

SUBMISSION OF THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

Bill 168, Occupational Health and Safety Amendment Act, 2009 (Violence and Harassment in the Workplace)

November 2009



Elementary Teachers' Federation of Ontario
Fédération des enseignantes et des enseignants de l'élémentaire de l'Ontario
480 University Avenue, Suite 1000, Toronto, Ontario M5G 1V2
Telephone: 416-962-3836 Toll free: 1-888-838-3836
Fax: 416-642-2424
Website: www.etfo.ca

The Elementary Teachers' Federation of Ontario (ETFO) represents over 73,000 teachers and education support personnel employed in the public elementary schools of Ontario.

ETFO strives to develop programs and services that protect and enhance the working lives of its members. ETFO works continuously to provide an environment that celebrates the diversity of its members and the students in their care. In addition to its internal work in support of members, ETFO reaches out to the broader community to foster a climate of social justice.

ETFO is concerned about all aspects of violence in the workplace. The federation has been an active participant in the government's Safe Schools Initiatives and the subsequent introduction of legislation aimed at preventing and remedying bullying, homophobia, sexism, and other offensive, unsafe and violent conduct in our public elementary schools. Most recently, ETFO has participated in the review of Bills 212 and 157 amending the Education Act in response to such conduct in our schools. Those recent legislative efforts focussed largely on student to student conduct and educational workers' response to this type of violent and destructive behaviour.

One of ETFO's major preoccupations has been with the effect of violence in all of its forms on front line educational professionals. The federation is pleased to see the government's initiative in Bill 168 which specifically addresses violence against workers. In elementary schools, teachers and educational workers face various forms of violence. The violence includes physical violence aimed at teachers and educational professionals by students, some of whom may have been identified as having special needs or behavioural issues. We have seen a disturbing increase in weapon based violence and a significant rise in bullying of all types, including cyberbullying, in elementary schools.

All violence has a devastating effect on educational workers. At ETFO we receive regular reports of physical harm to our members. This violence can range from bruising and broken noses to being menaced with weapons. Frequently teachers and educational professionals are also threatened with violence by students or other members of the educational community, including parents.

The policy changes proposed by Bill 168 are long overdue. Teachers and education support personnel can be a major force for education and change on this issue. Our future generations depend on us to address violence in all of its forms, whether harassment, bullying, threats of violence, or actual physical violence, in an appropriate way. We seek to name the conduct, to address it in a timely way, and to take prompt and effective measures to prevent it and remediate it.

Definitions of Workplace Violence and Harassment

Bill 168 defines "workplace harassment" as follows:

"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.

Bill 168 defines "workplace violence" as follows:

"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; and/or (b) an attempt to exercise physical force against a worker in a workplace that could cause physical injury to the worker.

Comments

The definition of "workplace harassment" is very broad, broader than "harassment" as defined in the *Human Rights Code*. It is not grounds-based, so that "workplace harassment" under Bill 168 may include conduct that is not related to a prohibited ground of discrimination, such as age, ethnicity, religion, sex, etc. The definition would likely capture bullying and cyberbullying. ETFO supports this broad definition.

Our concerns:

The definition of "workplace violence" only deals with actual or attempted physical force which causes or could cause physical injury. It does not include the threat of physical force and does not sufficiently anticipate the potential for violence. This is a significant issue for our members in terms of students who threaten or who our members know have the potential to be violent.

The definition also limits "workplace violence" to acts that cause or could cause physical injury. This may preclude acts of violence which cause or could cause psychological injury, such as post traumatic stress disorder, anxiety, depression, and other conditions that arguably are not captured by the term "physical injury".

The example we would use is of the Grade 6 teacher who is threatened by a student with a gun or knife. The gun may turn out not to be loaded, but the teacher's psychological distress may be acute. His or her resulting psychological state should be recognized as an "injury" but under this draft of the legislation, it likely would not be.

The definition of "workplace violence" addresses physical force against a worker and does not address violence in the workplace experienced generally, e.g., student-on-student violence, physical force against students or other persons on school property that would not fall under the definition of "worker". Student violence or threat of student violence, for example, may escalate or spill over to put teachers and educational workers directly at risk of injury or harm, and student violence or threats may be a precursor to subsequent violence directed at teachers.

Recommendations:

1. Strike out "against a worker" in subsections 1(a) and (b);
2. Change "workplace violence" to mean:

(a) the attempted or actual exercise of physical force by a person in a workplace that causes or could cause injury to the worker,

(b) the threat of physical force which gives a worker reasonable cause to believe he or she is at risk of injury;

3. Strike out "physical" from subsections 32.0.2 (2)(a), 32.0.4., 32.0.5 (3)(b), (4);

Even though both of these terms, "workplace harassment" and "workplace violence", have been introduced into the Act, s. 32.0.5 states that employer duties (s.25), supervisor duties (s. 27) and worker duties (s. 28) apply, as appropriate, with respect to workplace violence only, not with respect to harassment. Both of these terms need to expressly figure in each of the duty sections, or be elsewhere expressly linked to either the definition of "hazard" or "danger".

