

Bill 168

Occupational Health and Safety Amendment Act Violence and Harassment in the Workplace

APRIL 2010

Bill 168: Occupational Health and Safety Amendment Act

Violence and Harassment in the Workplace

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Law Practice

Nancy Ramalho is a partner practising in the Employment, Labour and Pension Group in Stikeman Elliott's Toronto office. In addition to litigation and grievance arbitration, she provides advice and opinions on all aspects of human resources management including employment standards, pay equity, human rights, corporate policies and procedures, employment contracts, health and safety, plant closures, collective bargaining negotiations, and certification and unfair labour applications. She also defends companies and their managerial staff who have been charged with offences under the *Occupational Health and Safety Act*.

Ms. Ramalho also provides assistance with labour and employment issues that arise in corporate transactions, insolvencies and restructuring. She also conducts specialized and practical in-house supervisory training seminars on such topics as workplace harassment and violence, occupational health and safety due diligence requirements, and enforcing policies and procedures including discipline.

Professional Activities

Ms. Ramalho is a member of the Canadian Bar Association, the Canadian Association of Counsel to Employers, the Portuguese Canadian Lawyers' Association and the International Women's Insolvency and Restructuring Confederation. She is a member of the board of directors of the Portuguese Canadian Lawyers' Association and the YWCA Canada.

Publications

Ms. Ramalho has participated as a speaker and panellist at various conferences and is the author of a number of papers dealing with employment and labour matters including recent publications on labour matters in an insolvency context.

Education

University of Windsor (LL.B. 1996), Carleton University (BA 1993).

Background

Ms. Ramalho is fluent in English and Portuguese.

Bar Admission

Ontario, 1998.

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PAPERS

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BILL 168: Occupational Health and Safety Amendment Act

Violence and Harassment in the Workplace

2010

On June 15, 2010, the provisions of Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)*, 2009 (the "Act"), will come into effect, and will impose significant and new obligations on employers in Ontario with respect to violence and harassment in the workplace. The Act was introduced to enhance protections against workplace violence and workplace harassment, by requiring employers to, among other things, create and maintain workplace violence and harassment policies and programs, and perform assessments to identify and measure the risks of violence in the workplace.

The following highlights some of the key provisions in the Act. Employers are strongly encouraged to begin taking an active approach, by reviewing their current policies and procedures, to determine what changes, if any, will be needed in order to comply with this new legislation by June 15, 2010.

What is workplace violence and workplace harassment?

The definitions of "workplace violence" and "workplace harassment" are set out in the Act as follows:

- **"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:
 1. the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
 2. an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker,
 3. a statement or behaviour that 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.

It is important for employers to remember that this definition of "workplace harassment" goes beyond what constitutes harassment under the *Human Rights Code* (Ontario). In particular, under the Act, workplace harassment may occur, even if it is not related to a ground protected by the Code.

Workplace violence and harassment policies and programs

Upon the coming into force of the Act, all employers will be required to prepare policies with respect to workplace violence and workplace harassment and to review these policies no less than once per year. In addition, where an employer regularly employs more than

five employees at a workplace, the employer will be required to prepare these policies in writing, and post them at conspicuous places in the workplace.

Employers will also be required to develop and maintain programs to implement these policies, in accordance with the requirements of their workplace. At a minimum, the programs to implement workplace violence policies must include the following elements:

- measures and procedures to control the risks identified in the assessments (discussed below) as likely to expose a worker to physical injury;
- measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- measures and procedures for workers to report incidents of workplace violence to the employer or supervisor; and
- set out how the employer will investigate and deal with incidents or complaints of workplace violence.

The programs to implement workplace harassment policies, on the other hand, must at least include measures and procedures for workers to report incidents of workplace harassment to their supervisor or employer, and set out how the employer will investigate and deal with incidents and complaints of workplace harassment.

Employers will also be required to provide workers with appropriate information and instruction on the contents of their policies and programs with respect to workplace violence and harassment.

Workplace violence risk assessments

In addition to the requirement to prepare and maintain policies and programs with respect to workplace violence, the Act also requires employers to assess the risks of workplace violence that may arise from the nature of the workplace, the type of work, or the conditions of work. These assessments must be conducted by employers as “often as is necessary” to ensure that workers are continually protected from workplace violence, and must take into account circumstances that would be common to similar workplaces, and those that are specific to the workplace. Once the results of the assessment, or any reassessment, are obtained, the employer must advise the joint health and safety committee or the health and safety representative accordingly, and provide copies of the assessment if in writing. If there is no such committee or representative, employers must advise the workers of the results directly, and provide copies of such results on request, if in writing.

Protecting workers from domestic violence

A unique and significant feature of the Act is that it requires employers to address the issue of domestic violence in the workplace. In particular, the Act requires employers to take every reasonable precaution to protect a worker, where it becomes aware (or ought reasonably be aware) that domestic violence is likely to expose the worker to physical injury in the workplace. Although the Act does not specifically define the scope of “domestic violence”, employers will nonetheless be required to take steps recognize any signs of domestic violence in the workplace, and respond accordingly.

Disclosure of persons with a history of violence

The Act will also require employers and supervisors to provide information (including personal information) to a worker about any person with a history of violent behaviour, if the worker can be expected to encounter the person in the course of his or her work, and the risk of workplace violence is likely to expose the worker to physical injury. The

disclosure of information, however, must be limited to information that is reasonably necessary to protect the worker from physical injury. In addition, employers are reminded that they still have obligations under applicable privacy and human rights legislation, which will continue to apply notwithstanding the coming into force of the Act.

Right to refuse work where health or safety is in danger

The Act amends certain provisions of the *Occupational Health and Safety Act*, which gives a worker the right to refuse work where his or her health or safety is in danger, to include the right to refuse work if he or she is likely to be endangered by workplace violence. Where a worker refuses to work, or do particular work, in these circumstances, he or she will be required to promptly report the circumstances of the refusal, and to remain in a safe place that is "as near as reasonably possible to his or her work station" for the purposes of an investigation.

It is important to note that the current provisions of the *Occupational Health and Safety Act*, which prohibit certain workers (such as police officers, firefighters, correctional officers and hospital employees) from refusing work when an unsafe condition is inherent in the work or is a normal condition of his or her employment, continue to apply. However, the Act also allows for the enactment of regulations that would specify additional circumstances in which workplace violence is considered to be inherent in a worker's work or is a normal condition of employment.

What does the act mean for employers?

As noted above, the provisions of the Act will come into effect on June 15, 2010, and will apply to all employers in Ontario, regardless of the nature of their workplace, the type of work performed, or the conditions of work. Employers are therefore strongly encouraged to begin taking active steps to comply with these new requirements by June 15, 2010. In particular, employers should review their current policies and procedures, to determine what changes, if any, will be needed in order to comply with the Act. At a minimum, employers will be required to update their policies, develop programs and conduct risk assessments with respect to workplace violence and harassment, and to ensure that their employees are trained accordingly.

Should you have any questions or concerns regarding the coming into force of the Act, please do not hesitate to contact a member of our Employment and Labour Group. We would be pleased to assist you in developing any policies, programs and procedures required to ensure that you meet your obligations under the Act by June 15, 2010.

BILL 168 CHECK LIST

✓ **Create workplace violence policy which:**

- Shows employer's commitment to protecting workers from workplace violence
- Addresses violence from all possible sources (customers, clients, employers, supervisors, workers, strangers etc.)
- Outlines roles/responsibilities of workplace parties in supporting the program/policy

✓ **Develop a program to implement workplace violence policy which:**

- Identifies risks
- Includes procedures for summoning assistance
- Provides reporting and investigation procedures
- Provides how the employer will investigate and deal with incidents of violence

✓ **Perform risk assessment of workplace**

- Report results of assessment to the Joint Health and Safety Committee or health & safety representative
- Assessment should be performed for each work location
- Repeat assessment as often as necessary to ensure protection of workers

✓ **Create or modify current workplace harassment policy which:**

- Shows an employer's commitment to addressing workplace harassment
- Consider workplace harassment from all sources (customers, clients, employers, supervisors, workers, strangers etc.)
- Outlines roles/responsibilities of workplace parties in supporting the program/policy

✓ **Develop program to implement workplace harassment policy including:**

- Reporting procedure
- Investigation procedure (consider procedure may need to differ from workplace violence procedure)

✓ **Maintain the policies:**

- Put system in place to ensure policies reviewed annually

Bill 168: Occupational Health and Safety Amendment Act

Violence and Harassment in the Workplace

RESOURCES

Bill 168, An Act to amend the *Occupational Health and Safety Act* with respect to violence and harassment in the workplace and other matters

Ministry of Labour's Workplace Violence and Harassment:
Understanding the Law Guidelines



1ST SESSION, 39TH LEGISLATURE, ONTARIO
58 ELIZABETH II, 2009

1^{re} SESSION, 39^e LÉGISLATURE, ONTARIO
58 ELIZABETH II, 2009

Bill 168

*(Chapter 23
Statutes of Ontario, 2009)*

**An Act to amend the
Occupational Health and Safety Act
with respect to violence and
harassment in the workplace
and other matters**

The Hon. P. Fonseca
Minister of Labour

1st Reading	April 20, 2009
2nd Reading	October 20, 2009
3rd Reading	December 9, 2009
Royal Assent	December 15, 2009

Projet de loi 168

*(Chapitre 23
Lois de l'Ontario de 2009)*

**Loi modifiant la
Loi sur la santé et la sécurité au travail
en ce qui concerne la violence
et le harcèlement au travail
et d'autres questions**

L'honorable P. Fonseca
Ministre du Travail

1 ^{re} lecture	20 avril 2009
2 ^e lecture	20 octobre 2009
3 ^e lecture	9 décembre 2009
Sanction royale	15 décembre 2009



EXPLANATORY NOTE

This Explanatory Note was written as a reader's aid to Bill 168 and does not form part of the law. Bill 168 has been enacted as Chapter 23 of the Statutes of Ontario, 2009.

The Bill adds Part III.0.1 (Violence and Harassment) to the *Occupational Health and Safety Act*. Subsection 1 (1) of the Act is amended to include definitions of workplace violence and workplace harassment.

Section 32.0.1 of the Act requires an employer to prepare policies with respect to workplace violence and workplace harassment, and to review the policies at least annually.

Section 32.0.2 of the Act requires an employer to develop a program to implement the workplace violence policy. The program must include measures to control risks of workplace violence identified in the risk assessment that is required under section 32.0.3, to summon immediate assistance when workplace violence occurs, and for workers to report incidents of workplace violence. The program must also set out how the employer will deal with incidents and complaints of workplace violence.

Section 32.0.3 of the Act requires an employer to assess the risks of workplace violence and to report the results of the assessment to the joint health and safety committee or to a health and safety representative. If there is no committee or representative, the results must be reported to the workers. The risks must be reassessed as often as is necessary to protect workers from workplace violence.

Under section 32.0.4 of the Act, if an employer is aware or ought to be aware that domestic violence that is likely to expose a worker to physical injury may occur in the workplace, the employer must take every reasonable precaution to protect the worker.

Section 32.0.5 of the Act clarifies that the employer duties in section 25, the supervisor duties in section 27 and the worker duties in section 28 apply, as appropriate, with respect to workplace violence. Section 32.0.5 also requires an employer to provide a worker with information and instruction on the contents of the workplace violence policy and program.

Section 32.0.6 of the Act requires an employer to develop a program to implement the workplace harassment policy. The program must include measures for workers to report incidents of workplace harassment and set out how the employer will deal with incidents and complaints of workplace harassment. Section 32.0.7 requires an employer to provide a worker with information and instruction on the contents of the workplace harassment policy and program.

The Bill amends section 43 of the Act, which deals with a worker's right to refuse work in various circumstances where health or safety is in danger, to include the right to refuse work if workplace violence is likely to endanger the worker.

The Bill adds sections 55.1 and 55.2 to the Act, authorizing inspectors to make orders requiring policies under section 32.0.1 and assessments and reassessments under section 32.0.3 to be in writing or to be posted in the workplace.

The Bill provides for authority to make regulations, including the following:

NOTE EXPLICATIVE

La note explicative, rédigée à titre de service aux lecteurs du projet de loi 168, ne fait pas partie de la loi. Le projet de loi 168 a été édicté et constitue maintenant le chapitre 23 des Lois de l'Ontario de 2009.

