

CHAPTER 23

An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters

Assented to December 15, 2009

Note: This Act amends the *Occupational Health and Safety Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Occupational Health and 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; (“harcèlement au travail”)

“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 the worker,
- (c) 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. (“violence au travail”)

2. Section 25 of the Act is amended by adding the following subsection:

Same

(3.1) Any explanatory material referred to under clause (2) (i) may be published as part of the poster required under section 2 of the *Employment Standards Act, 2000*.

3. The Act is amended by adding the following Part:

**PART III.0.1
VIOLENCE AND HARASSMENT**

Policies, violence and harassment

- 32.0.1** (1) 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.

Written form, posting

- (2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.

Exception

(3) Subsection (2) does not apply if the number of employees regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.

Program, violence

32.0.2 (1) An employer shall develop and maintain a program to implement the policy with respect to workplace violence required under clause 32.0.1 (1) (a).

Contents

- (2) Without limiting the generality of subsection (1), 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.

Assessment of risks of violence

32.0.3 (1) 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.

Considerations

- (2) 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.

Results

- (3) An 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.

Reassessment

(4) An employer shall reassess the risks of workplace violence as often as is necessary to ensure that the related policy under clause 32.0.1 (1) (a) and the related program under subsection 32.0.2 (1) continue to protect workers from workplace violence.

Same

- (5) Subsection (3) also applies with respect to the results of the reassessment.

Domestic violence

32.0.4 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, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.

Duties re violence

32.0.5 (1) For greater certainty, the employer duties set out in section 25, the supervisor duties set out in section 27, and the worker duties set out in section 28 apply, as appropriate, with respect to workplace violence.

Information

- (2) 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.

Provision of information

(3) An employer's duty to provide information to a 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.

Limit on disclosure

(4) 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.

Program, harassment

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

Contents

- (2) Without limiting the generality of subsection (1), 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 any prescribed elements.

Information and instruction, harassment

32.0.7 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 harassment; and
- (b) any other prescribed information.

4. (1) Clause 43 (1) (a) of the Act is amended by striking out “clause (3) (a), (b) or (c)” and substituting “clause (3) (a), (b), (b.1) or (c)”.

(2) Subsection 43 (3) of the Act is amended by striking out “or” at the end of clause (b) and by adding the following clause:

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

(3) Subsection 43 (5) of the Act is repealed and the following substituted:

Worker to remain in safe place and available for investigation

(5) Until the investigation is completed, the worker shall remain,

- (a) in a safe place that is as near as reasonably possible to his or her work station; and
- (b) available to the employer or supervisor for the purposes of the investigation.

(4) Subsection 43 (6) of the Act is amended by striking out “or” at the end of clause (b) and by adding the following clause:

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

(5) Subsection 43 (8) of the Act is repealed and the following substituted:

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person.

(6) Subsection 43 (10) of the Act is repealed and the following substituted:

Worker to remain in safe place and available for investigation

(10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker’s normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation.

Exception

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

- (a) assigns the worker reasonable alternative work during the worker’s normal working hours; or
- (b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

5. Subsection 52 (1) of the Act is amended by striking out “or fire” in the portion before paragraph 1 and substituting “fire or incident of workplace violence”.

6. The Act is amended by adding the following sections:

Order for written policies

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

Order for written assessment, etc.

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

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

7. Subsection 70 (2) of the Act is amended by adding the following paragraphs:

- 15. prescribing elements that any policy required under this Act must contain;

- 33. prescribing restrictions, prohibitions or conditions with respect to workers or workplaces relating to the risks of workplace violence;

- 50. requiring an employer to designate a person in a workplace to act as a workplace co-ordinator with respect to workplace violence and workplace harassment, and prescribing the functions and duties of the co-ordinator;
- 51. in the case of a worker described in subsection 43 (2), specifying situations in which a circumstance described in clause 43 (3) (a), (b), (b.1) or (c) shall be considered, for the purposes of clause 43 (1) (a), to be inherent in the worker’s work or a normal condition of employment;
- 52. varying or supplementing subsections 43 (4) to (13) with respect to the following workers, in circumstances when section 43 applies to them:
 - i. workers to whom section 43 applies by reason of a regulation made for the purposes of subsection 3 (3), and
 - ii. workers described in subsection 43 (2).

8. The Act is amended by adding the following section:

Regulations, taxi industry

71. (1) The Lieutenant Governor in Council may make regulations governing the application of the duties and rights set out in Part III.0.1 to the taxi industry.

Same

- (2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
 - (a) specifying that all or any of the duties set out in Part III.0.1 apply for the purposes of the regulations, with such modifications as may be necessary in the circumstances;
 - (b) specifying who shall be considered an employer for the purposes of the regulations and requiring that person to carry out the specified duties;
 - (c) specifying who shall be considered a worker for the purposes of the regulations;
 - (d) specifying what shall be considered a workplace for the purposes of the regulations.

Commencement

9. This Act comes into force six months after the day it receives Royal Assent.

Short title

10. The short title of this Act is the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009.*

Changes to the OHS Act between October 2006 and November 2008

Section	Amending Statute and Effective Date	Amendment(s)
5	2006, c. 35, Sched. C, s. 93 / August 20, 2007	- Public Service of Ontario Statute Law Amendment Act: definition of “employee in the Ministry”
21 (2)	2006, c. 35, Sched. C, s. 93 / August 20, 2007	- reference to Public Service of Ontario Act, 2006
32.2 (3)	2006, c. 21, Sched. F, s. 136 (1) / July 25, 2007	- reference to Legislation Act, 2006
40.1 (1)	2006, c. 35, Sched. C, s. 93 / August 20, 2007	- Public Service of Ontario Statute Law Amendment Act: definition of “employee in the Ministry”
40.1 (2)	2006, c. 35, Sched. C, s. 93 / August 20, 2007	- Public Service of Ontario Statute Law Amendment Act: definition of “employee in the Ministry”
43 (2) (d) (i)	2007, c. 8, s. 221 / Not yet proclaimed	- reference to “long-term care home” On a day to be named by proclamation of the Lieutenant Governor, subclause (i) is amended by the Statutes of Ontario, 2007, chapter 8, section 221 by striking out “nursing home, home for the aged” and substituting “long-term care home”.
50 (6)	2006, c. 35, Sched. C, s. 93 / August 20, 2007	- reference to Public Service of Ontario Act, 2006
61 (3.11)	2006, c. 21, Sched. F, s. 136 (1) / July 25, 2007	- reference to Legislation Act, 2006
65 (1) (a)	2006, c. 35, Sched. C, s. 93 / August 20, 2007	- Public Service of Ontario Statute Law Amendment Act: definition of “employee in the Ministry”
68.1 (3)	2006, c. 35, Sched. C, s. 25 / April 1, 2007	- change reference from “42 (e)” to “42 (1) (e)”