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New Workplace Harassment and Violence Regulations under the *Canada Labour Code*

Presentation to Motor Coach Canada
January 27, 2021



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Zeinab provides practical and proactive advice on a wide range of labour and employment matters, including labour relations, employment standards, wrongful dismissals, human rights, workplace investigations and other related matters. Zeinab represents employers before mediators, courts, and administrative tribunals and conducts workplace investigations. She also presents and provides training on workplace issues and writes regularly on labour and employment developments. Her goal is to deliver creative, timely, and cost-effective solutions to her clients.

AGENDA

- What is “workplace harassment and violence”?
- What is required to comply with the new Regulation?
 - Policy Requirements
 - Training
 - Risk Assessment
 - Preventative Measures
 - Investigations

CHANGES AS OF JANUARY 1, 2021:

- Sexual Harassment Division of Part III, CLC is repealed.
- Part XX (Violence Prevention in the Workplace), COHS Regulation, repealed.
- New regulation, **Work Place Harassment and Violence Prevention Regulation**, comes into force

DEFINITIONS

- Pre-January 1, 2021:
 - definition of sexual harassment,
 - no definition of harassment, and
 - definition of workplace violence, which was interpreted to include harassment that can be expected to cause harm, injury or illness.
- Will continue to apply for incidents that occurred prior to January 1, 2021.



What is “workplace violence and harassment”?

A NEW DEFINITION

- Since January 1, 2020, Part II of the *Canada Labour Code* defines harassment and violence 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.”

Examples

- aggressive or threatening behaviour, including verbal threats or abuse
- physical assault
- spreading malicious rumours or gossip about an individual or a group
- socially excluding or isolating someone
- persistently criticizing, undermining, belittling, demeaning or ridiculing someone
- swearing at someone or using inappropriate language toward them

Examples

- abusing authority by publicly ridiculing or disciplining a subordinate
- abusing authority by interfering with a subordinate's performance or job (for example, blocking applications for leave, training or promotion in an arbitrary manner)
- abusing authority by soliciting a sexual or romantic relationship from a subordinate, or making social invitations with sexual overtones to a subordinate
- making abusive or derogatory remarks or jokes about someone's gender, gender identity or gender expression, sex or sexual orientation (for example, homophobic remarks)

Examples

- domestic violence (also called intimate partner violence, domestic abuse or relationship abuse) is a workplace hazard when it occurs in the workplace (it puts the targeted worker at risk and may pose a threat to coworkers)
- using the Internet to harass, threaten or maliciously embarrass someone
- using the Internet to make sexual threats, or to harass or exploit someone sexually

Examples

- sexual touching (for example, patting, pinching, caressing, kissing, fondling)
- sexual invitations or requests in return for a promise of a reward (such as a promotion)
- displaying offensive posters, cartoons or images of a sexual nature
- sending inappropriate electronic communications (for example, sexually explicit emails)



What is NOT harassment and violence?

- Normal workplace conflict and differences of opinion
- Reasonable management actions:
 - constructive feedback
 - performance management (e.g. putting someone on a performance improvement plan)
 - reasonable disciplinary actions
 - assign work, and direct how and when it should be done
 - request updates or status reports
 - approve or deny time off
 - request medical documents to support an absence from work



What does the new Regulation require?

WHAT YOU NEED TO DO

1. Put together a Policy

4. Preventative Measures

2. Training

5. Resolving Complaints

3. Conduct a Risk
Assessment



1. PUTTING TOGETHER A POLICY

- Development: may vary from employer to employer
 - **up to 19 employees**, you must develop the new policy with the health and safety representative
 - **20 to 299 employees**, you must develop the new policy with the workplace committee
 - **300 or more employees**, you must develop the new policy with the policy committee

1. PUTTING TOGETHER A POLICY

- What should be included in the Policy?
 - the employer's commitment to prevent and protect employees against harassment and violence
 - prevention mission statement
 - scope of the policy
 - a description of the roles of workplace parties in relation to harassment and violence in the workplace

1. PUTTING TOGETHER A POLICY

- Content: (continued)
 - a list of training that you will provide about workplace harassment and violence
 - The complaint resolution process
 - Emergency procedures

1. PUTTING TOGETHER A POLICY

- Content: (continued)
 - A description of internal and external risk factors
 - A description of how the employer intends to protect the privacy of those involved
 - a description of any other recourse available to individuals

1. PUTTING TOGETHER A POLICY

- Content: (continued)
 - When a review is required and when the policy will be updated
 - Generally – once every 3 years, or as needed
 - Identify the name of the person designated to receive complaints (the “Designated Person”)
 - outline how an employer is to be informed of external dangers, such as family violence

1. PUTTING TOGETHER A POLICY

- Content: (continued)
 - Include any available support measures.
 - New requirement - Provide employees with information regarding the “medical, psychological or other support services that are available within their geographical area”.

