

Ontario Draws a New Line on Workplace Sexual Harassment & Violence



Ontario was among the last provinces to add specific workplace violence obligations to its OHS laws. But Bill 168, which took effect in 2010, made up for lost time by requiring employers to implement measures to prevent not just violence but *harassment* at work. Now Ontario is at it again, adopting new workplace sexual harassment and violence requirements that go beyond not just Bill 168 but most other workplace safety laws in Canada. Here's a look at the new Ontario anti-harassment rules and what employers must do to comply with them.

OVERVIEW OF THE LAW

The Context: On March 6, 2015, the Ontario government unveiled a new \$41 million Action Plan to Stop Sexual Violence and Harassment in not just workplaces but across college campuses, rental housing and other public settings. Accordingly, proposed revisions to OHS laws was just one of the Action Plan's commitments.

The Timeline: The OHS changes (and other new anti-harassment rules) are set out in Bill 132, which was tabled on October 27 and passed on March 8, 2016, the Action Plan's one-year anniversary. The new rules officially take effect on September 8, 2016.

What the Law Requires: Bill 132 makes 3 key changes to the Ontario *OHS Act*:

- **Broader Definition of "Harassment":** The OHS laws already require employers to prevent "workplace harassment" (thanks to Bill 168) but Bill 132 expands the rule by requiring employers to protect workers against "workplace sexual harassment," defined as:
- Vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression that's known or should reasonably be known to be unwelcome; or
- A sexual solicitation or advance by a person in a position to confer, grant or deny a benefit or advancement to the worker that's known or should reasonably be known to be unwelcome.

But Bill 132 also specifies that workplace harassment does *not* include a reasonable action by an employer or supervisor relating to the management and direction of the workplace.

- Written Harassment Program: Whereas Bill 168 required employers to implement a harassment *policy*, Bill 132 ups the ante by requiring a full blown written harassment *program*, developed and monitored in consultation with the Joint Health and Safety Committee or Health and Safety Representative, that includes, at a minimum:
- Harassment reporting procedures including methods for workers to report to somebody other than the employer or supervisor where the employer or supervisor is the alleged harasser;
- Procedures for investigating and dealing with harassment complaints;
- Assurances that information about the individuals involved will not be disclosed unless disclosure is necessary for the investigation or corrective action or required by law;
- Assurances against retaliation for reporting workplace harassment; and
- Procedures for notifying the worker and alleged harasser of the results of the investigation and corrective actions taken.
- MOL Power to Order Investigation: Bill 132 gives MOL inspectors new authority to order employers or an impartial third party to conduct a workplace harassment investigation and provide a written report of the results at the employer's expense.

WHAT IT MEANS

The provision with the most direct and significant impact on employers is the requirement to implement a written harassment program. The good news is that the harassment program needed mirrors the workplace *violence* program employers are already required to implement under Bill 168. So it should be relatively easy to comply by either expanding your current workplace violence program to include workplace sexual harassment or adopting a separate program using your current violence program as a template.

Moreover, the expanded definition of harassment to include conduct based on sex, sexual orientation, gender identity or gender expression doesn't impose any new substantive requirements since these are already personal characteristics protected against harassment and discrimination under human rights laws. Unwelcome sexual advances by persons in positions of authority are also forms of sexual harassment banned by human rights laws. All Bill 132 does is make the employer's obligation to prevent these forms of harassing conduct part of the OHS laws as well.