



## NEW ONTARIO WORKPLACE SAFETY LAW REGARDING SEXUAL HARASSMENT

EMPLOYERS REQUIRED TO IMPLEMENT PREVENTION PROGRAM, ENSURE APPROPRIATE INVESTIGATIONS

As of September 8, 2016, Bill 132: the Sexual Violence and Harassment Action Plan Act is now law; it expands the definition of workplace harassment in the Occupational Health and Safety Act to include sexual harassment.

According to the Act's preamble, "All Ontarians would benefit from living without the threat and experience of sexual violence, sexual harassment, domestic violence and other forms of abuse, and all Ontarians have a role to play in stopping them."

This type of legislation is expected to eventually become law across Canada to help ensure workplaces take an active role in protecting workers from the threat of violence, harassment, and sexual harassment.

The definition added to the Occupational Health and Safety Act states "workplace sexual harassment" includes distressing, unwelcome comments or conduct against a worker due to their gender, sexual orientation, gender identity or expression; or any type of sexual solicitation or advance by a person who is in a position of power over the worker, where the person knows or ought to reasonably know the advance is unwelcome.

## What the law says

Under the Occupational Health and Safety Act, a workplace harassment prevention program must:

- **Set out who would investigate if the alleged harasser is the employer.** Larger companies may already have their own trained investigators, and smaller companies may need to hire an external investigator.
- **Set out how confidentiality will be maintained.** Policy must include procedures on how information is obtained during the investigation, including identifying information about any of the individuals involved.
- **Provide written results of the investigation to the complainant and alleged harasser.** New employer responsibility ensures written results of the investigation are shared with both the complainant and the respondent, including any action taken or to be taken.

### Investigation guidelines

For employers, Bill 132 presents important workplace-related changes since it requires specific workplace harassment policies and programs are in place and that incidents and complaints are appropriately investigated. Ministry of Labour inspectors will now have the authority to order a third-party investigation at the employer's expense, especially if the internal investigation is seen to be flawed or incomplete.

### What is sexual harassment?

- Gender-related comments about a person's physical characteristics or mannerisms
- Paternalistic comment or conduct based on gender, which undermines a person's self-respect or position of responsibility
- Demands for dates or sexual favours
- Unwelcome physical contact
- Suggestive or offensive remarks or innuendoes about members of a specific gender
- Propositions of physical intimacy
- Gender-related verbal abuse, threats or taunting
- Leering or inappropriate staring
- Bragging about sexual prowess or questions or discussions about sexual activities
- Offensive jokes or comments of a sexual nature about an employee or client
- Rough and vulgar humour or language related to gender
- Display of sexually offensive pictures, graffiti or other materials, including through electronic means

Under the Ontario Human Rights Code, forms of sexual and gender-based harassment could include any of the above.

## New duties for employers

1. **Appropriate investigation:** Ensure an investigation into a workplace harassment complaint is conducted appropriately for the circumstances.
2. **Provide written results:** Ensure the complainant and alleged harasser are informed of the results of the investigation and any corrective action, in writing.
3. **Minimum annual review:** Review the program as often as necessary, but at least once a year, to ensure it adequately implements the workplace harassment policy.

### Summary of Ontario legal requirements to improve workplace safety

Companies must have written policy and procedures regarding the prevention of sexual harassment and violence in the workplace, which can be added to its existing policy on prevention of violence and harassment.

In addition, employers will want to incorporate staff training requirements on dealing with sexual or domestic violence in the workplace, and guidelines for leaves of absence and reasonable accommodation around work hours and location, for survivors of sexual and domestic violence.

### Occupational health and safety training

"Workplace Violence and Harassment Prevention" is a half-day training course that provides participants with all the necessary knowledge and tools to comply with every aspect of the new legislated requirements and establish effective violence and harassment prevention policies in their workplace:

[www.workplacesafetynorth.ca/training/course/workplace-violence-and-harassment-prevention](http://www.workplacesafetynorth.ca/training/course/workplace-violence-and-harassment-prevention)

### Free publications

"Workplace Violence and Harassment: Understanding the Law" includes key terms and concepts, roles and responsibilities, sample workplace violence prevention policy: [www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php](http://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php)

"Code of Practice to Address Workplace Harassment under Ontario's Occupational Health and Safety Act" includes employer's duties, training information, key definitions, sample workplace harassment prevention policy, and investigation template: [www.labour.gov.on.ca/english/hs/pubs/harassment/index.php](http://www.labour.gov.on.ca/english/hs/pubs/harassment/index.php)

For additional resources, visit the Ministry of Labour website: [www.labour.gov.on.ca/english/hs/topics/workplaceviolence.php](http://www.labour.gov.on.ca/english/hs/topics/workplaceviolence.php) or contact your WSN Health and Safety Specialist.

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For more information, or to schedule training, contact Workplace Safety North at

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