Key changes Bill 132 will enact this September – and how we can help



On September 8, 2016 Bill 132, the Sexual Violence and Harassment Action Plan Act, will be in full effect in Ontario – read on to learn about the key changes the Bill will enact.

We've received many inquiries from clients about the details of the Bill and what they will be required to do differently. Please find below a summary of key changes as well as how we can support organizations.

Workplace law firm, Mathews, Dinsdale & Clark LLP, authored an article (available in English only) about the changes entitled "OHSA Bill 132 Amendments: Navigating the Workplace Harassment Sea-Change" that provides an in-depth look at Bill 132 and answers some frequently asked questions. Below you will find highlights from the article.

Although there isn't specific training related to Bill 132, we can provide organizations with our 'Respect in the workplace' training program as well as third party investigation services should they be required. If you would like to learn more about these services, please see the attached communication or contact our Workplace Learning Solutions team at workplacelearning@morneaushepell.com or 1–877–595-8419.

Take note of these key changes coming September 8, 2016:

1. The Ministry of Labour (MOL) has added the definition of "workplace sexual harassment" in the definition of "workplace harassment". Bill 132 will define it as follows:
    - 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
    - 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.

2. A workplace harassment program will be required to be developed and maintained in consultation with the Joint Health and Safety Committee or a health and safety representative;
    - this program is developed by employers to implement the policy in consultation with their Health and Safety Committee or a representative. This program is to be reviewed yearly and must provide a method to report incidents or complaints of harassment with a process on how it will be investigated and managed. Employers will have to:
        - have an alternate reporting mechanism for reporting complaints
        - provide measures of confidentiality and appropriate reporting– the employer must not share any information gathered about the incident or complaint unless necessary for the investigation or for corrective action
        - Conduct investigations when "Appropriate in the Circumstances" – this phrase is still not defined. The MOL has also not provided any guidance or information on what factors will be considered by investigators when determining if the investigation meets this standard. The assumption is being made that the evaluation may be held against best practices, impartial investigators, fairness to the alleged harasser and the collection of relevant information.

3. New power to the Ministry of Labour (MOL) to order an independent workplace harassment investigation at the employer's expense.
    - The Bill does not give any details on what circumstances would require an external third party investigator. It's being assumed that this will be required if an employer has not investigated a complaint. It is also believed that the inspector may deem that the completed investigation was not 'appropriate in the circumstances' and direct the employer to hiring an external investigator.

The full article can be found here http://www.mathewsdinsdale.com/wp-content/uploads/2016/06/OHSA-BILL-132-amendments_June-2016_sp.pdf.

If you would like to learn more about our Workplace Learning Solutions services, please contact us at workplacelearning@morneaushepell.com or 1–877–595-8419.