



What's New in HR Law

Federal Government Publishes Final Work Place Harassment and Violence Prevention Regulations

July 6, 2020

On June 24, 2020, the Federal Government published the final version of 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 *Regulations* will come into force on January 1, 2021, providing federally regulated employers with 6 months to implement changes to their policies. This version of the *Regulations* contains some significant changes to the earlier version of the draft *Regulations* circulated for comment on April 27, 2019 and summarized [here](#).

These *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*.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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What do federally regulated employers need to do to prepare for January 1, 2021 and after?

1. Develop a workplace harassment and violence prevention policy that complies with the *Regulation*.

Employers are required to develop a policy that meets the requirements in the *Regulations* prior to January 1, 2021. In most cases, employers may wish to develop new policies and/or extend and supplement their pre-existing policies on harassment to comply with the *Regulations*.

The following elements will also be mandatory to include in a workplace harassment and violence policy:

- a mission statement;
- the name of the person to whom complaints are to be submitted (the “designated recipient”);
- a description of the roles of the employer, employees, designated recipient, and applicable partner;
- the internal and external factors that contribute to violence and harassment;
- a description of the training on workplace harassment and violence;
- an explanation of the resolution process 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; and
- a description of support measures available to the employees.

The policies should be developed, implemented and maintained by the employer and “applicable partner”. The applicable partner depends on the size of each employer’s organization as set out below:

- **0-19 Employees:** the applicable partner is a health and safety representative;
- **20-299 Employees:** the applicable partner is a workplace committee; or
- **299+ Employees:** the applicable partner is the policy committee.

2. Conduct a workplace assessment to identify harassment and violence risks.

Employers and the applicable partner will be required to conduct assessments identifying risks of harassment and violence workplace and preventative measures. The identification of risks should take into account:

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- culture, conditions, activities and organizational structure of the workplace;
- circumstances external to the workplace (e.g. domestic violence) that could give rise to harassment and violence in the workplace;
- reports, records and data related to harassment and violence;
- physical design of the workplace; and
- current measures in place to protect psychological health and safety in the workplace.

The assessment should also identify preventative measures, which should include both measures that mitigate the risk of harassment and violence in the workplace and implementation plans for the preventative measures. These assessments should be monitored to reflect any changes within the workplace and must be reviewed at least every 3 years.

3. Undergo mandatory workplace harassment and violence training.

Workplace harassment and violence training will be mandatory for employees in federally regulated workplaces. The training program must review:

- the workplace harassment and violence prevention policies;
- the relationship between workplace harassment and violence and the prohibited grounds of discrimination set out in the *Canadian Human Rights Act*; and
- how to recognize, minimize, and prevent workplace harassment and violence.

Notably, the final version of the *Regulations* removed certain training requirements with respect to crisis prevention, personal safety and de-escalation techniques on the basis that these requirements were more appropriately elsewhere. Employers are nonetheless encouraged to implement this as part of the training program. This training program must also be reviewed at least every 3 years.

4. Implement the resolution process as set out in the *Regulations* and workplace harassment and violence prevention policy.

Notification

As set out above, an individual must be selected as the “designated recipient” for all notifications of harassment and violence occurrences. Notifications of occurrences can be made by the principal party or a witness either directly or anonymously. The employer or designated recipient must, within 7 days of notice of an occurrence, contact the “principal party” (a principal party is an employee or employer who is the object of an occurrence) to inform them:

- that their notice of an occurrence has been received and/or they have been identified as the principal party in notice provided by a witness;
- the manner in which the work place harassment and violence prevention policy is accessed;
- of each step of the resolution process; and
- that they may be represented during the resolution process.

The same information must be given to the responding party when the employer or designated recipient contacts them to discuss the occurrence.

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

Negotiated Resolution

Going forward, the employer or designated recipient will be required to take every reasonable effort to resolve the occurrence during the negotiated resolution phase. The efforts must begin no later than 45 days after notice of 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.

The negotiated resolution phase also functions as a screening mechanism. During this phase, the principal party and the employer or designated recipient will review the notice of occurrence and may jointly determine that the notice of occurrence does not describe an action, course of conduct or comment that constitutes harassment and violence.

Conciliation

The parties may engage in conciliation where the principal party and responding party agree and jointly select a conciliator and where: (i) no investigation has been initiated; or (ii) an investigation has been initiated, but no report has been delivered. If an occurrence is resolved and an investigation is initiated, the investigation must then be discontinued.

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 applicable partner can jointly propose a list of investigators from which the principal party and responding party can make their selection.

Once completing an 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, their conclusions, including those related to the circumstances in the workplace that contributed to the occurrence, and their recommendations to eliminate or minimize the risk of a similar occurrence.

Completion of Process

The entire resolution process must be completed within 1 year of the day the notification of occurrence was received by the employer or designated recipient. This timeline may be extended where the principal party or responding party is temporarily absent from work for more than 90 consecutive days after the day on which notice of the occurrence was given.

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The resolution process is considered to be complete in the following situations:

- Early resolution or conciliation is successful.
- The principal party and the employer or designated recipient review the notice of occurrence and determine that the notice of occurrence does not describe an action, conduct or comment that constitutes harassment and violence.
- An employer and applicable partner jointly review and update the workplace assessment where a negotiated solution is unsuccessful and the principal party chooses to end the process. This is only applicable where the responding party is not an employee or employer.
 - where an investigation was conducted;
 - the investigator has provided the final report; and
 - the employer has implemented the recommendations jointly agreed upon with the applicable partner.

5. Ensure record-keeping protocols are in place for complaints under the workplace harassment and violence prevention policy.

Employers will be required to keep numerous health and safety records pertaining to the occurrence for a period of 10 years. Additionally, before March 1st of each year, the employer must provide the Minister with a report setting 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 number of occurrences that resulted in the death of an employee;
- the locations where the occurrences took place, specifying the total number of occurrences that took place in each workplace location;
- if known, the number of occurrences that fell under each prohibited ground of discrimination set out in the *Canadian Human Rights Act*;
- 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.

This is a significant change from the earlier proposed draft *Regulations*, which imposed a semi-annual reporting requirement on employers to the applicable partner.

Need more information?

For more information, please contact [Laura Freitag](#) at 416-408-5505, or speak to your regular lawyer at the firm.

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