

Bill 168 Webinar Questions and Answers Reference Document

Webinar held on Tuesday May 11, 2010

Questions Asked by Attendee Answers

Q: A lawyer has mentioned that this legislation will impact progressive discipline procedures. What are your thoughts on this?

A: Admittedly, lawyers like “Progressive Discipline Procedures” because they arm the legal team with the documentation they require to defend against claims of unlawful termination or other statute violations. When it comes to Violence and Harassment Prevention, a well documented policy, good management and effective leadership, including regular performance and risks reviews, with a decisive zero tolerance response by management are likely to create a similar documentation trail as a formal Progressive Discipline Policy. If you already have Progressive Discipline Procedures, incorporate them into your program; otherwise, a well executed Violence and Harassment Prevention policy and program should be able to stand on its own merit.

Q: Are you seeing an increase in pre-employment background checks by companies to address the history of violent behaviour?

A. There has been a significant increase in the use of criminal background checks and security clearances prior to the introduction of Bill 168. The reasons are varied, including government security, legislation concerning vulnerable sectors (such as charities and schools), trade agreements over food and drug handling, privacy protection, and, of course; protection from fraud and theft. This new legislation that addresses prior violent behaviour is just another reason behind the increase in this selection screening trend.

Q: Can you expand a little on the inspectors going around this summer to check on young workers and students?
Thanks.

A: The safety of young and new workers is the focus of a four-month enforcement blitz across Ontario beginning in May 2010. Health and safety inspectors at the Ministry of Labour will check to ensure young and new workers are properly oriented, trained and supervised on jobs, meet minimum age requirements, and are protected by safety measures to prevent injuries.

Particular attention will be paid to workplaces where many young and new workers are employed, including stores, wholesalers, restaurants and vehicle sales. The blitz is part of the Ontario government's *Safe At Work Ontario* strategy. Keeping more workers safe means increased productivity for Ontario's economy and less strain on the health care system.



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Q: Does the legislation apply when people sometimes work from home?

Q: Is the home office considered a workplace?

What about when employees attend a work-related social/industry event?

Q: Domestic Violence - where does the employer's responsibility end, when they leave the property, when they get home?

Q: What do we do if you are pretty sure someone is in a domestic violence situation but they don't want to talk about it and keep going back to same situation?

The regulations and the future evolution of rules around working from home are certain to develop with some controversy. As employers, we should be especially concerned when our employees are required to work from home if they have regular visits at their residence by clients or the public. For example, when a bookkeeper, physiotherapist or insurance agent works for a corporation but provides services from a home office, the home office should be viewed as a unique workplace. Beware of situations where employees keep valuables such as cash or jewels at home. Also, take special note when an employee requests special permission to work from home when there is known or suspected domestic violence. Allowing the individual to work from home without proper due diligence may likely be viewed as a legislative violation.

Work related social industry events are considered an extension of a workplace if it is a regular or frequent concern. As employers we only need be concerned if attendance at a social event presents a known or reasonably suspected threat. Having alcohol and drug policies, providing taxi chits and providing safe hotel accommodations are practices that may fall within the legislation.

A: Under section 32.0.4 of the Act, if an employer is aware or ought to be aware that domestic violence that is likely to expose a worker to physical injury may occur in the workplace, the employer must take every reasonable precaution to protect the worker.

Our legislated duty is limited to domestic violence that occurs in the workplace.



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Q: How can visitors be included in the company policy? Do we need to post policies in areas such as reception?

A: The Act is intended to prevent violence and harassment directed toward workers. Visitors must be considered during the development of policies as the presence of visitors may be a factor when assessing the risk to workers. Policies must be posted and available in a convenient location for the benefit of workers. You may decide that the reception area is the best place to achieve your objectives but not because you are obligated to make the policy visible to visitors.

Q: The employees at our workplaces are not our direct employees, although we administer payroll and benefits for them. Are we obligated to ensure they are set up for the workplace violence and harassment policies as we have in place for our direct employees?

A: Yes, workplace safety rules are carefully crafted so that our responsibilities are not limited by the technical definitions of Employer-Employee relationships. The general words "Worker" and "Workplace", combined with several prior court and tribunal decisions, create a broader definition that may include a shared or co-employment relationship between two or more employers. For example, a temporary staffing company will share a duty of responsibility with its clients toward the workers at the client site, and a condominium management company will share a duty of responsibility with the building owners toward the workers at the condominium facility. The degree of responsibility will be applied on-balance taking the unique facts of each case into consideration. Simply put, the employer with the greatest degree of authority and control will be given the greatest degree of responsibility.

Q: How do we ensure that our Sales Reps are covered when on calls?

