

ONTARIO'S SEXUAL VIOLENCE AND HARASSMENT PLAN ACT PASSES FIRST READING

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On October 27, 2015, Bill 132, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2015 passed first reading before the Ontario legislature.

Bill 132 is an omnibus bill that proposes to amend six Ontario statutes, including the *Occupational Health and Safety Act (OHSA)*.^[1] If passed, Bill 132 will deliver on commitments under the Ontario Government's action plan to stop sexual violence and harassment announced March 6, 2015.^[2]

The proposed amendments to the *OHSA* are of particular interest to employers. They build on the changes made to the *OHSA* in 2010 under Bill 168 which imposed employer responsibilities related to addressing and preventing workplace violence and harassment. A definition of "workplace sexual harassment", similar to that contained in the *Human Rights Code* prohibiting harassment because of sex, sexual orientation, gender identity or gender expression, will now be included in the definition of workplace harassment.

In addition, Bill 132 proposes to notably enhance the importance of workplace investigations by adding a number of specific employer obligations in conducting and following through with investigations into workplace harassment (including workplace sexual harassment). These include informing the alleged victim and harasser in writing of the results of the investigation and of any corrective action that has been or will be taken as a result of the investigation.

Most critically, *OHSA* inspectors will be empowered to order an employer to retain an impartial third party at the employer's expense to conduct an investigation into an alleged incident of workplace harassment. It is unclear under what circumstances this may occur.

What this means for Employers

The proposed *OHSA* changes mean that employers will need to be vigilant in addressing workplace harassment. It is noteworthy that the proposed amendments identify both "incidents" and "complaints". An employer should be aware of its obligations not only when a worker complains, but when the employer otherwise becomes aware of incidents of possible harassment.

Training will be a critical element in ensuring that internal investigators understand the law, how to conduct a proper investigation, draw conclusions from the factual findings, write a report and communicate to the alleged victim and harasser. An employer should want to control the investigation process and otherwise refer the matter to a third party only if it feels it is ill-equipped to investigate the matter itself.

by Kyle M. Lambert and Jennifer Hill, Student-at-Law

1. "[*Bill 132, Sexual Violence and Harassment Action Plan Act \(Supporting Survivors and Challenging Sexual Violence And Harassment\), 2015*](#)", 1st reading, Ontario Legislative Assembly.[ps2id id='1' target='']
2. Ontario, "[*Ontario Strengthening Laws to Stop Sexual Violence and Harassment*](#)" (October 27, 2015).[ps2id id='2' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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