
www.healthandsafetyontario.ca

Occupational Health and Safety System Resources cont'd

- **Occupational Health and Safety Council of Ontario (OHSCO)**
 - **Booklet** – *Domestic Violence Doesn't Stop When Your Worker Arrives at Work: What Employers Need to Know to Help* (6 languages)
 - **Booklet** – *Domestic Violence Doesn't Stop When You go to Work : How to get Help or Support a Colleague who may Need Help* (6 languages)

Occupational Health and Safety System Resources cont'd

- **Guide** - *Developing Workplace Violence and Harassment Policies and Programs: What Employers Need to Know*
 - includes an overview of domestic violence in the workplace, examples of reasonable precautions and a list of specific organizations that can assist with domestic violence
- **Toolbox** - *Developing Workplace Violence and Harassment Policies and Programs: A Toolbox*
 - includes tips on recognizing domestic violence in the workplace and developing a domestic violence program, tips on creating a safety plan for a worker, as well as additional resources

Additional Resources

- Ontario Women's Directorate: <http://www.citizenship.gov.on.ca/owd/>
- Domestic Violence Doesn't Stop When You go to Work: http://www.osach.ca/products/free_resources.shtml (suggest removing)
- The Assaulted Women's Helpline: <http://www.awhl.org>
- Community Legal Education Ontario: www.cleonet.ca/resources/973
- Springtide Resources: www.springtideresources.net/resources/show.cfm?id=136
- Neighbours Friends and Families: <http://www.neighboursfriendsandfamilies.ca>