BILL 168 QUICK GUIDE

A full Bill 168 Implementation Guide (complete with sample policies and additional content) is available to AFOA members by contacting Wayne Taylor at idi@eagle.ca.

Is Your Organization Ready?

Recent amendments to the Occupational Health and Safety Act will see Ontario join a growing list of jurisdictions requiring employers to adopt measures dealing with workplace harassment and violence.

On December 15, 2009, new legislation in Ontario received Royal Assent which will place specific obligations on most employers in the province to help combat workplace violence and harassment. Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009, comes into force on June 15, 2010. It amends the Occupational Health and Safety Act by requiring employers to do the following:

- Develop written policies with respect to violence and harassment in the workplace, post those policies (in the case of employers with more than five employees) and review them at least on an annual basis.
- Develop a program to implement and maintain those workplace violence and harassment policies. The program must include measures which control risk, provide for assistance to be summoned immediately when violence occurs and deal with incidents of violence, threats and complaints. The contents of this program must be communicated to workers.
- Assess the risk of workplace violence and communicate the results of that assessment to a joint health and safety committee, a health and safety representative or to the workers themselves if no committee or representative exists.
- Take reasonable precautions where the employer is aware (or ought to be aware) that domestic violence is likely to expose worker(s) to the risk of physical injury in the workplace.
- Provide information to workers about an individual with a history of violence where workers are likely to encounter that person in the course of their work and where there is risk of physical injury.
- Allow workers to refuse unsafe work where workplace violence is likely to endanger their safety.

Employer Concerns

While Bill 168 was busy working its way through the legislature, several commentators expressed the opinion that major changes would likely be forthcoming before the Bill passed. Surprisingly, however, that has not been the case, with the final version of the Bill being almost identical to the version that was introduced at first reading. Many employers and their representatives had expressed concern in particular about the requirements to disclose information on individuals with a history of violence and to take reasonable precautions protecting employees from domestic violence in the workplace.

The requirement to notify employees about a person’s violent past was seen as problematic where the individual concerned is a co-worker. This potentially raises issues related to privacy and confidentiality, as well as human rights implications, since discrimination based on pardoned convictions is prohibited under the Ontario Human Rights Code.
Secondly, some employers and their representatives worried about being required to protect employees from domestic violence. They were concerned that the legislation would require them to uncover or investigate incidents of domestic violence and abuse. While the legislation only requires employers, when they become aware of the risk or reasonably ought to be aware of it, to take measures to ensure employees’ safety on the job, concerns about this particular provision persisted.

Finally, there were also concerns that any attempt to manage employee performance could be met with allegations of workplace harassment. Indeed, the reality is that there is a fine line between “strong management” and workplace harassment.

In spite of the above concerns, very few substantive changes made it into the final Bill, which is available at: http://www.e-laws.gov.on.ca/html/source/statutes/english/2009/elaws_src_s09023_e.htm. In order to fully understand the context of the Bill, it makes sense to read it in conjunction with the rest of the Occupational Health and Safety Act (OHSA). A consolidated version of OHSA, including the changes brought about by Bill 168, is available online or by purchasing the 2010 version of Carswell’s Pocket Ontario OH&S Act & Regulations (see www.carswell.com).

Aside from the specific issues mentioned above, many employers feel that the legislative landscape in Ontario has swung too far in favour of employees recently, with the McGuinty government enacting several major pieces of employee-friendly legislation in recent years – especially given the current economic downturn. Bill 168 is seen by many as being yet another example of the ever-increasing regulation of the employment relationship by government. However, there are steps that your organization can take to ensure that you are in compliance with this legislation.

Other Jurisdictions

Employers in other provinces should also keep an eye on these types of developments, since there is a strong possibility that similar legislation may be coming soon to a jurisdiction near you. Even if such legislation does not materialize, developing policies which deal with workplace violence and harassment is probably a good idea. In the absence of legislation specifically targeting workplace harassment and violence, employers have a general duty under the common law and health and safety legislation to maintain a safe workplace – presumably one which is free from violence, harassment and intimidation. Having these policies represents best practices in human resources management and will help employers reduce the risk of liability, as well as additional costs incurred in the form of decreased productivity, poor morale, increased turnover and absenteeism, lower employee retention and engagement, and negative publicity.

