



Harassment and Sexual Harassment in the OHSA

In 2016, Bill 132, the *Sexual Violence and Harassment Action Plan Act* (Supporting Survivors and Challenging Sexual Violence and Harassment) amended six statutes – including the *Occupational Health and Safety Act* (OHSA) – with respect to sexual violence, sexual harassment, and domestic violence.

What did Bill 132 add into the OHSA?

- A definition of sexual harassment and an amended definition of workplace harassment that includes sexual harassment
- A proviso that reasonable actions by employers to manage or direct workers do not constitute harassment
- New employer obligations in their harassment programs
- Specific powers for Ministry of Labour inspectors in regards to workplace harassment

How do we interpret these changes?

The Ministry of Labour has created a Code of Practice to help interpret the requirements for harassment. Codes of Practice are guidelines that explain how employers can comply with the OHSA requirements. The *Code of Practice to Address Workplace Harassment under Ontario's Occupational Health and Safety Act* can be accessed at: <https://www.labour.gov.on.ca/english/hs/pubs/harassment/index.php>

It is also important to know that the Ontario Human Rights Code prohibits sexual harassment and violence, as well as harassment and violence based on a number of other prohibited grounds.

How do the changes affect workers?

The changes mean more transparency and embed some “natural justice” within an employer’s harassment program. First, the changes entitle complainants and respondents to receive, in writing, investigation results and information about corrective action taken where harassment is alleged and/or has occurred. Also, employers must maintain confidentiality as much as they can unless disclosure is necessary to conduct an investigation, take corrective action, or conform to law. The requirement that investigations must be “appropriate in the circumstances” means that workers can expect fairness in the process, whether they are complainants or respondents.

What are the employer’s obligations with regard to harassment in the OHSA?

- Employers must provide a process for workers to report harassment to an alternate person if the employer or supervisor is the alleged harasser.
- Employers must set out how they will make sure confidential information is not disclosed unless it is necessary to conduct an investigation, take corrective action, or disclose information as required by law.
- Employers must conduct an investigation that is appropriate in the circumstances. The investigation must be timely and the investigation must be objective. The investigator may not be a person with direct control over the complainant.
- Results of the investigation (a summary of the findings) and information on any corrective action shall be provided in writing by the employer to the complainant *and* the respondent (if the respondent is an employee).
- The employer must consult with the joint health and safety committee (JHSC) or health and safety representative in developing and maintaining its anti-harassment program.
- The employer must review the workplace harassment program annually or as needed to ensure that it adequately implements the harassment policy.



What are the “seven steps” that make an investigation “appropriate in the circumstances?”

The Code of Practice outlines seven steps that make an investigation appropriate:

1. Investigations are kept confidential unless disclosure is necessary to conduct the investigation, take corrective action, or meet legal requirements. Complainants, respondents, and witnesses must be reminded not to discuss any investigation.
2. The investigator interviews both the complainant and the alleged harasser.
3. The investigator gives the alleged harasser the opportunity to respond to the specific allegations, and hear again from the complainant if necessary.
4. The investigator interviews all witnesses independently.
5. The investigator collects and reviews any relevant documents.
6. The investigator takes detailed notes of all interviews.
7. The investigator prepares a written report, setting out all steps in the investigation, the specific allegations, the responses, witness accounts, evidence gathered, and the conclusion reached. The report goes to the person responsible for action.

What powers do the changes confer on Ministry of Labour inspectors?

The OHS Act also confers powers on Ministry of Labour inspectors to order that an investigation be conducted by a third party, that the investigation report is provided in writing, and that the investigation be paid for by the employer. Inspectors can also specify the knowledge, experience, or qualifications required of the investigator. These types of orders will likely occur where an employer’s harassment policy and program are deficient.

What does the JHSC have the right to know?

The JHSC or health and safety representative has the right to be consulted (give feedback and make recommendations) regarding the development and maintenance of the workplace harassment policy and program. Investigation reports are not considered “reports” for the purposes of disclosure to the JHSC or the health and safety representative. However, OPSEU recommends that the JHSC or health and safety representative (quarterly and as part of the annual review) request anonymized information, such as: the number of investigations opened/closed; average investigation timelines; the number of investigations externally/internally handled; general information on outcomes and steps or programs implemented to prevent reoccurrence; harassment prevention controls; data about implementation; and effectiveness of the policy. This is the type of general information that Bill 132 mandated that colleges and universities must report to the Ministry of Training, Colleges, and Universities.

I am a health and safety representative or member of a JHSC. What should I do about these changes?

- First, read about harassment in the OHS Act and the Code of Practice.
- Look at your employer’s workplace harassment program and see where you think changes need to be made.
- Confer with the Local Executive Committee (LEC) and the worker members of the JHSC to develop written recommendations. Put the item on the agenda of your next JHSC meeting and discuss the OHS Act amendments and your recommendations to improve the workplace harassment policy and program. If you are a health and safety representative in a smaller workplace, meet with your employer to discuss and submit your recommendations.

Use the Code of Practice as a guide to what the legislative obligations mean. Our aim is to ensure that the harassment program contains all of the elements described in the legislation; that reporting and investigating processes are clear and transparent; and that these processes reflect the principles and jurisprudence of natural justice.