Cassels

New Workplace Harassment and Violence Obligations Coming into Effect for Federally Regulated Employers on January 1, 2021

Caitlin Russell

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Earlier this summer, the Federal Government published new Workplace Harassment and Violence Prevention Regulations (the Regulations) that will come into force on January 1, 2021, along with related amendments to the *Canada Labour Code* under Bill C-65 (the Act).

The Act and Regulations will make amendments to the *Canada Labour Code* (the Code) that will significantly expand the obligations of federally regulated employers with respect to preventing and responding to harassment and violence in the workplace.

Under the new regime, existing provisions with respect to sexual harassment and violence will be consolidated and broadened under Part II of the Code (Occupational Health and Safety), which will redefine "Harassment and Violence" to include "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."

The changes will bring the Code in line with other provincial jurisdictions that have enacted similar requirements in health and safety legislation in recent years, however in many aspects, will impose more onerous obligations, particularly with respect to resolution, record keeping and reporting requirements. A summary of the measures that employers will be required to take by January 1, 2021 include the following:

1. Workplace Assessment – Employers will be required to conduct a workplace assessment to identify factors that contribute to a risk of harassment and violence in the workplace. The assessment must consider certain prescribed elements set out in the Regulation, which include circumstances both internal and external to the workplace, such as family violence. Within six (6) months after any such risk factors are identified, the employer must develop and implement preventative measures to protect employees from these risks. The workplace assessment must be updated and reviewed at least every three (3) years and must be conducted jointly with the employer's "applicable partner."[1]

2. Workplace Harassment and Violence Prevention Policy – Employers will be required to have a Workplace Harassment and Violence Prevention Policy in place that includes prescribed elements set out in the Regulation including:

- a mission statement and a description of the roles of the employer, employees, “designated recipient” (the person to whom complaints are to be submitted) and applicable partner;
- a list of internal and external factors that contribute to harassment and violence;
- a summary of the mandatory training to be provided;
- a summary of the resolution process for complaints, including the identity of the designated recipient and the manner in which the employer or designated recipient can be notified of harassment or violence in the workplace;
- the reasons for which a review of the workplace assessment must be conducted;
- a summary of emergency procedures in place;
- the measures taken to protect the privacy of those involved in an occurrence of workplace harassment or violence;
- a description of any recourse (in addition to recourse under the Code) available to those involved in an occurrence; and
- a description of support measures available to the employees.

The policy must be prepared jointly with the applicable partner, provided to all employees, and updated and reviewed at least every three (3) years.

3. Emergency Procedures – Employers will be required to develop emergency procedures that are to be implemented where an occurrence or threat of harassment or violence poses an immediate danger to the health and safety of an employee. The emergency procedures must be developed jointly with the applicable partner and provided to all employees.

4. Training – Employers will be required to develop and provide training on workplace harassment and violence to all employees (including supervisors and the designated recipient). Training must be tailored to the culture, conditions and activities of the workplace and must include:

- the elements of the Workplace Harassment and Violence Prevention Policy;
- a description of the relationship between workplace harassment and violence and the prohibited grounds of discrimination in the *Canadian Human Rights Act*; and
- information on how to recognize, minimize, and prevent harassment and violence.

Training must be reviewed and delivered to employees at least once every three (3) years. Training must be completed within one year after the Regulation comes into force (by January 1, 2022), and for new employees, within three (3) months of their start date.

5. Support Measures – Employers will be required to provide employees with information on medical, psychological or other support services that are available within their geographical area.

6. Resolution Process – Employers will be required to follow procedural requirements and timelines with

respect to the resolution of workplace harassment or violence occurrences. Key elements of the new resolution process are as follows:

- Complaints can be provided to the employee's supervisor or to the designated recipient (who must have requisite knowledge, training and experience). Complaints may be provided by a witness, or the "principal party" (the individual who was the object of the incident) and must include certain prescribed information. Former employees can make complaints under the new regime as long as they are made within three (3) months of termination of their employment.
- The supervisor or designated recipient must provide a response to the principal party within seven (7) days of receipt of the complaint. The response must provide an overview of the resolution process and inform them that they may be represented during the process. The same information must be provided to the responding party, however there is no timeline under which the respondent must be notified of a complaint.
- Within 45 days of a complaint, the supervisor or designated recipient, principal party and respondent (if they have been notified) must make efforts to resolve the complaint through a negotiated resolution. The parties may also agree to resolve the complaint through conciliation if they can agree on a person to facilitate it.
- Where a complaint is not resolved through negotiated resolution or conciliation, an investigation must be carried out if the principal party requests it. The investigation must be carried out by an investigator who is trained in investigative techniques, has knowledge, training and experience relevant to harassment and violence, and has knowledge of the Code and *Canadian Human Rights Act*. Rules with respect to the process for selecting an investigator are set out in the Regulations.
- An investigator's report must set out a description of the occurrence, a conclusion and recommendations to eliminate or minimize similar occurrences. The report must not reveal the identity of any individuals involved and a copy must be provided to the principal and responding party and the applicable partner.
- Following receipt of the investigator's report, the employer and applicable partner must jointly determine which of the investigator's recommendations they will implement and take steps to implement such measures.
- Employers must ensure that the resolution process is completed within one (1) year after the date that a complaint is received, and throughout the process, must provide monthly status updates to the principal and responding party.
- Unresolved complaints can no longer be referred to the internal applicable partner. Instead, the supervisor or principal party can refer unresolved complaints directly to the Minister, who must investigate unless it determines that (a) the complaint has been adequately dealt with; or (b) the matter is an abuse of process.

7. Record Keeping – Employers will be required to keep various records to support enforcement measures. These records must be kept for ten (10) years and include, among other things, copies of all complaints, actions taken in response to any complaint, and any reports prepared by an investigator.

8. Reporting Obligations – In addition to record keeping obligations, on or before March 1 of each year, employers will be required to deliver an annual report to the Minister related to harassment and violence in the workplace, which must include, among other things:

- the total number of occurrences, specifying the number in each workplace location;
- the number of occurrences that were related to sexual harassment and violence;
- the number of occurrences that fell under each prohibited ground of discrimination set out in the *Canadian Human Rights Act;*
- the workplace relationships that existed between the principal and responding parties;
- the means taken to resolve complaints and the number of occurrences for each; and
- the average time that it took to complete the resolution process.

Compliance with the new regime will take some time to implement. We recommend federally regulated employers take steps now to review and update their workplace harassment and violence policies, procedures and record keeping practices to ensure they are compliant by January 1, 2021.

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[1] Depending on the size of the organization, the applicable partner is as follows: 0-19 employees: the health and safety representative; 20-299 employees: the workplace committee; 299+ employees: the policy committee.

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