

Bill 168: What's your violence policy?

The deadline is quickly approaching for Ontario employers to be in compliance with new Occupational Health and Safety Act amendments.

By Noelle Stapinsky, Features Editor | April 07, 2010

Ontario manufacturers have only a couple months to develop policies on workplace violence and harassment, but many are unsure what they need to do. One thing is for certain; it will involve a lot more than putting a policy notice on the bulletin board.

The Bill 168 amendments to the Occupational Health and Safety Act (OHSA) come into effect on June 15 and require employers to conduct risk assessments, draft new policies, educate staff and warn employees if they may come into contact with someone that has a history of violence. It also gives employees the right to refuse work if they feel at risk.

Andrew Harkness, the Industrial Accident Prevention Association's (IAPA) senior strategy advisor, says employers should look at this as an extension of existing health and safety programs, rather than something new.

Although most provinces across the country have similar legislation, Toronto-based labour and employment law firm Sherrard Kuzz says there are issues arising from Ontario's broad definitions outlined in the new rules.

The Ministry of Labour has defined workplace violence as "the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury; an attempt to use physical force against a worker; and a statement or behaviour that a worker could interpret as a threat to exercise physical force against a worker."

But the new definition doesn't make clear employers are also obligated to ensure each worker is safe from any "person" that may come into contact with an employee. This "person" could be a supplier, client or someone who has a personal relationship with an employee. In Ontario more than 17% of self-reported incidents of violence happened in the workplace, 71% of which were physical assaults. And 66% of these incidents were committed by someone the victim knew, but wasn't a co-worker.

"Keep those risk sources in mind when doing risk assessments," says Erin Kuzz, a founder of Sherrard Kuzz. "Your employees are a source of information for you to find out what hasn't been reported."

Harassment, which was limited to racist, sexist or other comments covered under the Human Rights Code, is now defined as "a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably be known to be unwelcome."

These amendments extend an employer's obligation beyond the workplace and blurs the lines of privacy laws.

If, for example, a male employee was in a bar brawl and charged with assault or if an employee comes to work with bruises or injuries, under the new regulations, such incidents should be investigated and documented in case there are future conflicts. But deciding what information about your employees needs to be shared in the workplace can be tricky.

If an employee was involved in a bar fight, which has nothing to do with the workplace, coworkers don't need to know about it. But if an employee is a victim of domestic violence, that should be considered a risk since it could carry over into the workplace.

Where to start

Companies must first elect a "workplace coordinator" to oversee and administer the policies. "We recommend choosing someone at a high level in the organization," says Kuzz. "You want someone with some teeth that can get the job done."

The new law states that policies must be in writing, posted in the workplace and reviewed annually. Employers should clearly state in these documents: there is zero tolerance for violence and harassment; where the policy applies (company property, events, etc.); definitions of workplace violence and harassment; safety measures; a process for filing and investigating complaints; and the consequences for violating the policy.

"Bill 168 doesn't give a hard deadline for updating these programs or doing risk assessments," says Kuzz. "But you should reassess risks if, for example, you've acquired a new company, added shifts, moved locations or added new processes."

Policies and procedures have to be finalized by June. But companies that aren't working on a compliance plan should take heed: if an incident occurs after the due date, the ministry will be eager to make an example out of you.

Read the full story in the April issue of Canadian PLANT.