

Member's Quarterly

Fall 2016 Edition

Feature

Ontario's Bill 132: Make Sure You're Prepared!

New sexual violence and harassment legislation in effect Sept 2016

In March 2015, the Ontario Government introduced an Action Plan entitled "*It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment*". The Action Plan contains 13 proposals that are aimed at preventing sexual harassment and violence in the workplace and the broader community.

Bill 132: An Act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters was developed to adopt many of the recommendations contained in the Action Plan with a view to combatting sexual violence and harassment.

Below are the highlights that may impact your workplace:

- The definition of workplace harassment in the Occupational Health and Safety Act ("OHSA") will be expanded to include "workplace sexual harassment". The Bill does not contain any restrictions on a worker from launching a human rights complaint while complaints of sexual harassment are being investigated in the workplace.
- The OHSA will clarify that reasonable actions taken by an employer to manage or direct an employee do not constitute workplace harassment.
- Extensive obligations will be placed on your organization to develop a workplace harassment program to ensure that incidents or complaints of harassment are appropriately investigated. The program must be developed and reviewed in consultation with a joint health and safety committee or safety representative, if applicable.
- The workplace harassment program must outline how incidents or complaints of workplace harassment will be investigated and dealt with.
- Workplace harassment programs must also include procedures for reporting workplace harassment to another person in cases where a member of management within the organization is the alleged harasser.
- The results of a workplace investigation must be communicated to complainants and alleged harassers. The parties will also be entitled to be informed in writing of any corrective or disciplinary action taken.
- Your organization will be required to conduct investigations into "incidents" and complaints of workplace harassment. This language suggests that your organization will have to address not only formal complaints of harassment, but will also have to investigate any incidents of harassment that come to your attention.
- Workers must be informed that any information obtained in a workplace harassment complaint will only be disclosed on an as needed basis to investigate the complaint, take corrective action, or as required by law.
- Workplace harassment programs should be reviewed regularly, and at least once per year.
- Workers must be provided with information and instruction on the contents of the workplace harassment policy and program.



Ruben Goulart
B.A., LL.B.
Partner, Bernardi
Human Resource
Law LLP

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Feature continued

- Ministry of Labour inspectors will be given the power to order your organization to bring in an impartial third party to investigate an incident or complaint of workplace harassment. If an investigation is ordered, your organization will have to foot the bill to pay for the investigation and report. At this time, it is unclear what factors will guide an inspector to determine whether an investigator is "impartial", and has the requisite qualifications to conduct an investigation.

Another important change that the Bill will introduce is the elimination of the limitation period for civil proceedings based on a sexual assault. Currently, there is a two year limitation period for commencing such claims, but it does not run when a person is incapable of bringing a claim because of their physical or emotional condition. Once the Bill comes into effect, there will no longer be a limitation period for civil claims relating to sexual assault, and victims can bring their claims forward whenever they are ready.

The above laws will come into effect on September 8, 2016. In order to comply with the legislation, it is recommended that you review or create policies to ensure they are compliant with Bill 132 obligations. Members of your staff should also receive training on how to identify and deal with complaints of harassment and how to conduct workplace investigations.

Ruben Goulart is a Partner with Bernardi Human Resource Law LLP and can be reached via email at RGoulart@hrlawyers.ca.