



## Outsourced HR Expertise

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### Bill 168 Readiness

Bill 168 is a complex legislation designed to prevent workplace violence and harassment. For most employers, complying with the new provisions will require a substantial commitment of time as it poses unique challenges with far-reaching implications. HR-on-Demand is the expert in compliance and we can help you understand the impact of legislation, and implement compliant policies.

We've designed a Bill 168 readiness assessment to evaluate your current state, and outline the steps required for Bill 168 compliance. This speedy assessment can help you plan internal & external resources, and show what needs modification rather than a complete replacement. Our readiness assessment looks at three main areas:

#### Policy Diagnostics

To align your company's policy with the legislation, we understand that different of businesses need differing solutions - not a one-size-fits-all

Hello [[FIRSTNAME]],

#### Complexities & challenges of complying with Bill 168

By David Whitten - Whitten & Lublin LLP  
& Janet Candido - HR-on-Demand

Beginning June 15, Bill 168 requires that all Ontario employers have policies in place to protect their employees from workplace violence and harassment.

The Bill amends Ontario's *Occupational Health and Safety Act(OHSA)* by designating workplace violence and harassment as health and safety hazards. It's a direct response to recent acts of workplace violence, including Lori Dupont's murder at a Windsor hospital at the hands of her boyfriend in 2005 and Pierre Lebrun's shooting rampage at OC Transpo in 1999.

Previously, the *OHSA* required employers to take "all reasonable precautions" to protect employees. However, in the absence of a specific legislative definition of "reasonable precautions", charges were rarely laid. Bill 168 now expressly imposes obligations on employers and employees to protect against workplace violence and harassment.

By definition, workplace violence and workplace harassment is the actual exercise of physical force; an attempt to exercise physical force; or a statement or behaviour that can be reasonably viewed as a threat of physical force to cause physical injury. Unfortunately, the terms "physical force" and "physical injury" are undefined, leaving employer obligations unclear.

More significantly, the definition of workplace harassment has been borrowed from the Human Rights Code, where even perceived mistreatment can form the basis of a lawsuit or human rights complaint. Since harassment is often viewed in the eyes of the beholder, a tough or assertive boss could easily be seen as a personal harasser. The concern is that employees will use these new definitions to support constructed dismissal claims or complaints to the Ministry of Labour, based on little more than legitimate performance management.

By far the most alarming requirement is that employers must

policy. Instead, we review your existing policies & procedures to determine the changes needed to achieve compliance.

If necessary, where multiple levels of policies exist, we take steps to establish a hierarchy, and realign those policies. This can eliminate any variances with respect to the Health and Safety Act, the Human Rights Code and workplace harassment requirements.

Once a thorough review has been completed, we clearly identify the gaps between your existing policy and the Bill 168 legislated requirements.

### **Implementation plan**

Once a comprehensive diagnostic has been completed, we propose a methodology for implementing the changes, based on both existing and external resources. HR-on-Demand will also outline the overall cost and time needed to complete the project.

We can optionally review existing processes for investigation and contingency plans to determine levels of Bill 168 compliance, as well as propose a structure for conducting risk assessments.

### **Communications Plan**

A key component of the new legislation is effective communication of the new policy and an explanation of how it affects and protects employees. Our assessment will identify effective strategies for:

- posting the policies
- communicating policy changes to employees
- training employees and supervisors

To meet with one of our experienced specialists for help understanding Bill 168 and for guidance as you move towards compliance, [contact us](#).

now provide information to all employees, including personal information, about a colleague's history of violence. The legislation doesn't outline what should be considered violent behaviour or an employer's obligations to inquire into a person's history. It's also unclear how much information must be divulged to fulfil this requirement while balancing the importance of maintaining that person's privacy rights.

### ***Actions all employers must take to be compliant***

The following are the five steps that employers must take to ensure Bill 168 compliance:

1. ***Create compliant policies, post them in prominent locations (such as a lunchroom as well as on the company intranet) and review them every six months to reflect workplace or legal changes.***

It may not be necessary to create new policies from scratch. Instead, a thorough review of existing Human Rights Code and Health and Safety policies may reveal that the necessary changes can readily be made.

2. ***Conduct risk assessments for violence in the workplace, share the results with health and safety committees and re-assess often.***

Care must be taken when carrying out risk assessments because the results will shape policy. All organizations should look at comparable industry companies when conducting the risk assessment – for example, hospitals need to look at other hospitals – and create a rating tool that evaluates risk. As soon as risks are recognized, an action plan to defuse that risk is needed.

3. ***Develop and maintain training programs to implement workplace violence and harassment policies. These policies must include information on how employees can request assistance or report concerns.***

A comprehensive process on how to file complaints is a key part of this legislation and we recommend that investigations always be conducted by two people – for example someone from Human Resources and someone from the Health and Safety committee. This process must give direction on protecting the person being investigated until the investigation is complete as well as protecting the person who filed the complaint.

4. ***Amend disciplinary policies to address failure to abide by workplace violence and harassment policies.***

If no disciplinary action is deemed necessary and an employee is cleared, he or she must be allowed to return to their regular duties. However, the legislation states that employers must inform all other employees of the investigation and leave the door open for others to choose not to work with the investigated person. The difficulty is in determining how to convey this information to meet the legislated requirements



without contravening privacy laws.

5. ***Train supervisors and employees to understand and administer the various workplace policies.***

About the authors:

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## **Add HR Expertise & Depth**

HR-on-Demand understands that your HR staff is routinely involved in day-to-day work, leaving limited time to take on additional projects. We can add capabilities to your existing staff on an as-needed basis. [Click here](#) to discover how our professional services can augment your existing resources.

Check out our [compliance checklist](#). [Contact us](#) if you need to take action.

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