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Recent Developments in Ontario in Employment and Human Rights Law

Ritu Mahil

There were two interesting developments in Ontario this month in employment and human rights law.

1. Changes to the Occupational Health and Safety Act

Bill 132 received Royal Assent. Important to our employer clients in Ontario are the amendments to the Occupational Health and Safety Act (OHSA). Bill 132 now expands the definition of “workplace harassment” in the OHSA to include:

- 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
- Workplace sexual harassment

Bill 132 clarifies that reasonable action taken by an employer in managing or directing the workplace and workers is not workplace harassment.

Bill 132 also specifically defines “workplace sexual harassment” as:

- Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, general identity or gender expressed, 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 develop written programs, which must be reviewed annually, to respond to issues of harassment and sexual harassment in the workplace. Further, employers must provide training to their employees on their workplace harassment policy and program.

The changes to the OHSA will come into force on September 8, 2016.

The amendments to Ontario’s OHSA are similar to the Occupational Health and Safety policies in British Columbia which came into effect in 2013. These policies are pursuant to sections 115, 116, and 117 of the BC Workers Compensation Act, dealing with workplace bullying and harassment. The policies define bullying and harassment, and explain the duties of employers, workers, and supervisors to prevent and address workplace bullying and harassment.
2. Miscarriage is a Disability under Human Rights Law

In another Ontario development, the Ontario Human Rights Tribunal has found that a miscarriage may be a disability. The Tribunal, in Wenying (Winnie) Mou – and MHPM Project Leaders, 2016 HRTO 327, acknowledged that a miscarriage may already be covered in the Human Rights Code under the ground of sex. However, it found that a miscarriage is itself an ailment which may result in a disability requiring accommodation. The decision is an interim one and it is not clear whether the employee requested accommodation from her employer. The employer had sought to terminate the employment relationship due to performance concerns. The decision indicates that a disability need not be permanent for an employee to seek accommodation in the workplace. Women suffering a miscarriage may seek time from work to recover emotionally and physically. It further confirms the employer’s duty to make inquiries to determine if there was a relationship between the disability and the performance concerns.

Key Contacts

- Patricia Gallivan, Q.C.
  (T) 604.631.6718
  (E) pgallivan@lawsonlundell.com

- Rob Sider
  (T) 604.631.6722
  (E) rsider@lawsonlundell.com

Team Members

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Katy Allen</td>
<td>604.631.9198</td>
<td><a href="mailto:kallen@lawsonlundell.com">kallen@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Deborah Cushing</td>
<td>604.631.9282</td>
<td><a href="mailto:dculing@lawsonlundell.com">dculing@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Patricia Gallivan, QC</td>
<td>604.631.6718</td>
<td><a href="mailto:pgallivan@lawsonlundell.com">pgallivan@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Sandra MacKenzie</td>
<td>867.669.5503</td>
<td><a href="mailto:smackenzie@lawsonlundell.com">smackenzie@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Ritu Mahil</td>
<td>604.631.9156</td>
<td><a href="mailto:rmahil@lawsonlundell.com">rmahil@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Glen Rutland</td>
<td>867.669.5535</td>
<td><a href="mailto:grutland@lawsonlundell.com">grutland@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Robert Sider</td>
<td>604.631.6722</td>
<td><a href="mailto:rsider@lawsonlundell.com">rsider@lawsonlundell.com</a></td>
</tr>
<tr>
<td>Nicole Skuggedal</td>
<td>604.631.6795</td>
<td><a href="mailto:nskuggedal@lawsonlundell.com">nskuggedal@lawsonlundell.com</a></td>
</tr>
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