Le projet de loi ajoute la partie III.0.1 (Violence et harcèlement) à la *Loi sur la santé et la sécurité au travail*. Le paragraphe 1 (1) de la Loi est modifié pour inclure les définitions de «violence au travail» et de «harcèlement au travail».

L'article 32.0.1 de la Loi exige que l'employeur formule des politiques concernant respectivement la violence au travail et le harcèlement au travail et examine celles-ci au moins une fois l'an.

L'article 32.0.2 de la Loi exige que l'employeur élabore un programme de mise en oeuvre de la politique concernant la violence au travail. Ce programme doit comprendre les mesures à prendre pour contrôler les risques de violence au travail indiqués dans l'évaluation du risque exigée à l'article 32.0.3 et pour obtenir une aide immédiate lorsqu'il se produit de la violence au travail, ainsi que celles que les travailleurs doivent prendre pour signaler les incidents de violence au travail. Il doit également indiquer la manière dont l'employeur compte faire face aux incidents et aux plaintes de violence au travail.

L'article 32.0.3 de la Loi exige que l'employeur évalue les risques de violence au travail et informe le comité ou un délégué à la santé et à la sécurité des résultats de l'évaluation. En l'absence de comité ou de délégué, il faut en informer les travailleurs eux-mêmes. Les risques doivent être réévalués aussi souvent que cela est nécessaire pour protéger les travailleurs contre la violence au travail.

Selon l'article 32.0.4 de la Loi, si un employeur a connaissance, ou devrait raisonnablement avoir connaissance, du fait qu'il peut se produire, dans le lieu de travail, de la violence familiale susceptible d'exposer un travailleur à un préjudice corporel, il doit prendre toutes les précautions raisonnables pour le protéger.

L'article 32.0.5 de la Loi précise que les devoirs de l'employeur prévus à l'article 25, ceux du superviseur prévus à l'article 27 et ceux du travailleur prévus à l'article 28 s'appliquent, s'il y a lieu, à l'égard de la violence au travail. Il exige également que les employeurs fournissent aux travailleurs des renseignements et des directives sur le contenu de la politique et du programme concernant la violence au travail.

L'article 32.0.6 de la Loi exige que l'employeur élabore un programme de mise en oeuvre de la politique concernant le harcèlement au travail. Ce programme doit comprendre les mesures que les travailleurs doivent prendre pour signaler les incidents de harcèlement au travail et énoncer la manière dont l'employeur compte faire face aux incidents et aux plaintes de harcèlement au travail. L'article 32.0.7 exige que l'employeur fournisse aux travailleurs des renseignements et des directives sur le contenu de la politique et du programme concernant le harcèlement au travail.

Le projet de loi modifie l'article 43 de la Loi, lequel porte sur le droit d'un travailleur de refuser de travailler dans des circonstances susceptibles de mettre sa santé ou sa sécurité en danger, pour inclure le droit de refuser de travailler si de la violence au travail est susceptible de le mettre en danger.

Le projet de loi ajoute à la Loi les articles 55.1 et 55.2, lesquels autorisent les inspecteurs à ordonner que les politiques prévues à l'article 32.0.1 et que les évaluations et réévaluations prévues à l'article 32.0.3 soient écrites ou affichées dans le lieu de travail.

Le projet de loi prévoit des pouvoirs réglementaires, notamment :

1. Requiring an employer to designate a workplace coordinator with respect to workplace violence and workplace harassment.
2. In the case of workers with a limited right to refuse work under section 43 of the Act, specifying situations in which a danger to health or safety is inherent in the workers' work or a normal condition of employment.
3. Varying or supplementing subsections 43 (4) to (13) of the Act with respect to workers with a limited right to refuse under section 43 and workers to whom section 43 applies by reason of a regulation made for the purposes of subsection 3 (3) of the Act.
4. Governing the application of the duties and rights set out in Part III.0.1 to the taxi industry.

1. Exiger qu'un employeur désigne un coordonnateur du lieu de travail à l'égard de la violence au travail et du harcèlement au travail.
2. Dans le cas des travailleurs qui ont, en vertu l'article 43 de la Loi, un droit limité de refuser de travailler, préciser les cas où un danger pour la santé ou la sécurité est inhérent au travail d'un travailleur ou constitue une condition normale de son emploi.
3. Modifier ou compléter les paragraphes 43 (4) à (13) de la Loi en fonction des travailleurs qui ont, en vertu de l'article 43, un droit limité de refuser de travailler et des travailleurs auxquels l'article 43 s'applique en raison d'un règlement pris pour l'application du paragraphe 3 (3) de la Loi.
4. Régir l'application, à l'industrie du taxi, des devoirs et des droits prévus à la partie III.0.1.

**An Act to amend the
Occupational Health and Safety Act
with respect to violence and
harassment in the workplace
and other matters**

Note: This Act amends the *Occupational Health and Safety Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Occupational Health and Safety Act* is amended by adding 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; (“harcèlement au travail”)

“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. (“violence au travail”)

2. Section 25 of the Act is amended by adding the following subsection:

Same

(3.1) Any explanatory material referred to under clause (2) (i) may be published as part of the poster required under section 2 of the *Employment Standards Act, 2000*.

3. The Act is amended by adding the following Part:

**PART III.0.1
VIOLENCE AND HARASSMENT**

Policies, violence and harassment

32.0.1 (1) An employer shall,

**Loi modifiant la
Loi sur la santé et la sécurité au travail
en ce qui concerne la violence
et le harcèlement au travail
et d’autres questions**

Remarque : La présente loi modifie la *Loi sur la santé et la sécurité au travail*, dont l’historique législatif figure à la page pertinente de l’Historique législatif détaillé des lois d’intérêt public codifiées sur le site www.lois-en-ligne.gouv.on.ca.

Sa Majesté, sur l’avis et avec le consentement de l’Assemblée législative de la province de l’Ontario, édicte :

1. Le paragraphe 1 (1) de la *Loi sur la santé et la sécurité au travail* est modifié par adjonction des définitions suivantes :

«harcèlement au travail» Fait pour une personne d’adopter une ligne de conduite caractérisée par des remarques ou des gestes vexatoires contre un travailleur dans un lieu de travail lorsqu’elle sait ou devrait raisonnablement savoir que ces remarques ou ces gestes sont importuns. («workplace harassment»)

«violence au travail» Selon le cas :

- a) emploi par une personne contre un travailleur, dans un lieu de travail, d’une force physique qui lui cause ou pourrait lui causer un préjudice corporel;
- b) tentative d’employer contre un travailleur, dans un lieu de travail, une force physique qui pourrait lui causer un préjudice corporel;
- c) propos ou comportement qu’un travailleur peut raisonnablement interpréter comme une menace d’employer contre lui, dans un lieu de travail, une force physique qui pourrait lui causer un préjudice corporel. («workplace violence»)

2. L’article 25 de la Loi est modifié par adjonction du paragraphe suivant :

Idem

(3.1) Tout document explicatif visé à l’alinéa (2) i) peut faire partie de l’affiche publiée en application de l’article 2 de la *Loi de 2000 sur les normes d’emploi*.

3. La Loi est modifiée par adjonction de la partie suivante :

**PARTIE III.0.1
VIOLENCE ET HARCÈLEMENT**

Politiques : violence et harcèlement

32.0.1 (1) L’employeur :

- (a) prepare a policy with respect to workplace violence;
- (b) prepare a policy with respect to workplace harassment; and
- (c) review the policies as often as is necessary, but at least annually.

Written form, posting

(2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.

Exception

(3) Subsection (2) does not apply if the number of employees regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.

Program, violence

32.0.2 (1) An employer shall develop and maintain a program to implement the policy with respect to workplace violence required under clause 32.0.1 (1) (a).

Contents

- (2) Without limiting the generality of subsection (1), the program shall,
- (a) include measures and procedures to control the risks identified in the assessment required under subsection 32.0.3 (1) as likely to expose a worker to physical injury;
 - (b) include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
 - (c) include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;
 - (d) set out how the employer will investigate and deal with incidents or complaints of workplace violence; and
 - (e) include any prescribed elements.

Assessment of risks of violence

32.0.3 (1) An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work.

Considerations

- (2) The assessment shall take into account,
- (a) circumstances that would be common to similar workplaces;
 - (b) circumstances specific to the workplace; and
 - (c) any other prescribed elements.

Results

- (3) An employer shall,

- a) formule une politique concernant la violence au travail;
- b) formule une politique concernant le harcèlement au travail;
- c) examine les politiques aussi souvent que nécessaire, mais au moins une fois par année.

Formulation par écrit, affichage

(2) Les politiques sont formulées par écrit et sont affichées dans un endroit bien en vue du lieu de travail.

Exception

(3) Le paragraphe (2) ne s'applique pas si le nombre de personnes employées régulièrement dans le lieu de travail est égal ou inférieur à cinq, sauf ordre contraire d'un inspecteur.

Programme : violence

32.0.2 (1) L'employeur élabore et maintient un programme de mise en oeuvre de la politique concernant la violence au travail exigée à l'alinéa 32.0.1 (1) a).

Contenu

- (2) Sans préjudice de la portée générale du paragraphe (1), le programme :
- a) inclut les mesures à prendre et les méthodes à suivre pour contrôler les risques indiqués dans l'évaluation exigée aux termes du paragraphe 32.0.3 (1) comme étant susceptibles d'exposer un travailleur à un préjudice corporel;
 - b) inclut les mesures à prendre et les méthodes à suivre pour obtenir une aide immédiate lorsqu'il se produit ou qu'il est susceptible de se produire de la violence au travail;
 - c) inclut les mesures que les travailleurs doivent prendre et les méthodes qu'ils doivent suivre pour signaler les incidents de violence au travail à l'employeur ou au superviseur;
 - d) énonce la manière dont l'employeur enquêtera sur les incidents ou les plaintes de violence au travail et dont il compte y faire face;
 - e) inclut les éléments prescrits.

Évaluation des risques de violence

32.0.3 (1) L'employeur évalue les risques de violence au travail qui peuvent découler de la nature du lieu de travail, du genre de travail ou des conditions de travail.

Facteurs à prendre en considération

- (2) L'évaluation tient compte des facteurs suivants :
- a) les circonstances qu'auraient en commun des lieux de travail semblables;
 - b) les circonstances propres au lieu de travail;
 - c) les autres éléments prescrits.

Résultats

- (3) L'employeur :

- (a) advise the committee or a health and safety representative, if any, of the results of the assessment, and provide a copy if the assessment is in writing; and
- (b) if there is no committee or health and safety representative, advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies.

Reassessment

(4) An employer shall reassess the risks of workplace violence as often as is necessary to ensure that the related policy under clause 32.0.1 (1) (a) and the related program under subsection 32.0.2 (1) continue to protect workers from workplace violence.

Same

(5) Subsection (3) also applies with respect to the results of the reassessment.

Domestic violence

32.0.4 If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.

Duties re violence

32.0.5 (1) For greater certainty, the employer duties set out in section 25, the supervisor duties set out in section 27, and the worker duties set out in section 28 apply, as appropriate, with respect to workplace violence.

Information

- (2) An employer shall provide a worker with,
 - (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace violence; and
 - (b) any other prescribed information or instruction.

Provision of information

(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.

Limit on disclosure

- (4) No employer or supervisor shall disclose more per-

- a) informe le comité ou un délégué à la santé et à la sécurité, s'il y en a un, des résultats de l'évaluation et lui en remet une copie, dans le cas d'une évaluation écrite;
- b) informe les travailleurs des résultats de l'évaluation et, dans le cas d'une évaluation écrite, leur en fournit une copie sur demande ou leur indique comment en obtenir des copies, s'il n'y a ni comité ni délégué à la santé et à la sécurité.

Réévaluation

(4) L'employeur réévalue les risques de violence au travail aussi souvent que cela est nécessaire pour que la politique afférente visée à l'alinéa 32.0.1 (1) a) et le programme afférent visé au paragraphe 32.0.2 (1) continuent de protéger les travailleurs contre la violence au travail.

Idem

(5) Le paragraphe (3) s'applique également à l'égard des résultats de la réévaluation.

Violence familiale

32.0.4 L'employeur qui prend connaissance, ou devrait raisonnablement avoir connaissance, du fait qu'il peut se produire, dans le lieu de travail, de la violence familiale susceptible d'exposer un travailleur à un préjudice corporel prend toutes les précautions raisonnables dans les circonstances pour le protéger.

