FTR Now

New Regulations Outline Details of Requirements Under Ontario's Sexual Violence and Harassment Legislation for Colleges and Universities

Date: May 16, 2016

The Ontario government has filed two regulations mandating the content of sexual violence policies which colleges and universities must develop and implement pursuant to the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2015 (Act).

As reported in our *FTR Now* of March 14, 2016, *Universities and Colleges Take Note: Sexual Violence and Harassment Legislation Passed*, the Act requires publicly-assisted colleges and universities and private career colleges to develop a sexual violence policy and 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.

In this *FTR Now*, we provide an overview of the requirements outlined in the new regulations.

Obligations Relating to Community Colleges and Universities

O. Reg.131/16, "Sexual Violence at Colleges and Universities," made under the *Ministry of Training, Colleges and Universities Act*, requires that every college and university which receives regular and ongoing operating funds from the government for the purposes of post-secondary education "appropriately accommodate the needs" of students affected by sexual assault. It also sets out the mandatory content of a sexual violence policy, which includes:

- information about supports, services and key contacts at the university or college for students affected by sexual violence as well as information about supports and services in the community
- advising students that appropriate accommodation will be provided for those affected by sexual violence and providing key contacts for obtaining such accommodation
- advising students that "they are not required to report an incident of, or make a complaint about, sexual violence" in order to obtain the supports, services and accommodation referred to above
- detailed information regarding the process for responding to or addressing incidents or complaints of sexual violence.

The sexual violence policy must contain certain information relating to the process for responding to or addressing complaints, which includes among other things:

- the process to be followed for reporting an incident or complaint about sexual violence
- the process for determining whether the college or university will undertake an investigation of the incident or complaint
- a statement that "a victim may choose not to request an investigation by the college or university, and has the right not to participate in any investigation that may occur"
- a description of the procedural fairness components of the investigation and decision-making process as well as a description of the rights participants have to legal or other representation
- examples of interim measures that can be taken or measures that may be imposed upon conclusion of an investigation
- the appeal processes that might be available
- the responsibilities of various parties upon learning of an incident or complaint of sexual violence.

O. Reg. 131/16 requires that a process be developed to ensure input on the development of a sexual violence policy from a diverse selection of students. It also sets out a process for the adoption and implementation of the policy, which requires the policy to be approved by the college's or university's governing board or council and, as may be applicable, the university's senate or academic council. Once adopted, the policy must be published on the institution's website and the university or college must either provide or make available training on the policy to prescribed persons.

O. Reg. 131/16 comes into force on January 1, 2017.

Specific Obligations Relating To Private Career Colleges

O. Reg. 132/16, amending O. Reg. 415/16 "General" made under the *Private Career Colleges Act, 2005*, contains similar provisions to O. Reg. 131/16.

It requires that a private career college "appropriately accommodate the needs" of students affected by sexual violence and that no fees be charged either for the provision of supports, services or accommodations provided or for any referrals to supports in the community.

The required content for the sexual violence policy and the process to be used is similar to that prescribed for universities and colleges, above, with the exception that there is no process required for input into or adoption of the policy. O. Reg. 132/16 also specifies that training be provided or made available to prescribed persons. Where the private career college has an expulsion policy and there is a conflict between that policy and the sexual violence policy, the sexual violence policy shall prevail.

O. Reg. 131/16 comes into force on January 1, 2017.

Next Steps Required

Now that the regulations have been filed, all publicly-funded colleges, universities and private career colleges should carefully review, and in many cases revise, their current policies and programs in advance of January 1, 2017 to ensure compliance with the new legislation.

When developing their sexual violence policies, colleges and universities must consider student input from a diverse selection of students, which may well mean that this process cannot be completed until the new academic year commences. Before implementing the new or revised policy, it must be approved by the college's or university's governing board or council and, as may be applicable, the university's senate or academic council. In addition, the definition of "sexual violence" should be consistent with the new legislation, and all of the required elements as noted above should be included.

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, Njeri Damali Campbell at 416.864.7018 or your regular Hicks Morley lawyer.

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