FTR Now

Ministry Releases Code of Practice to Guide Employers in New Workplace Harassment Obligations

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On September 8, 2016, changes to the *Occupational Health and Safety Act* (*OHSA*) will come into force. The amendments require employers to develop policies and programs to prevent harassment, including sexual harassment, in the workplace. The Ministry of Labour has now finalized its "Code of Practice to Address Workplace Harassment under Ontario's *Occupational Health and Safety Act*" (Code of Practice) to guide employers on the practical application of these new obligations.

We discuss the new workplace harassment requirements under *OHSA* and the Code of Practice in this *FTR Now*.

New Requirements under *OHSA* Regarding Workplace Harassment

As we previously reported, Bill 132, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016*, amends *OHSA* to expand the definition of "workplace harassment" to include "workplace sexual harassment." Effective September 8, 2016, employers are required to develop and maintain their workplace harassment program in consultation with a joint health and safety committee or a health and safety representative, where there is one.

Bill 132 imposes new requirements for the workplace harassment program, including the establishment of a complaint mechanism for reporting incidents of workplace harassment, as well as an investigation procedure. Employers will be required to conduct investigations into complaints or incidents of workplace harassment "where appropriate in the circumstances." The program must also set out how the complainant and respondent will be advised in writing of the results of the investigation, including any corrective action taken.

The Workplace Harassment Code of Practice

Pursuant to *OHSA*, the Minister of Labour may approve a "Code of Practice" with respect to the legal requirements of *OHSA*. A Code of Practice will set out various compliance measures, some of which go beyond the minimum requirements of *OHSA*. Compliance with the Code of Practice is one way in which employers can meet the new legal requirements regarding workplace harassment. However, a failure to comply with the Code of Practice may not be a breach of the workplace harassment provisions under *OHSA*; other measures may be sufficient.

On August 12, 2016, the Ministry of Labour posted a Code of Practice regarding workplace harassment. The Code of Practice sets out a series of measures to assist employers in meeting their legal obligations. Specifically, it provides guidance for employers with respect to their workplace harassment policies and programs, as well as their duties concerning workplace harassment and their obligation to provide information and instruction to employees. The Code of Practice addresses an employer's:

- Workplace Harassment Policy, including:
  - preparation and posting requirements
  - elements that, at a minimum, should be contained in the policy
- Workplace Harassment Program, including:
  - details on the reporting requirements, including the appropriate person to whom to report incidents or

complaints and the information to be obtained for the incident report
    - how to handle complaints where the alleged harasser is the employer or supervisor
    - how to investigate and handle complaints, including suggested timeframes
    - how the complainant and the alleged harasser will be informed of the results of the investigation and any corrective action taken
    - record-keeping requirements, including how an incident or complaint will be kept confidential to the extent possible
    - the obligation to develop and maintain the program in consultation with the joint health and safety committee or a health and safety representative, if any
- duties regarding workplace harassment, including:
    - conducting an appropriate investigation
    - reporting on the results of the investigation
    - reviewing the program on an annual basis or when deficiencies are identified
- provision of information and instruction to employees on the policy and program.

The Code of Practice also provides a sample policy, a sample program as well as an investigation template.

Next Steps

With September 8, 2016 fast approaching, employers must ensure that their workplace policies and programs are updated to include the workplace harassment obligations coming into force on that date.

Although the Code of Practice sets out sample policies and programs, not all of these elements may be required to ensure compliance with *OHSA*, nor may they be appropriate for every workplace. Instead, an individualized review of employers' existing policies and programs in light of the *OHSA* requirements and the Code of Practice is recommended.

Should you have questions on the impact of these new obligations on your workplace and your existing policies, please contact Nadine S. Zacks at 416.864.7484, or your regular Hicks Morley lawyer.

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