While this Guide was written specifically to help provincially regulated employers in Ontario comply with the provisions of Bill 168, most of the information contained herein could also be used in other jurisdictions – either as a best practice, or to help organizations comply with similar provisions elsewhere. It is also worth remembering that even if your organization is headquartered elsewhere, if your industry is provincially regulated and you have operations in Ontario, you will be required to comply with this legislation with regard to your operations and your workers in Ontario.

Bill 168 Implementation Advice

The checklists below are designed to help you create or revise employment policies which are compliant with Bill 168 (note that, while it is a best practice to do so, there is no actual requirement in Bill 168 to create a Domestic Violence Policy). Sample policies and more in-depth implementation advice are available by purchasing Carswell’s new Bill 168 Implementation Guide, or by subscribing to Consult Carswell, our comprehensive online resource for HR professionals.
**Workplace Violence Policy Checklist**

Ideally, a Workplace Violence Policy should include the following elements:

- A statement indicating the organization’s commitment to minimizing or eliminating the risk of workplace violence.
- A statement indicating that workplace violence will not be tolerated, on company premises, while conducting company business, or at company functions or social events, whether such violence is perpetrated by managers, employees, contractors, customers/clients, visitors or members of the general public.
- Information on the organization’s Workplace Violence Prevention Program which is designed to implement the Workplace Violence Policy. At least some of the elements of the Program would be set out in the Policy.
- A statement that the company will not discriminate or retaliate against employees because they are or are perceived to be victims of workplace violence.
- A statement that infringement of the policy will give rise to disciplinary measures, up to and including termination of employment.
- A definition of what constitutes workplace violence.
- An indication of locations where workplace violence has occurred in the past or is likely to occur in the future.
- An indication of which positions are particularly high risk in terms of the possibility of encountering workplace violence. In particular, employees who handle cash, work nights, deal directly with the public or are involved in the sale of alcohol are often vulnerable to workplace violence, as are individuals working in retail establishments (especially late at night), healthcare, corrections, law enforcement, social services, education, financial services, taxi services, public transit, etc.
- Procedures to be used in notifying workers of specific risks of violence which are associated with particular work locations, jobs or shifts.
- A commitment to warn a worker about the identity and/or personal details of an individual with a history of violent behaviour where the worker can be expected to encounter that individual in the course of his or her work and there is a risk of workplace violence occurring as a result of that encounter. In addition, there should be a statement that such information will be shared with employees only on a need to know basis.
- Specific measures the organization has taken to minimize the risk of workplace violence, including personal protective equipment, administrative arrangements and engineering controls. Administrative arrangements are changes to the way work is organized or structured (e.g., having a policy that no one is to work alone, requiring employees to call the police when someone is behaving in a threatening manner, etc.). Engineering controls are physical modifications to the work site or equipment (e.g., the installation of bulletproof glass, panic buttons, etc.). Personal protective equipment is protective equipment that an individual actually wears (e.g., bulletproof vests, steel toed boots, etc.).
- Appropriate responses to an incident of workplace violence on the part of a worker who is a victim of such conduct.
- Reporting procedures to be followed where a worker has been exposed to violence, or has been a victim of violence, in the workplace.
- Procedures to be followed by the employer after a violent incident has been reported or has occurred.
- Information on any specific training programs provided by the employer with regard to workplace violence.
- A commitment to the maintenance of the privacy and confidentiality of the individual(s) concerned wherever possible. There should normally be an exception where disclosure is necessary for the purposes of conducting a proper investigation or taking appropriate disciplinary measures, or where required by law.
- An outline of the rights and responsibilities of workers/employees, managers, the joint health and safety committee, and the employer itself.
- A commitment to review the policy at least on an annual basis.
- It should be in writing and be posted in a conspicuous place in the workplace (unless there are five or fewer employees in the workplace; however, an inspector can order workplaces with fewer than five individuals to prepare and post such a policy). According to the requirements of Bill 168, simply including the policy in an
employee handbook may not be sufficient, since the policy must be “posted” in a “conspicuous place.”

☐ It should provide that a worker has the right to refuse unsafe work where workplace violence is likely to endanger him or her (note that there are exceptions, such as firefighters, police officers, paramedics, healthcare workers, etc.). While the work refusal is being investigated, the worker is to remain in a safe place that is as near as possible to his or her work station, making him or herself available for the purposes of the investigation. Note that there is no corresponding right to refuse unsafe work where there is danger of workplace harassment occurring.

