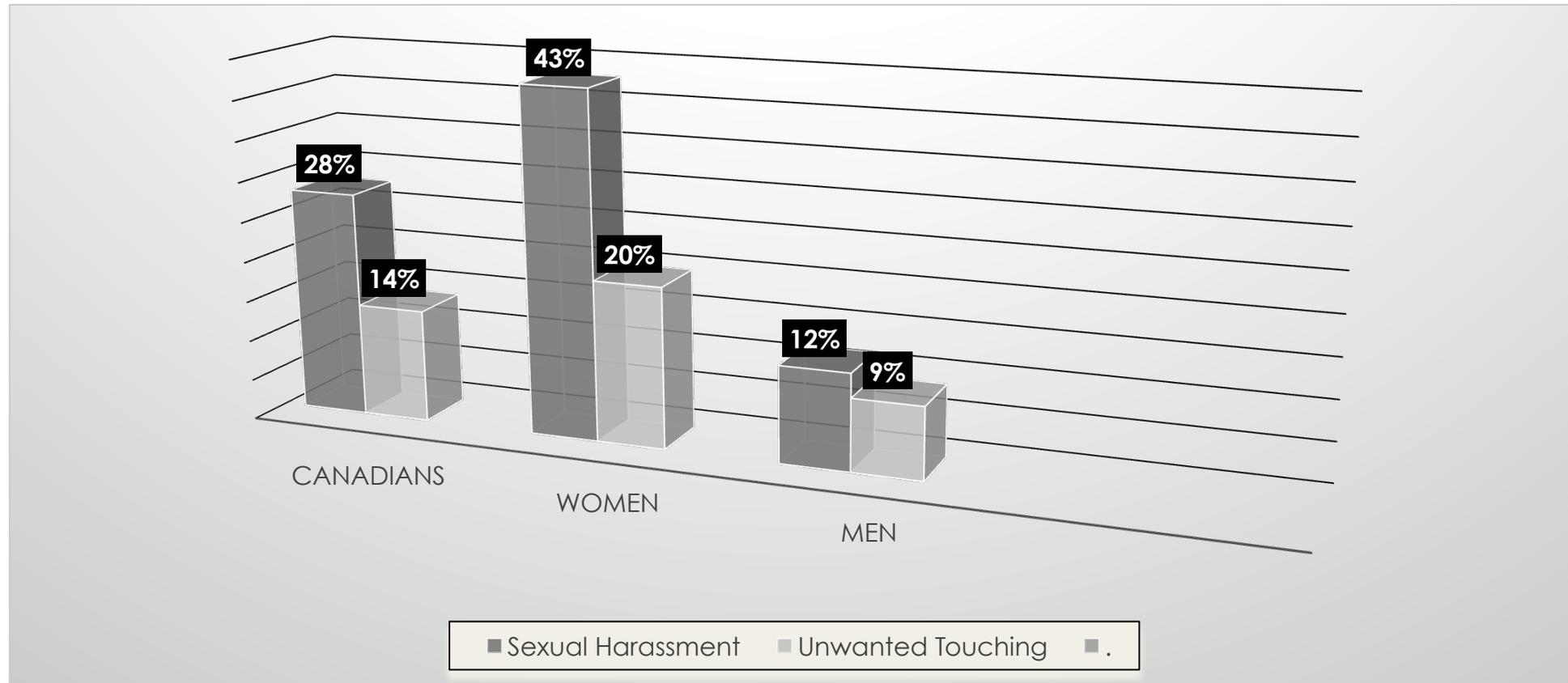




Bill 132 – Ontario's New Sexual Violence and Harassment Legislation

Sexual Harassment In The Workplace Statistics



Self commissioned Angus Reid on-line survey. November 18th-21st, 2015. Margin of error +/- 2.5% 19 times out of 20.

Synopsis

Bill 132 amends the Act by:

- Including “sexual harassment to the previous definition of “workplace harassment”.
- Adding new requirements for employer’s previous workplace harassment policies and programs.
- Defining the requirements for investigations relating to workplace harassment.
- Granting further powers to inspectors to order investigations regarding incidents and complaints of workplace harassment.

“Workplace Harassment” - Definition.

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

OHSA, s.1(1)

“**workplace harassment**” 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**

“Workplace Sexual Harassment” – Definitions Cont’d

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.

