

Workplace Harassment and Violence Prevention Regulations

2020



Bill C-65

Bill C-65 created one regime under Part II of the Code to:

- Deal with a “full spectrum of reprehensible behaviours, ranging from teasing and bullying to sexual harassment and physical violence”;
- Require employers to respond, record, and report harassment and violence, and support employees affected by them; and
- Provide privacy protections to ensure that complaints about harassment and violence are treated confidentially.

The new regime applies to:

- Federally regulated private-sector industries like Canada Post;
- Federal public service;
- Ministerial exempt staff (clarifies coverage);
- Employees on the Hill such as MPs staff, employees of the House of Commons, the Senate, the Library of Parliament and the Parliamentary Protective Service (currently not covered by the Code); and
- Interns employed in these sectors.

The new regime does not:

- Address remedies directly and so CHRA (Canadian Human Rights Act) and CA (Collective Agreement) processes are still equally important and can be pursued in parallel



Harassment and violence is defined 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.”



Human Rights

The Canadian Human Rights Act also protects federal employees from harassment, including sexual harassment, based on one or more prohibited grounds of discrimination. The prohibited grounds of discrimination are:

race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

The Canada Labour Code process and the definition of workplace violence and harassment does in fact include violence and harassment that stem from discrimination. Members who experience violence and harassment based on one or more prohibited grounds can also make complaints under Part II of the Canada Labour Code.

Workers who do have faced discriminatory harassment or violence and make a complaint under the CLC Part II are still entitled to make a human rights complaint and file a No Discrimination grievance. This will allow the worker to pursue human rights damages, as well as other remedies.



New Regulatory Framework for Violence and Harassment

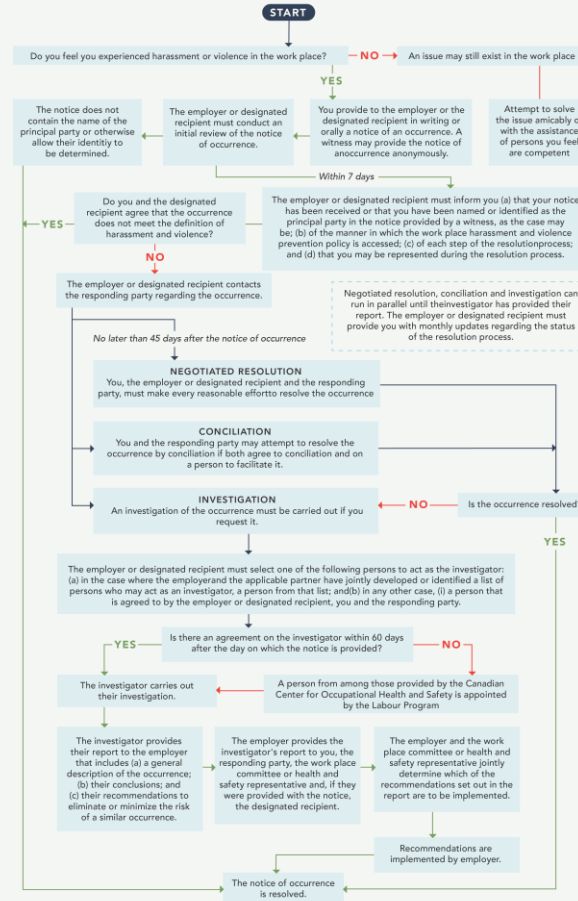
How it has improved

- a “designated recipient” receives harassment and violence complaints so workers no longer have to file a complaint to their supervisor about their supervisor
- reasonable timeframes for resolution to better support the complainant and alleged perpetrator (7 days to respond to a notice of an incident, 60 days to appoint an Investigator, one year for the entire process to be wrapped up and monthly status updates to parties throughout the process)
- confidentiality of all parties involved, including witnesses, throughout the investigation
- a distinct process for employees victimized by a third party (for example, an employee harassed by a client)
- employer obligations to implement recommendations and/or corrective measures in response to the investigation report
- A more detailed IPG



Workplace Harassment and Violence Process: A 4-step overview

ONE YEAR



1. Notification: Making the employer aware

Complainant must give notice in writing or orally. A witness may provide the notice anonymously. Former employees can notify up to 3 months after they were employed

The employer or designated recipient has 7 calendar days to inform you that notice has been received.

They must also inform you about each step of the resolution process and your right to representation during the process (by union, shop steward or someone to support you)



2. Negotiated resolution or conciliation

Parties must make efforts to resolve the issue.

Parties may use *conciliation* if acceptable to all.

Note: The use of conciliation does not rule out a formal investigation if the process is not successful.



3. Investigation

An investigation of the occurrence must be carried out if you, the principal party, requests it. The process has been simplified.

The employer or designated recipient must select an Investigator from a joint internal list who is agreed to by both parties.

If an investigator cannot be mutually agreed to, one will be appointed from the government's roster, after 60 days.

The investigator conducts their investigation.



4. Completion of process

The investigator provides their report to the employer that includes

- (a) a general description of what happened;
- (b) their conclusions; and
- (c) their recommendations to eliminate or minimize the risk of a similar occurrence.

The employer provides the investigator's report to all parties and the workplace committee or health and safety representative. We can expect all personal and identifying information to be redacted.

The employer and the workplace committee or health and safety representative jointly determine which of the recommendations will be implemented.

All joint recommendations **MUST** be implemented by the employer.

The notice of occurrence is resolved. (within one year)



Remember: There is No Remedy for Victims

This new process does not offer remedies for victims. Instead, it continues to be exclusively a prevention-focused management process.

If you think you are a victim of workplace violence and harassment, always contact your component or local union representative about also filing a grievance and/or human rights complaint.

