

Ontario moves forward with legislative amendments to combat sexual violence and harassment

Date : November 1, 2015

Readers of Focus will recall that earlier this year the Ontario government released “*It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment*”. The action plan set out the government’s commitment to preventing and addressing sexual violence and harassment in Ontario (see [Ontario introduces action plan to stop sexual violence and harassment – OHSa to be amended](#)). On October 27th, the government took another step forward in its action plan by introducing Bill 132, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2015*. If passed, Bill 132 will amend a number of statutes including the *Occupational Health and Safety Act* (“OHSa”). The amendments to the OHSa will introduce new requirements for Ontario employers to prevent and investigate sexual harassment in the workplace.

The proposed OHSa amendments include the addition of “workplace sexual harassment” to the current definition of “workplace harassment”. “Workplace sexual harassment” is defined as:

- (a) 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
- (b) 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;

For employers that are concerned about the breadth of the expanded definition of “workplace harassment”, the proposed amendments include a proviso that clarifies that, “A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.”

Under the current provisions of the OHSa, an employer is required to develop a program for implementing its workplace harassment policy. If passed into law, Bill 132 will require employers to update their programs to address new requirements. Although workplace sexual harassment is the impetus for the new requirements, they will nevertheless apply generally to all forms of workplace harassment if Bill 132 becomes law.

Under the proposed amendments, the implementation programs will have to provide measures and

procedures for workers to report workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser. The programs will also have to set out how information obtained about an incident or complaint of workplace harassment will not be disclosed by the employer unless the disclosure is necessary for the investigation, corrective action, or as otherwise required by law. The amendments would also require employers to review the implementation program as often as necessary, but at least annually, to ensure that the program adequately implements the workplace harassment policy.

Bill 132 also sets out new requirements for employers to investigate complaints of workplace harassment. The amendments propose to require the investigation to be appropriate in the circumstances and the investigation results, including any corrective action, must be provided to the worker and the alleged harasser. Bill 132 would also afford OHS inspectors with the authority to order employers to retain, at the employer's expense, an independent investigator to conduct an investigation of workplace harassment.

Bill 132 also includes a number of proposed amendments to the *Ministry of Training, Colleges and Universities Act* that apply to colleges and universities that receive funding from the government. The amendments include a requirement for these institutions to develop policies that address sexual violence involving students and set out how the institution will respond to and address incidents of sexual violence. Colleges and universities will also be required to consider student input when developing these policies and review the policies at least once every three years. Under the proposed amendments, if requested by the Minister of Training, Colleges and Universities, colleges and universities will be required to collect and provide the following information:

1. The number of times supports, services and accommodation relating to sexual violence are requested and obtained by students enrolled at the college or university, and information about the supports, services and accommodation.
2. Any initiatives and programs established by the college or university to promote awareness of the supports and services available to students.
3. The number of incidents and complaints of sexual violence reported by students, and information about such incidents and complaints.
4. The implementation and effectiveness of the policy.

One other notable statutory amendment proposed by Bill 132 is an amendment to the *Limitations Act, 2002* which would remove the limitations period for a person to commence a proceeding in respect of a sexual assault. The removal of the limitation period would apply retroactively even if the limitation period has already expired.

If passed into law, Bill 132 will come into force on the later of July 1, 2016, or six months after the bill receives Royal Assent. Employers will be required to update their workplace harassment policies to meet the new requirements set forth in Bill 132. Employers should begin to review their policies and prepare for the changes. We will continue to monitor Bill 132 as it progresses through the legislature and keep Focus readers informed of significant developments.

For further information please contact [Colleen Dunlop](#) at 613-940-2734 or [Kevin MacNeill](#) at 613-940-2767.