

Ontario's New Workplace Harassment Laws (Bill 132)

Five Key Points for Employers

The Ontario Government has passed Bill 132, the *"Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016"*. Bill 132 amends the *Occupational Health and Safety Act ("OHS")* to add additional obligations on employers with respect to workplace harassment. A summary of Bill 132's provisions can be found in my [previous article](#).

For this article, I have focused on five key points that employers should consider moving forward in advance of Bill 132's effective date (September 8, 2016):

Point #1 – Sexual Harassment is a Health and Safety Issue

With Bill 132, the Government has continued to transform how sexual harassment is regulated from a pure human rights issue into a human rights and occupational health and safety issue. Under Bill 132, the definition of "workplace harassment" in OHS now includes

"workplace sexual harassment". This means that companies can face liability both under the *Human Rights Code ("Code")* and OHS for sexual harassment in the workplace.

Point #2 – Harassment Should be Taken Seriously

As noted above, with Bill 132 employers face potential liability under 2 separate statutes. An employee can file a complaint of sexual harassment under the Code with the Human Rights Tribunal and, at the same time, a company can face a prosecution by the Ministry of Labour ("MOL"). In other words, the potential consequences have increased to employers who ignore or do not take reasonable efforts to prevent harassment at work. Employers need to be vigilant to ensure a respectful workplace. At the very least, this means training staff (including management), enforcing anti-discrimination and harassment policies and taking complaints seriously. This leads nicely into Point #3.



Daniel M. Pugen

Partner, Employment & Labour

PHONE

416 777 5194

EMAIL

dpugen@torkinmanes.com

Daniel is a partner of the firm and a member of our Employment & Labour Group. He represents and advises management and employers on a wide variety of labour, employment and human resources/workplace issues.

Point #3 – All Incidents/Complaints Must be Investigated

Bill 132 specifies that employers have a duty to investigate incidents/complaints of harassment. While this does not mean that every complaint should go through a week-long investigation (Bill 132 speaks of investigations that are “appropriate in the circumstances”), it does mean that employers must look into and deal with all complaints – even those that may seem, at first glance, as minor or trivial.

Point #4 – Amend Workplace Harassment Program

Currently, employers are only required to have a workplace harassment program in place that sets out a procedure to report and investigate complaints. After Bill 132, employers must also ensure that their workplace harassment program sets out:

- Procedures for reporting incidents to a person other than the complainant’s supervisor if that person is the alleged harasser.

- How information obtained about an incident or complaint will not be disclosed unless disclosure is necessary for the purposes of investigating or taking correction action.
- How the alleged victim and perpetrator (if a worker) will be informed of the results of the investigation and of corrective action.

Notably, this must be set out in writing and be developed in consultation with the joint health and safety committee (or health and safety representative). The new, beefed-up, program must be reviewed annually.

Point #5 – Beware the Power of the MOL

In an effort to ensure that all complaints are properly investigated, a MOL inspector can mandate that employers retain an external investigator to investigate a harassment complaint. Notably, the external investigator is to be paid for by the employer and possess qualifications as are specified by

the inspector. There are currently no limits on the inspector’s power or discretion. Accordingly, a lacklustre investigation is done at the employer’s peril. The MOL has the authority to send in an investigator to ensure that nothing is swept under the rug!

Employers should review the above points, start training staff, begin to amend their policies/procedures and, indeed, consider their overall outlook on workplace harassment in advance of Bill 132 coming into effect on September 8, 2016.

For any assistance on Bill 132 or on harassment issues generally, please contact Daniel Pugen at dpugen@torkinmanes.com or 416 777 5194.