Examples of remedies include reimbursement sick leave used due to harms experienced; accommodation measures; human rights damages if harassment based on prohibited grounds, etc.



Recap: What's new? Prevention

- Initial assessment
- Policy development
- Emergency procedures
- Domestic Violence



Recap: What's new? Employer Response

- Predictable timeframes for resolution
- When an employer becomes aware of an incident of harassment or violence, they must begin working with the affected employee within seven calendar days
- The employer must communicate to the employee the options available to them for resolution
- The employee has the option to pursue facilitated resolution to resolve the incident
- Employers will have the responsibility to provide a facilitator for the conciliation process



Recap: What's new? Investigator Selection

- An investigator must be mutually agreed upon by all parties before an investigation may begin
- Where the workplace health and safety committee develops a list or roster of “impartial competent persons” this list will be relied on in all future occurrence. The parties will therefore **not** have a say on who is selected as the investigator. Rather one will be appointed for them from the agreed to roster
- **NOTE:** When agreeing on a joint list of investigators, the workplace committee must turn its mind to the competencies of the investigators, particularly whether they have the skills, training and equity analysis necessary to investigate occurrences where discrimination is also a factor.



Recap: What's new? Recommendations

- Employers will be required to implement, prescribed measures made by an investigator as long as they are reasonably practicable



Recap: What's new? Training and Tracking

Training

- Employers will be required to provide training on their prevention policy
- They will also be required to provide training on harassment and violence

Tracking

- Employers will be legally required to track all incidents of harassment and violence
- Employers will be required to clearly outline how they will report on, share and store information of incidents of harassment and violence that occur in their workplace



Role of Policy Committees

- Conduct a workplace assessment with the employer, including an assessment of external factors, updated every three years.
- Developing emergency procedures with the employer.
- Working to develop a joint list of potential Investigators.
- Agree on recommendations to be implemented.



Assessments: When the Responding Party is Not an Employee

In cases where either the responding party is not an employee or the employer, or the principal party ends the resolution process but the occurrence is not resolved, there is an assessment.

Assessments are not to determine if the notice of occurrence is founded, rather it is to:

- Identify any risk factors that may have been overlooked when the initial workplace assessment was conducted that may have led to the occurrence;
- Assess whether the preventative measures in place adequately mitigate and/or minimize the risk of harassment and violence in the workplace; and,
- Develop new preventative measures to eliminate or minimize the risk of a similar occurrence if the current preventive measures are inadequate.

It is important for our membership that our union ensures that the assessments are thorough, robust and that equity is central in the assessment.

The IPG states, “*The employer or designated recipient should obtain as much information as possible about the occurrence from the principal party and any witnesses and provide this information to the workplace committee without disclosing the identity of the person(s) involved in the occurrence, unless these person(s) consent to their identity being disclosed. As well, the employer and workplace committee should consider if there are any systemic issues, patterns of behaviour and barriers to resolving the occurrence. This process may involve interviewing the principal party and witnesses, considering other reviews and/or updates of the workplace assessment related to notices that were received in the past, and consulting with specialists as appropriate (i.e. security specialists, anti-racism specialists, etc.).*”

Pitfalls to Watch For

Assessments:

When the responding party is not an employee

Undue Pressure:

Pressure can be applied at the Conciliation stage to discourage an Investigation

Recommendations:

Employer could refuse to agree on any recommendations to be implemented.



Tools Provided

Dec. 1st

This PowerPoint presentation

A draft violence and harassment tool kit (for your review);

A flow chart

A sample violence policy from the Labour Program

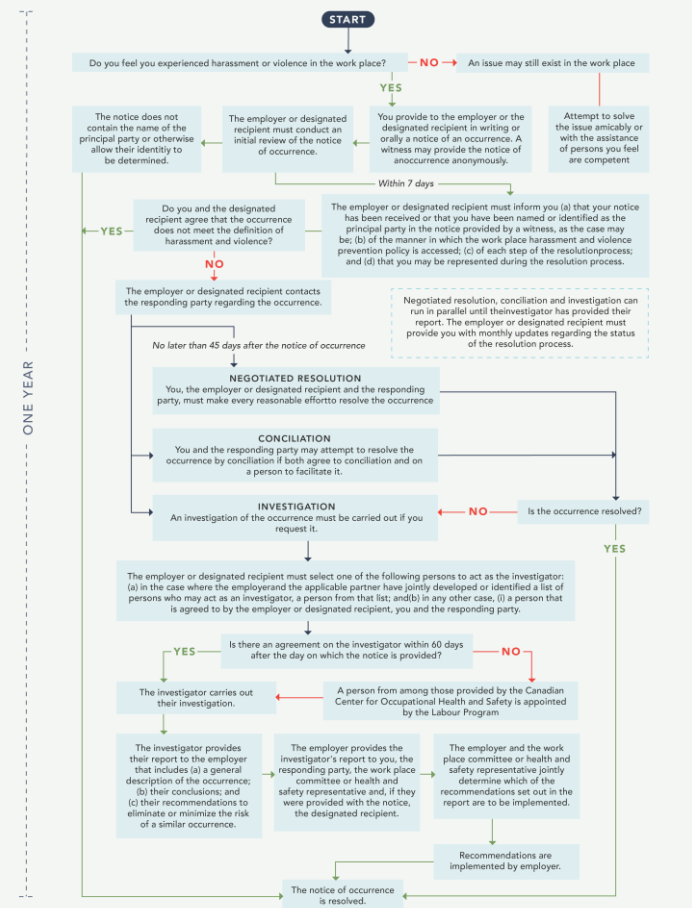
A sample risk assessment from the Labour Program

An IPG from the Labour Program

January 1st

Updated PSAC Workplace Violence and Harassment Course

Final violence and harassment tool kit for co-branding



QUESTIONS?

