

# NEW FEDERAL VIOLENCE AND HARASSMENT LEGISLATION

(Bill C-65 and related regulations in effect January 1, 2021)



## 1. Summary

Bill C-65, An Act to amend the Canada Labour Code (harassment and violence), came into effect on January 1, 2021. Its stated goal is to create a safe environment for workers who have experienced violence or harassment to come forward. The new legislation affects all workplaces that fall under the federal jurisdiction of Part II of the Canada Labour Code (*the Code*). It replaces multiple pieces of legislation, most notably the Part XX of the Canadian Occupational Health and Safety Regulations.

## 2. How are violence and harassment now defined under the law?

Bill C-65 added a new definition of harassment and violence to the Code as “any action, conduct or comment, including of a sexual nature that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.”

The government’s *Interpretations, Policies and Guidelines* (IPG) on the new regulations include the following examples of what constitutes violence and harassment.

### Violence can include, but is not limited to:

- hitting;
- kicking;
- biting;
- punching;
- spitting;
- scratching;
- squeezing;
- pinching;
- battering;
- homicide;
- swearing or shouting in an offensive manner;
- verbal abuse;
- attack with any type of weapon;
- contact of a sexual nature; and,
- sexual assault.

## Harassment can include, but is not limited to:

- spreading malicious rumours or gossip about an individual or group;
- cyber bullying (threatening, spreading rumours, or negatively talking to or about someone online or on social media);
- making offensive jokes or remarks;
- playing unwanted practical jokes, including hazing and other pranks;
- socially excluding or isolating someone;
- unwanted remarks about a person's body, clothing, or appearance;
- tampering with someone's work equipment or personal belongings, or impeding a person's work in any deliberate way;
- vandalizing or hiding personal belongings or work equipment;
- persistently criticizing, undermining, belittling, demeaning or ridiculing a person;
- misusing authority to create hardship for an individual, including:
  - maliciously changing work guidelines;
  - restricting information or setting impossible deadlines that will lead to failure;
  - blocking applications for leave, training, or promotion in a malicious manner;
- intruding on a person's personal space;
- stalking;
- public or private ridicule;
- verbal threats or intimidation;
- unwelcome physical contact;
- sexual innuendo/insinuation;
- unwanted and inappropriate or persistent invitations, gifts, messages, calls, or requests, including of a sexual nature;
- displaying offensive posters, cartoons, images or other visuals;
- using workplace resources (i.e. the work email, phone, computer, etc.) to stalk or intimidate an (ex)partner or other third party;
- making aggressive, threatening or rude gestures;
- retaliation of any kind (e.g. in the form of threats, punitive or disciplinary action, bribery, etc.) for submitting a notice of an occurrence; and,
- engaging in any of the actions that is against a person because of any of the prohibited grounds that are listed in the *Canadian Human Rights Act*.

### 3. New Legislative Terms

The new regulations introduce the following terms:

**DESIGNATED RECIPIENT** – the person or group that receives and investigates complaints of harassment or violence in the workplace from principal parties (victims).

**OCCURRENCE** – an occurrence of harassment and violence in the workplace.

**PRINCIPAL PARTY** – an employee or employer who is the object of an occurrence.

**RESPONDING PARTY** – the person who is alleged to have been responsible for the occurrence in a notice of an occurrence provided to the designated recipient.

**WITNESS** – a person who witnessed an occurrence of harassment and violence or is informed of an occurrence by the principal party or responding party.

### 4. What has changed?

The biggest change concerns how health and safety committees interact with workers when there has been an occurrence of violence and/or harassment. The Code has been changed to prohibit reporting violence or harassment to health and safety committees.

Health and safety committees will no longer receive, investigate or resolve complaints of violence and harassment in the workplace. These activities are now the employer's responsibility.

Instead, health and safety committees (policy or workplace depending on the size of the workforce) will act as joint partners in the employer activities required by the new regulations, including but not limited to risk assessment, policy development and the implementation of recommendations made by investigators (see section 5).

While the union's role in the process has been reduced, it has not been completely removed. Workers who report an incident of violence or harassment will be able to have representation throughout all aspects of the new resolution process (see section 6). This **can** be a union representative, such as a steward.

### 5. What are the employer's new requirements under Bill C-65?

The following is a summary of the new obligations of the employer. Under the new legislation, employers must:

1. Jointly, with the appropriate committee:
  - a. perform a workplace assessment that consists of the identification of risk factors for violence and harassment.