Devoirs concernant la violence

32.0.5 (1) Il est entendu que les devoirs de l'employeur énoncés à l'article 25, les devoirs du superviseur énoncés à l'article 27 et les devoirs du travailleur énoncés à l'article 28 s'appliquent, selon le cas, à l'égard de la violence au travail.

Renseignements

- (2) L'employeur fournit ce qui suit au travailleur :
 - a) des renseignements et des directives adaptés au travailleur sur le contenu de la politique et du programme concernant la violence au travail;
 - b) les autres renseignements ou directives prescrits.

Fourniture de renseignements

(3) Le devoir de l'employeur de fournir des renseignements au travailleur conformément à l'alinéa 25 (2) a) et le devoir du superviseur d'informer un travailleur conformément à l'alinéa 27 (2) a) s'entendent notamment du devoir de fournir des renseignements, y compris des renseignements personnels, relatifs au risque de violence au travail de la part d'une personne qui a des antécédents de comportement violent, si les conditions suivantes sont réunies :

- a) selon toute attente, le travailleur rencontrera cette personne dans le cadre de son travail;
- b) le risque de violence au travail est susceptible d'exposer le travailleur à un préjudice corporel.

Restriction de la divulgation

- (4) Ni l'employeur ni le superviseur ne doit divulguer,

sonal information in the circumstances described in subsection (3) than is reasonably necessary to protect the worker from physical injury.

Program, harassment

32.0.6 (1) An employer shall develop and maintain a program to implement the policy with respect to workplace harassment required under clause 32.0.1 (1) (b).

Contents

- (2) Without limiting the generality of subsection (1), the program shall,
- (a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
 - (b) set out how the employer will investigate and deal with incidents and complaints of workplace harassment; and
 - (c) include any prescribed elements.

Information and instruction, harassment

32.0.7 An employer shall provide a worker with,

- (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment; and
- (b) any other prescribed information.

4. (1) Clause 43 (1) (a) of the Act is amended by striking out “clause (3) (a), (b) or (c)” and substituting “clause (3) (a), (b), (b.1) or (c)”.

(2) Subsection 43 (3) of the Act is amended by striking out “or” at the end of clause (b) and by adding the following clause:

- (b.1) workplace violence is likely to endanger himself or herself; or

(3) Subsection 43 (5) of the Act is repealed and the following substituted:

Worker to remain in safe place and available for investigation

- (5) Until the investigation is completed, the worker shall remain,
- (a) in a safe place that is as near as reasonably possible to his or her work station; and
 - (b) available to the employer or supervisor for the purposes of the investigation.

(4) Subsection 43 (6) of the Act is amended by striking out “or” at the end of clause (b) and by adding the following clause:

- (b.1) workplace violence continues to be likely to endanger himself or herself; or

(5) Subsection 43 (8) of the Act is repealed and the following substituted:

Decision of inspector

- (8) The inspector shall, following the investigation

dans les circonstances visées au paragraphe (3), plus de renseignements personnels que raisonnablement nécessaire pour protéger le travailleur d’un préjudice corporel.

Programme : harcèlement

32.0.6 (1) L’employeur élabore et maintient un programme de mise en oeuvre de la politique concernant le harcèlement au travail exigée à l’alinéa 32.0.1 (1) b).

Contenu

- (2) Sans préjudice de la portée générale du paragraphe (1), le programme :
- a) inclut les mesures que les travailleurs doivent prendre et les méthodes qu’ils doivent suivre pour signaler les incidents de harcèlement au travail à l’employeur ou au superviseur;
 - b) énonce la manière dont l’employeur enquêtera sur les incidents et les plaintes de harcèlement au travail et dont il compte y faire face;
 - c) inclut les éléments prescrits.

Renseignements et directives : harcèlement

32.0.7 L’employeur fournit ce qui suit au travailleur :

- a) des renseignements et des directives adaptés au travailleur sur le contenu de la politique et du programme concernant le harcèlement au travail;
- b) les autres renseignements prescrits.

4. (1) L’alinéa 43 (1) a) de la Loi est modifié par substitution de «l’alinéa (3) a), b), b.1) ou c)» à «l’alinéa (3) a), b) ou c)».

(2) Le paragraphe 43 (3) de la Loi est modifié par adjonction de l’alinéa suivant :

- b.1) que de la violence au travail est susceptible de le mettre en danger;

(3) Le paragraphe 43 (5) de la Loi est abrogé et remplacé par ce qui suit :

Obligations du travailleur de demeurer dans un lieu sûr et de rester disponible aux fins de l’enquête

- (5) Tant que l’enquête n’est pas terminée, le travailleur :
- a) d’une part, demeure dans un lieu sûr aussi près que raisonnablement possible de son poste de travail;
 - b) d’autre part, reste à la disposition de l’employeur ou du superviseur aux fins de l’enquête.

(4) Le paragraphe 43 (6) de la Loi est modifié par adjonction de l’alinéa suivant :

- b.1) que de la violence au travail est toujours susceptible de le mettre en danger;

(5) Le paragraphe 43 (8) de la Loi est abrogé et remplacé par ce qui suit :

Décision de l’inspecteur

- (8) À la suite de l’enquête visée au paragraphe (7),

referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person.

(6) Subsection 43 (10) of the Act is repealed and the following substituted:

Worker to remain in safe place and available for investigation

(10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation.

Exception

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

- (a) assigns the worker reasonable alternative work during the worker's normal working hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

5. Subsection 52 (1) of the Act is amended by striking out "or fire" in the portion before paragraph 1 and substituting "fire or incident of workplace violence".

6. The Act is amended by adding the following sections:

Order for written policies

55.1 In the case of a workplace at which the number of employees regularly employed is five or fewer, an inspector may in writing order that the policies with respect to workplace violence and workplace harassment required under section 32.0.1 be in written form and posted at a conspicuous place in the workplace.

Order for written assessment, etc.

55.2 An inspector may in writing order that the following be in written form:

- 1. The assessment of the risks of workplace violence required under subsection 32.0.3 (1).
- 2. A reassessment required under subsection 32.0.3 (4).

7. Subsection 70 (2) of the Act is amended by adding the following paragraphs:

- 15. prescribing elements that any policy required under this Act must contain;
- ...
- 33. prescribing restrictions, prohibitions or conditions with respect to workers or workplaces relating to the risks of workplace violence;
- ...

l'inspecteur décide si une circonstance visée à l'alinéa (6) a), b), b.1) ou c) est susceptible de mettre le travailleur ou une autre personne en danger.

(6) Le paragraphe 43 (10) de la Loi est abrogé et remplacé par ce qui suit :

Obligation du travailleur de demeurer dans un lieu sûr et de rester à la disposition de l'enquêteur

(10) Tant que l'enquête n'a pas eu lieu et tant que l'inspecteur n'a pas rendu sa décision, le travailleur demeure, pendant ses heures normales de travail, dans un lieu sûr aussi près que raisonnablement possible de son poste de travail et reste à la disposition de l'inspecteur aux fins de l'enquête.

Exception

(10.1) Le paragraphe (10) ne s'applique pas si l'employeur, sous réserve des dispositions de la convention collective, le cas échéant :

- a) donne au travailleur un autre travail raisonnable pendant ses heures normales de travail;
- b) sous réserve de l'article 50, donne au travailleur d'autres directives s'il est impossible de lui donner un autre travail raisonnable.

5. Le paragraphe 52 (1) de la Loi est modifié par substitution de «, d'un incendie ou d'un incident de violence au travail» à «ou d'un incendie» dans le passage qui précède la disposition 1.

6. La Loi est modifiée par adjonction des articles suivants :

Ordre : politiques écrites

55.1 Dans le cas d'un lieu de travail où le nombre de personnes régulièrement employées est égal ou inférieur à cinq, un inspecteur peut ordonner par écrit que les politiques concernant la violence au travail et le harcèlement au travail exigées aux termes de l'article 32.0.1 soient formulées par écrit et affichées dans un endroit bien en vue du lieu de travail.

Ordre : évaluation écrite

55.2 Un inspecteur peut ordonner par écrit que les évaluations suivantes soient écrites :

- 1. L'évaluation des risques de violence au travail exigée au paragraphe 32.0.3 (1).
- 2. La réévaluation exigée au paragraphe 32.0.3 (4).

7. Le paragraphe 70 (2) de la Loi est modifié par adjonction des dispositions suivantes :

- 15. prescrire les éléments que doivent comprendre les politiques exigées par la présente loi;
- ...
- 33. prescrire des restrictions, des interdictions ou des conditions à l'égard des travailleurs ou des lieux de travail relativement aux risques de violence au travail;
- ...

50. requiring an employer to designate a person in a workplace to act as a workplace co-ordinator with respect to workplace violence and workplace harassment, and prescribing the functions and duties of the co-ordinator;
51. in the case of a worker described in subsection 43 (2), specifying situations in which a circumstance described in clause 43 (3) (a), (b), (b.1) or (c) shall be considered, for the purposes of clause 43 (1) (a), to be inherent in the worker's work or a normal condition of employment;
52. varying or supplementing subsections 43 (4) to (13) with respect to the following workers, in circumstances when section 43 applies to them:
 - i. workers to whom section 43 applies by reason of a regulation made for the purposes of subsection 3 (3), and
 - ii. workers described in subsection 43 (2).

8. The Act is amended by adding the following section:

Regulations, taxi industry

71. (1) The Lieutenant Governor in Council may make regulations governing the application of the duties and rights set out in Part III.0.1 to the taxi industry.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) specifying that all or any of the duties set out in Part III.0.1 apply for the purposes of the regulations, with such modifications as may be necessary in the circumstances;
- (b) specifying who shall be considered an employer for the purposes of the regulations and requiring that person to carry out the specified duties;
- (c) specifying who shall be considered a worker for the purposes of the regulations;
- (d) specifying what shall be considered a workplace for the purposes of the regulations.

Commencement

9. This Act comes into force six months after the day it receives Royal Assent.

Short title

10. The short title of this Act is the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009*.

50. exiger qu'un employeur désigne une personne dans un lieu de travail pour agir à titre de coordonnateur du lieu de travail à l'égard de la violence au travail et du harcèlement au travail et prescrire les fonctions et les obligations du coordonnateur;
51. dans le cas d'un travailleur décrit au paragraphe 43 (2), préciser les cas où une circonstance visée à l'alinéa 43 (3) a), b), b.1) ou c) doit être considérée, pour l'application de l'alinéa 43 (1) a), comme étant inhérente au travail d'un travailleur ou comme une condition normale de son emploi;
52. modifier ou compléter les paragraphes 43 (4) à (13) en fonction des travailleurs suivants, dans les circonstances où l'article 43 s'applique à ces derniers :
 - i. les travailleurs auxquels l'article 43 s'applique en raison d'un règlement pris pour l'application du paragraphe 3 (3),
 - ii. les travailleurs visés au paragraphe 43 (2).

8. La Loi est modifiée par adjonction de l'article suivant :

Règlements : industrie du taxi

71. (1) Le lieutenant-gouverneur en conseil peut, par règlement, régir l'application, à l'industrie du taxi, des devoirs et des droits énoncés à la partie III.0.1.

Idem

(2) Sans préjudice de la portée générale du paragraphe (1), le lieutenant-gouverneur en conseil peut, par règlement :

- a) préciser que la totalité ou une partie des devoirs énoncés à la partie III.0.1 s'applique dans le cadre des règlements, avec les adaptations nécessaires dans les circonstances;
- b) préciser les personnes qui sont considérées comme étant des employeurs pour l'application des règlements et exiger que ces personnes s'acquittent des devoirs précisés;
- c) préciser les personnes qui sont considérées comme étant des travailleurs pour l'application des règlements;
- d) préciser ce qui est considéré comme étant un lieu de travail pour l'application des règlements.

Entrée en vigueur

9. La présente loi entre en vigueur six mois après le jour où elle reçoit la sanction royale.

Titre abrégé

10. Le titre abrégé de la présente loi est *Loi de 2009 modifiant la Loi sur la santé et la sécurité au travail (violence et harcèlement au travail)*.

Workplace Violence and Harassment: Understanding the Law

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About This Guide

This guide explains what every worker, supervisor, employer and constructor needs to know about workplace violence and workplace harassment requirements in the Occupational Health and Safety Act. It describes everyone's rights and responsibilities and answers, in plain language, the questions that are most commonly asked about these requirements.

