



**Bill 168: 2010 Amendments to OHSA
(Workplace Violence and Harassment)**

**Bill 26: Proposed Amendments to OHSA and ESA (Domestic
Violence)**

CMPA February 10, 2017

How is “workplace” defined?

- “...any land, premises, location or thing at, upon, in or near which a worker works”
- very broad – vehicles, set, production offices, sets, studios, washrooms, vehicles, location/situations such as business travel, work-related social gatherings

Definition of workplace violence

- The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker
- 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

Source of Violence

- The source of the violence could be actor to crew member; supplier to producer; a stranger to the workplace; from a personal relationship with a member
- Under ESA, worker can refuse to work if “workplace violence is likely to endanger himself or herself” (note doesn’t apply to workplace harassment)

Definition of workplace harassment

- 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

Examples of workplace harassment

- Making remarks, jokes or innuendos that demean, ridicule, intimidate or offend
- Displaying or circulating offensive pictures or materials in print or electronic form
- Bullying
- Repeated offensive or intimidating phone calls or e-mails
- Harassment which is prohibited by Ontario's *Human Rights Code*

What is NOT workplace harassment

- reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment:
 - Changing in work assignments
 - Scheduling
 - Performance reviews
 - Constructive feedback
 - Disciplinary actions

Domestic Violence – impact on workplace

- If employer becomes aware, or ought reasonably to be aware, of the potential for domestic violence in the workplace, the employer must take every reasonable precaution for the protection of the worker.
- New proposed Bill 26 will finally add a definition of terms like “domestic violence,” “intimate partner” – amends ESA and OHSA – allows for accommodation, leaves, training
- **Domestic violence or sexual violence — accommodation** If an employee or the employee’s child has experienced domestic violence or sexual violence, and as a result the employee needs to **needs fewer hours of work or needs to work at different times** than the employer has assigned the employee
- **OR needs to work at a place of work other than where the employer has assigned the employee**, the employer shall accommodate the employee’s need unless it would cause the employer undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Duties of employers – (a) policies

- Must have Policies that are reviewed at least annually
- Must have a workplace violence program that will include measures and procedures to:
 - control the risks identified in the assessment as likely to expose a worker to physical injury; design or physical layout of the workplace such as doors with clear windows, adequate lighting, barriers; emergency procedures that would be relevant to violent or potentially violent incidents, such as designated safe locations for emergency situations or lockdown procedures;
 - summoning immediate assistance when workplace violence occurs or is likely to occur
 - workers to report incidents of workplace violence to the employer or supervisor;
 - set out how the employer will investigate and deal with incidents or complaints of workplace violence.

Employer's Duties – (b) Risk Assessment

- An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work. The assessment shall take into account:
 - circumstances that would be common to similar workplaces;
 - circumstances specific to the workplace.

Employer Duties – (c) training

Employer must provide “information and instruction that is appropriate for the worker on the contents of the policy and program”

- This applies to workplace harassment (including sexual harassment) and sexual violence

Reporting, investigating, and outcomes

- Employees need to know who to report incidents or complaint to
- How the investigation will be conducted and who will conduct it
- What the disciplinary outcomes might be
 - Record in the file?
 - More training?
 - Mandatory counseling?
 - Verbal or written warning?
 - Suspension?
 - Termination of employment