



What's New in HR Law

Federal Government Proposes Work Place Harassment and Violence Prevention Regulations

September 20, 2019

Bottom Line

On April 27, 2019 the Federal Government proposed the [Work Place Harassment and Violence Prevention Regulations](#) under the *Canada Labour Code* (the “Regulations”) to assist in the prevention of harassment and violence in the workplace in federally regulated workplaces prescribed under Part II of the *Canada Labour Code*. These proposed *Regulations* support Bill C-65, *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017 No.1* (“Bill C-65”) and will replace the violence prevention provisions of the *Canada Occupational Health and Safety Regulations*, the *Maritime Occupational Health and Safety Regulations*, and the *On Board Trains Occupational Safety and Health Regulations*.

If passed as currently drafted, the *Regulations* will come into force in 2020 at the same time as the Bill C-65 amendments to the health and safety sections of the *Canada Labour Code* dealing with harassment and violence.

While these changes are not yet in force, employers must be aware of the *Regulations* as the changes will impact how federally-regulated employers must respond to complaints of workplace violence and harassment.

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Key Provisions of the *Regulations*

The *Regulations* are intended to change the culture of harassment and violence in the workplace by giving control of the process to the complainant (the “principal party”) and to require the employer to proactively prevent workplace harassment and violence from occurring.

The *Regulations* will strip employers of their ability to unilaterally make decisions with respect to workplace harassment and violence policies and procedures. Instead, employers will be required to collaborate with the policy health and safety committee (“policy committee”), or if there is no policy committee, the workplace health and safety committee (“workplace committee”) or the health and safety representative (the “Committee”) established in accordance with the *Canada Labour Code*, at various stages of the complaint process. If the parties are unable to agree, the employer will have authority to make the ultimate decision.

Prevention Policy

An employer and the Committee will be required to jointly implement a prevention policy that includes measures for identifying and addressing external dangers such as, for instance, family violence and stalking. The following elements will also be mandatory to include in a prevention policy:

- a mission statement;
- a description of the roles of the union, policy committee, workplace committee and health and safety representatives;
- the contributing factors to violence and harassment;
- an outline of the training that will be provided;
- an explanation of the resolution process including the name of the person designated to receive notification of occurrences (the “designated recipient”) and the manner in which the principal party or third party may notify the employer or designated recipient of an occurrence of harassment or violence in the workplace;
- the reasons for a review or update of the workplace assessment;
- a description of the notification process for external dangers and the measures the employer will implement to minimize the dangers;
- a summary of the emergency procedures;
- the measures taken to protect the privacy of those involved in an occurrence;
- a description of the other recourses available to those involved in an occurrence;
- the support measures available to the employees; and
- the name of the person who is designated to receive a complaint.

An employer will also be required to jointly conduct a workplace assessment identifying risks of harassment and violence in the workplace with the Committee. This workplace assessment must consider the culture, conditions and activities of the workplace and any reports, records and data that are related to harassment and violence in the workplace. Within six months of identifying the risks, the employer must jointly implement preventative measures and a plan to address the risks. These assessments must be reviewed every three years.

Additionally, an employer and the Committee will be required to jointly develop and implement emergency procedures where an occurrence of harassment and violence poses an immediate

danger to the health and safety of employees and when there is a threat of such an occurrence happening in the workplace.

Training

Workplace harassment and violence training will be mandatory for employees, the employer and the designated recipient. The training program must review:

- the harassment and violence prevention policy;
- the relationship between workplace harassment and violence and the prohibited grounds of discrimination set out in the *Canadian Human Rights Act*;
- how to recognize, minimize, and prevent workplace harassment and violence;
- crisis prevention, personal safety and de-escalation techniques; and
- how to appropriately respond to various types of occurrences.

This training program must also be reviewed at least every three years.

Support Measures

Employers will be required to provide information of support services, such as mental health services, that employees can access in their geographical area if needed.

