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BARRISTERS AND SOLICITORS

New Rules for "Workplace Harassment"

By Malte von Anrep

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As of June 15, 2010 new rules came into effect through amendments to the *Occupational Health and Safety Act*. Every employer needs to understand these rules and be aware of the consequences if they are not followed.

Firstly, "workplace harassment" has been expanded to include engaging in a course of vexatious comments or conduct against a worker in a workplace that is known, or ought reasonably to be known, to be unwelcome. **Harassment**, is now defined so that it is no longer restricted to harassment based on gender or race.

A second change in the rules pertains to "workplace violence" which includes:

- i. the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- ii. an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker; or
- iii. a statement or behaviour that it is reasonable for a worker to interpret as a threat of physical force against the worker in a workplace, that could cause injury to the worker.

Furthermore, such prohibited acts are not restricted to conduct from a fellow employee or an employer. It can include a work environment where the employee faces harassment or potential violence from customers, suppliers or members of the public.

Now workers may refuse to work where they have reason to believe they are in danger of being a victim of workplace violence. Such remedy is not available in the case of alleged workplace harassment.

What employers must do to comply with the changes in the legislation and protect themselves from possible claims includes the following:

1. familiarize yourself with the changes in the *Occupational Health and Safety Act* and assess your workplace to see if it is in compliance.
2. communicate to your workers the legislative changes and incorporate those changes in your written policies which you provide to each employee. Include in your policies a reporting procedure and establish a mechanism for investigating such complaints.
3. set-up a committee to periodically review the requirements and educate the workers on ways to prevent workplace harassment and violence.

Remember, an ounce of prevention is worth a pound of cure, as any employer who has faced a claim from a worker, will attest to.

***The foregoing information is provided to you for information purposes only.
We caution you to obtain legal advice specific to your situation in all circumstances***

Commercial Law Group

Rodger A. Gordon	rgordon@lbwlawyers.com	Robert W. P. Welch	rwelch@lbwlawyers.com
Harry E. Thorsteinson	hthorsteinson@lbwlawyers.com	R. Bruce Smith	bsmith@lbwlawyers.com
Gary L. Black	gblack@lbwlawyers.com	Michael A. Mann	mmann@lbwlawyers.com
David L. Edwards	dedwards@lbwlawyers.com		

Employment Law Group

Robert B. Reid	rreid@lbwlawyers.com	Leanne E. Standryk	lstandryk@lbwlawyers.com
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Malte von Anrep is a partner at the firm, practicing family and civil litigation law - he may be contacted at mvonanrep@lbwlawyers.com

Lancaster, Brooks & Welch LLP

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1	Tel. 905.641.1551,	Fax 905.641.1830
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9	Tel. 905.735.5684,	Fax 905.735.3340
55 Main Street West, Grimsby, Ontario L3M 1R3	Tel. 905.594.1263,	Fax 905.594.1268

www.lbwlawyers.com