



Violence Prevention

Occupational Health & Safety Act amendments related to violence prevention

January 4, 2010

On December 9th, 2009, the amendments (*known as Bill 168*) to the Occupational Health & Safety Act related to workplace violence, workplace harassment and domestic violence received Third Reading in the Ontario Legislature. These amendments come into force **June 15, 2010** (6) months after the day it received Royal Assent (*Dec 15, 2009*).

These amendments will have profound effects in the Education Sector on a number of fronts and most significant impact for those employees working in special education. Overall, the amendments will encourage better and more open communications between supervisor and employee.

ESAO has always maintained that violence prevention is achieved by team work. Employee teams are successful when fostering communications across all team members and providing timely resources to keep our employees safe under some inherently challenging working conditions.

With respect to new definitions...

Subsection 1 (1) of the Occupational Health & Safety Act is amended by adding the following definitions:

“workplace harassment” means 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.

“workplace violence” means,

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to a worker,

- (c) a statement or behaviour that 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.

ESAO sees clause (c) to have significant application in our sector due to the potential of verbal behaviours amongst the student populations we serve.

With respect to policies on violence and harassment...

Subsection 32.0.1(1) will be added to the Occupational Health & Safety Act and reads:

An employer shall,

- (a) prepare a policy with respect to workplace violence;
- (b) prepare a policy with respect to workplace harassment; and
- (c) review the policies as often as is necessary, but at least annually.

The policies shall be in written format and shall be posted at a conspicuous place in the workplace. *(Written format does not apply if there are five or less employees in the workplace unless the employer receives a Ministry of Labour order).*

ESAO reminds all clients that most employers have these policies already in place. However, they traditionally are in policies and procedures related to separate functional areas, i.e.:

1. Harassment and discrimination policies are usually found in human resources.
2. In schools the Safe Schools policies and student codes of conduct policies are usually found in the academic vice president or superintendent portfolios.
3. While the violence prevention and site security policies are usually found in the occupational health and safety department, campus security, campus police, and or facilities portfolios.

ESAO recommends that one violence prevention policy be written and posted. This policy should reference all other existing policies related to violence and harassment.

Ministry of Labour inspectors are expecting to request and receive only one inclusive violence policy for review.

Program for workplace violence...

Subsection 32.0.2(1) will be added to the Occupational Health & Safety Act and reads:

An employer shall develop and maintain a program to implement the policy with respect to workplace violence and the program shall,

- (a) include measures and procedures to control the risks identified in the assessment required under subsection 32.0.3(1) as likely to expose a worker to physical injury;
- (b) include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- (c) include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;
- (d) set out how the employer will investigate and deal with incidents or complaints of workplace violence; and
- (e) include any prescribed elements.

ESAO recommends that violence prevention programs be written specifically to compliment existing programs related to student focused violence prevention (i.e., student code of conduct, safety in special education, etc.).
All Organizations with or without students require a comprehensive violence prevention program which considers both employees and other people who may be present on their sites.

Assessment of risks of workplace violence...

Subsection 32.0.3(1) will be added to the Occupational Health & Safety Act and reads:

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,

- (a) circumstances that would be common to similar workplaces;
- (b) circumstances specific to the workplace; and
- (c) any other prescribed elements.

The employer shall,

- (a) advise the committee or a health and safety representative, if any, of the results of the assessment, and provide a copy if the assessment is in writing; and
- (b) if there is no committee or health and safety representative, advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies.

The employer shall reassess as often as is necessary to ensure that the related policy under clause 32.0.1 (1) and the related program under subsection 32.0.2 (1) continue to protect workers from workplace violence. The employer shall advise, as above, the results of the reassessment.

The ESAO Resource Book Workplace Violence Prevention Program (Catalogue # ERBVIO0607), provides a starting template for risk assessments. Ask your Field Consultant for a follow-up review of your draft risk assessment.

Part VIII Enforcement - amendments...

Section 55.1 will be added to the Occupational Health & Safety Act and reads:

In the case of a workplace at which that number of employees regularly is five or fewer, an inspector may in writing order that the policies with respect to workplace violence and harassment required under section 32.0.1 be in written form and posted at a conspicuous place in the workplace.

Section 55.2 will be added to the Occupational Health & Safety Act and reads:

An inspector may in writing order that the following be in written form:

The assessment of the risks of workplace violence required under subsection 32.0.3 (1) and the reassessment required under subsection 32.0.3 (4).

ESAO recommends that all assessments of risk of workplace violence be in writing.

Domestic violence...

Section 32.0.4 will be added to the Occupational Health & Safety Act and reads:

If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, that employer shall take every precaution reasonable in the circumstances for the protection of the worker.

ESAO recommends that human resource policies be revised to ensure domestic violence risks are acknowledged and addressed for compliance with this Occupational Health & Safety Act amendment.

Harassment program...

Section 32.0.6 will be added to the Occupational Health & Safety Act and reads:

An employer shall develop and maintain a program to implement the policy with respect to harassment required under clause 32.0.1 (1)(b). The program shall,

- (a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
- (b) set out how the employer will investigate and deal with incidents and complaints of workplace harassment; and
- (c) include prescribed elements.

