



# What's New in HR Law

## The Canadian Federal Government Seeks Input on Bill C-65 and its Proposed Response to Address Workplace Harassment and Violence

September 25, 2018

### **BOTTOM LINE**

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*, seeks to amend the *Canada Labour Code* (the "Code") to significantly change how federally-regulated employers address workplace violence and harassment.

The Bill was passed by the Senate in June, 2018, and the Federal Government is now seeking input from the public on Bill C-65 and how it can appropriately address workplace harassment and violence in federal workplaces.

Despite the fact that it is not currently in force, federally regulated employers need to be aware of Bill C-65's proposed provisions to prepare for the day on which it becomes law.

## Practical Effects of Bill C-65 – Amendments to the *Canada Labour Code*

### Broader Scope

Bill C-65 introduces new language to the *Code* to broaden the applicability of its Occupational Health and Safety provisions. Currently, the Occupational Health and Safety provisions of the *Code* are aimed at addressing only “accidents and injury to health arising out of, linked with or occurring in the course of employment”. Bill C-65 widens the application of the Occupational Health and Safety provisions by specifically stating that those provisions also apply to prevent “physical or psychological injuries and illnesses”.

The language is broad and would encompass everything from teasing and bullying, to sexual harassment and physical or sexual violence in the workplace.

### Prevention and Investigation

Bill C-65 would also amend the *Code* by including requirements that federally regulated employers take concrete action to prevent and protect against harassment and violence in the workplace and effectively respond to any incidents when they occur.

Specifically, Bill C-65 would amend section 125(1)(c) of the *Code*, such that employers would be required to investigate, record and report all “occurrences of harassment or violence” known to the employer.

The steps that are currently prescribed under section 125(1)(z.16) of the *Code* (i.e. the steps an employer must take to prevent violence) will likely be applied more broadly so as to “prevent and protect against harassment and violence in the workplace, 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.”

If/once Bill C-65 comes into force, employers will also be obliged to ensure that supervisors and managers receive appropriate training and information pursuant to section 125(1)(z.161).

Additionally, the *Code* would be amended to state that employees may request that an unresolved complaint relating to an occurrence of harassment or violence be directly referred to the Minister of Employment, Workforce Development and Labour. The Minister would not be obliged to investigate if they believe the complaint has been adequately dealt with by another statute or agreement, or if they are of the opinion that the matter is trivial, frivolous or vexatious.

### Privacy

One of the most substantial changes arising out of Bill C-65 relates to employee privacy. If/once Bill C-65 is passed, the *Code* would contain significant measures aimed at protecting the privacy of complainants and respondents involved in a workplace harassment or violence investigation.

Under the proposed provisions, workplace committees, policy committees and health and safety representatives would no longer be permitted to participate in investigations related to workplace harassment or violence. This is aimed at safeguarding the identity of employees who are involved in an occurrence of harassment or violence in the workplace. In the absence of consent from an individual involved, employers would be required to ensure that workplace

committees, policy committees and health and safety representatives not be provided with any information that would be likely to reveal the identity of a person involved in the investigation.

The new privacy provisions proposed by Bill C-65 are in response to the government's determination that fear of retaliation is keeping some workers from reporting harassment or violence in the workplace

## Public Consultations

The Federal government has requested the input of the general public in relation to Bill C-65's proposed changes. To have your voice heard, you can visit the following link to engage in a survey with respect to workplace harassment and violence considerations:

<https://esdc-consultations.canada.ca/consultation-harassment-violence>

If you wish to make a submission, we would be happy to discuss and to assist in crafting a response.

## Need more information?

For further information, please contact [Danny G. Parker](#) at 519.435.6007, Mark Van Ginkel, Student-At-Law, or your regular lawyer at the firm.



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