



Insurance | Risk Management | Consulting

A report on insurance for corporate executives

#MeToo and your organization

It has been a year since The New York Times ran its first article outlining allegations against Harvey Weinstein by numerous women in Hollywood. Since then, there have been numerous sexual harassment allegations in the workplace. Canada is not immune.

The #MeToo movement has proven to be a defining development within management liability insurance. Employees are more aware of their rights, more willing to make claims, and Canadian courts are increasingly plaintiff-friendly. Harassment does not have to be intentional to be damaging; Companies can be held liable for seemingly innocent or unintentional mistakes.

Managing your risk:

Employers can reduce their exposure to sexual harassment allegations and other employment related claims by considering the following:

- Being aware of, and complying with the law – Occupational Health and Safety legislation, the Canadian Human Rights Code (which expressly prohibits harassment in the workplace), and the Canada Labour Code all address corporate responsibility when it comes to the employment relationship. Further, new provincial laws such as the Ontario Workplace Harassment and Violence Law Bill 168, and the Federal government's Bill C-65 (proposed but not yet in force) will further codify a corporation's duties.
- Implementing & communicating appropriate policies & procedures – Applicable policies should be updated to reflect current laws and your organization's demonstrated awareness and compliance. Policies should be reviewed by legal counsel at least annually to address any relevant new case law and changes to statutes and federal or provincial laws. Because laws are different in every jurisdiction, policy manuals must address all applicable employer locations.
- Implementing hotlines – Employees may feel more comfortable raising complaints to people outside the organization. Employers may want to consider engaging an outside firm to provide an associated complaint hotline.
- Training – Managerial staff should be trained on recognizing & preventing harassment, discrimination, and retaliation. Sensitivity to employees' protected status should be considered as integral to this training. In addition to management & supervisor training, all employees should be trained on what is expected of them. Awareness of harassment and the prohibitions against it is essential for all levels of employees.
- Thorough complaint investigation – Interviews of the complainant, accused, and witnesses are recommended to be conducted by appropriately trained individuals. Any investigation should address all matters raised in the complaint and records of the investigation be thoroughly maintained. The outcome should be communicated according to stated policies and procedures.
- Effective implementation – Training & policies is not enough alone. Effective implementation is essential. Management should track issues and follow through on outcomes of complaints and investigations.

- Ensuring anti-retaliation measures – Employees who complain of harassment or discrimination should do so with communicated support and without fear of retaliation. While fear of retaliation is often used as an excuse for not bringing complaints to management, retaliation is against the law and this should be effectively communicated.
- Obtain legal counsel advice before considering termination upon the conclusion of an investigation within the full constrains of federal or provincial law.

Insurance for workplace harassment claims

Employment Practices Liability (EPL) policies provide coverage for the insured company as well as individuals for claims brought by employees (including former employees) alleging sexual harassment, discrimination, wrongful termination, and employment-related defamation.

EPL coverage is included in D&O policies for privately-held and Not-for-Profit corporations. EPL should be considered to be a core part of an organization's annual insurance purchase. In addition to the cost of defending claims, plaintiffs may claim for a longer severance period, consequential and punitive damages, reputational damage, and emotional distress among others. In addition to the coverage afforded by EPL policies, many carriers provide risk management and hotline assistance.

Awareness of and compliance with legal obligations are key to minimizing exposure associated with employment claims. Employers should work with counsel experienced in this area to engage in effective policy drafting, training, and risk management.

Our experienced professionals understand the unique exposures private companies and their management teams face. Our Management Liability Practice specializes in providing tailored insurance solutions to address these exposures, such as: Directors and Officers Liability, Employment Practices Liability, Crime, Transaction Liability, Cyber Liability, and Fiduciary Liability.

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An actual insurance policy must always be consulted for full coverage details.