

ALERT: Ontario Passes Sexual Violence and Harassment Law



On March 8, 2016 'International Women's Day' the Ontario government passed a law designed to, among other things, make workplaces safer from sexual violence and harassment. Here's an overview of Bill 132, Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2015 as it impacts employers and workplaces.

THE LAW

Key Dates: Bill 132 became law on March 8, 2016, when it received Royal Assent. But the key changes that impact employers don't take effect until Sept. 8, 2016.

Key Changes for Employers: Schedule 4 of the Bill spells out changes to the OHS laws to address sexual harassment, including:

Definitions. The *OHS Act* was amended to define 'workplace sexual harassment' as:

- Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or
- Making a sexual solicitation or advance where the person making the solicitation or advance 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.

In addition, 'workplace sexual harassment' has been added to the definition of workplace harassment already in the *OHS Act*.

Harassment programs. Sec. 32.0.6 of the *OHS Act* was amended to require employers to, in consultation with the JHSC or a health and safety representative, if any, develop and maintain a written program to implement the workplace harassment

policy required under Sec. 32.0.1(1)(b). Such programs must now:

- Include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;
- Explain how incidents or complaints of workplace harassment will be investigated and dealt with;
- Set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, won't be disclosed unless the disclosure is necessary to investigate or take corrective action with respect to the incident or complaint, or is otherwise required by law;
- Spell out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the investigation's results and of any corrective action that has been taken or that will be taken as a result of the investigation; and
- Include any prescribed elements.

Employer duties. The new Sec. 32.0.7 imposes certain duties on employers to protect workers from workplace harassment. Specifically, to protect a worker from workplace harassment, an employer must ensure that:

- An investigation is conducted into incidents and complaints of workplace harassment that's appropriate in the circumstances;
- The worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the investigation's results and of any corrective action that has been taken or that will be taken as a result of the investigation;
- The harassment program discussed above is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the required workplace harassment policy; and
- Such other duties as may be prescribed are carried out.

ANALYSIS

Why was Bill 132 necessary? According to the press release announcing the law's passing, one in three women in Canada will experience some form of sexual assault in their lifetime. And 28% of Canadians say they've been on the receiving end of unwelcome sexual advances, requests for sexual favours or sexually charged talk while at work. Employers in Ontario have some time to take steps to implement these new requirements and duties as to sexual harassment. Employers in other jurisdictions may have similar duties under their OHS, employment standards and/or human rights laws. But even without specific requirements, *all* employers would nonetheless be well served implementing measures to protect all workers from sexual harassment on the job.