Please note this guide is not a legal document. It should not be taken as a statement of the law or what constitutes compliance with the law. If you need help in determining what constitutes compliance, you should consult a lawyer.

This guide does not cover every situation or answer every question about the legal requirements for workplace violence and workplace harassment in Ontario. It also does not cover requirements for other workplace health and safety issues. You should consult *A Guide to the Occupational Health and Safety Act* for information about other requirements.

This guide does not cover other legal obligations that may exist such as those under Canada's Criminal Code or Ontario's Human Rights Code.

Ontario Ministry of Labour health and safety inspectors enforce the Occupational Health and Safety Act and may refer to this guide when determining compliance. They do not enforce this guide.

The workplace violence and workplace harassment requirements are effective June 15, 2010 and are enforceable as of that date.

Introduction

Ontario's Occupational Health and Safety Act* sets out the rights and duties for occupational health and safety of all parties in the workplace. The act provides for enforcement of the law in cases where compliance has not been voluntarily achieved.

The requirements for violence and harassment in the workplace establish minimum standards and set out the rights and duties of all those who have a role in dealing with workplace violence and workplace harassment.

Employers, supervisors and workers share the responsibility for occupational health and safety. This concept of an internal responsibility system is based on the principle that workplace parties themselves are in the best position to identify health and safety problems and develop solutions.

Ideally, the internal responsibility system involves everyone from the company chief executive officer to the worker. How well the internal responsibility system works depends on whether there is a complete, unbroken chain of responsibility and accountability for health and safety.

Every improvement in occupational health and safety benefits all of us. Through co-operation and commitment, we can make Ontario a safer and healthier place in which to work.

* *The Occupational Health and Safety Act is amended from time to time. A current version is available at the following government internet website:*
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm

Background

Workers may face violence and harassment in any workplace and from any person in that workplace.

There is a continuum of unwanted behaviours that can occur in a workplace. This can range from offensive remarks to violence.

It is important for employers to address any unwanted behaviours early to minimize the potential for workplace harassment to lead to workplace violence.

The harassing or violent person may be someone the worker comes into contact with due to the nature of his or her work. This may include a client, customer or patient.

The harassing or violent person may also be part of the workforce, including a co-worker, manager, supervisor or employer. Or the person may be someone with no formal connection to the workplace such as a stranger or a domestic/intimate partner who brings violence or harassment into the workplace.

Canada's Criminal Code deals with matters such as violent acts, threats and behaviours such as stalking. The police should be contacted in these situations. Harassment may also be a matter that falls under Ontario's Human Rights Code.

1 Key Terms and Concepts

1.1 Workplace

The Occupational Health and Safety Act defines a workplace as any land, premises, location or thing at, upon, in or near which a worker works [Section 1].

A workplace could be a building, mine, construction site, vehicle, open field, road or forest.

The test is: Is the worker being directed and paid to be there or to be near there? If the answer is “yes”, then it is a workplace.¹

1.2 Workplace Violence

The Occupational Health and Safety Act defines workplace violence as the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker. It also includes an:

- ◆ attempt to exercise physical force against a worker in a workplace, that could cause physical injury to the worker; and a
- ◆ statement or behaviour that a worker could reasonably interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker [Section 1].

This definition of workplace violence is broad enough to include acts that would constitute offences under Canada’s Criminal Code.

See Section 4.3 of this guide for more information on the role of police.

Examples of workplace violence include:

- ◆ verbally threatening to attack a worker;
- ◆ leaving threatening notes at or sending threatening e-mails to a workplace;

¹ *The term “workplace” may be interpreted differently under other Ontario statutes such as the Human Rights Code and Workplace Safety and Insurance Act, 1997.*

-
- ◆ 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.

What if a worker is accidentally pushed or hurt?

Accidental situations – such as a worker tripping over an object and pushing a co-worker as a result – are not meant to be included.

Does the person need to intend to hurt the worker?

For workplace violence to occur, a person must apply or attempt to apply physical force against a worker. However, he or she does not need to have the capacity to appreciate these actions could cause physical harm.

For example, a person may have a medical condition that causes them to act out physically in response to a stimulus in their environment. This would still be considered workplace violence.

In addition, workplace violence would include situations where two non-workers, patients for example, are fighting and a worker could be injured when he or she intervenes. The non-workers may not have intended their violence to spill over to anyone else, but they used physical force, which could ultimately cause physical injury to a worker.

Employers would be expected to take these situations into account when assessing the risks of workplace violence and when dealing with incidents. They would be required to establish measures and procedures to protect workers from this type of behaviour.

1.3 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.

1.4 Workplace Harassment

The Occupational Health and Safety Act defines workplace harassment as engaging in a course of vexatious comment or conduct against a worker, in a workplace – behaviour that is known or ought reasonably to be known to be unwelcome [Section 1].

The comments or conduct typically happen more than once. They could occur over a relatively short period of time (for example, during the course of one day) or over a longer period of time (weeks, months or years).

Workplace harassment can involve unwelcome words or actions that are known or should be known to be offensive, embarrassing, humiliating or demeaning to a worker or group of workers. It can also include behaviour that intimidates, isolates or even discriminates against the targeted individual(s).

Workplace harassment often involves repeated words or actions, or a pattern of behaviours, against a worker or group of workers in the workplace that are unwelcome.

This may include:

- ◆ 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.

This definition of workplace harassment is broad enough to include harassment prohibited under Ontario’s Human Rights Code, as well as what is often called “psychological harassment” or “personal harassment.”

See Section 4.4 of this guide for the list of prohibited grounds of harassment under the Human Rights Code.

What isn't workplace harassment?

Reasonable action or conduct by an employer, manager or supervisor that is part of his or her normal work function would not normally be considered workplace harassment. This is the case even if there are sometimes unpleasant consequences for a worker. Examples could include changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, implementation of dress codes and disciplinary action.

Differences of opinion or minor disagreements between co-workers would also not generally be considered workplace harassment.

In addition, any behaviour that would meet the definition of workplace violence would not be considered to be workplace harassment.

1.5 Continuum of Inappropriate Behaviours

A continuum of inappropriate behaviours can occur at the workplace. This can range from offensive remarks to violence. Workplace harassment may escalate over time into threats, or acts, of physical violence. In some cases, a targeted worker may react violently to prolonged harassment in the workplace.

It is important for employers to recognize these behaviours and to deal with them promptly because they could lead to workplace violence.

2 Workplace Violence

2.1 General Duties of Workplace Parties

The Occupational Health and Safety Act sets out the general duties for an

- ◆ employer under Section 25;
- ◆ supervisor under Section 27; and
- ◆ worker under Section 28.

These general duties also apply to workplace violence [Section 32.0.5].

See *A Guide to the Occupational Health and Safety Act* for more information about these duties as well as the duties of other workplace parties such as constructors, licensees and owners.

Employers must:

- ◆ take every precaution reasonable in the circumstances to protect workers. This includes protecting workers from the hazard of workplace violence [Section 25(2)(h)];
- ◆ provide information, instruction and supervision to a worker to protect the health and safety of the worker [Section 25(2)(a)];
- ◆ ensure equipment, materials and protective devices provided by them are maintained in good condition [Section 25(1)(b)];
- ◆ provide assistance and co-operation to a joint health and safety committee or health and safety representative [Section 25(2)(e)]; and
- ◆ prepare and review, at least annually, a written occupational health and safety policy, and develop and maintain a program to implement that policy. This applies to workplaces where five or more workers are regularly employed [Section 25(2)(j)].

Supervisors must:

- ◆ ensure a worker works in the manner and with the protective devices, measures and procedures required by the Occupational Health and Safety Act and its regulations [Section 27(1)(a)];

-
- ◆ ensure a worker uses or wears the equipment, protective devices or clothing that the employer requires to be used or worn [Section 27(1)(b)];
 - ◆ advise a worker of the existence of any actual or potential danger to the health or safety of the worker of which the supervisor is aware [Section 27(2)(a)]; and
 - ◆ take every precaution reasonable in the circumstances to protect workers [Section 27(2)(c)].

Workers must:

- ◆ work in compliance with the Occupational Health and Safety Act and its regulations [Section 28(1)(a)];
- ◆ use or wear equipment, protective devices or clothing required by the employer [Section 28(1)(b)];
- ◆ report the absence of, or defect in, any equipment or protective device of which the worker is aware [Section 28(1)(c)];
- ◆ report any contravention of the Occupational Health and Safety Act or its regulations, or the existence of any hazard the worker knows of to the employer or supervisor [Section 28(1)(d)]; and
- ◆ not engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct [Section 28(2)(c)]. While this type of behaviour may not constitute workplace violence, it must not be allowed. If allowed to continue, this behaviour may escalate into workplace violence.

2.2 Workplace Violence Policy

Every employer in Ontario must prepare and review, at least annually, a policy on workplace violence, as required by the Occupational Health and Safety Act [Section 32.0.1(1)(a) and (c)].

This policy is required regardless of the size of the workplace or the number of workers.

If six or more workers are regularly employed at a workplace, this policy must be in writing and posted in a conspicuous place in the workplace.

If fewer than six workers are regularly employed at the workplace, the policy does not necessarily have to be written [Sections 32.0.1(2) and (3)]. However, a Ministry of Labour inspector may order the policy to be in writing [Section 55.1].

Employers may choose to prepare a separate workplace violence policy or they may choose to combine it with another policy required by the Occupational Health and Safety Act such as the workplace harassment policy [Section 32.0.1(1)(b)] or occupational health and safety policy [Section 25(2)(j)].

The workplace violence policy should:

- ◆ show an employer's commitment to protecting workers from workplace violence;
- ◆ address violence from all possible sources (customers, clients, employers, supervisors, workers, strangers and domestic/intimate partners);
- ◆ outline the roles and responsibilities of the workplace parties in supporting the policy and program; and
- ◆ be dated and signed by the highest level of management at the workplace.

See Appendix A for an example to help you develop your workplace violence policy.

Can the workplace violence policy and program be combined?

Yes, as long as all of the requirements for the policy and program are complied with. Although the Occupational Health and Safety Act does not require the program to be in writing, an employer may choose to combine the workplace violence policy and program.

2.3 Assessing the Risks of Workplace Violence

Under the Occupational Health and Safety Act, the employer has a number of responsibilities for assessing the risks of workplace violence.

The employer must:

- ◆ assess the risk of workplace violence that may arise from the nature of the workplace, type of work or conditions of work [Section 32.0.3(1)].
- ◆ take into account the circumstances of the workplace and circumstances common to similar workplaces, as well as any other elements prescribed in regulation [Section 32.0.3(2)]; and,
- ◆ develop measures and procedures to control identified risks that are likely to expose a worker to physical injury. These measures and procedures must be part of the workplace violence program [Section 32.0.2(2)(a)].

The employer must advise the joint health and safety committee or health and safety representative of the assessment results. If the assessment is in writing, the employer must provide a copy to the committee or the representative [Section 32.0.3(3)(a)].

If there is no committee or representative, the employer must advise workers of the assessment results. If the assessment is in writing, the employer must provide copies to workers on request or advise the workers how to obtain copies [Section 32.0.3(3)(b)].

Employers must repeat the assessment as often as necessary to ensure the workplace violence policy and related program continue to protect workers from workplace violence [Section 32.0.3(4)] and inform the joint health and safety committee, health and safety representative, or workers of the results of the re-assessment [Section 32.0.3(5)].

What is meant by the phrase “the nature of the workplace,” the “type of work” or the “conditions of work”?

The ***nature of the workplace*** refers to the physical aspects of the workplace, whether it is a building, construction site, vehicle, or forest. This may include workplace lighting, lines of sight, depth of counters, entrances, exits and objects that could be used to hurt workers.

The ***type of work*** refers to the activities workers perform (such as handling cash), the sector of work (such as health care) and people with whom workers interact (such as customers, clients or patients).

The ***conditions of work*** refers to other aspects such as hours worked, the surrounding neighbourhood and whether workers move from location to location, work alone or in isolation.

What is meant by the phrase “circumstances specific to the workplace”?

Circumstances specific to the workplace could include:

- ◆ layout and design of the workplace;
- ◆ geographic location of the workplace;
- ◆ work carried out and conditions of work, including activities or circumstances associated with a higher risk of violence (see list below);
- ◆ protective measures and procedures, including security measures, that may already be in place; and
- ◆ past violent incidents in the workplace.

