



# PeopleRight

Human Resources Solutions

## Quick Facts:

- Bill 168 is greater in scope than employers anticipated
- Greater pressure is placed on employers and employees to identify hazards of violence
- Employers face greater risks of liability

## Are you ready for Bill 168?

The effective date for the new statute, Bill 168: Violence & Harassment in the Workplace, is June 15, 2010 and it appears many employers are still grappling with its implementation, four months after receiving royal assent.

The scope of this legislation is broad and comprehensive and the Ministry of Labour expects all workplaces to be in compliance by June 15.

When looking at the reported employer experience over the past five years, it isn't difficult to see the government's impetus for this legislation. 59% and 43% of surveyed employers<sup>1</sup> have experienced harassment and violence complaints, respectively, in the last five years. Perhaps these numbers are even higher if you believe a number of incidents go unreported.

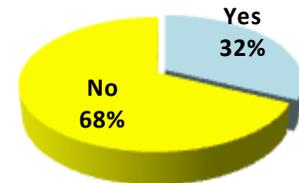
A quick survey this month of employers, large and small, private and public sector, indicates there is still much to do. Just over two-thirds report they currently have violence reduction programs and almost 80% are aware of the Bill coming into effect June 15<sup>th</sup>. Surprisingly, a fairly large number, 26%, are still not aware of the requirements of the bill.

Given that workplaces must conduct risk assessments; have two policies in place, one each for harassment and violence, including procedures; and provide education and training for employees, there is very little time to meet the deadline of June 15<sup>th</sup>.

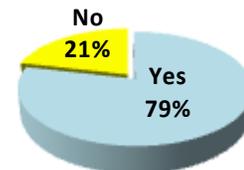
Some employers have already done much work in this area but still have some adjustments to make. For instance, many employers have harassment policies; however, they are tied to the prohibited grounds in the Human Rights Code. Now they will need to have accompanying harassment and violence policies covering objectionable behaviour not covered by the code.

What may set this legislation apart from many other jurisdictions is that employers must now advise employees of the presence of others that have a violent history (Note, 32% of employers reported individuals who would have fallen into this category). There are many concerns with this requirement, not the least of

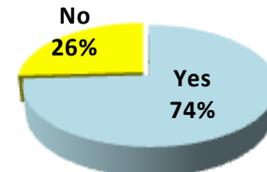
Do you have a violence reduction program in place?



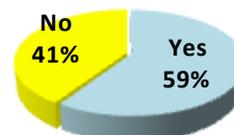
Are you aware Bill 168 comes into effect June 15, 2010?



Are you aware of the requirements for Bill 168?



Have you had a case of harassment in your workplace within the last 5 years?



**"... about 26% of employers, are still not aware of the requirements ..."**

<sup>1</sup>28 respondents

which is complying with privacy requirements.

## Bill 168: Violence & Harassment in the Workplace

What is really unique, however, is that employers must now proactively deal with matters of domestic violence. This is an especially sensitive area for the workplace and has always been deemed to be outside the scope of the employment relationship.

In today's environment we are well aware of domestic situations that have spilled over into the workplace. The most common reference point for this is the nurse who was killed by her partner while she was on the job in a Windsor hospital. The recommendations from the inquest included the requirement that employers aware of such difficulties should take all reasonable precautions to protect their employees from the potential of domestic violence while in the course of work.



Employers have little experience in conducting risk assessments or having trained investigators for incidents of harassment or violence. Almost two-thirds of the employers surveyed indicated their supervisors are not trained in conducting effective investigations, nor do they utilize external investigators. This is not unusual given the experience in other jurisdictions across North America.

Now that harassment and violence is covered under the Occupational Health & Safety Act, there is a requirement that there be supervisory competence in the area of investigations, and the standard expected is high.

**"...investigations should be conducted by impartial, third-party providers."**

It is difficult to expect supervisors to be competent in this area if they conduct investigations infrequently. Faced with some serious situations of harassment and violence in the workplace and, now, having to deal with domestic violence, the stakes are high in the event an investigation is ineffective.

Guidelines and legal decisions across North America recommend that investigations should be conducted by impartial, third-party providers. This adds credibility to the process and is perceived as such by employees and government ministries because of their expertise and impartiality. This is important, because, if a worker believes the employer did not properly deal with an incident, they may also seek a resolution outside of the employer's internal investigation procedure.

Quite often, the legal experience in the U.S. is a harbinger as to what Canada will see. It has been reported that some employees who have experienced violence in the course of their employment have taken legal action against their employers; charging they were vicariously liable. That is, they claim their employer could have prevented the violent occurrence if all reasonable steps had been taken in their violence reduction program.

One example of employer liability is illustrated with the Vancouver Island Health Authority where it was fined \$75,000 for failing to take adequate measures to protect employees from workplace violence. The penalty resulted

from two separate investigations into incidents that injured or had the potential to injure workers.

Certainly, this is a burgeoning area in health and safety in Ontario and, once again, employers are reminded to pay attention to their health and safety program. Evidence has shown, however, that employers that have made health and safety an organizational priority have engendered greater employee loyalty and commitment which has translated into greater organizational success.

