

Federally Regulated Employers Must Comply with New Workplace Harassment and Violence Prevention Laws

In order to protect workers in federally regulated workplaces, the federal government made changes to the *Canada Labour Code* regarding workplace harassment and violence prevention that came into effect on **January 1, 2021**. The new *Work Place Harassment and Violence Prevention Regulations* (SOR/2020-130) (the "Regulations") require federally regulated employers to implement certain policies and procedures to prevent and respond to occurrences of workplace violence and harassment.

Federally regulated employers are now required to file annual reports with the Minister of Labour on or before March 1 of each year to report, among other things, the number of occurrences of workplace harassment and violence that occurred in the preceding year, whether they were related to sexual harassment and violence, the locations of where the occurrences took place, the number of occurrences that resulted in the death of an employee, the number of incidents that fell under each prohibited ground of

discrimination set out in the *Canadian Human Rights Act* and the average time it took to complete the resolution process.

Employers will need to move quickly to change their practices to comply with the new requirements. Starting **January 1, 2022** failure to comply with the Regulations could lead to hefty monetary fines along with the public naming of violating companies under the *Administrative Monetary Penalties (Canada Labour Code) Regulations* (SOR/2020-260).

Checklist for Employers

Federally regulated Canadian employers must carry out the following actions:	
Action	Compliance Timelines
Perform a workplace assessment identifying risk factors for workplace violence and harassment	Within 6 months, develop and implement preventative measures Review the assessment every 3 years
Develop a workplace harassment and violence prevention policy	Review the policy every 3 years and after every change to a policy element
Develop emergency procedures for threats of occurrences of harassment and violence	Review the procedures after every implementation
Develop a training program for employees on workplace harassment and violence	Review the program every 3 years and after every change to a training element
Make information about nearby support services available to employees	Ongoing
Become familiar with and be prepared to engage in the resolution process if a notice of occurrence is received	Ongoing
Retain records and reports	Records must be kept for 10 years
File an annual report to the Minister of Labour	Before March 1st every year

Employers can also refer to helpful interpretive guidelines published by the federal government, the *Work Place Harassment and Violence Prevention (HVP) Interpretations, Policy, Guidelines* which answer questions regarding the new harassment and violence provisions of the *Code* and Regulations.

The following is a more detailed summary of the obligations imposed on federally regulated employers as a result of the new Regulations:

Workplace Assessment

Employers and their health and safety committee/representative must jointly carry out a workplace assessment that identifies risk factors for workplace violence and harassment and the development and implementation of preventive measures. The assessment must take into account:

- the culture, conditions, activities and organizational structure of the workplace;
- circumstances external to the workplace, such as family violence, that could give rise to harassment and violence in the workplace;
- any reports, records and data that are related to harassment and violence in the workplace;
- the physical design of the workplace; and
- the measures that are in place to protect psychological health and safety in the workplace.

Within 6 months after the risk factors are identified, the employer must develop and implement preventive measures to mitigate the risks. The assessment must be reviewed every 3 years.

Prevention Policy

Employers and their health and safety committee/representative must jointly develop a detailed workplace harassment and violence prevention policy that contains the following elements:

- the employer's mission statement regarding the prevention of and protection against harassment and violence in the workplace;
- a description of the risk factors, internal and external to the workplace, that contribute to workplace harassment and violence;
- a summary of the training that will be provided regarding workplace harassment and violence;
- a summary of the resolution process, including
 - o the name or identity of the person or work unit designated by the employer to whom notice of an occurrence of workplace harassment or violence may be provided (the "designated recipient") and
 - o how a principal party or witness may provide the employer or the designated recipient with notice of an occurrence;

- the reasons for which a review and update of the workplace assessment must be conducted;
- a description of the respective roles of the employer, designated recipient, employees, policy committee, workplace committee and health and safety representative in relation to harassment and violence in the workplace;
- a summary of the emergency procedures that must be implemented when an occurrence poses an immediate danger to the health and safety of an employee or when there is a threat of such an occurrence;
- a description of how the employer will protect the privacy of persons who are involved in an occurrence or the resolution process for an occurrence;
- a description of any recourse that may be available to persons who are involved in an occurrence; and
- a description of the support measures that are available to employees.

The policy must be made available to all employees. Employers must review their policy at least once every 3 years and after any change to an element of the policy.

Emergency Procedures

Employers and their health and safety committee/representative must jointly develop emergency procedures that are to be implemented if an occurrence poses an immediate danger to the health and safety of an employee, or if there is a threat of such an occurrence. The emergency procedures must be made available to all employees. The emergency procedures must be reviewed and updated, if necessary, after every implementation of the procedures.

Training

Employers and their health and safety committee/representative must jointly develop a training program on workplace harassment and violence to be provided to all employees. The program must be specific to the culture, conditions, and activities of the workplace. The program must also include the elements of the prevention policy, 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 a description of how to recognize, minimize, prevent, and respond to workplace harassment and violence.

The following timelines apply to training programs:

- Employees hired **before** January 1, 2021, must receive training **before January 1, 2022**.
- Employees hired **after** January 1, 2021, must receive training **within 3 months of their start date**.
- All employees must continue to undergo training **every 3 years**.

Employers must review the training program at least once every 3 years and following any change to an element of the training.

Employers must undergo training **before January 1, 2022**, and at least every 3 years after that.

The designated recipient must be provided with training before assuming their duties and at least once every 3 years after that.

Support Measures

Employers must make information available to employees regarding the medical, psychological, or other support services that are available within their geographical area.

Resolution Process

The Regulations provide a detailed procedure for resolving occurrences of workplace harassment or violence. Employers should familiarize themselves with this process so they can respond appropriately to such occurrences.