The employer shall provide a worker with,

- (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment; and
- (b) any other prescribed information.

ESAO recommends that human resource programs be revised to ensure workplace harassment programs are updated, staff education revisited and communications addressed to comply with this Occupational Health & Safety Act amendment.

Duties of employer, supervisor, and worker...

Section 32.0.5 (1) will be added to the Occupational Health & Safety Act and reads:

Employer duties in section 25, supervisor duties in section 27 and worker duties set out in section 28 apply, as appropriate, **with respect to workplace violence.**

Information and provision of information...

Section 32.0.5 (2) will be added to the Occupational Health & Safety Act and reads:

An employer shall provide a worker with,

- (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace violence; and
- (b) any other prescribed information or instruction.

Section 32.0.5 (3) will be added to the Occupational Health & Safety Act and reads:

An employer's duty to provide information to the worker under clause 25 (2) (a) and a supervisor's duty to advise a worker under clause 27 (2) (a) include the duty to provide information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour if,

- (a) the worker can be expected to encounter that person in the course of his or her work;
and
- (b) the risk of workplace violence is likely to expose the worker to physical injury.

Section 32.0.5 (4) will be added to the Occupational Health & Safety Act and reads:

No employer or supervisor shall disclose more personal information in the circumstances described in subsection (3) than is reasonably necessary to protect the worker from physical injury.

ESAO acknowledges the significance of this new legislation. In our special education sector, communication between and amongst the school team (including the teacher, the educational assistant(s), the specialist or itinerant teacher, the parent(s), the principal, and the student) is the cornerstone of violence prevention for the successful placement of the behaviourally challenged exceptional student. All members of the school team will now have access to the student's behavioural plans and the staff member's safety plan. For example, incident reporting and sharing will allow the school team to modify the Individual Education Plan of the student after the second occurrence subsequent to the initial incident. This would improve the safety of all workers assigned to the student, while modifying the learning successes of the student.

ESAO also acknowledges a legislative conflict with the Ministry of Education's Bill 157, Safe Schools' amendments. In this legislation, the student's information is to be maintained in confidence by the principal. ESAO recommends compliance with both Ministry of Education's Bill 157 and Ministry of Labour's Bill 168. For the safety of the school team, all workers will now be informed of the risks of educating the exceptional student as necessary to protect staff from physical injury

The new ESAO Resource Book "Best Practices for Safety in Special Education" (catalogue # ETRAHEI1109) provides a collection of safety programs across Ontario where school teams develop safety plans and communicate behaviour plans. Reference the "Notification of Risk of Injury".

Ask your Field Consultant as to its availability to assist your violence prevention team.

Refusal to work...

Section 43 (3) (b.1) will be added to the Occupational Health & Safety Act and reads:

A worker may refuse to worker or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;

(b.1) workplace violence is likely to endanger himself or herself; or

- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contraventions is likely to endanger himself, herself or another worker.

Section 43 (6) (b.1) will be added to the Occupational Health & Safety Act and reads:

(b.1) workplace violence continues to be likely to endanger himself or herself; or

In each of our education sectors; Universities, Colleges, Schools and School Boards, Libraries, Museums, Art Centres, and Employment Centres; ESAO acknowledges the significance of the new right to refuse unsafe work due to workplace violence.

The process of the right to refuse unsafe work facilitates communication between the refusing employee and his or her supervisor. Open communication resolves disputes.

ESAO has always maintained that violence prevention is achieved by team work. Employee teams are successful when fostering communications across all team members and providing timely resources to keep our employees safe under some inherently challenging working conditions

Reporting of workplace violence incidents...

Section 52 (1) will amend the Occupational Health & Safety Act and reads:

Notice of accident, explosion, fire or incident of workplace violence causing injury.

If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall within four (4) days of the occurrence, give written notice of the occurrence containing prescribed information and particulars (Reg 851 Section 5) to the following:

1. The committee, the health and safety representative and the trade union, if any.
2. The Director(MOL), if an inspector requires notification or the Director(MOL)

ESAO recommends that internal and external reporting and communications be revised to ensure reporting of workplace violence incidents are included for compliance with this Occupational Health & Safety Act amendment.

Our people in the field:

Mike Atkinson, Greater Toronto Area - East
416-466-1923

matkinson@esao.on.ca

Blaine Larock, Georgian Bay Region
905-563-4842

blarock@esao.on.ca

Doug Bennett, North East Region
705-752-1989

dbennett@esao.on.ca

Jim Ogilvie, Central Lakes Region
905-799-2960

jogilvie@esao.on.ca

Alain Chenard, Francophone Consultant
613-837-2042

achenard@esao.on.ca

Greg Swan, Eastern Region
613-370-0288

gswan@esao.on.ca

Janice Gallant, Greater Toronto Area - West
905-785-3742

jgallant@esao.on.ca

Bill Urie, Niagara Region
905-312-9962

burie@esao.on.ca

Ed Hager, South West Region
519-264-9738

ehager@esao.on.ca

[Link to Bill 168 article](#)