

## **Bill 132 – Sexual Violence and Harassment Action Plan Act**

Bill 123 amend 6 government statutes. One of those statues, the one that affects CUPE members, is the *Occupational Health and Safety Act*. The Bill came into force September 8, 2016.

The amendments made to *OHS*A through Bill 132 build on those that came into effect with Bill 168 – The workplace violence and workplace harassment provisions that were implemented in 2010.

As you know Bill 168 compelled employers to perform risk assessments of potential violence in the workplace (all violence not just sexual violence). The Bill required the employer to institute programs and policies for workplace violence and harassment, give training to employees with respect to both violence and harassment. It is also required employer to develop specific procedures to enable both the reporting and investigation of employee complaints of harassment.

The problem with the 2010 changes is that they failed to provide any mechanism for the Ministry to get involved. If an employee was harassed all the Ministry could do was censure the employer for failing to have the proper policies or training in place. The Minister could not make a decision as to whether or not an employee was actually harassed and if there was harassment, what the employee should be entitled to as a remedy. Simply put, there was no recourse under Bill 168 to remedy actual violence against or harassment of an employee.

Bill 132 make significant changes to three areas:

1. The definition of workplace sexual harassment
2. The imposition of additional employer obligations
3. Enforcement

## Definitions – “Workplace Harassment”

1. The *OHSA*’s definition of “workplace harassment is expanded to include “workplace sexual harassment”:

s.1(1) means:

- a) Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- b) Workplace sexual harassment

2. The *OHSA* is further amended to include a definition of “workplace sexual harassment”. The definition in the *OHSA* is similar to that found in the Ontario Human Rights Code:

3. *OHSA*, s.1(1)

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.

Bill 132 clarifies that not all actions taken by employers are considered workplace harassment. Employer actions relating to the management and direction of the workplace that are reasonable are not “workplace harassment”.

OHSA s. 1(4)

A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

## **Employer Obligations**

Prior to Bill 132 employers were required to:

1. Prepare a policy with respect to workplace harassment and violence; and
2. Develop and maintain programs to implement those policies

Bill 132 imposes additional requirements for existing workplace harassment policies and programs. Employer must now:

- Develop and maintain a written workplace harassment program to implement its workplace harassment policy;
- Work in consultation with the joint health and safety committee or health and safety representative, if any, to develop and maintain the written program;
- Review the program as often as necessary, but at least annually to ensure that it effectively implements the Workplace Harassment Policy;
- In addition to existing program requirement, the program must now set out:
  - i. Alternative reporting procedures for instance in which the alleged harasser is the employee’s employer or supervisor;
  - ii. A process for how incidents or complaints of workplace harassment will be investigated and dealt with;

- iii. How information obtained about the incident or complaint will not be disclosed, unless necessary;
- iv. The process for how the employer will appropriately investigate both incidents and complaints of workplace harassment;
- v. How the results of the investigation, or any corrective action that will be taken will be shared with the employee who reported the complaint and the alleged harasser.

In addition to the above, employers must provide employees with appropriate instruction and information on the contents of the harassment policy and program.

Lastly the Bill imposes positive duties on employers to protect workers from workplace harassment. Employers must:

- Conduct investigations into all incidents of complaints of workplace harassment;
- Inform the parties in writing of the results of the investigation and/or of resulting corrective action;
- Review the program as often as necessary but at least annually

### **Enforcement** (Section 55.3)

Bill 132 grants the ministry inspectors with the power to order:

- An employer to arrange for an appropriate investigation to be conducted by an impartial person who possesses knowledge, experience or qualifications as specified by the inspector; and

- Obtain, at the employer's expense, a written report by the impartial person

**Key points:**

1. Sexual harassment is a health and safety issue
2. Harassment must be taken seriously
3. All incidents and complaints must be investigated
4. Workplace harassment programs must be amended and those amendments must be made in consultation with the joint health and safety committee
5. The Ministry of Labour has more power than before and can mandate an employer to retain an external investigator at the employer's expense

S. 55.3 (1) An inspector may in writing order an employer to cause an investigation described in clause 32.07 (1) (a) to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person.