



# Workplace Sexual Harassment: Ontario Overview

A Primer for Employer Compliance

## Introduction

On March 8, 2016 the Ontario government passed Bill 132, An Act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters.

Bill 132 introduces a number of significant changes to the harassment provisions in Ontario's Occupational Health and Safety Act (the "Act"), including with respect to employer duties and the necessary requirements to be contained related programs. These requirements are set out in detail below and are further summarized in the attached compliance checklist.

Bill 132 comes into force on September 8, 2016, at which time all Ontario employers must ensure that they have reviewed and revised (if necessary) their harassment policies and programs, and have taken the appropriate steps to ensure compliance with the new legislation.

## 1 | Definitions of "Workplace Harassment" and "Workplace Sexual Harassment"

Bill 132 expands the Act's definition of "workplace harassment" to explicitly include "workplace sexual harassment", which is defined as:

- engaging in a course of vexatious comment or conduct against a worker<sup>1</sup> 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

### Bill 132 Compliance Checklist

**See page 4** for our Compliance Checklist, which sets out the steps that an employer must take to ensure compliance with Bill 132.

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<sup>1</sup> The definition of "worker" under the Act has a broad definition which is inclusive of (but not limited to) employees and unpaid co-op students, learners and trainees.

- 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.

Bill 132 also makes clear that the Act's definition of "workplace harassment" *does not* include a reasonable action taken by an employer or supervisor relating to the management and direction of workers.

## 2 | Harassment Policies and Programs

Under the Act, all employers are required to prepare policies with respect to workplace harassment and to put in place workplace harassment programs.

Bill 132 now requires that an employer, in consultation with its joint health and safety committee or with its health and safety representative (as applicable in the particular workplace)<sup>2</sup>, develop and maintain a *written* workplace harassment program.<sup>3</sup>

The purpose of a written workplace harassment program is to implement the employer's workplace harassment policy and must contain the following information:

- measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
- the procedure by which incidents or complaints of workplace harassment will be investigated;
- the process for disclosing or using information about an incident or complaint of workplace

<sup>2</sup> Workplaces with six to nineteen employees are generally required to have a non-managerial health and safety representative who is selected by the workers they represent; workplaces with twenty to forty-nine employees are required to have a joint health and safety committee of two members; and workplaces with fifty or more employees are required to have a joint health and safety committee of four members. Note that special rules apply where the workplace is subject to the Act's designated substance regulation.

<sup>3</sup> Previously, employers were not required to have a written workplace harassment program however many chose to do so, often in the same document as the workplace harassment policy.

harassment, including identifying information about any individuals involved. The Act requires that such information will not be disclosed unless the disclosure is required by law or is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint; and

- 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.

## 3 | Employers' Duties with Respect to Workplace Harassment

Bill 132 also sets out the following more general employer duties, which have the goal of further protecting workers from workplace harassment:

- an employer must ensure that an investigation that is appropriate in the circumstances be conducted into any incidents and complaints of workplace harassment;
- an employer must ensure that both a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, be informed in writing of the results of an investigation of workplace harassment and of any corrective action that has been taken or that will be taken as a result of the investigation;
- an employer must review its workplace harassment program as often as necessary, but at least annually, to ensure that it adequately implements the employer's harassment policy; and
- an employer must ensure that all workers are provided with appropriate information and training on the contents of their workplace harassment policies and programs.

## 4 | Ministry of Labour – New Inspectors' Authority

Bill 132 also provides the Ministry of Labour's inspectors with the authority to order an employer to conduct a workplace harassment investigation

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by an impartial third party, at the employer's expense. A Ministry of Labour inspector may also specify the knowledge, experience and qualifications required of a third party investigator and may obtain, at the employer's expense, the written investigation report.

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# Bill 132: Compliance Checklist

## Harassment Policies and Programs

- Ensure that harassment policies and programs contain an updated definition of “workplace harassment” as well as a definition of “workplace sexual harassment.” These definitions should be consistent with the definitions in the Act.
- For a workplace with five or more employees, ensure that an updated harassment policy is posted at a conspicuous place in the workplace.
- For a workplace with six to nineteen employees, ensure that the written workplace harassment program is developed and maintained in consultation with the employer’s non-managerial health and safety representative.
- For a workplace with twenty or more employees, ensure that the written workplace harassment program is developed and maintained in consultation with the employer’s joint health and safety committee.
- Ensure that the workplace harassment program explicitly sets out the following:
  - measures and procedures for workers to report incidents of workplace harassment;
  - the procedure by which incidents or complaints of workplace harassment will be investigated and dealt with;
  - the disclosure of information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved – specifically, how such information will not be disclosed unless required by law or necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint; and
  - how a complainant and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and any corrective action that has been or will be taken as a result.
- Ensure that workers are provided with appropriate information and instruction on the contents of the employer’s workplace harassment policies and program, including by providing information, instruction and/or training on the following:
  - the meaning of workplace harassment (including sexual harassment) and workers’ rights and responsibilities under the Act;
  - employers’ responsibilities under the Act;
  - how workers are to report incidents of workplace harassment to the employer, supervisor or manager;
  - how the employer will investigate and deal with incidents or complaints of workplace harassment;
  - how to recognize and respond to harassment;
  - for supervisors and managers, how to manage and follow up on reported incidents or complaints of workplace harassment, confidentiality obligations in respect of same and how/to whom to communicate the results of an investigation and any corrective action resulting from same;
  - for any internal investigators, how to conduct an investigation on workplace harassment, confidentiality obligations in respect of same and how/to whom to communicate the results of an investigation and any corrective action resulting from same.

## Employers’ Duties – Going Forward

- Implement steps to ensure that investigations (as appropriate in the circumstances) will be conducted into all incidents and complaints of workplace harassment.
- Ensure that a 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 (i) the results of an investigation into workplace harassment and (ii) any corrective action that has been taken or that will be taken as a result of the investigation.
- Ensure that the employer’s workplace harassment program will be reviewed as often as necessary and at least annually.
- Reassess your current practice/process of how and who conducts investigations.
- Ensure your assigned investigators are properly trained.