A number of activities or circumstances may increase the risk of workplace violence. These include:

- ◆ handling cash;
- ◆ protecting or securing valuables;
- ◆ transporting people and goods;
- ◆ a mobile workplace (such as a vehicle);
- ◆ public or community contact;
- ◆ working with unstable or volatile people;
- ◆ working alone or with just a few people; and
- ◆ working late nights or very early mornings.

How does the employer take into account “circumstances that would be common to similar workplaces”?

A specific workplace may not have experienced a violent incident, but may share risks of workplace violence with similar workplaces.

The risk of violence may be higher in certain sectors such as health care, social services, retail, hospitality, education, transportation, police, security and correctional facilities.

Similar workplaces may also have activities or work conditions in common.

See above for a list of circumstances or activities that may increase the risk of workplace violence.

Can one assessment be done for multiple workplaces?

An assessment of the risks of workplace violence should be specific to the workplace.

A similar type of work may be performed in multiple locations. However, the assessment must take into account the nature of the workplace and conditions of work. Each location should be assessed for its own unique risks of workplace violence in addition to the common risks.

For example, a company may operate many retail stores, all providing the same services. However, each store would have a unique location, surroundings and clientele, etc. In addition, the stores may have different interior physical layouts, equipment or hours of operation.

So, even though the risks of workplace violence for the services provided may be similar, each store may have different risks specific to its particular location.

How can an assessment be done if workers are constantly changing locations (e.g. mobile workers)?

An assessment may not be able to take into account the specific risks related to the nature of every workplace that a mobile worker may visit.

However, the assessment should take into account risks associated with the worker's vehicle. It should also consider risks associated with the type of work and work conditions. For example, a salesperson carrying valuable stock could be at risk for robbery.

The workplace violence program must have measures and procedures in place to control the risks faced by mobile workers.

Is the employer required to assess the risks of violence between individual workers?

The Occupational Health and Safety Act does not require an employer to proactively assess the risks of violence between individual workers. It could be difficult for the employer to predict when violence may occur between individual workers

However, a review of incidents or threats of violence from all sources may indicate the origins of workplace violence and likelihood of violence between workers at a particular workplace.

How often should reassessment take place?

The risks of workplace violence should be re-assessed as often as is necessary to protect workers from workplace violence. For example, a reassessment should be undertaken if:

- ◆ the workplace moves or the existing workplace is renovated or reconfigured;
- ◆ there are significant changes in the type of work (for example, more expensive items are being sold);
- ◆ there are significant changes in the conditions of work (for example, closing at a later hour);
- ◆ there is new information on the risks of workplace violence; or,
- ◆ a violent incident indicates a risk related to the nature of the workplace, type of work, or conditions of work was not identified during an earlier assessment.

It is recommended the employer review the assessment at least annually.

2.4 Workplace Violence Program

In addition to preparing a workplace violence policy and assessing the risks of workplace violence, under the Occupational Health and Safety Act every employer must develop and maintain a program to implement the workplace violence policy [Section 32.0.2].

The program must include:

- a) measures and procedures to control the risks identified in the assessment required under subsection 32.0.3(1) as likely to expose a worker to physical injury;
- b) measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- c) measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;
- d) how the employer will investigate and deal with incidents or complaints of workplace violence; and
- e) any other elements prescribed in regulation.

The workplace violence program may incorporate or reference existing programs, procedures or protocols related to workplace violence. For example, there could be existing procedures for emergency situations, incident reporting or personal safety.

See Appendix B for more information on the types of measures and procedures that could be part of a workplace violence program.

Can a workplace adopt a program that exists at another workplace?

The measures and procedures in a workplace violence program must address the risks and conditions specific to that workplace.

While a program from a similar workplace may be used as the basis for a new program, it would need to be tailored to fit the workplace where it would be used and based on the results of the assessment for that specific workplace.

For example, a chain of retail outlets could develop a general workplace violence program with measures to control the risks common to all of the stores. The general program could also include standard emergency, reporting, and investigation measures and procedures. However, each location would need to modify the general program

based on site-specific risks and conditions to ensure there are appropriate measures and procedures to protect workers.

We have done an assessment and have not identified any risks that are likely to expose a worker to physical injury. Do we still need a workplace violence program?

Yes. While no specific measures or procedures may be needed to control risks, a workplace violence program would still be required because it would need to provide measures and procedures for:

- ◆ summoning immediate assistance;
- ◆ reporting incidents or complaints of workplace violence; and
- ◆ investigating and dealing with workplace violence incidents and complaints, if they occur.

If new risks are identified after the initial assessment, the employer would need to modify the workplace violence program to include appropriate measures and procedures.

How often should the workplace violence program be reviewed and revised?

Under the Occupational Health and Safety Act the employer must maintain the workplace violence program [Section 32.0.2(1)].

It is recommended the program be reviewed at least annually. This review should focus on the effectiveness of the measures and procedures in the program. This is to ensure they are being used and are continuing to protect workers from workplace violence.

A review or revision of a workplace violence program should be undertaken if:

- ◆ a reassessment of risks indicates revisions are needed;
- ◆ workers, or the joint health and safety committee or health and safety representative, indicate measures or procedures are not adequate or are not used;
- ◆ a violent incident shows that measures or procedures are not adequate; and/or
- ◆ the workplace's response to a violent incident or complaint shows the reporting or investigation procedures need to be revised.

2.5 Information and Instruction on Workplace Violence

Workplace Violence Policy and Program

Under the Occupational Health and Safety Act, an employer must provide appropriate information and instruction to workers on the contents of the workplace violence policy and program [Section 32.0.5(2)].

All workers should be aware of the employer's workplace violence policy and program. Workers should:

- ◆ know how to summon immediate assistance;
- ◆ know how to report incidents of workplace violence to the employer or supervisor;
- ◆ know how the employer will investigate and deal with incidents, threats or complaints;
- ◆ know, understand and be able to carry out the measures and procedures that are in place to protect them from workplace violence; and
- ◆ be able to carry out any other procedures that are part of the program.

Supervisors may need additional information or instruction, especially if they are going to follow up on reported incidents or complaints of workplace violence.

Other Related Information and Instruction Duties

Under the Occupational Health and Safety Act, an employer has a general duty to provide information, instruction and supervision to protect a worker [Section 25(2)(a)].

A supervisor has a duty to advise workers of any actual or potential occupational health and safety dangers of which the supervisor is aware [Section 27(2)(a)].

To protect workers, the employer must tailor the type and amount of information and instruction to the specific job and the associated risks of workplace violence.

Workers in jobs with a higher risk of violence may require more frequent or intensive instruction or specialized training.

When and how often should instruction take place?

An employer should identify what information, instruction or training is needed when a worker is hired. This should be done by taking into account hazards associated with each specific job as well as the measures and procedures that are in place.

Similarly, the employer should identify what information, instruction or training is needed when a worker changes jobs.

Workplace violence can be covered along with other occupational health and safety topics, including workplace harassment, or it can be covered separately.

Employers should also identify how often instruction or training should be repeated. This may be done:

- ◆ on a regular basis;
- ◆ when there are significant changes to the risks encountered;
- ◆ when there are significant changes to the workplace violence policy or program; and/or
- ◆ when circumstances indicate additional instruction or training is needed such as when procedures are not being followed or workers do not know about them.

2.6 Information about a Person with a History of Violent Behaviour

The Occupational Health and Safety Act clarifies that employers and supervisors must provide workers with information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour [Section 32.0.5(3)].

However, this duty is limited and applies only when the:

- (a) worker can be expected to encounter the violent person in the course of his or her work; and the
- (b) risk of workplace violence is likely to expose the worker to physical injury.

Employers and supervisors must also not disclose more information than is reasonably necessary for the protection of a worker from physical injury.

What factors should I consider in determining what is “likely to expose a worker to physical injury”?

Employers would have to evaluate the circumstances of a person’s history of violent behaviour and determine which workers would be likely to encounter this person in the course of their work and whether the person poses a risk to those workers.

Some factors to consider include:

- ◆ Was the history of violence associated with the workplace or work?
- ◆ Was the history of violence directed at a particular worker or workers in general?
- ◆ How long ago did the incident(s) of violence occur?
- ◆ What measures and procedures are in place in the existing workplace violence program?

Do I have to tell every worker about a person with a history of violent behaviour?

Not necessarily. An employer would first have to determine which workers, if any, would be likely during the course of their work to encounter the violent person and if the risk of workplace violence was likely to expose the worker to physical injury [Section 32.0.5(3)].

Depending on the results, the employer would not have to provide a worker with specific information about the violent person if the worker was:

- ◆ not likely to encounter that person in his or her work; or
- ◆ not at risk of physical injury from that person.

What information do I have to disclose to workers?

Under the Occupational Health and Safety Act, employers and supervisors must disclose as much information about a person with a history of violent behaviour as needed to protect workers from physical injury while respecting privacy as much as possible [Sections 32.0.5(3) and (4)].

For example, the information disclosed should allow workers to identify the person with the violent history and, if appropriate, the triggers of his/her potential aggression.

Only personal information that is necessary to protect the worker from physical injury should be disclosed.

For example, a waitress or construction worker should be told if there is person with a history of hitting workers at that workplace and what the triggers are for that person's violent behaviour. However, the worker would not necessarily need to know all the personal information the employer has about the person with the violent history.

In workplaces where the risk of workplace violence is similar from many people, such as in correctional institutions, it may be appropriate to provide general information about these risks as part of the information and instruction given to workers under Section 25(2)(a).

However, in these types of workplaces, workers may require information about a specific individual's history of violent behaviour so workers are aware of the specific risks [Section 32.0.5(3)].

What about privacy legislation?

There may be other laws that govern the release of personal or medical information such as the:

- ◆ Youth Criminal Justice Act (Canada);
- ◆ Personal Information Protection and Electronic Documents Act (Canada); and
- ◆ Personal Health Information Protection Act.

The employer will have to take into account a person's right to privacy under those laws in addition to a worker's right to be informed of workplace violence risks under the Occupational Health and Safety Act.

In such cases, employers may wish to seek legal advice.

Do I have to disclose personal medical information?

In most situations, it should be possible to provide workers with enough information to protect them without disclosing personal medical information.

In cases where an employer or supervisor feels personal medical information should be disclosed to a worker, the employer may wish to obtain legal advice about possible implications under human rights or privacy legislation.

Am I required to conduct criminal background checks on people in the workplace?

The Occupational Health and Safety Act does not require employers or supervisors to do criminal background checks or to otherwise seek out information on workers or other people who are likely to be in the workplace.

2.7 Domestic Violence

Under the Occupational Health and Safety Act, an employer must take every precaution reasonable in the circumstances for the protection of workers when they are aware, or ought reasonably to be aware, that domestic violence may occur in the workplace, and that it would likely expose a worker to physical injury [Section 32.0.4].

Domestic violence may put the targeted worker at risk, and may also pose a threat to co-workers.

Measures and procedures in the workplace violence program can help protect workers from domestic violence in the workplace. For example, measures for the summoning of immediate assistance or for reporting of violent incidents could help protect workers from domestic violence when it may occur in the workplace.

Workers should be told that they can report their concerns to their employer if they fear domestic violence may enter the workplace.

Employers must be prepared to investigate and deal with these concerns on a case-by-case basis.

In addition to evaluating a worker's specific circumstances, employers should determine how measures and procedures in the existing workplace violence program could be used to support the development of reasonable precautions for the worker.

This could involve creating an individual safety plan for the worker while he or she is in the workplace. The safety plan should be developed in consultation with the targeted worker.

In developing the plan, the employer and worker may be able to work with the police, courts, or other organizations who may already be involved.

When a worker and his or her spouse work at the same organization, and there are concerns about domestic violence occurring in the workplace, the employer should

follow the workplace violence policy and program in dealing with the abusive worker's behaviour.

How might an employer become aware of domestic violence that may enter the workplace?

An employer may become aware of domestic violence when an incident takes place at the workplace or when a concern is reported by a targeted worker, co-workers or someone else.

Other indicators could include threatening emails and phone calls received at work or unwelcome visits at the workplace such as by an abusive partner.

What is the employer's obligation if the targeted worker does not want the employer to take any steps?

Even if a worker does not want any steps taken, the employer may still be required to take some action to protect the targeted worker and other workers, depending on the circumstances.