- b. develop a workplace harassment and violence prevention policy.
  - c. develop emergency procedures.
  - d. develop or identify training on work place harassment and violence that is to be provided to employees, the employer and the designated recipients.
  - e. Review the policy every three years.
  - f. Implement recommendations from investigator report.
2. Ensure the organization has the prescribed processes (described below) in place for resolving a complaint of violence or harassment.
  3. Make information available to employees' regarding the medical, psychological or other support services that are available within their geographical area.
  4. Ensure a process to confidentially retain required records.
  5. Ensure that all workers are provided training specific to the culture, conditions and activities of the workplace which includes:
    - (a) the elements of the workplace harassment and violence prevention policy;
    - (b) a description of the relationship between workplace harassment and violence and the prohibited grounds of discrimination set out in subsection 3(1) of the *Canadian Human Rights Act*, and
    - (c) a description of how to recognize, minimize, prevent and respond to work place harassment and violence.

Please see the regulations for greater detail ([link below](#)).

## 6. What is the new complaint process?

### 6.1 Third-party violence.

Third-party violence is violence perpetrated by someone who is not employed by your employer. This includes clients, patients, customers, contractors and other non-employees with whom a worker might interact.

The new complaint process requires the reporting of third-party violence. Workers must report incidents of violence and harassment to the designated recipient in their organization. The health and safety committee will then review the current risk assessment to ensure that it is adequate.

There is no requirement for a formal investigation of third-party violence, so it is very important that workers provide as much detail as possible when reporting an occurrence. This will enable the health and safety committee to properly review the risk assessment.

## 6.2 Violence from within your organization.

When violence or harassment is perpetrated by an employee of an organization (including supervisors or higher), the new regulations require a very specific set of steps:

### A) FILE A NOTICE OF OCCURRENCE.

A notice of occurrence (a report about an incident) must include the name of the principal party (the employee who has been the object of violence or harassment) or otherwise allow their identity to be determined. If this is not done, the employer will be able to close the investigation.

After an occurrence is reported to the designated recipient (either verbally or in writing,) the employer or the designated recipient must, within 7 days after the day on which notice of an occurrence is provided, contact the principal party to inform them:

- (a) that their notice has been received or that they have been named or identified as the principal party in notice provided by a witness, as the case may be;
- (b) how they can access the workplace harassment and violence prevention policy;
- (c) of each step of the resolution process; and
- (d) that they may be represented during the resolution process.

The **principal party** may end the resolution process at any time by informing an employer or designated recipient that they choose not to continue with the process.

### B) NEGOTIATED RESOLUTION.

Within 45 days of the report, the employer or designated recipient, the principal party and (potentially) the responding party must make every reasonable effort to jointly resolve an occurrence. Most frequently, this step of the process will determine if the complaint is valid, or if it could be better dealt with in a different forum. However, workers should not feel pressured to drop complaints. They also do not need to meet with someone who has been abusive or caused them harm.

If the negotiated resolution does not resolve the complaint, then the next steps are conciliation and/or investigation. These processes can be run at the same time, but both will end when an investigator files a report to the employer.

### C1) CONCILIATION.

If the complaint has not been resolved in the negotiated resolution phase, one option is conciliation. The principal party and the responding party may attempt to resolve an occurrence by conciliation if they both agree to conciliation and a facilitator.

## **C2) INVESTIGATION.**

The second option for resolution is an investigation. If the complaint has not been resolved, an investigation of the occurrence must be carried out if the principal party requests it. If an occurrence being investigated is resolved through an alternate route, the investigation must be discontinued.

**SELECTION OF AN INVESTIGATOR.** The employer may select a qualified investigator. However, both the principal party and the responding party must agree to the investigator. If no agreement on an investigator is reached within 60 days after the notice of an investigation has been made, an investigator will be appointed from a list of pre-approved investigators maintained by the Canadian Center of Occupational Health and Safety. This does not apply if the policy committee (or workplace committee) members have agreed to a pre-determined list.

### **The regulations require that investigators must:**

- be trained in investigative techniques;
- have knowledge, training and experience that are relevant to harassment and violence in the workplace;
- and have knowledge of the Part II of the Canada Labour Code, the *Canadian Human Rights Act* and any other legislation that is relevant to harassment and violence in the workplace.

### **INVESTIGATOR'S REPORT**

After conducting an investigation, the investigator will provide a report. The investigator's report must include a general description of the occurrence, their conclusions and their recommendations to eliminate or minimize the risk of similar occurrences. The employer and the workplace committee or the health and safety representative jointly determine which of the recommendations set out in the report will be implemented. The employer is then required to implement these recommendations.

## **7. Other options for violence and harassment**

Under the new legislation, workers who experience harassment or violence have other options available to seek remedy. These options include the new process described in this sheet as well as the grievance process, filing complaints with the Canadian Human Rights Commission, and filing criminal reports to the police. The union should ensure that complainants are made aware of all their options.

Full regulations can be found here: <https://laws.justice.gc.ca/eng/regulations/SOR-2020-130/index.html>