Workplace Violence and Harassment Policies and their Implementation

Bill 168 requires employers to prepare written policies dealing with workplace violence and harassment. Workers must be trained on these policies, which must be posted in workplaces with more than five workers. The policies must be reviewed by the employer annually.

Under Bill 168, employers are required to develop and maintain a program to implement workplace violence and harassment policies. The workplace violence program must include measures and procedures to:

- control the risks identified in the workplace violence assessment;
- call for immediate assistance when workplace violence occurs or is likely to occur, or when a threat of workplace violence is made;
- report incidents or threats of workplace violence to the employer or supervisor;
- and
- establish how the employer investigates and manages incidents, complaints or

threats of workplace violence.

The workplace harassment program must also include procedures for reporting and investigating incidents of workplace harassment.

The threat of physical force is contemplated in the clause relating to implementation programs. ETFO supports these proposals. However, the workplace harassment program should also include procedures for reporting and investigating incidents of workplace harassment which can induce psychological injury, and which may be precursors to other types of violence.

Our concerns:

In the education sector, many legislative efforts have imposed obligations on school board employers to draft and implement policy, and to train workers on these policies. Various Policy and Program Memoranda from the Ministry of Education require policy implementation by local school board employers on student-based violence in the schools. In our view, these obligations have not been met in a sufficient way. This bill is deficient with respect to workers' participation in the development of the policies, time lines for completion, and resources for development and training.

Recommendations:

1. That the government impose a fixed timeline for the implementation of policies to be prepared in consultation with workplace unions and health and safety committees.
2. That the Ministry of Labour and the Ministry of Education provide model policies and investigation procedures for school boards.
3. That timelines and a monitoring mechanism be established to ensure appropriate training is done at the school board level to support these policies.
4. Clarification must be provided on whom to contact for immediate assistance.

5. That changes be drafted to link the threat of violence in these sections to the definition of workplace violence.

Risk Assessments for Workplace Violence

Under Bill 168, employers would be obliged to assess the risk of workplace violence that may arise, based on the nature of the workplace, the type of work, or working conditions. Risk assessments must take into account circumstances that would be common to similar workplaces as well as circumstances specific to the workplace itself.

Bill 168 requires that employers advise the joint health and safety committee or the health and safety representative of the results of these risk assessments. If the assessment is in writing, a copy must be provided. If the workplace does not have a joint health and safety committee or a health and safety representative, the workers must be advised of the results of the assessments and of how to obtain a copy of the assessment.

In addition, Bill 168 requires that workplace violence risks be reassessed "as often as is necessary" to ensure the workplace violence policy and program continue to protect workers.

ETFO supports these provisions.

Domestic Violence

The issue of "domestic violence" in the workplace is explicitly addressed in Bill 168 by requiring employers to "take every precaution reasonable in the circumstances" to protect workers from domestic violence that would likely cause physical injury to workers in the workplace. Unfortunately "domestic violence" is not defined. ETFO is concerned the lack of definition reinforces the false dichotomy between work and home, public and private life.

Also, as stated above, the language of the bill only addresses physical injury and not such conduct as harassment, stalking, and psychological and emotional abuse. These are real, cause real injury, and in fact, may be precursors of physical violence. The bill should be drafted so as to protect workers from this harm, to the extent possible.

Recommendations:

1. That subsection 32.04 be amended to include a definition of “domestic violence” and that the definition be expanded to include harassment, stalking, and psychological and emotional abuse.
2. That the bill be amended to replace "physical injury" with "injury or risk of injury" and that the word “likely” be struck out.

Disclosure of Persons with a Violent History

Subsection 32.0.5 (3) of Bill 168 requires employers and supervisors to provide information, including personal information, to a worker about a person with "a history of violent behaviour" in two circumstances: if the worker could be expected to encounter that person in the course of his/her work; and, if there is a risk of workplace violence likely to expose the worker to physical injury.

Comments:

ETFO has sought this policy change for many years. It is the federation’s interpretation that this section will oblige school boards to document incidents of violent student behaviour on the Ontario Student Record through Violent Incident Reports or other similar procedures. Bill 168, however, does not specify how to determine whether a person has reached the threshold of having a "history of violent behaviour."

Clarification is needed on what constitutes a history of violent behaviour.

Recommendation:

1. That regulations specifically for the education sector be developed to align with

the Education Act on the question of policies, procedures, investigations and documentation on student files regarding violent incidents of all types.

Notice to health and safety committee and the Ministry of Labour

Bill 168 obliges employers to notify the union, the joint health and safety committee, and the Ministry of Labour when a person is disabled from performing work or requires medical attention because of an act of workplace violence.

Comments

Harassment which causes a teacher or educational professional to require medical attention or where a person is disabled from performing work should be included in the notice provision.

Recommendation:

1. That subsection 52(1) of the Occupational Health and Safety Act be amended to ensure that "incident of workplace harassment" is added after "accident, explosion, fire or incident of workplace violence".

Conclusion

ETFO wants to be proactive and part of the solution. The federation supports the government's attempts to address violence in our workplaces, including violence which follows workers into their workplaces. We believe that, with minor amendments, Bill 168 will bring Ontario in line with other jurisdictions that have introduced progressive measures to their health and safety legislation.

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