The employer should work closely with the targeted worker to develop reasonable precautions to address the situation while attempting to respect the worker's privacy and sensitivity of the issue.

Does an employer have to assess the risk that domestic violence will occur in the workplace?

The Occupational Health and Safety Act does not require an employer to assess the risk of domestic violence occurring in a workplace.

However, an employer may wish to conduct a review of violent incidents or threats of violence from all sources. This may help the employer determine origins of workplace violence and the likelihood violence will occur at a particular workplace.

2.8 Work Refusals

Under the Occupational Health and Safety Act, a worker can refuse to work if he or she has reason to believe he or she may be endangered by workplace violence [Section 43(3)(b.1)]. However, work cannot be refused on the grounds of workplace harassment.

The act sets out a specific procedure that must be followed in a work refusal. It is important for workers, employers, supervisors, joint health and safety committees and health and safety representatives to understand and follow this procedure.

As discussed in Section 2.4 of this guide, the workplace violence program must include measures and procedures for workers to report workplace violence incidents and for employers to investigate and deal with those incidents or complaints.

These measures can help workers, supervisors and employers address workplace violence concerns before they escalate to work refusals.

Do all workers have the right to refuse work due to workplace violence?

Yes, but for some workers the right to refuse work for any reason, including for workplace violence, is limited.

Certain workers who protect public safety cannot refuse work if:

- ◆ the danger is an inherent or normal part of their job or
- ◆ the refusal would endanger the life, health or safety of another person.

These workers are:

- ◆ police officers;
- ◆ firefighters;
- ◆ workers employed in correctional institutions; and,
- ◆ workers employed in workplaces such as hospitals, nursing homes, psychiatric institutions, rehabilitation facilities, residential group homes for persons with physical or mental disabilities, ambulance services, first-aid clinics, licensed laboratories or in any laundry, food service, power plant or technical service used by one of the above [Section 43(2)].

In addition, teachers cannot refuse work when a pupil's life, health or safety is in imminent jeopardy [Section 3(3) of Regulation 857 (Teachers)].

See *A Guide to the Occupational Health and Safety Act* for more information on work refusals.

Where must workers stay during a work refusal?

A worker must remain in a safe place as near as reasonably possible to his or her workstation while waiting for the employer to investigate [Section 43(5)] or for the Ministry of Labour to investigate [Section 43(10)].

The location will depend on the circumstances that led to the work refusal.

Employers may wish to develop workplace-specific procedures for work refusals related to workplace violence, including where a safe place would be. These workplace-specific procedures must be consistent with the work refusal provisions in the Occupational Health and Safety Act.

Can a worker refuse work on the basis of a threat?

Yes, if it is (or can be reasonably interpreted to be) a threat to exercise force that could cause physical injury to the worker. Where a worker receives a threat that does not cause him/her to fear for his/her personal safety, the worker should use the procedures in the workplace violence or harassment program to report the incident to his or her employer.

Does all work need to be suspended during an investigation if there is a work refusal due to workplace violence?

Although Section 43 allows workers to refuse to work or do particular work if their health and safety is in danger due to workplace violence, this does not mean all work needs to be suspended during a work refusal.

For example, if the risk of workplace violence is eliminated by the removal of a violent person, it may be possible for work to continue during the employer's investigation.

Can the measures and procedures that an employer has in place affect a worker's right to refuse due to workplace violence?

A worker who has reason to believe that he or she is likely endangered by workplace violence always has the right to refuse work (subject to limitations on the right to refuse work for specific categories of workers).

An employer with a good workplace violence policy and program, supported by equipment, training and effective communication, should have established methods for immediately dealing with violent and potentially violent incidents. For example, an

employer may direct workers to call the police for assistance when they have immediate safety concerns due to workplace violence.

Having these internal procedures in place may be the best way to prevent further danger and to protect workers and members of the public (in sectors such as the transit industry, for example). This does not limit a worker's right to refuse work. However, because the danger to workers is dealt with quickly, a worker may not need to refuse work in these circumstances.

Whether there is a work refusal or not, workers should report an incident of workplace violence to their employer or supervisor. The employer needs to investigate and take any steps necessary to protect workers. A worker may also contact the Ministry of Labour with a complaint if their concerns are not resolved at the workplace.

2.9 Notices

When an incident of workplace violence occurs, the employer should first notify police or emergency responders for immediate assistance. In addition, under the Occupational Health and Safety Act, an employer has a number of duties if a workplace violence incident results in a person being killed or critically injured² [Section 51(1)].

An employer must:

- ◆ immediately notify, by direct means such as telephone, a Ministry of Labour inspector, the workplace's joint health and safety committee or health and safety representative and union, if any; and
- ◆ within 48 hours notify, in writing, a director of the Ministry of Labour, giving the circumstances of the occurrence and any information that may be prescribed³.

If there is an incident of workplace violence and a worker is disabled or requires medical attention, the employer⁴ must notify the joint health and safety committee or health and safety representative and the union, if any, within four days of the incident.

² *Critically injured is defined in Regulation 834 of the Occupational Health and Safety Act.*

³ *Regulations under the Occupational Health and Safety Act prescribe the specific information that must be provided*

⁴ *Self-employed people are required to notify a director of the Ministry of Labour, in writing, if they sustain an occupational injury or illness.*

This notice must be in writing and must contain any prescribed information [Section 52(1)]. If required by an inspector, this notice must also be given to a director of the Ministry of Labour.

Notices are not required for incidents of harassment.

See Sections 2.4 and 3.2 of this guide for more information on internal reporting mechanisms for workplace violence and harassment programs.

3 Workplace Harassment

Workplace harassment may escalate to threats or acts of physical violence or a targeted worker may react violently to prolonged harassment in the workplace. It is important for employers to recognize these behaviours and to deal with them promptly because they could lead to workplace violence.

The requirement for all workplaces to have a workplace harassment policy and program will help workplace parties recognize and deal with workplace harassment before it escalates into possible workplace violence.

3.1 Workplace Harassment Policy

Employers must prepare and review a policy on workplace harassment at least annually, as required by the Occupational Health and Safety Act [Section 32.0.1(b) and (c)].

The policy is required regardless of the size of the workplace or the number of workers.

If six or more workers are regularly employed at the workplace, the policy must be in writing and it must be posted in a conspicuous place in the workplace.

If less than six workers are regularly employed in the workplace, the policy does not necessarily have to be written [Sections 32.0.1(2) and (3)]. However, a Ministry of Labour inspector may order the policy to be in writing [Section 55.1].

Employers may choose to prepare a separate policy regarding workplace harassment or they may combine it with a workplace violence policy [Section 32.0.1(1)(a)] or occupational health and safety policy [Section 25(2)(j)].

Employers may also deal with workplace harassment by including it in an existing anti-harassment or anti-discrimination policy based on the criteria for harassment in Ontario's Human Rights Code. However, if an employer has an existing anti-harassment or anti-discrimination policy, the policy would need to be modified in order to meet the requirements of the Occupational Health and Safety Act. This is because the act's definition of "workplace harassment" goes beyond the prohibited grounds in the code. See Section 4.4 of this guide for a list of the prohibited grounds in the code.

The workplace harassment policy should:

- ◆ show an employer's commitment to addressing workplace harassment;
- ◆ consider workplace harassment from all sources such as customers, clients, employers, supervisors, workers, strangers and domestic/intimate partners;
- ◆ outline the roles and responsibilities of the workplace parties in supporting the policy and program; and
- ◆ be dated and signed by the highest level of management at the workplace.

See Appendix C for an example to help you develop your workplace harassment policy.

Can the workplace harassment policy and program be combined?

Yes, the policy and program can be combined as long as all of the requirements of the policy and program are complied with. Although the Occupational Health and Safety Act does not require the program to be in writing, an employer may choose to combine the workplace harassment policy and program.

3.2 Workplace Harassment Program

Under the Occupational Health and Safety Act, an employer must develop and maintain a program to implement the workplace harassment policy [Section 32.0.6(1)].

The program must include:

- (a) measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor [Section 32.0.6(2)(a)];
- (b) how the employer will investigate and deal with incidents and complaints of workplace harassment [Section 32.0.6(2)(b)]; and
- (c) any prescribed elements that may be included in regulations made under the act [Section 32.0.6.(2)(c)].

See Appendix D for an example to help you develop your workplace harassment program.

Does an employer have to assess the risk that harassment may occur in the workplace?

The Occupational Health and Safety Act does not require an employer to assess the risk of workplace harassment.

3.3 Information and Instruction on Workplace Harassment

An employer must provide appropriate information and instruction to workers on the contents of the workplace harassment policy and program, as required by the Occupational Health and Safety Act [Section 32.0.7].

All workers should be aware of the employer's policy on workplace harassment. Workers should:

- ◆ know how to report incidents of workplace harassment to the employer or supervisor; and
- ◆ know how the employer will investigate and deal with incidents or complaints of workplace harassment.

Workers may need other information and instruction on workplace harassment, depending on their jobs.

Some workers may need to be trained to recognize and respond to harassment or trained in specialized techniques to deal with harassment.

Supervisors may need additional information or instruction, especially if they are going to follow up on reported incidents or complaints of workplace harassment.

Employers, supervisors and unions also need to be aware of their responsibilities to prevent and address harassment prohibited under Ontario's Human Rights Code.

See Section 4.4 - Ontario Human Rights System for more information.

4 Roles and Responsibilities

4.1 Joint Health and Safety Committees / Health and Safety Representatives

Joint health and safety committees and health and safety representatives have the same powers and responsibilities for workplace violence hazards as they do for other occupational health and safety hazards under the Occupational Health and Safety Act. For example, their role during a work refusal [Section 43] is the same for workplace violence as it is for any other workplace hazard.

These committees and health and safety representatives should also be able to recognize risks of workplace violence in the course of carrying out their regular functions such as inspecting workplaces.

An employer may wish to consult with his or her workplace's joint health and safety committee or health and safety representative when developing workplace violence and workplace harassment policies and programs.⁵

Employers must advise the joint health and safety committee or health and safety representative of the results of an assessment of workplace violence risks [Section 32.0.3(3)(a)] or the results of a reassessment [section 32.0.3(5)]. For more information, see Section 2.3 - Assessing the Risks of Workplace Violence.

Employers must also inform the committee or health and safety representative if a person is killed, critically injured, disabled from performing their usual work, or requires medical attention due to workplace violence [sections 51(1) and 52(1)]. For more information, see Section 2.9 - Notices.

For more information, see *A Guide for Joint Health and Safety Committees and Representatives in the Workplace*.

⁵ For those workplaces that fall under the Health Care and Residential Facilities Regulation (O. Reg. 67/93) there are specific requirements for consulting with the joint health and safety committee or health and safety representative on certain matters. For more information see sections 8 and 9 of the regulation.

4.2 Ministry of Labour

The Ministry of Labour carries out workplace inspections to:

- ◆ ensure compliance with the Occupational Health and Safety Act and its regulations; and to
- ◆ ensure the workplace's internal responsibility system is working.

Ministry of Labour health and safety inspectors may check to ensure employers, supervisors and workers are complying with workplace violence and workplace harassment requirements. They may do this as part of a general inspection of a workplace or when investigating a specific complaint or incident.

Inspectors may issue written orders to comply with the act when contraventions are found [Section 57].

The ministry may also prosecute an employer, supervisor or worker if a contravention is found or if they have failed to comply with an order of an inspector, a director or the minister [Section 66(1)].

See *A Guide to the Occupational Health and Safety Act* for more information on the role of ministry inspectors.

Police may also investigate violent incidents and complaints. See Section 4.3 of this guide for more information about the role of the police.

It is not the role of ministry inspectors to resolve or mediate specific allegations of harassment in the workplace.

Employers are responsible for investigating and dealing with incidents and complaints of workplace harassment. They are also responsible for making decisions on what steps, if any, should be taken as a result.

A worker may also seek resolution of a workplace harassment incident or complaint outside of the employer's internal investigation procedure. In particular, a worker may do this if he or she believes the employer did not properly deal with the matter.

For example, a worker may:

- ◆ contact the Human Rights Tribunal of Ontario to file an application to have their matter heard if the alleged harassment is based on one of the grounds prohibited under the Ontario Human Rights Code; or

-
- ◆ seek to resolve harassment issues through the grievance arbitration process if they are represented by a union; or
 - ◆ seek to resolve harassment issues through civil litigation, depending on the circumstances.

