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**ONTARIO PASSES WORKPLACE  
HARASSMENT AND VIOLENCE LAW**

On December 15, 2009, Bill 168, *An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters* received Royal Assent. As a result, Ontario employers have until June 15, 2010 to ensure that their workplace complies with the new law.

The new law tackles workplace harassment and violence as a health and safety issue introducing the following definitions into the *Occupational Health and Safety Act (OHSA)*:

“workplace harassment” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

“workplace violence” means,

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in the workplace, that could cause physical injury to the worker,
- (c) 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.

The new law amends the general obligations under the current *OHSA* to expressly impose obligations on employers, supervisors and workers to take all reasonable steps to protect workers from workplace

harassment and violence. There is an additional obligation imposed on employers with respect to domestic violence. Employers who are aware or ought to be aware that a domestic violence situation is likely to expose a worker to physical injury in the workplace will be obliged to take all reasonable precautions to protect their workers. Similarly, employers must also provide their workers with information, including personal information, about a person with a history of violent behaviour. This obligation will be triggered only if the worker is likely to encounter that 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 law also extends the existing work refusal provisions in the *OHSA* to grant workers the right to refuse work if workplace violence is likely to endanger the worker.

To prevent workplace harassment and violence, employers will be required to develop a policy and program to proactively deter workplace harassment and violence. The policy and program must include the conduct of a risk assessment and the creation of a reporting and complaint investigation mechanism. The policy must be reviewed at least annually, and it must be posted at a conspicuous place in the workplace.

In terms of workplace harassment, the Ontario *Human Rights Code* (the *Code*) has long prohibited harassment in the workplace based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability. Traditionally, harassment that was based on other, non-protected grounds was not actionable, unless the employer had agreed to extend this protection by way of policy or in a collective agreement. The one caveat to this has been the development of a body of law by the courts in which protracted, serious, personal harassment has been found to amount to a constructive dismissal. This development created protection for employees from severe, harassment based on non-protected grounds, but for less severe harassment, no legal protection existed. The amendments change this

because they require employers to treat harassment based on non-protected grounds in the same manner as harassment based on *Code*-protected grounds. Depending on an employer's existing policies or collective agreement language, these obligations may greatly extend an employer's current obligations.

By introducing this new law, Ontario is following the lead of other provinces, but also extending the protection further in some respects. Under Ontario's law, proof of an effect on, or damage to an employee's dignity or psychological or physical integrity created by the harassment is not required. There is also no requirement to prove that the harassment creates a harmful work environment – this is effectively assumed to be one of the effects of workplace harassment.

As noted above, Ontario employers must be fully compliant with the new law by June 15, 2010. In the interim, employers would do well to involve their employees in the process of developing a workplace violence and harassment program that satisfies the unique needs of their own workplace as well as the basic requirements of the new law. Through cooperation and engagement, employers can create a workplace culture that is safe and profitable.

## CONTACT US

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