A: Consideration must be given to the general nature of the work taking into consideration the fact that the sales person may be in a car, traveling, exposed to many unpredictable situations, different geographical areas and many different people. You can not assess the individual location of each client (unless the worker is regularly assigned to work at a specific client's worksite). For example, risks will vary for a sales person who goes door to door in residential apartment buildings compared to a corporate sales rep who visits corporate head offices by appointment.



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Q: What is the role of the JH&SC in investigating claims of Violence or harassment?

A: This should become a component of the Joint Health and Safety Committee or Safety Officers' responsibility. At a minimum, the JH&SC must be fully informed of the policy and program.

Q: How does one create parameters for the section related to domestic violence as it seems to have such a broad scope?

A: Under section 32.0.4 of the Act, if an employer is aware, or ought to be aware, that domestic violence that is likely to expose a worker to physical injury may occur in the workplace, the employer must take every reasonable precaution to protect the worker.

Our legislated duty is limited to domestic violence that occurs in the workplace.

Q: Is it important to have documentation that training has been given to each employee - i.e. signatures?

A Yes. Documented training records are something that an Ministry of Labour inspector may ask to see (i.e.: training certificates, meeting minutes, signed meeting attendance lists, signed acknowledgements, posted policies, etc.). These are the same standards that are typical for any workplace safety audit or inspection. Expect that a complaint or serious incident will trigger an audit or inspection. Documentation is an employers' only defense to an inspector's order to comply or charges under the act.

Q: Will training of this new legislation need to be completed for all employees by June 15/10?

Policies, risk assessments and programs must be in place by June 15th, 2010. If your program requires training in order to effectively communicate the program to all employees, then yes, June 15th is your deadline. Not all programs will require extensive training. Work environments with very little risk may also require very little training. It's important that the program and deliverables are balanced and appropriate for the assessed risk of each workplace.



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Q: Is this the first legislation of its kind in Canada? Is there anything similar in the other provinces?

A: Some other provinces have similar aspects within their Health and Safety legislation. For example Alberta's requirements appear as Part 27 of the Occupational Health and Safety (OHS) Code. Section 390 of the OHS Code requires employers to develop a policy and procedures respecting potential workplace violence. Section 8 of the *Occupational Health and Safety Regulation* requires that the procedures be in writing, and available to workers. While Section 391 and 392 of the OHS Code requires similar policies and procedures to Ontario.

Q: If there is a work refusal under this legislation, would the JHSC be required to conduct an investigation as they would with any other work refusal?

A: Joint Health & Safety Committees and Health & Safety Representatives have the same powers and responsibilities for workplace violence hazards as they do for other Occupational Health and Safety hazards under the Occupational Health & Safety Act. For example, their role during a work refusal (Section 43) is the same for workplace violence as it is for any other workplace hazard.

Q: We are a consulting firm and the majority of our employees work at client sites and not at our office. We have 3 support staff in our office who consistently work in the office. Do we need to create a policy according to the legislation?

A: Bill 168 requires employers who have six or more "Regularly Employed" workers at the workplace to have a written policy and have it posted in a conspicuous place in the workplace. This does not apply for firms with five or fewer "Regularly Employed" workers. A Ministry of Labour inspector does have the authority to order an employer with five or fewer workers to comply with the policy requirements in Bill 168. We recommend that you have a written policy posted in the workplace. Work environments with very little risk may also require very little in terms of a program. It's important that the program and deliverables are balanced and appropriate for the assessed risk of each workplace. This may not be your highest priority but when dealing with MOL inspectors, it's much better to take a proactive approach.



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Sometimes a client will behave aggressively over the phone when talking our Customer Service Representatives. Is this considered harassment?

A. There can be a difference between harassment and an unpleasant job. If the employee is subjected to a course of vexatious comments or conduct against a specific worker or group of workers that is known or ought to reasonably be known to be unwelcome then it would be considered harassment.

A clear set of policies that allows a CSR to escalate harassing or threatening customers to a supervisor, training to de-escalate situations and protecting the identity of the CSR should be sufficient in most cases.

We have employees across Canada, what if one of our Non-Ontario employees commits violence or harassment via phone or e-mail to one of our Ontario employees. How do we handle this?

A. Our obligation under the Act is to provide protection to our workers in Ontario. We are not obliged to punish workers. How you choose to handle your employee in the other province for breach of conduct is your business decision but the manner in which you protect the Ontario worker should be the same as if a non-employee, customer or visitor were to threaten or harass your workers.

Is Bill 168 a provincial regulated law only?

Bill 168 is specific to the Ontario Occupational Health & Safety Act and will effect only Provincially regulated employers. Federally Regulated companies should refer to the Federal Labor Code Section 2.

Does it apply to companies that are federally regulated? Do they need to be prepared?

Q. Is The People Bank always this awesome?

A. Sometimes More ☺

