

FTR Now

Ontario Introduces Legislation to Address Sexual Violence and Harassment

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On October 27, 2015, the Ontario government tabled new legislation to address sexual violence and harassment. If passed, the proposed measures in Bill 132, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2015 (“Act”), would, among other things, require publicly assisted colleges and universities and private career colleges to develop a stand-alone sexual violence policy. It would also create specific duties for all employers to develop policies and procedures to prevent sexual harassment in the workplace, including a duty to investigate incidents and complaints.

In this *FTR Now*, we provide an overview of some of the key changes that would impact employers should this legislation pass.

CHANGES TO THE *OCCUPATIONAL HEALTH AND SAFETY ACT*

If passed, the Act would make changes to the *Occupational Health and Safety Act* (“OHSA”). Specifically, the Act would revise the OHSA definition of “workplace harassment” to include “workplace sexual harassment”, defined as follows:

1. engaging in a course of vexatious comment or conduct against a worker 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
2. 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.

Among other things, under Bill 132, the requirement that an employer create a policy and program with respect to workplace harassment would be expanded to include workplace sexual harassment within that policy. A new duty would also be imposed on employers to ensure that an investigation is conducted into incidents and complaints of workplace harassment and to inform the complainant and respondent of the results and any corrective action taken.

The Act would expand an inspector’s powers to include the power to order that an employer conduct an investigation “by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector” and that a report be prepared, at the employer’s expense.

If passed, these provisions are scheduled to come into force on July 1, 2016, or six months after the Act receives Royal Assent, if earlier.

SPECIFIC OBLIGATIONS RELATING TO COMMUNITY COLLEGES, UNIVERSITIES AND PRIVATE CAREER COLLEGES

Bill 132, if passed, would require every college of applied arts and technology, every university that receives regular and ongoing operating funds from the government, and every private career college to create a stand-alone sexual violence policy addressing sexual violence involving students enrolled at the educational institution. Sexual violence is defined broadly to mean any “sexual act or act targeting a person’s sexuality, whether the act is physical or psychological in nature” and includes acts that are committed, threatened, or attempted without consent. This includes sexual assault, sexual harassment,



stalking, indecent exposure, voyeurism and sexual exploitation. The policy must set out the process for how the educational institution will respond to and address incidents and complaints of sexual violence involving students.

The educational institution must consider student input in the development and review of the policy, and must review the policy at least once every three years. These institutions would also be required to collect and provide to the government (or in the case of private career colleges, the superintendent appointed by the government) information and data including:

- the number of times supports, services and accommodation relating to sexual violence are requested and obtained by students and information about such supports, services and accommodation;
- any initiatives and programs established by the institution to promote awareness of the supports and services available to students;
- the number of incidents and complaints of sexual violence reported by students, and information about such incidents and complaints; and
- the implementation and effectiveness of the policy.

If passed, these provisions are scheduled to come into force on July 1, 2016, or six months after the Act receives Royal Assent, if earlier.

OTHER CHANGES

In addition to the foregoing, the Act would also completely remove the limitation period for civil proceedings based on sexual assault so that survivors can bring their civil claims forward whenever they choose to do so. Currently, the limitation period to commence a claim based on assault or sexual assault does not run during any time in which the person with the claim is incapable of commencing the proceeding because of his or her physical, mental or psychological condition. Incapability until the date the claim is filed is assumed unless the contrary is proven. The changes would eliminate the limitation period completely.

The Act would also eliminate the limitation period for survivors of sexual assault and domestic violence to make a compensation application to the Criminal Injuries Compensation Board and shorten the time it takes to end a tenancy agreement for people experiencing sexual or domestic violence.

CONCLUSION

The Act, if passed, will have a significant impact on all employers. It will require a review and revision of current workplace harassment policies and programs, and will subject employers to increased powers by inspectors. It will have an even greater impact on publicly-funded colleges and universities and private career colleges, which will be required to create stand-alone policies addressing sexual violence against students. However, like all proposed legislation, Bill 132 may be subject to changes as it moves through the legislative process. We will continue to monitor Bill 132 and report on its progress.

For more information on Bill 132, please contact any member of our [Occupational Health and Safety](#), [Universities](#) or [Colleges](#) practice groups, or your regular [Hicks Morley lawyer](#).

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