

Employment Law Update

March 2010

New Occupation Health & Safety Rules Coming Into Effect

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New measures coming into effect on June 15th, 2010 aim to reduce the risk of violence in the workplace. Employers are required to take immediate action and ensure compliance prior to that date.

For well over a century, the Ontario government has been taking steps to protect the health and safety of employees in the workplace. Changes in the laws relating to the workplace create unique challenges for the employers and demand immediate action. On the other hand, the adjustments to the workplace policies that result from this process lead to an improved and healthier work environment.

Recently, an amendment to the existing law relating to Occupational Health and Safety

has received royal assent. It will come into force on June 15th, 2010. This amendment aims to protect employees in all businesses from workplace harassment and physical violence or threats, no matter what its basis, and is intended to apply to a broad range of situations. The amendment places the burden on employers to assess the risk to the safety and security of employees. It requires employers to take immediate action and ensure compliance prior to the law coming into force.

What does the amendment deal with?

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

“Workplace violence” means,

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

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Does it apply to your business?

If your business is subject to the labour laws of Ontario, then it is subject to the amendment. The amendment applies to all businesses, whatever the size and whatever the activity or area of industry:

- The work done by the owner, occupant, or a servant in a private residence or on the connected land.
- Federal workplaces. Federal workplaces are businesses that work for the common good of two or more Canadian provinces in one of the prescribed fields (which include banking, air, water or rail transport, energy and mining, broadcasting, communications, and others). In cases of federal workplaces, federal legislation will apply. The federal legislation has been in force since June 2008, and its content is very similar to the amendment to the Ontario legislation.

What does the amendment require?

In short, before the amendment comes into force, employers are required to assess the level of risk of workplace violence, and develop and implement policies to protect employees. To ensure subsequent compliance with the law, employers must review the policies at least annually. A more detailed review of the obligations follows.

1. Assessing the Risk

The amendment requires employers to undertake an assessment of the risk of workplace violence. An assessment involves an analysis of the structure and environment of the workplace with the goal of identification of the high-risk factors (see insert “*The businesses most at risk of workplace violence*”). The assessment may be conducted by the employer or an outside assessor, formally or informally, and it may be concluded with a written final report. The assessment should be based on the nature of the workplace, the type and conditions of work, the circumstances

The Businesses Most at Risk of Workplace Violence

The amendment applies to all workplaces, no matter how high or low the level of the risk of violence. However, if your business represents a high-risk environment, or if your business practices contain one or more of the high-risk factors, then, based on a long-standing policy of the Ministry of Labour, it is more likely that the Ministry will undertake an inspection of your business to check for the employer policies and programs to address harassment and workplace violence.

High-risk environments:

- Health care
- Social services
- Retail
- Hospitality
- Financial institutions
- Education
- Transportation
- Police, security and corrections

High-risk factors:

- Handling cash
- Protecting or securing valuables
- Handling prescription drugs
- Transporting people and goods
- A mobile workplace (such as a vehicle)
- Public or community contact
- Working with unstable or volatile people
- Working on premises where alcohol is served
- Working alone, in small numbers (e.g. store clerks, real estate agents), or in isolated or low traffic areas (e.g. washrooms, storage areas, utility rooms)
- Working late nights or very early mornings
- Working during periods of intense organizational change (e.g. strikes, downsizing)

common to similar workplaces and circumstances specific to the workplace. The results of the assessment should be communicated to the employees or their designated representatives

While conducting the assessment, there are many questions the employer should ask himself or herself. Some examples are:

- Are there any records or reports pertaining to health and safety in the workplace? Security reports, employee incident reports, staff perception surveys, health and safety inspection reports, first aid reports and other similar documentation will be helpful.
- What factors present at the workplace may contribute to the risk of violence? For example, to what extent and what kind of contact with the public

are my employees exposed? Are cash or other valuables kept on the premises? What is the staffing situation during evenings or nights?

- What are the statistics of violence in workplaces similar to mine? For example, you may check the police reports in the area or make inquiries with umbrella organizations with which you are associated.
- Do I maintain open communication with my employees? Did I make sufficient inquiries to become aware of any violence-related concerns about work practices, public interactions, or any other issues?
- Is there a risk of domestic violence towards my employees that would likely expose a worker to physical injury that may occur in the workplace?

2. Developing the Policies

The second step in the process is to develop policies with respect to workplace violence and harassment that will minimize the risks by addressing the factors revealed in the assessment. The law requires employers to take every precaution reasonable in the circumstances to protect an employee's health and safety. The Ministry of Labour suggests that the development of policies should include the following:

- A review of the structure and design of the workplace. Typical improvements include lighting, fences, signs, locks, or electronic surveillance.
- A review of the work practices. Suggested changes include reducing the amount of cash and valuables kept on premises, varying the time when the cash register is emptied, or adjusting work schedules to avoid employees working alone at high-risk times.
- An evaluation of the need for staff training, including emergency plans and posting emergency phone numbers in conspicuous places.
- Preventative measures, plans for emergencies and immediate assistance, facilitation of reporting and subsequent investigations.

Moreover, the amendment explicitly requires the employers to take certain specific precautions. The employer having the relevant knowledge must, first, protect employees from domestic violence that may occur in the workplace and second, inform the employees about the history of violent behaviour of any person who is likely to expose the employee to physical injury. Employers may require advice about how much personal information can be disclosed during this process.

3. Implementing the Policies

Although it may be a time-consuming or challenging process, training employees is the key to successful prevention of workplace harassment or violence. Every staff member should be aware of their responsibility in securing compliance with the new amendments. Based on the practice of the Ministry, employers are advised to:

- Inform employees of the policies. Unless you employ five or fewer employees, the policies must be written and posted in a conspicuous place.
- Review and test the understanding of the policies regularly.

- Create a system of enforcement of the policies and inform employees of the consequences of non-compliance with the policies.
- Ensure that emergency plans and phone numbers are available at all times and everyone knows where to find them.
- Establish open channels of communication with employees to ensure that concerns related to workplace violence are addressed and policies are updated. It is important to cultivate trust in the relationships with employees.
- Review the policies at least annually, based on updated assessments.

We recommend that employers seek information as to the precise content of the amendment and the regulations that will be issued in the next months, in order to avoid non-compliance, and the administrative and financial burdens it may bring.

The Employment Law Group of Kelly Santini LLP would be delighted to clarify your legal responsibilities with respect to the Ontario Occupational Health and Safety legislation or to help you with any other employment law issue.

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Overview – What are my new legal responsibilities?

As a result of the amendment, employers will be held to the following obligations:

- Conduct a workplace violence risk assessment.
- Develop policies with respect to workplace violence and harassment.
- Review the policies at least annually.
- Ensure that employees know the policies.
- Post the policies with dates of last assessment in a conspicuous place, unless the business employs five or less employees.
- Pay attention to the issues of domestic violence and take steps to minimize the risks in the workplace.
- Pay attention to the presence in the workplace of persons with a history of violent behavior, and inform other workers about it.
- Pay attention to reports and investigate any instances of workplace violence or harassment.
- Provide a mechanism for employees to disclose the risk that their domestic situation may cause a confrontation in the workplace so that appropriate precautions may be taken.