

Important Changes To Employers' Obligations Regarding Violence And Harassment In The Workplace



Ontario recently introduced Bill 132, the *Sexual Violence and Harassment Action Plan Act* (Supporting Survivors and Challenging Sexual Violence and Harassment), 2015, (the “Bill”). The Bill has received first reading and comes into effect on the later of six months after receiving Royal Assent or July 1, 2016.

The Bill amends a number of statutes, including the *Occupational Health and Safety Act* (“OHSA”), and has several key provisions that will impact employers’ duties in Ontario.

For All Employers

The Bill builds on 2010 amendments to the OHSA, which required employers to have in place workplace harassment policies and programs.

Part III.0.I of the OHSA imposes obligations on employers to create policies and programs with respect to keeping workers safe from workplace violence and harassment. Such issues have been considered in wrongful dismissal cases and in labour arbitration’s.

The proposed Bill expands the specific types of conduct in the workplace against which employers are obligated to ensure that employees are protected. This conduct includes both words and actions. Under the Bill, ‘workplace harassment’ is defined to mean:

- a. engaging in a course of vexatious comment or conduct against an employee in a workplace that is known or ought reasonably to be known to be unwelcome, or
- b. workplace sexual harassment.

The term 'workplace sexual harassment' is itself defined to be:

- a. engaging in a course of vexatious comment or conduct against an employee in a workplace because of sex, sexual orientation, gender identity or gender expression, where the comment or course of conduct is known or ought reasonably to be known to be unwelcome, or
- b. making a sexual solicitation or advance where the person making same is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Employers will be obliged to review and update their written policies and programs to ensure that they include measures and procedures that address these new definitions. See our "Tips For Employers" for further information on how to go about making these changes.

Investigations

As part of employer programs, employees must be able to report incidents of workplace harassment to someone other than the employer or supervisor if such person is the alleged harasser.

Moreover, employers' policies and programs must outline how investigations are to be conducted. Section 32.07(1) of the proposed Bill creates a duty on Ontario employers to ensure the following:

- a. that an investigation is conducted that is appropriate in the circumstances, and
- b. that the employee who allegedly experienced the harassment, and the alleged harasser, are informed in writing of the results of the investigation and any corrective action to be taken.

Note that under the Bill, the powers of Ministry of Labour Inspectors are enhanced to include the ability to order that employers use impartial investigators and further, that such persons possess the knowledge, experience and skills as specified by the Inspector.

Tips for Employers

- Review your workplace violence and harassment policies to make sure that they address the following points:
- The definition of workplace harassment; and
- How an employee can make a complaint to a person other than a supervisor or employer where the alleged harasser is the supervisor or employer.
- Consider the workplace investigations – create written procedures to assist the individual(s) and make the procedure available in the harassment policy:
- That the employer will investigate incidents or complaints of workplace harassment;
- That the context and process of the investigation will be determined by the employer;
- That the employer will inform the employee and the alleged harasser of the results of the investigation, including any corrective action.
- Consider how to balance the privacy rights of employees – how information is to be obtained and disclosed and how the employee and the alleged

harasser are to be informed of the results of the investigation.

We do not know precisely what the final legislation will look like. However, employers would be wise to start thinking about these issues in order to avoid a last minute rush to comply.

Article by Cynthia R. C. Sefton and Meghan Cowan