Quebec employers: Are your harassment policies up to snuff?

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By: Tania Da Silva

In a May 2018 Canada In Focus blog post we discussed significant changes proposed to Quebec’s Act Respecting Labour Standards (the “Act”) under Bill 176. Bill 176 has since received royal assent with certain amendments in effect since June 12, 2018, and others coming into effect as of January 1, 2019. Included in the January amendments are important modifications regarding harassment in the workplace.

Previously, the Act set out that all employees have a right to a workplace environment free from psychological harassment, with an obligation on employers to take reasonable action to prevent psychological harassment in the workplace and to put a stop to such behaviour whenever they became aware of it. While these obligations remain in place, January 1st amendments to section 81.19 of the Act will place an additional obligation on employers to adopt a psychological harassment prevention and complaint processing policy, and to make such policy available to their employees.

Definition of psychological harassment expanded to include sexual harassment

Previously psychological harassment in the Act was defined as “vexatious behaviour in the form of repeated and
hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee’s dignity or psychological or physical integrity and that results in a harmful work environment for the employee” or “[a] single serious incidence of such behaviour that has a lasting harmful effect on an employee.” While the courts have interpreted that the Act’s definition of psychological harassment included sexual harassment, Section 81.18 of the Act has now been amended to provide that “psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature.” As such, and following on the above noted revisions to section 81.19 obligating employers to adopt formal harassment prevention and complaint policies, such policies must include a section addressing sexual harassment in the workplace.

Next steps for Quebec employers

In light of the above amendments, Quebec employers, whether they currently have anti-harassment policies in place or not, should:

1. create anti-harassment policies or revise existing ones to ensure that they specifically address not only psychological harassment in the workplace, but sexual harassment as well;
2. confirm that clear and consistent internal processes to address harassment complaints are set out therein, and implement such processes if they do not already exist;
3. implement their new or revised anti-harassment policies as soon as possible, and no later than January 1, 2019; and
4. make their new or revised policies available to all of their employees.

In regards to the obligation to make anti-harassment policies available to their employees, employers must circulate their anti-harassment policies in a manner that ensures that it is accessible to all employees, whether by email, via their intranet or in paper form. No particular format or method has been specified by the legislature. An employer may choose to accompany the introduction of the new or revised policy with mandatory anti-harassment training sessions which include an explanation of the various components of the employer’s new or revised policies. This would constitute a best practice to ensure that the new obligations under the Act are fully complied with.

Lastly, despite any internal complaint processes that may be available or implemented internally, employees have the option of filing a harassment complaint with the Commission des normes, de l’équité, de la santé et de la sécurité du travail. An additional amendment to the Act has increased the deadline within which an employee can file a complaint from 90 days to two years from the last occurrence of the harassing behaviour. Therefore, as always, it is important for employers to address and take steps towards dealing with any incidence of harassment in the workplace, of whatever nature it may be, as soon as they become aware that it is occurring.

AUTHORS

Tania Da Silva
Associate
Montréal | T: +1 514 392 1991
tania.dasilva@dlapiper.com