

#MeToo

Risk Management Considerations for Workplace Sexual Harassment Policies

In the wake of sexual misconduct allegations against Hollywood mogul Harvey Weinstein, there is a trending movement on Twitter where victims of sexual harassment or assault are urged to tweet “#MeToo” to demonstrate how widespread the issue of sexual misconduct is.

Subsequent news stories have revealed that this problem is not limited to Hollywood or the United States. Politicians, educators, coaches and police services, among others, have been called out all over the world, including here in Canada.

In Ontario, the *Occupational Health and Safety Act* was amended in 2016 to require employers to prepare a workplace harassment policy that includes the definition for workplace sexual harassment. Most other provinces have similar legislation in place or have tabled the legislation. Even when there is no legislation in place specific to sexual harassment, all provinces require employers to ensure employees are generally safe.

Ignoring allegations of sexual harassment can be expensive for employers (e.g., they are legally responsible for sexual harassment that occurs in their workplaces, especially if they fail to address it appropriately) and can create a toxic work environment that affects productivity and employee morale.

A written sexual harassment policy must include:

- The types of behaviour the organization considers to be workplace harassment or violence;
- Steps the organization expects employees to take when they become aware of an incident of workplace harassment or violence;
- How the organization will respond to allegations of workplace violence or harassment;
- Explicit protection against retaliation for raising a concern about workplace harassment or violence;
- Regular reviews of all policies and practices; and
- Multiple channels for reporting incidents, including a channel that does not involve the parties' direct management.

How to Mitigate

According to a survey conducted by the federal government, respondents who experienced sexual harassment tended to work in an environment with a higher ratio of men in positions of power than respondents who experienced non-sexual harassment or violence.

Five most common risk factors for sexual harassment:

1. High ratio of women in work team
2. High ratio of women in workplace
3. High ratio of men in positions of power within the organization
4. Employees are unaware of the reporting procedures that are available for incidents of workplace sexual harassment
5. Employees are unaware of the grievance procedures that are available for incidents of workplace sexual harassment¹

Most survey respondents reported that, although their workplaces have sexual harassment and violence prevention policies in place, they did not receive training on these policies.

Consider the following risk management strategies for limiting the risk of sexual harassment claims:

1. Have a “zero tolerance policy”.
2. Create a written sexual harassment policy.
3. Have robust whistle-blower and discrimination policies.

¹ <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/workplace-harassment-sexual-violence.html>

4. Ensure everyone is aware of the policies.
5. Policies should be explicit as to what conduct is inappropriate and won't be tolerated.
6. Train employees and managers regularly.
7. Consider using a third-party complaint-management service.
8. Ensure that violations of the company's harassment and discrimination policy constitute “for cause” termination.
9. Consider retaining an independent consultant to audit the company's records and history of complaints to identify any issues.
10. Make policies available to ALL employees.
11. Review and update policies annually.
12. All employees should know how to make a complaint under the policies and to whom.
13. Take swift action to address issues and complaints.