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Labour Law

[LEGAL ISSUES OF INTEREST TO UNIONS AND THEIR MEMBERS]

Labour Update – May, 2010

Bill 168: A New Approach to Dealing with Workplace Violence and Harassment

WHAT YOU NEED TO KNOW:

On June 15, 2010, significant new changes will take effect in Ontario's occupational health and safety legislation. The changes to the Ontario *Occupational Health and Safety Act* require extensive efforts in the workplace to prevent both violence and harassment at work.

Workplace Policies: Violence and Harassment

All workplaces are now required to develop and maintain **workplace policies** to protect employees from violence and harassment in the workplace. If the workplace has more than five workers, the policy must be in writing and posted in a public, visible location in the workplace. The employer must review the policies on a continuing basis, and as often as is necessary to ensure workers are protected.

Workplace Programs

These employers are then required to develop and maintain a **comprehensive program** to implement the anti-violence and harassment policies. The program must detail:

- (a) Measures to control identified risks that could expose workers to physical injury (*workplace violence only*);
- (b) Procedures to summon immediate assistance when workplace violence occurs or is likely to occur (*workplace violence only*);
- (c) Procedures to report incidents of workplace violence or harassment;
- (d) Procedures for how the employer will investigate and address incidents or complaints.

Risk Assessments

Employers must now undertake a **risk assessment** of workplace violence that may arise given the nature of the workplace, the type of work or the conditions of work. When

conducting the assessment, employers must consider circumstances in their own workplace as well as circumstances that would be common in other similar workplaces.

After the risk assessment is completed, the employer must advise the Joint Health and Safety Committee or representative of its findings, or make its findings available to all workers where there is no committee. Employers must also make the appropriate changes to the workplace in accordance with its findings in order to minimize the risk of workplace violence. The employer must reassess risks of workplace violence on a continuing basis and as often as is necessary to ensure continued protection of workers from workplace violence.

Domestic Violence

Additionally, if an employer becomes aware, or ought to have been aware, that **domestic violence** may occur in the workplace, the employer must take all reasonable precautions to ensure that the worker is protected. Further, if a worker can be expected to encounter a person with a history of violent behaviour that will likely expose the worker to physical injury, the employer must advise the worker of that risk.

Training and Information

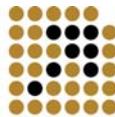
Workers are also entitled to **training and information** on the content of the anti-violence and harassment policies and programs. Workers also have a right to refuse work, with some exceptions, if they have a reason to believe they are in danger of workplace violence. A worker cannot refuse to work, however, based on an allegation of workplace harassment.

WHAT YOU NEED TO DO:

- Unions will want to ensure that a wide range of its members are included in the Joint Health and Safety Committees, from various parts of the operation, if applicable, in order to fully examine how to protect all workers.
- Unions should make sure that they have an active presence on the Joint Health and Safety Committees (this right already exists under s. 9(8) of the *Occupational Health and Safety Act*).
- Employers have a legal duty to re-examine workplace risks and policies: Unions will want to ensure that the employer is conducting proper reviews when issues arise.
- Unions will want to ensure that workplace policies and procedures are accessible to all members.
- Unions will want to examine workplace programs to ensure that they provide meaningful ways to resolve the issues the new law was meant to address.
- Given that this is labour relations legislation, there may be an argument that any rights or obligations it creates form part of any collective agreements under provincial jurisdiction.
- Unions should decide if their next collective bargaining session will involve bargaining rights arising out of the new law. These could include negotiating the comprehensive workplace policy, establishing a right to be notified of any workplace risks, agreeing to an independent investigator to address complaints, and establishing the right to participate in the drafting of policies and amendments.
- Unions should decide if they want any right or obligation under the Bill to be grievable and add those to their bargaining agenda.
- Most policies are likely to include details of an investigation procedure in cases where workplace violence or harassment is alleged. Unions should clarify the procedure for the investigation, the extent of their involvement in the process and the effect of the result, including any investigation report. This should include a decision on whether the investigation report is binding or not in any arbitration.

- Unions should decide if they want to have input into the selection of an investigator, if that is part of the process to deal with allegations.
- As part of their review, unions should decide if they want to bargain a prohibition on general workplace harassment that is similar to the prohibition on harassment that contravenes the Ontario *Human Rights Code*.
- Unions should consider whether to insist on access to early conflict resolution measures and outside conflict resolution experts.
- Unions should make sure that the message gets out to all members: the changes are important for creating safe workplaces for members.

Questions? Contact Sean McGee at 613-231-8232 (sean.mcgee@nelligan.ca)



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