

Are Companies Liable For The Misconduct Of Their Execs Or Employees?



Employers have a legal duty to provide their employees with a workplace that is safe and free from harassment

The recent criminal charges against Canadian billionaire [Frank Stronach](#), the 91-year-old founder and former chief executive of auto-parts maker [Magna International Inc.](#), are another example of a prominent business figure accused, years later, of sexual assault.

The complaints span from 1977 to as recently as this year, and while we don't yet know whether any of the alleged incidents took place in an office setting, some of them do coincide with Stronach's tenure as Magna's CEO. The case, along with that of another high-profile Canadian businessman, [Peter Nygard](#), reignited conversations about workplace harassment and whether companies can be liable for the misconduct of their executives or employees.

When [Harvey Weinstein](#)'s serial sexual assaults were exposed in 2017, the ensuing #MeToo movement inspired victims around the world to break their silence and come forward against their abusers. The movement aimed to defeat the culture of silence that stifles victims for fear of having their careers or personal lives ruined in retaliation. Employers woke to the need for a zero-tolerance approach to workplace sexual misconduct and were forced to respond to the numerous business, reputational and legal risks of not addressing issues when they're first reported.

POTENTIAL LIABILITY FOR EMPLOYERS

The potential liabilities employers face if they fail to uphold strong workplace policies are expanding as the law develops. While employers are generally not vicariously liable for [sexual harassment](#) by their employees, they can still face legal liability under provincial human rights legislation – the Ontario Human Rights Act, for example, or Workplace Occupational Health and Safety Act – as well as legal action in civil court. In a civil lawsuit, an employer's alleged breach of human rights or occupational health and safety can also be used to claim additional monetary damages.

Employers have a legal duty to provide their employees with a workplace that is safe and free from harassment. Employers should proactively inform employees of their rights and what steps they can take if they feel they are being harassed by a co-

worker in or outside of the workplace. Clearly communicated policies will help prevent the risk of employees burying their concerns out of fear that nothing good will come of them. They also protect employers from liability.

The timing of the charges against Stronach for alleged crimes spanning decades highlights another problem employers must avoid: inaction.

Workplace policies are only as good as how well they are enforced. A lack of enforcement and discipline may signal an employer's condonation of the behaviour, and employers who fail in their duty to seriously investigate complaints of harassment may be in breach of occupational health and safety laws.

In a civil suit, like an action for [wrongful](#) or [constructive dismissal](#) brought by an employee against their former employer, an employer's failure to effectively combat harassment can lead to a court awarding exemplary monetary damages for the harm caused by their conduct.

In Ontario, there is no statute of limitations on civil claims based on sexual assault or claims relating to "any other misconduct of a sexual nature" if, at the time of the misconduct, the accused was "in a position of trust or authority in relation to the person bringing the claim." This second type of claim would cover examples of sexual misconduct committed against employees by their superiors, therefore, an employer cannot drag its heels in response to a complaint in the hopes of running out the clock and avoiding a potential lawsuit over how it addressed (or didn't address) the alleged misconduct.

We have seen an increase in [employment law cases](#) where constructive dismissal is alleged because of a toxic or poisoned work environment. An employer's failure to effectively combat harassment itself, if serious enough, can lead to a poisoned work environment in which employees no longer feel safe and able to perform their jobs. An employer's failure to treat harassment complaints seriously and act when they are first reported is a common contributor to constructive dismissals.

Beyond constructive dismissals and human rights actions, victims of workplace harassment might have recourse in claims for negligence and intentional infliction of mental distress.

In the workplace context, employers must remember the importance of taking harassment allegations seriously and addressing them without delay. Employees should know their rights and what to do in the event their employer fails to take their concerns seriously.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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