

EMPLOYERS' ALERT

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WHAT'S NEW at RUBIN THOMLINSON LLP

Our new podcasts on the H1N1 virus and constructive dismissal are on our website. Let us know what you think by emailing us at podcasts@rubinthomlinson.com

Christine Thomlinson was quoted in an article in the November edition of Today's Parent magazine entitled, "Maternity leave 101".

Christine spoke at the 10th Annual Conference on Managing & Litigating Disability Insurance Claims, hosted by the Canadian Institute on October 26.

Christine co-chaired and provided an employment law update at the HR Law Conference at the Human Resources Professionals Association on October 28.

Dorian Persaud also spoke at the HR Law Conference, where he covered workplace violence.

Janice Rubin was interviewed for the CBC television program, The National, on November 4. Janice talked about the H1N1 virus.

Janice conducted a workshop hosted by Lancaster House on "Violence and Harassment in the Workplace: Preparing for Ontario's New Legislation (Bill 168)" on November 9.

Sharaf Sultan participated in a practitioner panel about career opportunities in workplace law on November 16 at Osgoode Hall Law School.

Christine discussed "Managing Employment and Labour Law Issues in the Current Economy", at the 13th Annual In-House Counsel Congress, hosted by The Canadian Institute on November 19.

Janice also spoke at the In-House Counsel Congress. Janice's topic was "Ensuring the Appropriate Conduct of Internal Investigations".

Joy Casey co-chaired the Call to Action Summit on November 19, which was put on by A Call to Action Canada.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Ruben Thomlinson LLP. This has been sent to you courtesy of Ruben Thomlinson LLP.

Bill 168, an Act to amend the *Occupational Health and Safety Act*, (the "Act") to include specific employee protections against workplace violence and harassment has passed second reading, and is likely to become law very shortly. Once passed, employers will have a number of months to prepare, as there will be a six month period of time before it is proclaimed into law. That being said, we believe that it is prudent for employers to begin thinking about what is required of them now, and make plans for implementing any necessary changes. If you do not know where to begin, here are a few suggestions:

Are you Bill 168 Ready? – Practical Suggestions for Employers

1. Plan to conduct a workplace risk assessment

The new Bill requires employers to conduct a workplace risk assessment, to determine if there are parts of their operation that are particularly vulnerable to violence. This means violence as between employees, but also violence between employees and the public.

If you are an organization that has done this type of assessment already, as part of your overall obligations under the existing Act, you are ahead of the game, and you may simply need to review and update it.

Unfortunately, the current version of the Bill does not outline how this assessment is to be done. If you are starting from scratch, we can suggest either hiring a consultant to assist you, or to establish a special committee to undertake this project. First steps would be to review how your organization operates and whether there are perceptible risks to employees in terms of violence. A second step would include reviewing any data the organization has in terms of past incidents of violence. Your organization might even consider

reviewing data from organizations in similar lines of work, if it exists, or even doing a survey.

Once you have the data, you can begin to make changes to the workplace as necessary. Examples might be greater security on a night time shift, more lights in a parking lot, and limiting access to the workplace with only those individuals with pass cards.

2. Review and update your policy

The Bill requires employers to have a policy that explicitly prohibits violence and workplace harassment. As a reminder, workplace harassment is defined as, "engaging in a course of vexatious comments or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome". We refer to this harassment as "psychological" or "personal" harassment. It is harassing behaviour that is not necessarily linked to the prohibited grounds of harassment and discrimination commonly found in human rights legislation across the country, such as sex, disability and race.

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