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**Bill 168 the Occupational Health and Safety Amendment Act
(Violence and Harassment in the Workplace), 2009**

by Leanne E. Standryk
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On April 20, 2009, the Ontario Government introduced Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009*. If passed, this legislation will significantly amend the *Occupational Health and Safety Act* (the OHSA) to impose new obligations on employers in an effort to protect workers from workplace violence and harassment.

The highlights of Bill 168 are as follows:

1. Definition of Workplace Violence and Harassment

“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 a worker; and/or (b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.

What is interesting is that the definition of workplace violence encompasses only physical harm or injury.

2. Development and Implementation of Policies

Bill 168 requires employers to prepare written policies dealing with workplace violence and harassment. These policies must be reviewed, at minimum, on an annual basis. Workers must be trained on the policies and employers with more than five employees must post the policies in a conspicuous location in the workplace.

Employers must develop and maintain programs to implement their workplace violence and harassment policies. These programs must include measures and procedures to:

- Control the risks identified in the workplace violence assessment;
- Call for immediate assistance when workplace violence occurs or is likely to occur, or when a threat of workplace violence is made;
- Report incidents or threats of workplace violence to the employer or supervisor; and
- Establish and process investigations and a system to manage incidents, complaints or threat of workplace violence.

3. Violence assessments

Bill 168 requires employers assess the risk of workplace violence in their workplaces with regard to the nature of the workplace, the type of work and the conditions of work. Employers must provide the results of the assessment and a copy of the assessment to the workplace health and safety committee or representative.

Employers must reassess as often as is necessary to ensure the workplace violence policy and program protects workers.

Lancaster, Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9
55 Main Street West, Grimsby, Ontario L3M 1R3

Tel. 905.641.1551,
Tel. 905.735.5684,
Tel. 905.594.1263,

Fax 905.641.1830
Fax 905.735.3340
Fax 905.594.1268

www.lbwlawyers.com

4. Addressing domestic violence at work

Bill 168 specifically addresses the issue of domestic violence in the workplace by requiring employers to take every precaution reasonable in the circumstances to protect workers from domestic violence. This obligation only arises when the employer becomes aware, or ought reasonably to be aware, that domestic violence may occur in the workplace and would likely expose workers to physical injury.

5. Disclosure of Information about violent individuals

Bill 168 attempts to create an obligation on employers and supervisors to provide information, including personal information, to workers about a person with a history of violent behavior if:

- The worker could be expected to encounter that person in the course of his/her work; and
- There is a risk of workplace violence likely to expose the worker to physical injury.

This aspect of the Bill may prove to be rather contentious and further provides no guidance on who would be a person with a "history of violent behavior".

6. Right to refuse work

Workers may refuse to work where they have reason to believe that workplace violence will likely put them into danger. The normal work refusal process would be triggered.

Practical Advice to Employers:

If passed, Bill 168 will require employers to act diligently. Employers should:

- Develop a workplace violence and harassment policy;
- Educate management and initiate employee training;
- Commence a process of risk assessment to determine the possibility of workplace violence and harassment;
- Create an annual re-assessment schedule;
- Prepare a comprehensive, clear complaint and investigation policy;
- Develop and implement security measures to protect workers from members of the public or customers; and
- Develop a record keeping system.

In the meantime, employers should review their current policies and consider what steps they will be required to take if/when Bill 168 is passed. This review and analysis will well position employers to implement the necessary programs and policies when Bill 168 become law.

*The foregoing information is provided to you for information purposes only.
We caution you to obtain legal advice specific to your situation in all circumstances*

Commercial Law Group

Rodger A. Gordon	rgordon@lbwlawyers.com	Robert W. P. Welch	rwelch@lbwlawyers.com
Harry E. Thorsteinson	hthorsteinson@lbwlawyers.com	R. Bruce Smith	bsmith@lbwlawyers.com
Gary L. Black	gblack@lbwlawyers.com	Michael A. Mann	mmann@lbwlawyers.com
David L. Edwards	dedwards@lbwlawyers.com	Wade R. Mills	wmills@lbwlawyers.com

Employment Law Group

Robert B. Reid	rreid@lbwlawyers.com	Leanne E. Standryk	lstandryk@lbwlawyers.com
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Lancaster, Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1	Tel. 905.641.1551,	Fax 905.641.1830
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9	Tel. 905.735.5684,	Fax 905.735.3340
55 Main Street West, Grimsby, Ontario L3M 1R3	Tel. 905.594.1263,	Fax 905.594.1268
www.lbwlawyers.com		