

# PAYROLL & HUMAN RESOURCES

## Ontario firms facing new workplace laws

By **DUFF MCCUTCHEON**

In a recent poll of its members, the Human Resources Professional Association found that more than half of respondents — which translates to one-third of Ontario businesses — said they would be challenged to implement the workplace training and investigation procedures required around Bill 168, Ontario's new workplace violence and harassment legislation.

Bill 168 came into force June 15, and firms that have yet to implement the necessary compliance — workplace violence risk assessment, policy and procedures and employee training — face hefty penalties. Breaches of the legislation are punishable by fines of up to \$500,000 for companies and up to \$25,000 for individuals.

All workplaces, regardless of size, must comply with Bill 168.

### Policy creation

The first step for all employers is to prepare a workplace violence policy and review it every year. This policy must:

- 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 and 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.

Employers must also prepare a workplace harassment policy.

"The notion of workplace harassment is quite new and challenging," says employment lawyer Janice Rubin, a partner at Rubin Thomlinson LLP in Toronto. "While it's not well defined under Bill 168, if you look at other sources where harassment has been considered — like Quebec's labour code or constructive dismissal case law — it does cover behaviours that are common in many workplaces: swearing, screaming, name calling, embarrassing people, practical jokes.

"People may have become desensitized to these behaviours and workplaces need to clean up around this. I think a lot of employers are going to find this very challenging."

Rubin says a harassment policy needs to say that the employer will not tolerate workplace harassment and should provide a definition and some examples for clarity.

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**"You need examples because the legislation covers behaviours that people may have become desensitized to, but it also covers things that employees may wrongly assume are harassment, like the boss being short with them."**

*Janice Rubin, Rubin Thomlinson LLP*

people may have become desensitized to, but it also covers things that employees may wrongly assume are harassment, like the boss being short with them," she explains. "When you look at the case law, the type of bad behaviour that falls under harassment is quite serious — like shoving and very obvious aggressive, threatening behaviour."



RUBIN

### Workplace risk assessment

Another key requirement of the legislation is an assessment of the risks of workplace violence that may arise from the nature of the workplace, the type of work or conditions of work.

While it is understandable that some may not consider their stan-

dard accounting firm as a hotbed of violence, there are risks that must be mitigated at all workplaces. Perhaps a client meeting gets out of hand, the office is near a half-way house or street crime has spiked in the neighbourhood. All these things must be considered in a workplace risk assessment for your office.

"Employers have to take into account a number of things," says Warren Leonhard, chief operating officer at SECURaGLOBE, a corporate security solutions provider, in London, Ont. "Consider office location. Are they located in the city? What's around the building — a biker hangout or a daycare? What about crime in the neighbourhood? What threats are applicable to your location?"

Then there's the office space itself. Does the building front onto an area where a lot of people circulate, or does the firm have its own floor that only employees access? How many entrances does the office have? Is the main reception area self-contained? How can employees call for assistance?

### Workplace violence program

Any and all risks that have been identified by the assessment must be dealt with by a program that identifies policies and procedures for dealing with potentially violent incidents. If the workplace has more than six employees, this must be documented and available for all employees to see.

The program must include procedures to control the risks identified in your assessment; measures for summoning immediate assistance should violence occur; workplace violence reporting procedures; and details on how the employer will investigate and deal with incidents or complaints of workplace violence.

For example, has an irate clients



LEONHARD

become threatening in the boardroom? A procedure needs to be crafted for dealing with potentially violent clients, as well as some way of getting assistance, like a panic button or glass doors so people can see what's going on.

Do employees work long hours during tax season and have to go to

their cars in an unsupervised parking lot late at night? If your workplace extends to the parking lot, firms need a procedure for ensuring safe passage to and from worker vehicles, like security escorts or remote monitored cameras.

Other potential risks that the legislation specifically addresses are those posed by domestic violence — particularly from a spouse who may come to the workplace to harm the victim or other employees.

### Violence from home

An employer is not obliged to ask employees about domestic violence and their intimate relationships, "but, if you know or reasonably ought to know that it's a risk to the employee and workplace, then you have to do something," says Rubin.

"For example, if an employee says, 'I've left my physically abusive spouse and I'm really worried he's going to come after me,' then the employer has to put its mind to what it can do to make the employee safe."

This would include all the general things one would do to secure a workplace, like locks, buzzers and security passes. But it also involves creating and implementing a procedure that tells reception that the spouse is a person of interest and providing a name, description, picture and instructions to call security if the person appears, says Leonhard.

Of course, not all domestic violence victims discuss their problems at work. However, if you see someone coming in repeatedly with suspicious injuries, "it might be worthwhile to ask a question," says Rubin.

### Violent co-workers

Bill 168 also states that employers must tell workers about work colleagues with a history of violent behaviour. The obligation is limited and applies only when the worker can be expected to encounter the violent person in the course of his or her work; and the 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," according to the legislation.

However, Rubin warns employers to tread cautiously around this part of the regulation. "You're going to have to assess whether in fact the employee in question has a 'history of violence,' and whether it's reasonable that this

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violent history could impact on the workplace. It's a very difficult assessment because you're balancing the interests of the employee in question with the rest of the workplace," she says.

"I suppose if you had learned that an employee had repeatedly assaulted co-workers at a previous job and then you had talked to the employee and found there'd been no remedial act — like taking medication or receiving counselling — then I might consider it."

Before doing criminal record checks on all employees and looking for dark workplace pasts, be advised that employers are not obligated to determine if their

employees have a history of violence.

### Training

Finally, employers must provide training around both potential workplace violence risks and the procedures it has devised to mitigate them. You must also train workers on your workplace harassment policy and program, including how to report incidents of workplace harassment and how the employer will investigate and deal with incidents or complaints of workplace harassment.

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

"When you put your mind to

this whole compliance process, it's interesting what you find," says Rubin. "There are some obvious things that you may not have previously considered to keep employees safe. For example, when we did our own assessment, we found that reception had never been told how to contact security. Also, though we had a buzzer, we didn't have a camera or a persons-of-interest list. Those are some small changes that we've made that arose from our own assessment."

"You'll find shortcomings that can be fixed very easily. Complying with this new legislation doesn't have to be onerous."

*Duff McCutcheon is communications specialist at the HRP.*