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BY: MEGHAN E. FERGUSON

ONTARIO GOVERNMENT INTRODUCES WORKPLACE VIOLENCE LEGISLATION

On April 20, 2009, the Ontario Government introduced amendments to the *Occupational Health and Safety Act (Act)* to address workplace violence and harassment. If passed, Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009*, would require employers to develop policies to address workplace violence and harassment and to assess the risk of violence in its workplace.

The Bill also imposes a new duty on employers to address domestic violence in the workplace, requires procedures to summon immediate help if a violent incident occurs and requires that workers be alerted to a person who has a history of violence.

DEFINING “WORKPLACE VIOLENCE” AND “WORKPLACE HARASSMENT”

The Bill proposes the following definitions:

“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.

It is noteworthy that the definition of “workplace violence” focuses on physical injury. There is no reference to psychological harm.

PREPARING AND POSTING POLICIES

The Bill requires employers to prepare a written policy with respect to workplace violence and workplace harassment. The policies must be posted in a conspicuous place in the workplace. Different requirements apply to workplaces of five or fewer employees.

The policies must be reviewed as often as necessary and at least once a year. The Bill also requires employers to provide information and instruction to employees on its workplace violence policy and program.

ASSESSING THE RISKS OF VIOLENCE

The Bill requires an employer to assess the risk of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work.

The risk assessment must take into account common risks at other similar workplaces and risks specific to the employer's workplace.

A copy of the risk assessment and its results must be provided to the joint health and safety committee or health and safety representative. If there is no committee or representative, employees must be advised how to obtain copies of the assessment and its results and it must be provided to workers on request.

REASSESSING THE RISKS OF VIOLENCE

In addition to doing an initial assessment, the Bill requires an employer to reassess the risk of violence as often as necessary to protect workers. The Bill does not provide any guidance on how often the employer must perform a reassessment.

IMPLEMENTING A WORKPLACE VIOLENCE PREVENTION PROGRAM

An employer will be required to develop and maintain a program to implement the workplace violence policy. The program must include measures and procedures:

- to control the risks identified in the risk assessment or reassessment;
- to summon immediate assistance when workplace violence occurs or is likely to occur including when a threat of workplace violence is made;
- for workers to report incidents or threats of workplace violence to the employer or supervisor;
- to investigate and deal with incidents, complaints or threats of workplace violence; and any further elements required by regulation.

ADDRESSING DOMESTIC VIOLENCE

The Bill requires an employer to take all reasonable precautions in the circumstances for the protection of the worker if a domestic violence situation would likely expose a worker to physical injury in the workplace and the employer becomes aware or ought to reasonably be aware of the situation.

DISCLOSING PERSONS WITH A HISTORY OF VIOLENCE

One of the more controversial aspects of the Bill is the requirement to provide information, including personal information, about 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.

The Bill limits the disclosure only to information that is reasonably necessary to protect workers from physical injury.

This aspect of the Bill would require employers to establish some sort of notification procedure for persons with a history of violence (including patients or clients) so that workers who may encounter the person are aware of the risk of potential physical injury. Some employers may find this type of profiling problematic.

REFUSING WORK IF WORKPLACE VIOLENCE IS LIKELY TO ENDANGER

The Bill permits a worker to refuse to work or do a particular work where he or she has reason to believe that workplace violence is likely to endanger himself or herself.

The *Act* currently prohibits certain workers such as police officers, firefighters, correctional officers and hospital employees from refusing work when the unsafe condition is inherent in the work or is a normal condition of employment. The Bill allows for a regulation to specify situations that define when an unsafe condition is inherent in the work or is a normal condition of employment.

REPORTING OBLIGATIONS

The Bill requires an employer to report and provide prescribed information on a workplace violence incident to the joint health and safety committee within four days of its occurrence.

The *Act* would still require the Ministry of Labour to be notified of a critical incident or a fatality in the workplace. Absent a critical injury or fatality, an Inspector may require an employer to notify the Ministry of Labour's Director of Occupational Health and Safety of a violent incident.

WHAT EMPLOYERS NEED TO KNOW

The Ministry of Labour currently takes the position that section 25(2)(h) of the *Act* requires employers to "take every precaution reasonable in the circumstance for the protection of a worker" and that includes assessing the risk of workplace violence. It is prudent for an employer at the very least to have a policy addressing workplace violence and to assess the risk of violence in its workplace.

If you have any questions arising out of this *FTR Now*, please contact Robert W. Little at 416.864.7332 or Meghan Ferguson at 416.864.7350 or your regular Hicks Morley lawyer.

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Hicks Morley Hamilton Stewart Storie LLP
www.hicksmorley.com

TORONTO
Toronto Dominion Tower
66 Wellington St. W.
30th Floor, Box 371
Toronto, ON M5K 1K8
Tel: 416.362.1011
Fax: 416.362.9680

WATERLOO
100 Regina St. S.
Suite 200
Waterloo, ON N2J 4P9
Tel: 519.746.0411
Fax: 519.746.4037

LONDON
148 Fullarton St.
Suite 1608
London, ON N6A 5P3
Tel: 519.433.7515
Fax: 519.433.8827

KINGSTON
366 King St. E.
Suite 310
Kingston, ON K7K 6Y3
Tel: 613.549.6353
Fax: 613.549.4068

OTTAWA
150 rue Metcalfe St.
Suite 2000
Ottawa, ON K2P 1P1
Tel/Tél: 613.234.0386
Fax/Télé: 613.234.0418