4.3 Police

Canada's Criminal Code deals with matters such as violent acts, threats and behaviours such as stalking. The police should be contacted immediately when an act of violence has occurred in the workplace or when someone in the workplace is threatened with violence.

4.4 Ontario Human Rights System

Ontario's Human Rights Code is a provincial law that gives everyone equal rights and opportunities without discrimination or harassment in specific areas such as employment, housing and services.

The code's goal is to prevent discrimination and harassment based on the following 15 grounds:

- ◆ race
- ◆ ancestry
- ◆ place of origin
- ◆ colour
- ◆ ethnic origin
- ◆ citizenship
- ◆ creed (religion)
- ◆ sex (including pregnancy and gender identity)
- ◆ sexual orientation
- ◆ disability
- ◆ age (18 and over, 16 and over in occupancy of accommodation)
- ◆ marital status (including same sex partners)
- ◆ family status

-
- ◆ receipt of public assistance (in accommodation only) and
 - ◆ record of offences (in employment only).

“Disability” covers a broad range and degree of conditions, some visible and others not. A disability may be present from birth, caused by an accident or developed over time. It may include physical, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions.

Under the Human Rights Code, protection from discrimination or harassment includes past, present and perceived conditions involving disabilities.

For example, a person who experiences discrimination because he or she was an alcoholic in the past is protected. Similarly, a person whose condition does not limit his or her workplace abilities at present, but who may be at greater risk of having limitations in the future is also protected.

When dealing with workplace violence and harassment, employers should be aware of their responsibilities for people with disabilities under the Human Rights Code.

Under the code, employers have an obligation to keep the workplace free of discrimination and harassment related to one or more of the code’s prohibited grounds.

Employers, supervisors and workers may be held liable under Ontario’s human rights system if harassment occurs in the workplace or at work-related functions. They may also be liable for failing to take proper steps to address and prevent that harassment.

Ontario’s human rights system consists of three separate and independent parts. They are the:

- ◆ **Human Rights Tribunal of Ontario** which decides if someone’s human rights have been violated. If a person thinks his or her rights under the code have been violated, he or she can file an application directly with the tribunal and it will decide the best way to deal with the situation.
- ◆ **Human Rights Legal Support Centre** which helps people who file applications with the tribunal. Services may include advice, support and legal representation.
- ◆ **Ontario Human Rights Commission**, which provides leadership for the promotion, protection and advancement of human rights, and builds partnerships across the human rights system. This includes developing policies and providing targeted public education, monitoring human rights, doing research and analysis, and conducting human rights inquiries. In matters affecting the broad public

interest, it may take its own cases to the tribunal or intervene in human rights cases before the tribunal.

An employer who wishes to learn more about his or her obligations under the code should visit the websites of the Commission or the Tribunal.

A worker who believes that a matter involving prohibited grounds was not properly addressed by his or her workplace should contact the Human Rights Legal Support Centre for help, or the Tribunal directly to file an application to have the matter heard.

4.5 Health and Safety Associations

Ontario's health and safety associations provide training programs, products and services to employers and workers.

The associations, which include industry-based safe workplace associations, the Workers Health and Safety Centre and Occupational Health Clinics for Ontario Workers, are funded by Ontario's Workplace Safety and Insurance Board.

Employers and workers can contact the appropriate association for information, resources and assistance to help them comply with workplace violence and workplace harassment requirements under the Occupational Health and Safety Act.

A complete listing of the health and safety associations is available at: www.wsib.on.ca/wsib/wsibsite.nsf/public/HealthSafetyCommunity.

Appendix B: Workplace Violence Program

The following are some examples of measures and procedures employers may wish to consider when developing a workplace violence program [Section 32.0.2 of the Occupational Health and Safety Act].

Measures and procedures to **control the risks of workplace violence** identified in the risks assessment may include:

- ◆ safe work procedures;
- ◆ personal protective equipment;
- ◆ design or physical layout of the workplace such as doors with clear windows, adequate lighting, location and structure of counters, barriers, etc.;
- ◆ designated safe locations for emergency situations;
- ◆ procedures for informing or advising workers of potentially violent situations or people;
- ◆ worker training on the workplace violence policy and program and dealing with aggressive or violent clients.

Measures and procedures for **summoning immediate assistance** may include:

- ◆ equipment to summon assistance such as fixed or personal alarms, locator or tracking systems, phones, cell phones, etc.;
- ◆ emergency telephone numbers and/or e-mail addresses;
- ◆ emergency procedures.

Measures and procedures for workers to **report incidents of workplace violence** to the employer or supervisor may include information about:

- ◆ how, when and to whom a worker should report incidents or threats;
- ◆ forms or other reporting mechanisms;
- ◆ roles and responsibilities of employers, supervisors, workers, Joint Health and Safety Committees, health and safety representatives and others in the incident reporting process;
- ◆ when the incident requires external reporting (i.e. to the police, Workplace Safety Insurance Board, Ministry of Labour, etc.).

Measures and procedures for how the employer will **investigate and deal with incidents or complaints** of workplace violence may include information about:

- ◆ how and when investigations will be conducted;
- ◆ what will be included in the investigation;
- ◆ roles and responsibilities of employers, supervisors, workers, Joint Health and Safety Committees, health and safety representatives and others;
- ◆ follow-up to the investigation (description of actions and timeframe);
- ◆ recordkeeping requirements.

An employer may wish to have a more extensive workplace violence program, which could include workplace violence awareness training, an Employee Assistance Program (EAP) or post-traumatic incident response procedures.

Appendix C: Example of Workplace Harassment Policy

The management of _____ (insert company name) is committed to providing a work environment in which all individuals are treated with respect and dignity.

Workplace harassment will not be tolerated from any person in the workplace (The workplace may wish to list the sources of workplace harassment). Everyone in the workplace must be dedicated to preventing workplace harassment. Managers, supervisors, and workers are expected to uphold this policy, and will be held accountable by the employer (If the policy applies to other people in the workplace, they should also be listed).

Workplace harassment means engaging in a course of vexatious comment or conduct against a worker in a workplace -- a comment or conduct that is known or ought reasonably to be known to be unwelcome (The workplace may wish to list examples of unacceptable behaviour).

Harassment may also relate to a form of discrimination as set out in the Ontario Human Rights Code, but it does not have to (The workplace may wish to include information about what constitutes discriminatory harassment under Ontario's Human Rights Code).

This policy is not intended to limit or constrain the reasonable exercise of management functions in the workplace (The workplace may wish to include examples of work functions that would generally not be considered workplace harassment).

Workers are encouraged to report any incidents of workplace harassment (The workplace may wish to provide more information about how to report incidents and may wish to emphasize there will be no negative consequences for reports made in good faith).

Management will investigate and deal with all concerns, complaints, or incidents of workplace harassment in a fair and timely manner while respecting workers' privacy as much as possible (The workplace may wish to provide more information about how incidents of harassment will be investigated and/or dealt with).

Nothing in this policy prevents or discourages a worker from filing an application with the Human Rights Tribunal of Ontario on a matter related to Ontario's Human Rights Code within one year of the last alleged incident. A worker also retains the right to exercise any other legal avenues that may be available.

Signed: _____ President / CEO Date: _____

The workplace violence policy should be consulted whenever there are concerns about violence in the workplace.

Appendix D: Workplace Harassment Program

The following are examples of measures and procedures employers may wish to consider when developing a workplace harassment program. [Section 32.0.6]

Measures and procedures for workers to **report incidents of workplace harassment** to the employer or supervisor may include information about:

- ◆ how, when and to whom a worker should report incidents;
- ◆ forms or other reporting mechanisms;
- ◆ roles and responsibilities of employers, supervisors, workers and others in the incident reporting process.

Measures and procedures for how the employer will **investigate and deal with incidents and complaints** of workplace harassment may include information about:

- ◆ how and when investigations will be conducted;
- ◆ what will be included in the investigation;
- ◆ roles and responsibilities of employers, supervisors, workers and others;
- ◆ follow-up to the investigation (description of actions and timeframe);
- ◆ recordkeeping requirements.

An employer may wish to have a more extensive workplace harassment program, which could include workplace harassment awareness training or an Employee Assistance Program (EAP).

Appendix E: Ministry of Labour Health and Safety Contact Information

Many of the toll-free numbers listed below are accessible only within the area code of the relevant office.

CENTRAL REGION

Central Region includes Toronto and the following counties: Dufferin, Durham, Peel, Simcoe, and York.

Central Occupational Health and Safety Duty Desk

Tel: 416-314-5421 / 800-991-7454

Fax: 416-235-3972

EASTERN REGION

Eastern Region includes the following counties: Frontenac, Haliburton, Hastings, Lanark, Leeds & Grenville, Lennox & Addington, Muskoka, Northumberland, Ottawa-Carleton, Peterborough, Prescott & Russell, Prince Edward, Renfrew, Stormont Dundas & Glengarry and Victoria

Ottawa

347 Preston Street, 4th Flr

Ottawa K1S 3J4

Tel: 613-228-8050 / 800-267-1916

Fax: 613-727-2900

Kingston

51 Heakes Lane

Beechgrove Complex

Kingston K7M 9B1

Tel: 613-545-0989 / 800-267-0915

Fax: 613-545-9831

Peterborough

300 Water St N, 3rd Fl South Tower

Peterborough K9J 8M5

Tel: 705-755-4700 / 800-461-1425

Fax: 705-755-4724

NORTHERN REGION

Northern Region includes the following counties: Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Timiskaming

Sudbury

159 Cedar St, Ste 301

Sudbury P3E 6A5

Tel: 705-564-7400 / 800-461-6325

Fax 705-564-7435

North Bay

101 McIntyre Street West, 2nd Flr

North Bay P1B 2Y5

Tel: 705-497-5234 / 800-461-6325

Fax: 705-497-6850

Sault Ste. Marie

70 Foster Dr, Ste 480

Sault Ste Marie P6A 6V4

Tel: 705-945-6600 / 800-461-7268

Fax 705-949-9796

Thunder Bay

435 James St S, Ste 222

Thunder Bay P7E 6S7

Tel: 807-475-1691 / 800-465-5016

Fax 807-475-1646

Timmins

(mailing address)

P.O. Bag 3050

South Porcupine P0N 1H0

(office address)

Ontario Government Complex

D Wing Highway 101 E

Porcupine P0N 1C0

Tel: 705-235-1900 / 800-461-9847

Fax 705-235-1925

WESTERN REGION

Western Region includes the following counties: Brant, Bruce, Elgin, Essex, Grey, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Huron, Kent, Lambton, Middlesex, Niagara, Oxford, Perth, Waterloo and Wellington

Western Occupational Health and Safety Call Centre

Tel: 905-577-9774 / 877-202-0008

Fax: 905-577-1316

NOTES

The above contact numbers are for reporting fatalities and critical injuries, work refusals, unsafe workplace complaints and joint health and safety committee disputes, as well as assistance with the application of the Occupational Health and Safety Act and its regulations, and referrals to other health and safety partners (Workplace Safety and Insurance Board, Health and Safety Associations, etc).

For health and safety emergencies outside of regular business hours, please contact the Spills Action Centre (SAC) toll-free at 1-800-268-6060 or 416-325-3000 in Toronto.

All calls for employment standards (i.e., hours of work, overtime, public holidays, vacation, leaves of absence, termination, etc.) should be directed to the Employment Standards Information Centre toll free at 1-800-531-5551 or at 416-326-7160 in Toronto

For more contact information, or if you're not sure what region you're in, please see "Employment", "Health and Safety" or "Labour" in the Blue Pages of your local telephone directory, or see the List of Regional Offices on the Ministry's website: at www.labour.gov.on.ca/english/about/reg_offices.php

Bill 168: Occupational Health and Safety Amendment Act Violence and Harassment in the Workplace

FIRM PROFILE

About Stikeman Elliott

Employment, Labour and Pension Group

About Stikeman Elliott

Stikeman Elliott is recognized nationally and internationally for the sophistication of its business law practice. The firm is a Canadian leader in each of its core practice areas – corporate finance, M&A, banking, corporate-commercial, real estate, tax, insolvency, structured finance, competition, intellectual property, administrative law, employment and business litigation – and has developed in-depth knowledge of a wide range of industries including mining, energy, banking, insurance, infrastructure, retail, telecommunications and technology.

