

# *e2r Alert!*

## **WORKPLACE HARASSMENT: AN UPDATE**

Following in the steps of Ontario, British Columbia could be the next jurisdiction to adopt legislation in relation to workplace harassment, not to be confused with existing legislation pertaining to workplace violence. Entitled the *Workplace Bullying Prevention Act* (Bill M 217-2011), this Bill purports to amend the *Workers Compensation Act* (the "Act"), and significantly expand the scope of employer obligations. Through these amendments, the Bill will allow incidents of workplace harassment to be investigated, compensated and dealt with in the same manner as workplace accidents.

### **The Proposed Amendments**

The Bill defines *harassment* as follows:

*"any conduct, comment, display, action or gesture that*

*(a) adversely affects a worker's psychological or physical wellbeing, or*

*(b) the actor knew or reasonably ought to have known would cause a worker to be humiliated or intimidated"*

The Bill goes further by providing that harassment may also include "the act of causing intentional harm through verbal harassment, intimidation or other more subtle methods of coercion such as manipulation, including ignoring and isolating a person". The Bill offsets what appears to be an expansive definition by emphasizing that reasonable employer actions relating to the management and direction of the workplace will not constitute harassment.

The Bill would also lower the threshold requirements for mental distress claims that may arise from harassment. First, the Bill would eliminate the present requirement that a mental distress claim must result from an acute reaction to a sudden and traumatic event arising out of and in the course of the worker's employment. Second, the Bill would also eliminate the requirement that the stressful event not be caused by a decision of the employer relating to the worker's employment including, but not limited to, decisions relating to working conditions and discipline.

### **Workplace Harassment Policies**

As expected, the Bill requires employers to be proactive. In particular, the Bill would require an employer with nine (9) or more workers to: (i) implement a workplace harassment policy that includes measures and procedures for workers to report incidents of workplace harassment; (ii) implement procedures for investigating incidents and complaints of workplace harassment; and (iii) develop procedures to make workers accountable for acts of harassment.

Although the Bill appears to have a remarkable resemblance to Ontario's Bill 168 which amended the *Occupational Health and Safety Act*, it goes much further in that it permits employers to seek compensation from WorkSafe B.C. for having been "harassed" as defined above.

It should be noted that the Bill is only in first reading, and accordingly, may not become law. However, it is certainly representative of the extent to which legislators across Canada are seeking to protect (and now potentially compensate through workers compensation) workers that are considered to have been harassed.

We encourage you to contact an e2r Solutions® service provider should you have any questions in regards to the foregoing.

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