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PUBLICATION

Bill 132 and Sexual Harassment in the Workplace

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Bill 132 received royal assent on March 8, 2016. This Bill will amend various statutes with respect to sexual violence, sexual harassment, domestic violence. Relevant for employers, Bill 132 will amend the *Occupational Health and Safety Act* ("OHSA") in the following ways:

- "Workplace sexual harassment" is defined and added to the definition of "workplace harassment". Workplace sexual harassment means:

(a) 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

(b) 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.

- Programs that implement a workplace harassment policy required under the OHSA are amended to:
- include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;
- set out how incidents or complaints of workplace harassment will be investigated and dealt with;
- set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or as otherwise required by law;
- set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and of any corrective action that has been taken or will be taken as a result of the investigation.

- With respect to workplace harassment, new duties are established under the OHSA to protect a worker, including that an employer shall ensure that:
- an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
- the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or will be taken as a result of the investigation;
- the program developed under the OHSA in respect of workplace sexual harassment and workplace harassment is reviewed as common as is necessary, but at least annually, to ensure it adequately implements the policy with respect to workplace harassment required by the legislation;
- employers are required by the legislation to provide a worker with information and instruction appropriate for the worker on the contents of the policy and program with respect to workplace harassment.
- Finally, a health and safety inspector may order an employer to cause an investigation under the legislation to be conducted, at the employer's expense, by an impartial person possessing knowledge, experience or qualifications as specified by the inspector and to obtain, at the employer's expense, a written report by that person.

These changes to the *Occupational Health & Safety Act* will be in force six months after the date the Bill received royal assent. Accordingly, by September 2016, employers should ensure that their policies are compliant with the new requirements.