The resolution process is initiated when a witness or the party which was the “object of an occurrence” of harassment or violence (the “principal party”) provides a “notice of occurrence”.

The employer or designated recipient must conduct an initial review of every notice of occurrence. If the notice does not name the principal party, or allow their identity to be determined, the occurrence is deemed resolved.

Within 7 days of receiving the notice of occurrence, the employer or designated recipient must contact the principal party and inform them that the notice of occurrence has been received, how to access the prevention policy, each step of the resolution process and that they may be represented during the resolution process. If the notice of occurrence was provided by a witness, who does not wish to remain anonymous, the employer or designated recipient must contact the witness within 7 days to confirm that the notice was received.

The employer or designated recipient must then contact the responding party and advise them that they have been named or identified in the notice of occurrence, how to access the prevention policy, each step of the resolution process and that they may be represented during the resolution process.

There are three different streams for resolution of a workplace harassment and violence occurrence:

- (1) **Negotiated resolution** - The employer or designated recipient, the principal party, and any responding party must then “make every reasonable effort” to resolve an occurrence through negotiations starting no later than 45 days after the notice is provided. This includes conducting a review to determine whether the occurrence would constitute “harassment and violence” as defined in the *Canada Labour Code*. If they jointly agree that the occurrence does not constitute “harassment and violence”, the matter is deemed resolved.

- (2) **Conciliation** - If the parties agree, the complaint may be resolved through conciliation where a person will facilitate the conciliation.

- (3) **Investigation** - If the occurrence is not resolved through negotiation or conciliation, an investigation of the occurrence must be carried out if the principal party requests it. The investigator can be an individual on the employer’s preselected list of investigators, an individual that is agreed upon by the parties, or an individual identified from the Canadian Centre of Occupational Health and Safety. The investigator 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 relevant legislation. The investigator may not be in a conflict of interest with any of the parties, including the employer. The investigator must provide a report that describes the occurrence, their conclusions, including what circumstances in the workplace contributed to the occurrence, and their recommendations to eliminate or minimize the risk of a similar occurrence. The employer or designated recipient must provide the investigator with all information that is relevant to the investigation. The report should not reveal the identity of persons who are involved in an occurrence or the resolution process. The employer must provide copies of the investigator’s report to the parties and the workplace health and safety committee/ representative. Employers and their health and safety committee/ representative must then jointly review the investigator’s report and determine which recommendation should be implemented. The employer must implement all such jointly determined recommendations.

Generally, the employer must ensure the resolution process is completed within 1 year after the notice of occurrence. However, if one of the parties is temporarily absent from work for more than 90 consecutive days, the resolution process must be completed within the later of 1 year after the notice of occurrence or 6 months after the party returns to work.

Records and Reports

Employers must keep and retain certain specified health and safety records for at least 10 years:

- the workplace harassment and violence prevention policy;
- a copy of the documents that form part of the workplace assessment;
- a copy of the documents that form part of each review and update of the workplace assessment;
- for each instance where the employer and their health and safety committee/representative are unable to agree on a matter that is required by these Regulations to be jointly done by them, a record of the employer’s decision in that matter and the reasons for that decision;

- a record of each notice of occurrence and each action taken in response to the notice;
- for each instance where a time limit is not met, a document that sets out the reason for the delay;
- a copy of each report that is prepared by an investigator;

- a copy of each annual report; and
- a copy of each fatality report.

The author would like to thank Allan Tung, Articling Student, for his assistance with this article.

How we can help you

Our certified workplace investigators know the legal requirements of procedural fairness and due process. We provide expert advice that will minimize the time, costs and disruptions associated with resolving workplace disputes.

Understanding the effects of trauma on individuals, we are sensitive to their plight and will maintain confidentiality and protect the privacy of all involved. What we do:

- Conduct impartial, efficient, sensitive, and timely workplace investigations that are fact-based, focused on evidence and assessments of credibility.
- Provide you with reliable information to determine whether allegations are substantiated and what actions you should take.

- Offer support and guidance if you conduct your own internal investigations.

Depending on the mandate, investigations can involve interviewing complainants, respondents and witnesses; making findings of fact; applying relevant workplace policies and legal requirements; and drafting a report with findings whether the allegations are substantiated.

We can also make recommendations based on our findings. Where the results identify a need for employees to understand proper workplace conduct, we can provide customized post-investigation training, addressing gaps in knowledge or compliance identified during the investigation process.



Maria Tassou

Pallett Valo Employment & Labour Practice

Our Employment & Labour lawyers have the legal expertise to provide creative and pragmatic solutions for a wide variety of employment-related issues that arise in today's workplace. Our approach is to provide advice that will minimize the time, costs and disruption associated with labour and other employment disputes. We represent our clients before various provincial quasi-judicial tribunals and in court, and frequently attend at conciliation, mediation and other settlement proceedings.

Contact Members of our Employment & Labour Practice:

Andy Balaura

abalaura@pallettvalo.com • (905) 273.3022 ext. 225

Jeffrey S. Percival

jpercival@pallettvalo.com • (905) 273.3022 ext. 254

Maria Tassou

mtassou@pallettvalo.com • (905) 273.3022 ext. 295

PALLETT VALO LLP
Lawyers & Trade-Mark Agents

This article provides information of a general nature only and should not be relied upon as professional advice in any particular context. For more information about Employment & Labour, contact a member of our **Employment & Labour Practice** at 905.273.3300.

If you are receiving this bulletin by mail and you would prefer to receive future bulletins by email, visit www.pallettvalo.com/signup or send an email to marketing@pallettvalo.com.

Pallett Valo LLP will, upon request, provide this information in an accessible format.

77 City Centre Drive, West Tower, Suite 300, Mississauga, Ontario L5B 1M5 • 1.800.323.3781