Workplace Harassment Policy Checklist

Ideally, a Workplace Violence Policy should include the following elements:

☐ A statement indicating that workplace harassment will not be tolerated, on company premises, while conducting company business, or at company functions or social events, whether such harassment is perpetrated by managers, employees, contractors, customers/clients, visitors or members of the general public.

☐ A definition of what constitutes workplace harassment generally. The Policy should also include definitions and examples explaining what constitutes specific types of harassment, including racial/ethnic and sexual harassment, as well as bullying/psychological harassment.

☐ Information on the organization’s Workplace Harassment Prevention Program which is designed to implement the Workplace Harassment Policy. At least some of the elements of the Program would be set out in the Policy.

☐ A statement that every worker is entitled to a workplace free from harassment in any form.

☐ A statement that the company will not discriminate or retaliate against employees because they are or are perceived to be victims of workplace harassment.

☐ A statement that infringement of the policy will give rise to disciplinary measures, up to and including termination of employment.

☐ Appropriate responses to an incident of workplace harassment on the part of a worker who is a victim of such conduct.

☐ Specific measures the organization has taken to minimize the risk of workplace harassment, including workplace harassment awareness training and implementing a complaint handling system and security measures.

☐ Reporting procedures to be followed where a worker has been exposed to workplace harassment, or has been a victim of such harassment.

☐ Procedures to be followed by the employer after an incident of workplace harassment has been reported or is alleged.

☐ A commitment to the maintenance of the privacy and confidentiality of the individual(s) concerned wherever possible. There should normally be an exception where disclosure is necessary for the purposes of conducting a proper investigation or taking appropriate disciplinary measures, or where required by law.

☐ A reference to anti-discrimination provisions in the relevant human rights legislation (in Ontario, this would be the Human Rights Code), along with a statement that workers who find themselves subject to harassment based on one or more of the prohibited grounds of discrimination under that legislation have a right to file a complaint with the relevant human rights commission/tribunal. This part, in particular can be considered optional in Ontario. However, other jurisdictions do require such a statement to be included in some anti-harassment policies.
Domestic Violence in the Workplace Checklist

Ideally, a Domestic Violence in the Workplace Policy should include the following elements:

☐ A definition of what constitutes domestic violence. The Policy should also include definitions and examples of specific types of domestic violence including physical violence, sexual assault and stalking/criminal harassment.

☐ A commitment to the maintenance of the privacy and confidentiality of the individual(s) concerned wherever possible. There should normally be an exception where disclosure is necessary where required by law or when necessary, for the purposes of conducting a proper investigation or when taking appropriate disciplinary measures is required.

☐ A statement that the company will not discriminate against employees because they have been or are perceived to be victims of domestic violence.

☐ A statement encouraging employees to confidentially disclose to their employers any threats or potential incidents of domestic violence.

☐ A statement of where information, services and programs on domestic violence can be found. This could be included on the organization's HR Intranet. Programs and services can include Employee Assistance Programs (EAPs), various resources such as local law enforcement information and local domestic violence hotline services as well as Victim Crisis Assistance and Referral Services (VCARS), the Victim Quick Response Program (VQRP), Shelternet, etc.

☐ Reporting procedures for workers to follow when reporting incidents of domestic violence to their supervisor or to the employer.

☐ Procedures to be followed by the employer after an incident of domestic violence has been reported or is alleged.

☐ Measures to control risks of domestic violence in the workplace. Such measures would normally include awareness training, administrative controls and security measures.

☐ A commitment to warn a worker about the identity and/or personal details of an individual where there is a history of violent behaviour and where the worker can be expected to encounter that individual in the course of his or her work and there is a risk of workplace violence occurring as a result of that encounter, which is likely to expose the worker to physical injury. Again, there should be a statement that such information will be shared with employees only on a need to know basis.

☐ Information on any specific training programs provided by the employer with respect to domestic violence.

For Further Information:

Carswell Custom Handbooks
Visit www.customhandbooks.com or call 1-888-887-9088 to learn how Carswell Custom Employee Handbooks can help you to create your own employee handbook which includes comprehensive policies on violence and harassment in the workplace. We focus on helping small and mid-sized organizations create and publish their employee handbook in an efficient manner. Servicing business sectors such as manufacturing, service, distribution, retail as well as not for profit and professional services firms, Carswell Custom Employee Handbooks offers a significant advantage. Producing an employee handbook is typically a difficult and time-consuming task that can consistently be stalled or interrupted while addressing other pressing business matters. We use an innovative system reducing your work by up to 75% and providing an opportunity to finally "get the job done."