



Ontario Legislation: Bill 132 and Bill 148 Summary

The key effects of **Bill 132 upon the Occupational Health and Safety Act** have been:

to revise and expand the definition of “workplace harassment” for the purposes of the OHS Act to include “workplace sexual harassment”; and to place additional obligations upon employers with respect to the prevention of sexual violence and harassment in the workplace.

1. Redefinition of “workplace harassment”

The first critical amendment to the OHS Act involves an expansion of the definition of “workplace harassment” to specifically include “workplace sexual harassment.” This change specifically recognizes sexual harassment as an important occupational health and safety issue and operates to entrench it as an independent basis for concern and investigation.

“Workplace sexual harassment” has been defined as:

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.

Bill 132 requires employers to include these new and expanded definitions in workplace harassment policies. Beyond simply providing clearer definitions of important terms, this expansion seeks to elevate dialogue and awareness of sexualized harassment within the important conversations already taking place regarding general workplace violence and harassment.

2. New employer obligations

Further to the enhanced dialogue and awareness referenced above, Bill 132 also requires employers to develop and maintain workplace harassment programs and /policies which must specifically address issues of workplace sexual harassment. These workplace harassment prevention programs and policies must: be developed and maintained in consultation with the employer’s joint health and safety

committee or health and safety representative (where applicable); include a reporting mechanism for allegations of workplace harassment, including for when the alleged harasser is the employer or supervisor; ensure that all complaints and allegations are properly investigated; and set out how complainants and respondents will be informed in writing of the results of any investigation and/or corrective action taken.

Bill 132 also provides the Ministry of Labour's health and safety inspectors with additional powers to enforce the OHS Act. For example, an inspector may order an employer to have a third-party investigation and report completed (at the employer's expense) where there is a complaint or incident of workplace harassment. To assist with compliance, the Ministry has published a Code of Practice, designed to act as an employer's guide to understanding its new obligations.

Recognizing that these amendments may open the door to significant increases in harassment complaints, Bill 132 also amends the OHS Act to include a new employer defence to an unfounded complaint of workplace harassment, providing that "reasonable action" taken by an employer relating to the management and direction of an employee or the workplace will not constitute workplace harassment.

Bill 148- amendment to the Employment Standards Act

This legislation makes a number of changes to both the *Employment Standards Act, 2000*, the *Labour Relations Act, 1995*, and the *Occupational Health and Safety Act*, including raising the minimum wage to \$15 and providing employees with:

Equal pay for equal work for casual, part-time, temporary and seasonal workers

It will be mandatory for employers to pay: casual, part-time, temporary and seasonal employees, who are doing substantially the same work as full-time/permanent employees, the same rate of pay as full-time/permanent employees temporary help agency employees (also known as assignment employees), who are doing substantially the same work as employees of the client, the same rate of pay as employees of the client. Casual, part-time, temporary and seasonal employees will be allowed to ask their employer to review their rate of pay if they believe they're not receiving the same rate of pay as full-time/permanent employees who perform substantially the same work.

Temporary help agency employees will also be allowed to ask their employer to review their rate of pay if they believe they're not receiving the same rate of pay as employees of the client who perform substantially the same work. The employer will have to respond by either adjusting the employee's pay or giving the employee a written explanation.

Exceptions

Employers will be exempt from the new equal pay for equal work rules for part-time, temporary, casual and seasonal employees, if the wage difference is based on: a seniority or merit system, systems that measure earnings by quantity or quality of production other factors (sex and employment status will not qualify as an exception)

Temporary help agencies will be exempt from the new equal pay for equal work rules for temporary help agency assignment employees if the difference in the rate in pay is based on something other than sex, employment status or assignment employee status.

Comes into effect This will come into effect on April 1, 2018.

Scheduling

The legislation will allow employees to: request a schedule or location change once they've been employed for three months, without fear of being penalized refuse shifts if their employer asks them to work with less than 96 hours' notice, without fear of retaliation, with certain exceptions

Employers will also be required to **pay wages to the employees for three hours of work** if the employee: regularly works more than three hours a day, shows up for work and works less than three hours or not at all (for example, the shift is cut short) the shift is cancelled within 48 hours of their scheduled start time, with certain exceptions is scheduled to be on-call but, despite being available to work, is either not called in to work or works less than three hours. This will be required for each 24-hour period the employee is on call.

Cancellations

Employers will not be required to pay for a cancelled shift if they were unable to provide work because of: fire, lightning, power failure, storms or similar causes beyond their control or the employee's work is weather-dependent and the employer is unable to provide work for weather-related reasons

Three hour rule

Employers will not be required to pay wages for three hours for a shift that lasts fewer than three hours if they were unable to provide work because of fire, lightning, power failure, storms or similar causes beyond their control.

Refusing a shift with less than 96 hours' notice

Employees cannot refuse a shift if the reason that the employer is asking them to work or be on call is to: deal with an emergency, remedy or reduce a threat to public safety, ensure the continued delivery of essential public services, regardless of who delivers those services

On-call pay rules

Employers will not be required to pay wages for three hours for an on-call shift if the employee is on call to ensure the continued delivery of essential public services, regardless of who delivers those services **and** the employee was not required to work.

Comes into effect These scheduling changes will come into effect on January 1, 2019.

Domestic or sexual violence leave

An employee who has been employed for at least 13 consecutive weeks is now entitled to up to 10 individual days of leave and up to 15 weeks of leave if the employee or their child experiences domestic or sexual violence or the threat of domestic or sexual violence. The first five days of leave, each calendar year, will be paid, the rest will be unpaid. Effective since Jan 2018.

Summary retrieved from: <https://ogletree.com/shared-content/content/blog/2017/june/bill-132-understanding-and-applying-ontarios-recent-sexual-harassment-and-violence-legislation>

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