2. TRAINING

- Jointly develop
- Training should be tailored toward the workplace
- The training contents need to be reviewed and updated every three years or as needed

2. TRAINING

- What should it include?
 - The policy
 - How to recognize, minimize, prevent and respond to workplace harassment and violence
 - A description of the relationship between workplace harassment and violence and the prohibited grounds of discrimination under the Canadian Human Rights Act

2. TRAINING

- Who should be trained?
 - Everyone
 - Before resuming their duties - the designated recipient (i.e. the person receiving complaints)

2. TRAINING

- When training must occur:
 - i. with any employee who starts **after Jan 1, 2021**, within 3 months of their first day.
 - ii. with any employee who starts **before Jan 1, 2021**, before Jan 1, 2022
 - iii. At least every 3 years after that
 - iv. before an employee is moved to a position with increased risk
 - v. following any updates to the training

3. CONDUCTING A RISK ASSESSMENT

- Who?
 - The employer and Applicable Partner
 - 19 or less: Health and safety rep
 - 20 to 299 employees: Workplace committee
 - 300 + employees: Policy committee
- Tailored to the workplace, taking into account certain factors.
- If an occurrence is not resolved, or if there is an incident by someone who is not an employee, the parties have to jointly review and update the assessment, taking into account that specific situation.



3. CONDUCTING A RISK ASSESSMENT

- Take into account relevant factors - work conditions, activities, physical design, and organizational structure of the workplace
- A sample workplace harassment and violence risk assessment tool is available on the [Government of Canada website](#)



4. PREVENTATIVE MEASURES

- Employer and Applicable Partner
 - need to develop and implement preventative measures **within six months.**
 - Must monitor the accuracy of the workplace assessment
 - Review it **every three years or as necessary**
 - **Examples: Robust Training!**

5. RESOLVING COMPLAINTS

- Once employer receives notice of occurrence, they have to resolve it
- Within 7 days, contact complainant and respondent
- Provide policy to the parties, and inform them of the complaint resolution process
- Reasonable efforts to resolve the occurrence must begin no later than 45 days after the notice is provided.

5. RESOLVING COMPLAINTS

- Three streams:
 1. Negotiated resolution
 2. Conciliation
 3. Investigation
- The complainant can choose to end the resolution process at any time



5. RESOLVING COMPLAINTS

- Negotiated Resolution:
 - Employer/designated recipient will jointly review with the Principal Party the complaint against the definition of harassment and violence
 - The parties are required to proceed through the resolution process if:
 - They cannot agree on whether the occurrence falls under the definition
 - AND
 - The complainant wishes to proceed
- Offer the option of conciliation and/or investigation

5. RESOLVING COMPLAINTS

- Conciliation
 - Complainant and Respondent must:
 - Agree to participate
 - Agree to conciliator

5. RESOLVING COMPLAINTS

- Notice of investigation
- Who will investigate?
 - Employer can appoint an investigator from a list of qualified investigators that is developed with the Applicable Partner.
 - If no list exists, the employer, the complainant and the respondent may agree to an investigator.
 - If no agreement within 60 days, then the employer will select someone from a list identified by the Canadian Centre for Occupational Health and Safety.

5. RESOLVING COMPLAINTS

- The investigator will investigate and prepare a report.
- The investigation report:
 - a general description of the occurrence,
 - The investigator's findings and conclusions, and
 - recommendations on how to minimize a repeat or similar occurrence
- The report will go to the parties and the Applicable Partner.

RECORDS AND REPORTS

- Record all reported occurrences of harassment and violence
- Report to Labour Program, even if internally resolved
- If it led to death, you must report to the Labour Program within 24 hours



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