

FTR Now

Sexual Violence and Harassment Legislation Passed

Date: March 14, 2016

On March 8, 2016, legislation addressing sexual violence and harassment was passed and received Royal Assent.

[As previously reported](#), the [Sexual Violence and Harassment Action Plan Act \(Supporting Survivors and Challenging Sexual Violence and Harassment\), 2015](#) (“Act”) creates 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. It also requires publicly assisted colleges and universities and private career colleges to develop a sexual violence policy.

In this *FTR Now*, we summarize the significant changes brought about by the Act.

CHANGES TO THE *OCCUPATIONAL HEALTH AND SAFETY ACT*

The Act revises and expands the definition of “workplace harassment” in the *Occupational Health and Safety Act* (“OHSA”) to include “workplace sexual harassment”, which is defined in the Act.

An employer is now required to create a policy and program with respect to workplace harassment which includes workplace sexual harassment. The program must be developed and maintained in consultation with the joint health and safety committee or health and safety representative within the workplace. Among other things, the program must:

- include a reporting mechanism for incidents of workplace harassment, including a reporting mechanism for when the alleged harasser is the employer or supervisor;
- ensure that all complaints and allegations are investigated; and
- set out how the complainant and respondent will be informed of the results of the investigation and any corrective action taken (which information must now be communicated to the complainant and respondent in writing).

The Act also expands 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 written report be prepared, at the employer’s expense.

These provisions come into force on September 8, 2016.

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

With certain conditions, the Act amends the *Ministry of Training, Colleges and Universities Act* and the *Private Career Colleges Act, 2005* to 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 sexual violence policy (which may be included within another workplace policy) addressing sexual violence involving students enrolled at the educational institution. Sexual violence is defined in the Act.

Among other things, the Act also permits the Minister (or in the case of private career colleges, the superintendent) to conduct, or direct a college or university to conduct or participate in, a survey of students and other persons relating to the effectiveness of the college's or university's sexual violence policy.

These provisions come into force on January 1, 2017.

OTHER CHANGES

The Act removes 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 eliminate the limitation period completely.

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

NEXT STEPS REQUIRED BY EMPLOYERS

All employers should carefully review, and in many cases revise, their current workplace harassment policies and programs in advance of the date these provisions come into force. The development, review and maintenance of the program must be done in consultation with the joint health and safety committee or health and safety representative, if any. The workplace harassment policies and programs should include the following:

- A statement of the employer's commitment to maintaining a fair and equitable environment free of harassment.
- A definition of harassment that is consistent with the *Human Rights Code* and the *OHS Act*

(including the new revised and expanded definition which includes workplace sexual harassment).

- A statement regarding to whom the policy applies (e.g. employees, independent contractors, volunteers) and that employment-related incidents that occur beyond the normal workplace, on social media or outside of working hours may be captured by the policy.
- An explanation of employer obligations to investigate potential workplace harassment, even in the absence of a formal complaint.
- An outline of the complaint resolution process for a harassment complaint, including:
 - to whom employees should report;
 - how complaints will be investigated;
 - how confidentiality will be addressed (including a statement that information obtained during the investigation will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident, or is otherwise required by law);
 - what corrective action will be taken; and
 - how and to whom conclusions will be reported, including informing the complainant and respondent of the results and corrective action taken. The requirement to disclose the results of the report and any corrective action taken arises under *OHSAA* and therefore would not apply to non-workers (e.g. students and patients).
- A prohibition on reprisal for good faith complaints.
- Preservation of employees' rights to pursue complaints under other processes available (e.g. under the *Human Rights Code* or *OHSAA*).

Employers should give extra consideration at the outset of an investigation as to whether an external investigator is required, given the new power of inspectors to order an external investigation be conducted.

The Ministry of Labour intends to establish a special enforcement team of inspectors trained to address complaints of workplace harassment, including sexual harassment, and enforce these new duties and obligations. In addition, it intends to create a new "Code of Practice" regarding employer obligations relating to sexual violence and harassment. Educational materials for employers regarding these issues are also being developed.

We will continue to monitor as these resources are developed and released, and will provide updates regarding any additional requirements which may be outlined. Should you require more information about the Act or your workplace harassment policies, please contact [Nadine S. Zacks](#) at 416.864.7484, [Michael J. Kennedy](#) at 416.864.7305, [Daniel J. Michaluk](#) at 416.864.7253 or your regular [Hicks Morley lawyer](#).

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