Definitions – Cont'd (Not In The Act)

- **Vexatious:** difficult to deal with and causing a lot of anger, worry, or argument.
- **Gender identity:** is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth assigned sex. Gender identity is fundamentally different from a person's sexual orientation. *
- **Gender expression:** is how each person publically presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender. *

*As defined in the MOL Health and Safety Guide Lines: [Workplace Violence and Harassment: Understanding the Law.](#)

Examples of Workplace Sexual Harassment

Workplace sexual harassment may include:

- asking questions, talking or writing about sexual activities;
- rough or vulgar language related to sexuality, sexual orientation or gender;
- displaying or circulating pornography, sexual images, or offensive sexual jokes in print or electronic form;
- leering or inappropriate staring;
- invading personal space;
- unnecessary physical contact, including inappropriate touching;
- demanding hug, dates or sexual favours;
- making gender – related comments about someone's physical characteristics, mannerisms, or conformity to sex-role stereotypes;
- verbally abusing, threatening or taunting someone based on gender or sexual orientation; or
- threatening to penalize or otherwise punish a worker if they refuse a sexual advance.

Employers New Responsibilities

In order to be in compliance with the OHSA employers must take the following actions:

1. Review and revise existing policies and programs to include Bill 132's new requirements.
2. Ensure that policies and programs specifically address "workplace sexual harassment".
3. Develop resources to provide incoming and existing employees with information and instruction on updated workplace harassment policies and programs.
4. Be in a position to appropriately investigate incidents and complaints of workplace harassment.

Workplace Harassment Program – New requirements

Bill 132 now requires employers to:

- set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if a worker of the employer, will be informed in writing of the results of investigation and any action taken or to be taken as a result of the investigation. . Sec 32.0.1
- Work **in consultation with** the Joint Health and Safety Committee or Health and Safety Representative, if any, to develop and maintain the written program. Sec 32.0.6 (1)
- Review the program as often as necessary, but **at least annually** to ensure that it effectively implements the Workplace Harassment Policy. Sec 32.0.1 (1)(c)

Workplace Harassment Program – New Requirements Cont'd

In addition to the Employers current Program requirements, the new Program must now detail;

1. 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. Sec. 32.0.6 (2)(b)
2. A process for how incidents or complaints of workplace harassment will be investigated and dealt with. The OHSA now clearly states that the employer shall insure that the investigation must be appropriate in the circumstance. Sec. 32.0.7 (1)(a)
3. How information obtained about the incident or complaint, including identifying information about the individual involved will not be disclosed, unless the disclosure is necessary for investigating, taking corrective action, or by law. Sec. 32.0.6 (2)(d)
4. How a worker who has allegedly experienced workplace harassment and the alleged harasser (if s/he is a worker of the employer) will be informed in writing of the results of the investigation and of any corrective action that has been, or will be, taken. Sec. 32.0.6 (2)(c)

Workplace Harassment Program – New Requirements Cont'd

The OHSA amendments require the employer to provide workers with “information and instruction that is appropriate for the worker on the contents of the policy and program with respect to “workplace harassment.”
Sec. 32.0.8 (a)

No other specifics for instructing workers are stipulated; although the amendments provide that additional information which the employer needs to provide to workers may be prescribed. Sec. 32.0.8 (b)

New Enforcement Mechanism

Section 55.3

Bill 132 grants inspectors 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.
Sec 55.3 (1)

Although Bill 132 does not include specific situations in which inspectors will issue a Section 55.3 Order, they could likely include:

- In response to an incident or complaint reported to the Ministry of Labour by an employee; or
- As a result of a workplace blitz inspection conducted by the Ministry of Labour

Existing OHSA Penalties

OHSA, s.66

(1) Every person who contravenes or fails to comply with,

- (a) a provision of this Act or the regulations;
- (b) an order or requirement of an inspector or a Director; or
- (c) an order of a Minister,

is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than twelve months , or to both.

(2) If a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed upon the corporation is \$500,000 and not as provided therein.

What We Can Be Doing

- Speak to your Reps to let them know if JHSC members were consulted in the creation of the new policies and program.
- Educating our Stewards and JHSC members on Bill 132. This training will be developed and delivered at a Local level.
- Further educating ourselves on sexual harassment and its effects. This will be done at a Local level.
- Speak to your Reps and JHSC members to insure the policies are being posted and that training is occurring or is scheduled to occur.
- Educating our members about sexual harassment, the policies and programs. This will also be done at a Local level using pamphlets, action cards etc.