

## Workplace Harassment Update: Ministry of Labour Issues “Code of Practice”

Ontario’s Bill 132 introduced new sexual harassment related provisions to the *Occupational Health & Safety Act* (the “Act”) including a new mandatory investigation obligation in the case of alleged or suspected workplace (including sexual) harassment. The changes take effect September 8, 2016. (We have reported these developments in previous Bulletins – see links below.)

The Ministry of Labour has published its own “Code of Practice” under Bill 132, establishing a set of guidelines for compliance with the amended version of the Act.

The Code is divided into four Parts.

**Part I** outlines the requirements for a written Workplace Harassment (including sexual harassment) Policy.

**Part II** sets out in detail the requirements for a written Workplace Harassment Program, including protocols for the reporting of harassment, the investigation and handling of complaints and the preservation of all records (including the complaint itself, the investigation record and witness statements, as

well as the results of the investigation and any corrective action).

**Part III** deals with the employer’s new statutory obligation to conduct “appropriate” investigations into all incidents or complaints of workplace harassment (including sexual harassment), mandating that investigations be completed within 90 days of the of the incident or complaint, absent extenuating circumstances.

The Code requires the appointment of an objective investigator and sets out the following 7 required “steps” of the investigation:

- maintenance of confidentiality and non-disclosure
- thorough interview of the complaining employee and alleged harasser
- procedural fairness and opportunity to respond
- collection and review of relevant documents
- thorough interview of witnesses
- adequate record keeping



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- preparation of a report for the employer's use

Significantly, the *Code* mandates that the "results" of the investigation (different from the "report" prepared for the employer's use), must be provided to the person alleging harassment as well as the alleged harasser, in writing. These results (a summary of the findings of the investigation) must be delivered within 10 days of the investigation being concluded. Corrective action, if any, must also be communicated to the alleged harasser within 10 days of the conclusion of the investigation.

**Part IV** of the Code sets out requirements for the training and instruction of employees on the content of Workplace Harassment Policies and Programs, including the identification of harassment, the reporting of incidents or complaints, and the procedures in place for investigation of harassment and the reporting of results.

All Ontario employers must review their existing Workplace Harassment Policies and Programs (or implement new ones) in order to ensure compliance with the new requirements of the *Act*. While the

Ministry of Labour says that strict adherence to the *Code of Practice* is not the *only* route to compliance, employers choosing to either follow the *Code* or deviate from its specific requirements would be wise to do so with the advice or assistance of counsel knowledgeable in the area.

*For more information on the Code, Bill 132 or any other employment law topic, please contact me at pstraszynski@torkinmanes.com or 416 777 5447.*

#### Previous Torkin Manes publications on this topic:

[Ontario's New Workplace Harassment Laws \(Bill 132\)](#) by Daniel Pugen (May 2016)

[New Workplace Harassment Laws Are Coming](#) by Daniel Pugen (Nov 2015)

[Identifying and Responding to Sexual Harassment in the Ontario Workplace \(video\)](#) with Lisa Corrente (Nov 2015)