

Member's Quarterly

Spring 2020 Edition

Feature

Heads Up Island Employers: Additional Workplace Harassment Obligations Coming Soon!

PEI: It's time to review your sexual harassment policy

Summertime in Prince Edward Island will not only bring with it beach days and tourists but, new workplace harassment obligations for employers.

On July 1, 2020, the *Occupational Health and Safety Act* Regulation amendments pursuant to the Occupational Health and Safety Act, RSPEI 1988, c O-1.01, regarding workplace harassment will come into force. Under the new amendments, harassment will be defined as:

- any inappropriate conduct, comment, display, action or gesture or any bullying that the person responsible for the conduct, comment, display, action or gesture or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety, and includes:
 - ◊ conduct that is based on any personal characteristic such as, but not limited to, race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin, gender identity or pregnancy; and
 - ◊ inappropriate sexual conduct that is known, or ought reasonably to be known, to the person responsible for the conduct to be unwelcome, including, but not limited to, sexual solicitations or advances, sexually suggestive remarks, jokes or gestures, circulating or sharing inappropriate images, or unwanted physical contact.

Harassment will also include:

- repeated inappropriate conduct, comments, displays, actions or gestures or incidents of bullying that have a harmful effect on the worker's psychological or physical health or safety; and
- a single occurrence of inappropriate conduct, comment, display, action or gesture or bullying that has a harmful effect on the worker's psychological or physical health or safety but does not include reasonable action taken by an employer or supervisor relating to management and direction of workers or of the workplace.

The amended regulations will require an employer who knows or ought reasonably to know that harassment in the workplace is occurring to ensure that the source of the harassment is identified and the harassment stopped; and that reasonable steps are taken to remedy the effects of the harassment and to prevent or minimize future incidents of harassment.

Employers will be required to keep the details of the harassment complaint confidential, unless, and to the extent that, disclosure is necessary in order to report the incident of harassment or to cooperate in the investigation of the complaint. Workers must also cooperate in the investigation of complaints.



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Employers will also be required to develop and implement a written policy to prevent and investigate harassment in the workplace that includes such obligations as a statement that every worker is entitled to a workplace free of harassment; a commitment that the employer shall ensure, as far as is reasonably practicable, that no worker will be subjected to harassment in the workplace; and information or procedures about how to make a harassment complaint to the employer or supervisor, how to make a harassment complaint to a person other than the employer or supervisor, if the employer or supervisor is a subject of the complaint, how a harassment complaint will be investigated, and how the complainant and subject of the complaint will be informed of the results of the investigation and any corrective action that has been or will be taken as a result. A copy of the policy must also be made readily available to employees.

Employers will have an obligation to conduct an investigation into the complaint. Investigations may be referred to an impartial person either within or outside of the workplace who is not directly involved in the incident or the complaint; is not directly under the control of the person who is the subject of the complaint or otherwise in a conflict of interest; and has knowledge of the workplace harassment provisions, the amended regulation and other applicable laws.

If an investigation is carried out by an impartial person, that person must make a determination as to whether the harassment occurred and may also make recommendations. If recommendations are made, the employer will be required to determine the corrective action required in the circumstances and implement the corrective action.

These new obligations are in addition to obligations already imposed on employers regarding sexual harassment in the workplace under the Prince Edward Island *Employment Standards Act*, RSPEI 1988, c E-6.2. The obligations under the employment standards legislation are similar in that employers are obligated to make every reasonable effort to ensure that no employee is subject to sexual harassment and it requires employers to issue a policy statement.

In light of the upcoming changes, PEI employers should take a look at their current sexual harassment policy statement and adapt and expand to ensure compliance with the new occupational health and safety requirements.

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