Redefining workplace harassment and enhancing workplace protections: a summary of Bill 132’s amendments to the Occupational Health and Safety Act

November 2015
Employment and labour

As part of the Ontario government’s March 2015 report “It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment” a new bill is before the Ontario legislature. Bill 132, Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2015 (the Bill), which has already passed its first reading in Ontario’s parliament, includes a number of amendments to the Occupational Health and Safety Act (the Act). It’s important for all employers to be aware of the Bill and its new requirements.

Definitions

The Bill’s amendments include an addition to the current definition of “workplace harassment” under s. 1 of the Act. Currently, “workplace harassment” is defined as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.” This would be supplemented by the term “workplace sexual harassment,” which is defined as:

- 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
- 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.

These changes incorporate the grounds for discrimination under the Ontario Human Rights Code.

In addition, the proposed amendments to the definition of workplace harassment would be subject to the following exception:

- A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

Workplace harassment policy requirements

The Act currently requires the employer to develop and maintain a program to implement its workplace harassment policy that includes measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor, and sets out how the employer will investigate and deal with such incidents and complaints. Under the Bill, these requirements would include the following:
The requirement for 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;

The requirement for an employer to set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law; and

The requirement for an employer to set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed 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.

Workplace harassment investigation requirements

The Act currently requires the employer to provide the worker with any information and instruction that is appropriate for the worker on the contents of the workplace harassment policy and program. The Bill would create new requirements for employers, including that:

- An investigation be conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances; and

- 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.

In addition, employers may be subject to an order to cause such an investigation to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person.

Many additional changes are also found in the Bill, a copy of which can be accessed here.

Key takeaways for employers

- Review the new definition of “workplace sexual harassment.”

- Consider revising your policy on workplace harassment and investigation to ensure it meets the new requirements.

Gabriel Granatstein

For further information, please contact one of the following lawyers:

> Karen Jensen       Ottawa       +1 613.780.8673       karen.jensen@nortonrosefulbright.com

> Gabriel Granatstein Toronto +1 416.216.2346 Gabriel.Granatstein@nortonrosefulbright.com

> John Mastoras       Toronto       +1 416.216.3905       john.mastoras@nortonrosefulbright.com

© Norton Rose Fulbright Canada LLP 2015