Resolution Process

Early Resolution

An individual must be selected as a designated recipient to receive all notifications of harassment and violence occurrences. Notifications of occurrences can be made by the principal party or a third party either directly or anonymously. The employer or designated recipient must confirm receipt of the notification within 5 days and must indicate to the principal party the manner in which the harassment and violence policy will be assessed, the steps in the resolution process, and that the principal party is entitled to be represented throughout the process. The same information must be given to the responding party when the employer or designated recipient contacts them to discuss the occurrence.

Going forward, the employer or designated recipient will be required to take every reasonable effort to resolve the occurrence. If the issue cannot be resolved, the principal party may choose to proceed with the resolution process either by way of conciliation or through an investigation.

Conciliation

Conciliation may only begin if no investigation has been initiated and if the principal party and responding party agree to conciliate and jointly select a conciliator. If the conciliation cannot proceed or is unsuccessful, the principal party can choose to continue the process by triggering an investigation into the occurrence.

Investigation

The investigation must be conducted by an investigator selected by the principal party and responding party. If they cannot agree on an investigator within 60 days after notice of an investigation has been given, the employer must request the Minister to select the investigator.

The employer and the Committee can jointly propose a list of investigators from which the principal party and responding party can make their selection.

Once completing his or her investigation, the investigator will be required to provide the employer, principal party and responding party with a final report setting out a detailed description of the occurrence, the methodology used in the investigation, their analysis and findings, and his or her recommendations to eliminate or minimize the risk of a similar occurrence. The investigator must also provide a summary report that sets out a general description of the occurrence, a summary of the analysis and findings, and his or her recommendations. The summary report must not disclose directly or indirectly, the identities of the principal party and the responding party. This summary report must be provided to the Committee and, together with the employer, they must determine which of the investigator's recommendations to implement.

Timelines

The early resolution and conciliation process must be concluded within 180 days after the day the notification of occurrence was received by the employer or designated recipient. The entire resolution process must be completed within one year of the day the notification of occurrence was received by the employer or designated recipient. The resolution process is considered to be complete if:

- early resolution or conciliation is successful;
- the principal party chooses, at any time before an occurrence is investigated, not to proceed with the resolution process and the employer reviews and updates the workplace assessment; and
- where an investigation was conducted:
 - the investigator has provided the final report and summary report, and
 - the employer has implemented the recommendations jointly agreed upon with the policy committee, workplace committee or health and safety representative.

Throughout the resolution process the employer or designated recipient will be required to provide monthly updates to the principal party and the responding party with respect to the status of the process.

Records and Reports

The employer will be required to keep numerous health and safety records pertaining to the occurrence for a period of ten years. Additionally, every six months, the employer must provide the Committee with a report setting out prescribed information relating to the completion of the resolution process by means of early resolution or conciliation. The following information must be included in the report:

- the total number of occurrences that were completed by early resolution or conciliation;
- the number of occurrences that were related to sexual harassment and violence, as well as non-sexual harassment and violence;
- the locations where the occurrences took place, specifying the total number of occurrences that took place in each workplace location;

- the types of workplace relationships that existed between the principal and responding parties, specifying the total number for each relationship type; and
- the average time, expressed in months, that it took to complete the resolution process for an occurrence.

An employer will also be required to provide the Minister, on or before March 1 every year, with an annual report containing similar information provided to the Committee.

Potential Effect on Provincially Regulated Employers

As indicated above, the *Regulations* will only affect federally regulated employers covered under Part II of the *Canada Labour Code*. However, it remains to be seen if the Federal Government's proposed changes will spark provincial governments to review and make similar significant changes to workplace harassment and violence legislation that governs in other jurisdictions. We will monitor this issue closely and will advise readers as more information becomes available.

Need more information?

For more information, please contact [Natalie Garvin](#) at 416-408-3221, or speak to your regular lawyer at the firm.



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