



Bill 132: New Obligations for Employers, New Protections for Employees

There has been a lot of buzz in the employment law community about Bill 132, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2015 ("Bill 132"), and rightly so. While Bill 132 is still in its preliminary stages before the Ontario legislature, if passed it would amend several pieces of legislation (including the *Occupational Health and Safety Act*) relating to sexual violence, sexual harassment and domestic violence.

In March 2015, the Ontario government launched "*It's Never OK: An Action Plan to Stop Sexual Violence and Harassment.*" The initiative considers many forms of sexual violence and harassment, including when they occur in the workplace. Incidents of workplace sexual harassment and violence can be especially problematic, because of an inherent inequality of power amongst employees, and ineffective processes to safely report problems. Bill 132 is part of this initiative, seeking to create new obligations for employers and provide new protections to individuals in workplace.

The primary change that employers need to be aware of is the proposed change to the *Workplace Health and Safety Act* ("the Act"), which seeks include "workplace sexual harassment" in the definition of "workplace harassment". In doing so, all references to workplace harassment in the Act would be expanded to include any behavior that fell within the definition of sexual harassment. The definition, as proposed, is broad and captures a nuanced understanding of how sexual harassment occurs:

"workplace harassment" means,

- (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.

Further, the proposed changes would impose new duties on employers to establish real and meaningful avenues by which a victim of workplace sexual harassment can seek assistance. In addition to requiring employers to "include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser" and "set out how incidents or complaints of workplace harassment will be investigated and dealt with", Bill 132 provides new specific obligations for workplace investigations.

In efforts to reasonably and adequately protect workers from workplace harassment, the Bill would impose a duty on employers to ensure that:

- a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
- b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;
- (c) the program developed under section 32.0.6 is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the policy with respect to workplace harassment required under clause 32.0.1 (1) (b); and
- (d) such other duties as may be prescribed are carried out.

Significantly, the proposed changes would also give new powers to inspectors acting under the authority of the Act to order an employer to conduct an independent, third-party, workplace investigation and to produce a report at the employers' expense. This amendment places serious obligations on employers, and could be especially onerous to small businesses.

The Standing Committee considering Bill 132 heard oral submissions from the community from January 19-22, 2016. Following this, the Committee will report to the House and the Bill must pass a third reading before receiving Royal Assent. We eagerly await their decision and we will keep you posted.

Kevin Robinson will be speaking at The Osgoode Certificate in
HR Law for HR Professionals Spring 2016

