Federal Government Unveils Enhanced Workplace Harassment and Workplace Violence Framework

November 10, 2017

On November 7, 2017, the Honourable Patty Hajdu, Minister of Employment, Workforce Development and Labour, announced Bill C-65, the federal government's proposed legislation to amend the *Canada Labour Code*, the *Parliamentary Employment and Staff Relations Act* and the *Budget Implementation Act, 2017*. The aim of Bill C-65 is to strengthen existing laws on the prevention of harassment and violence, including sexual harassment and sexual violence, in all federally regulated workplaces.

The timing of Bill C-65 could not be more appropriate. In a week that saw a number of high-profile sexual harassment and assault allegations in the United States, this legislation is a reminder that harassment and sexual violence of any kind is unacceptable in all federally regulated workplaces, including Parliament Hill. The legislation has three main pillars:

1. Prevention of incidents of harassment and violence from occurring;
2. Responding effectively to these incidents when they do occur; and
3. Supporting victims, survivors and employers in the process.

Prevention

The proposed approach under Bill C-65 aims to eliminate harassment and violence from federally regulated workplaces by prohibiting the full range of unacceptable workplace behaviours which can cause "accidents and physical or psychological injuries and illnesses" arising out of, linked with or occurring in the course of employment. This new language is purposely broad and modifies the existing language of the *Canada Labour Code* which was limited to "accidents and injury to health". The new language is intended to encompass everything from workplace teasing and bullying, to sexual harassment and physical or sexual violence.

Response

Bill C-65 will also require federally regulated employers to take concrete action to prevent and protect against harassment and violence in the workplace and effectively

respond to any incidents when they occur. For example, section 125(1)(c) of the *Canada Labour Code* has now added in an employer obligation to investigate, record and report, all "accidents, occurrences of harassment or violence, occupational illnesses and other hazardous occurrences" known to the employer, as opposed to the more limited "accidents, occupational diseases and other hazardous occurrences". The legislation also provides employees with a choice of informal resolution processes or neutral, third-party investigations by the Minister under section 127.1(8) of the *Canada Labour Code*. Bill C-65 does grant leeway to the Minister to forego an investigation if the complaint has been adequately dealt with according to procedures under other federal legislation or a collective agreement, or if the complaint is deemed to be "trivial, frivolous or vexatious".

An employer's existing obligation to take prescribed steps to "prevent and protect against violence in the work place" has also been expanded under section 125(1)(z.16) of the *Canada Labour Code*. Employers must now take prescribed measures to "prevent and protect against harassment and violence in the work place, respond to occurrences of harassment and violence in the work place and offer support to employees affected by harassment and violence in the work place". The legislation does not require particular sanctions or outcomes for perpetrators if harassment or violence complaints are substantiated, but it will require that employers implement the recommendations of harassment and violence investigators. Failure to comply with the new statutory obligations could result in sanctions against the employer under the *Canada Labour Code*.

Support

There is also a significant new focus on privacy in Bill C-65. The proposed amendments require employers and federal officials to withhold from a policy committee, a workplace committee or a health and safety representative "any information" that is likely to reveal the identity of a person who reports an occurrence of harassment or violence, unless that person provides consent. The objective here appears to be to encourage potential victims to come forward and protect such persons from the prospect of reprisal.

Next Steps

Bill C-65 is currently in First Reading in the House of Commons. While Bill C-65 progresses in the legislative review process, both public and private federally regulated employers may wish to review their existing policies and procedures and determine whether any changes will be required if the proposed legislation becomes law. We will continue to monitor the Bill and report on any developments. Should you require further information or guidance, please contact your BLG lawyer or a member of our Labour and Employment Group.

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