Located in Toronto, Montréal, Ottawa, Calgary and Vancouver, its Canadian offices are among the leading practices in their respective jurisdictions. Stikeman Elliott is also prominent internationally, with a longstanding presence in London, New York and Sydney and extensive experience in China, South and Southeast Asia as well as in central and eastern Europe, Latin America, the Caribbean and Africa. The firm's 500 members include many of Canada's most prominent business lawyers, including leading litigators, in several of Canada's provinces.

Chambers Global identifies the firm as one of Canada's two top-tier Corporate/M&A practices and it is frequently ranked among Canada's leaders in domestic and cross-border M&A league tables from Thomson Financial, Mergermarket and Mergerstat Review. Stikeman Elliott is also the leading adviser in Canadian securities offerings, ranking first from 2005 to 2009 (inclusive) in Bloomberg league tables in terms of overall volume, as well as receiving top rankings from the *Financial Post*. The firm's National Litigation Group, whose specializations include class actions, securities litigation and restructurings, has been ranked among the top three business litigation practices in Canada by Lexpert. Among Stikeman Elliott's other highly regarded practices are competition/antitrust (named as a leader by the *Global Competition Review*), taxation (highly ranked by Lexpert) and structured finance (widely considered to be Canada's foremost practice in that field). The firm is also well known for its extensive regulatory and government relations expertise; the latter anchored by its office in Ottawa.

Because Stikeman Elliott has grown through internal expansion, rather than through mergers, the firm's clients can expect a consistently high level of service from each of its eight offices. Its offices frequently work together on major transactions and litigation files, and regularly collaborate with prominent U.S. and international law firms on cross-border transactions of global significance. The firm has invested heavily in leading-edge knowledge management systems in order to assure our clients of advice of the highest quality, grounded in the accumulated expertise of Stikeman Elliott's national and international practice.

“We wouldn't get business done without them. They're that good.”

– IFLR1000 (2010)

Client Interview

OUR OFFICES

Stikeman Elliott's Canadian offices are located in the major business and financial centres of Montréal, Toronto, Ottawa, Calgary, and Vancouver. Outside Canada, the firm's network includes offices or representation in the United Kingdom, the United States and the Asia-Pacific region. Our unsurpassed international experience ensures that we can serve our clients wherever their business takes them.



Montréal

The firm's Montréal office is one of the most successful and respected in the city. Its practice is focused on M&A, securities, banking, cross-border financial restructuring, international tax and commodity transactions, real estate, environmental law, intellectual property, information technology, transportation, insurance and employment law. The Montréal litigation group is widely recognized as one of the leading business law litigation teams in Quebec. Stikeman Elliott's expertise in civil law and commercial transactions is particularly significant where an organization has operations in Quebec or in other jurisdictions with codified civil law-based legal systems, such as Central and Eastern Europe and South America. Much of the work carried out in the Montréal office has a strong international focus.

Toronto

The Toronto office of Stikeman Elliott is a broadly based corporate-commercial law practice with a strong transactional focus. The firm's Toronto lawyers include many of Canada's foremost practitioners in the areas of M&A, securities, banking, structured finance, insolvency, tax, real estate, competition, employment, pensions, technology, outsourcing, mining and electricity law. The Toronto business litigation group is highly regarded for its record in commercial litigation, most notably securities litigation, class action defence and complex insolvencies and restructurings. The office is renowned for its expertise in cross-border transactional and litigation work and counts many major global corporations and financial institutions among its clients.

Calgary

Our Calgary office, with currently more than 50 legal personnel, is home to some of Alberta's leading lawyers. The Calgary office opened in 1992 and maintains a business law practice focused on M&A, securities, real estate, joint ventures, project financings, structured financings, tax, employment and banking. The office also has a significant international dimension, advising on foreign investment in the Canadian energy sector and cross-border trade in energy resources. In addition, the office maintains a commercial litigation practice and is renowned for its regulatory practice involving oil and gas and electricity related matters. The Calgary office has recently won two awards for its active role in the community.

Vancouver

Celebrating 20 years in the city in 2008, our Vancouver practice includes a number of British Columbia's leading lawyers in the areas of M&A, securities, banking, litigation and real estate. Our corporate lawyers lead local matters and draw on expertise of other Stikeman Elliott offices in national and international matters. We have one of British Columbia's most prominent real estate development and acquisition practices, while our Litigation Group has acted for all levels of government and offers a broad range of commercial dispute resolution and advocacy services, including significant class action expertise. A very experienced group of lawyers also practice in the areas of public-private partnerships, infrastructure development and project finance. The Vancouver office has a strong cross-border focus, acting as the firm's Canadian gateway to the Asia-Pacific region.

Ottawa

The Ottawa office of Stikeman Elliott focuses on administrative law and regulated industries, with particular emphasis on competition law, intellectual property law, international trade, government procurement and public policy. Industry sectors in which the office has expertise include such federally-regulated commercial sectors as telecommunications, broadcasting, transportation, and energy, as well as those (such as packaging and labelling) that are subject to food and drug administration.

London

Drawing over 40 years of experience in the city, Stikeman Elliott's London office has long been recognized for its leadership in international corporate transactions, including leveraged buy-outs, take-over bids and share and asset purchases. Our London corporate finance team is a leading advisor to Canadian companies with respect to Toronto Stock Exchange and AIM listings and has been recognized for many years as one of the most prominent international advisors in the Eurobond markets. We have also been at the forefront of developing the legal framework for the issuance of Maple Bonds in Canada. Our lawyers have broad industry expertise, as well as significant experience in Africa, in the mining sector. The office also serves as the gateway for our India, Middle East and Sovereign Wealth Fund practices. As well, our private client practice ranks amongst the world's leading practices in the area.

New York

The New York office of Stikeman Elliott has extensive experience in Canada-U.S. cross-border corporate transactions, with a particular focus on M&A, corporate finance, banking and structured finance. The firm's New York lawyers provide Canadian legal advice on cross-border acquisitions, investments, banking, securities and regulatory matters to U.S. corporations, investment dealers, advisors, banks and funds.

Sydney

Stikeman Elliott's Sydney office, the hub of our Asia-Pacific practice, is involved in multi-jurisdictional securities and M&A law with a sectoral emphasis on mining, cross border M&A, infrastructure development and project finance.

Asia

Stikeman Elliott regularly acts in transactions involving clients across Asia, including, in particular, India, China, Hong Kong, Thailand and the Middle East. Reflecting the position of Canada as a target for a rapidly expanding Asian region and as a significant source of capital, the firm provides advice on a large number of significant transactions from Asia into Canada, as well as advising on Canadian investment into Asia. The firm has a particularly high profile in resource-sector transactions and is involved in the vast majority of IPOs originating in Asia that involve placements into Canada.

Employment, Labour and Pension Group

EMPLOYMENT AND LABOUR

The Stikeman Elliott Employment and Labour Group has represented clients for the past 40 years in all aspects of the individual and collective employment relationship, both at the provincial and federal level. Members of the group have gone on to become judges and to hold senior positions in government.

The Employment and Labour Group at Stikeman Elliott advises employers on all facets of the employment relationship. Although all members of the group have wide-ranging employment and labour law experience, each has developed expertise in particular areas. This approach ensures that we can provide advice in a timely, cost-effective and efficient manner. We enjoy long-standing relationships with clients in virtually all industries and in a broad range of business activities.

We regularly assist employers and their executives with:

- Business immigration and relocation;
- Compliance with employment related statutes;
- Director and officer liability issues and fiduciary duties;
- Drafting and enforcing confidentiality, non-solicitation and non-competition covenants;
- Employee drug and alcohol testing;
- Employment contract and incentive compensation issues;
- Employment-related class proceedings;
- Health and safety in the workplace including the strategic planning of worker's compensation assessments;
- Human rights and harassment in the workplace, including workplace violence;
- Executive compensation planning;
- Management education and training;
- Managing chronically ill and absent employees;
- Occupational health and safety;
- Outsourcings, restructurings and plant and facility closures;
- Pay equity;
- Privacy and access to information issues in the employment setting;
- Pleading employment-related litigation;
- Privacy and access to information issues;
- Proactive and strategic advice regarding relevant laws;
- Reorganization and workforce reduction;
- Strategic human resources planning;
- Termination and severance practices and arrangements;
- Transition and retention programs, and retirement benefits;

- Workplace policies; and
- Wrongful dismissal.

In the field of labour relations, we focus exclusively on representing management. Our services in this field include advice and representation in:

- Collective agreement administration;
- Collective bargaining;
- Discipline and termination of employment;
- Instituting proactive and positive employee relations practices and programmes;
- Labour arbitration and dispute resolution;
- Industrial conflicts (strikes, lock-outs and picketing);
- Successor-employer proceedings;
- Unfair labour practices;
- Union organizing, certification and decertification campaigns; and
- Strategic labour advice.

Members of the Group regularly appear as counsel for employers in the courts and before various employment and labour-related administrative tribunals both under federal and provincial legislation.

While we often deliver our services on a continuing basis, we are also regularly involved in the employment and labour-related aspects of commercial transactions, including those arising from mergers, acquisitions, insolvency and receivership, and in strategic employment and human resource planning. Our advice includes negotiating the human resources aspects of a corporate transaction and drafting various related agreements including transition services agreements, employment agreements and restrictive covenant agreements.

Recognition

The Group has been recognized as a leader in the Canadian marketplace by Chambers Global's *Guide to the Leading Lawyers for Business*. The Group has also been endorsed by *PLC Which Lawyer?*, with our Quebec practice cited in the area of labour and employment and our Ontario practice cited in the area of pensions and benefits.

Professional Activities

Several members of the group have lectured at the university level, authored books, legal service manuals and articles, including *Le congédiement déguisé au Québec – Fondements théoriques et aspects pratiques*, *The Employment Contract*, *Le contrat d'emploi*, *Executive Employment Law*, *Les dirigeants: leurs droits et leurs obligations*, as well as a section dealing with labour law in the publication titled *Doing Business in Canada*.

As part of our commitment to assist corporate leaders to establish and refine positive management and employee practices, we regularly provide in-house seminars and produce newsletters that address topical and timely employment issues.

PENSIONS AND BENEFITS

National and international enterprises have a growing demand for innovative legal advisors to assist in the increasingly sophisticated and complex environment in which pension and employee benefit programmes operate today. Our National Pension and Benefits Practice Group is widely recognized for its ability to assist clients in this area, which will continue to grow in importance as the Canadian population ages.

The group is centred in the firm's Employment, Labour and Pension Group, but also draws upon expertise from the Corporate, Litigation and Taxation Groups of the firm. This approach provides flexible and multi-disciplinary solutions tailored to the client's specific needs. As the first law firm in Canada with practitioners in both Montréal and Toronto devoted exclusively to pension matters, we offer a unique capacity to advise on matters governed by Quebec, Ontario, and federal pension law. Our practice has been endorsed as a Canadian leader by Chambers Global's *Guide to the World's Leading Lawyers for Business*.

Expertise

Pension and benefit programmes are becoming increasingly sophisticated and the regulatory and legal framework in which they exist increasingly complex. Our pension expertise includes the full range of legal matters in this area. We draft pension plan rules, trust agreements, investment management agreements and investment policies; advise on pension plan governance and pension fund investment issues; negotiate pension surplus-sharing agreements; advise on the impact of transactions such as mergers and acquisitions, reorganizations, insolvencies, outsourcings, and privatizations; design and administer employee share ownership plans and phantom stock plans; negotiate and structure executive compensation arrangements and advise on the taxation thereof; help financial institutions develop pension and retirement products; advise on creditor protection of retirement income arrangements; represent plan sponsors before pension regulatory tribunals and the courts and counsel employers on benefits-related issues in unionized environments.

Professional Activities

Members of Stikeman Elliott's National Pension and Benefits Group are involved in many professional development activities, including:

- Constituting the editorial board of *Canadian Cases on Pensions and Benefits*, a monthly law report published by Thomson Carswell;
- Sitting on the Quebec Pension Board, Financial Services Commission of Ontario and Financial Services Tribunal Legal Advisory Committees, Ontario Bar Association Pension and Benefits Section Executive, Association of Canadian Pension Management and Canadian Pensions and Benefits Institute;
- Publishing articles in various newspapers, law reviews, and pension industry publications;
- Contributing the Canada chapter to *Employee Share Plans: International Legal and Tax Issues*;
- Speaking at meetings and conferences of numerous organizations both in Canada and abroad; and
- Advising foreign governments on pension reform.