

What Employers Need To Know About Ontario's Proposed Sexual Harassment Protections



After adopting an action plan to stop sexual violence and harassment in March 2015, Ontario's legislature is taking steps to pass an act that would create new duties for employers to prevent and investigate sexual harassment in the workplace. If passed, the act would go into effect six months after it is signed.

The act, titled the Sexual Violence and Harassment Action Plan Act (the "Act"), amends Ontario's Occupational Health and Safety Act to create new affirmative duties for employers to prevent workplace sexual violence and harassment. The Act would expand employers' duties to:

- Have a workplace harassment policy or program that includes and defines workplace sexual harassment;
- Have measures and procedures that allow employees to report incidents of workplace harassment to a person other than their supervisor, if the supervisor is the harasser;
- Investigate the alleged harassment;
- Keep the incident or complaint of harassment confidential unless necessary for the purposes of the investigation or corrective action;
- Inform the complainant and respondent of the results of the investigation;
- Take corrective measures in light of the investigation;
- Comply with Occupational Health and Safety inspectors' requests for an investigation or a report at the employer's expense.

The Act also provides that reasonable actions taken by an employer or supervisor relating to management of employees does not constitute workplace harassment. In addition to the workplace requirements, the Act includes proposed amendments to curb sexual violence and harassment in universities, colleges, and housing.

Employers operating in both New York and Ontario may recall a group of laws similar to the Act that went into effect in New York earlier this year. The laws, as part of the Women's Equality Agenda broadened the definition of employer for sexual harassment claims, and, like Ontario's act, included stronger protections from housing discrimination for victims of domestic violence. However, the Act differs importantly from New York law as it creates an affirmative duty for employers to adopt and enforce sexual harassment policies and investigate complaints, which is not required by either New York or United States federal law (although all employers should have such policies in place).

The Act currently is being considered by the Social Policy committee of Ontario's legislature. Employers operating in Ontario should be aware that these new requirements may be just around the corner, and should review their policies to ensure that they are in compliance and reach out to counsel with any concerns.