



# **Bill 132: Ontario's New(ish) Sexual Violence and Harassment Legislation**

**February 2017**

# Bill 132: Ontario's New Sexual Violence and Harassment Legislation

- On March 6, 2015, the Ontario Government released a policy statement: “It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment”.
- Bill 132 will amend the *Occupational Health and Safety Act* (the “OHSA”). It comes into force September 8, 2016.
- **Bottom line:** Ontario employers are required to “develop and maintain” a written program to implement the workplace policy, in consultation with the OHS committee.

# Bill 132: Is It Really Anything New?

- Not really:
  - (a) the Ontario *Human Rights Code* already states that employees have a right to be free from sexual harassment.
  - (b) Since 2010, Bill 168 has required workplace violence and harassment policies.
- But OHSA now puts an onus on employers to – by having policies – prevent workplace harassment in the first place.
- It has always been – and will continue to be – a good practice to have anti-discrimination and anti-harassment policies.

## Bill 132: How Is It Defined?

- Workplace harassment now includes sexual harassment:
  - (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

## Expanded definition

- Workplace sexual harassment defined to include
- sexual orientation, gender identity or gender expression...
- Gender identify and expression were all added to the Human Rights Code in 2012

## Bill 132: How Is It Defined?

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.

# OHSA – What Has to be in the Policy?

- The policy must set out how an employee can report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser
- The policy must indicate how the involved parties will be informed about the results of the investigation and, of any corrective (eg. disciplinary) action taken.
- incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser

# OHSA – When Do You Have to Investigate?

Three possible sources of the requirement to conduct an investigation:

1. A complaint by an employee
2. Employer has knowledge of an “incident” or situation
3. Inspector orders an investigation

# **Must Investigate “Complaint or Incident”**

## **– Why don’t people report?**

- They don’t know their legal rights
- Don’t want to be seen as a trouble maker
- Feel the behavior is condoned
- Afraid of losing their jobs or reprisals
- could be vulnerable on other grounds

# OHSA – Is Training Required?

- Employees must have training on the policy, so they understand their rights and responsibilities.
- Those in leadership roles must have a strong understanding of the employer's duty to prevent workplace harassment
- Programs and procedures must be reviewed at least annually.

# Really? An External Investigator?

- Impartiality and objectivity - internal HR personnel may be seen as biased, too invested in reputation of organization
- Will have training and expertise into conducting investigations and human rights law
- Appropriate where allegations are very serious
- Appropriate where alleged harasser is high- ranking, senior
- Appropriate where there are multiple parties; where parties are represented by counsel and/or union
- Perceived as being able to better ensure confidentiality and privacy