

Bill 132, Sexual Violence and Harassment Action Plan Act Creates New Obligations for Employers

On March 8, 2016, the Ontario government passed Bill 132, the *Sexual Violence and Harassment Action Plan Act*, to amend various statutes with respect to sexual violence, sexual harassment, and domestic violence. Bill 132 comes into force on September 8, 2016.

Notably, Bill 132 expands the *Occupational Health and Safety Act* ("OHSA") definition of "workplace harassment" to include "workplace sexual harassment". As a result of this amendment, sexual harassment is not only a human rights issue covered by the *Human Rights Code*, but is also a workplace safety issue covered by the *OHSA*. Given the expanded definition of "workplace harassment", employers will now have to amend their policies and procedures to specifically include "workplace sexual harassment".

Bill 132 adds a number of specific employer obligations in conducting investigations into workplace harassment. The Bill requires employers to consult with a joint health and safety committee or a health and safety representative to develop, maintain and review on an annual basis a written program that implements the employer's workplace harassment policy. The requirements of the employer's written program must include the following:

- set out measures and procedures for workers to report incidents of workplace harassment to persons other than their employer or supervisor, if the employer or supervisor is the alleged harasser;
- detail how incidents and complaints of workplace harassment will be investigated and handled;
- ensure that information about an incident or complaint will not be disclosed (unless disclosure is necessary to the investigation or corrective action, or is otherwise required by law); and
- describe how the alleged victim and harasser will be informed of the results of the investigation and of any corrective action.

The Ontario Ministry of Labour Inspectors will also now have the power to order employers, **at their own expense**, to engage the services of a third party to investigate the alleged workplace harassment and issue a written report.

Practical Considerations

Bill 132 means that employers must be vigilant in addressing workplace sexual harassment. Employers ought to be aware that its obligation is triggered not only when an employee makes a complaint, but when the employer otherwise becomes aware of an incident of possible sexual harassment. In summary, employers must complete the following in order to be compliant:

- review or update workplace harassment policies and programs to explicitly include the definition of workplace sexual harassment and to reflect the new requirements discussed above;
- develop a process to ensure workplace harassment programs are being reviewed at least once annually to ensure the employer is effectively implementing all applicable policies;
- train employees to ensure understanding of workplace harassment, their rights and responsibilities, and consequences of misbehaviour; and
- train managers and internal investigators on how to respond to a workplace harassment incident and complaint, conduct investigations, complete reports and communicate with the appropriate parties.

The **September 8, 2016** deadline is quickly approaching, and employers should act soon to ensure compliance with the new legislation. Please contact e2r® if you have any questions or concerns regarding your current policies or if you do not have a current policy in place. All e2r® Partner clients will be receiving a revised "Respect in the Workplace" policy shortly.