

Navigating Workplace Harassment And Violence In Federally-Regulated Workplaces



The *Workplace Harassment and Violence Prevention Regulations* came into force in January, 2021 with a goal of enhancing protections for federally regulated employees.

These *Regulations* reflect a shift toward greater clarity, fairness, and accountability in addressing workplace harassment and violence.

Here's what you need to know about the *Workplace Harassment and Violence Prevention Regulations* and how it impacts employers and employees in federally regulated workplaces.

Key Changes as of January 2021

Expanded Definitions

Previously, workplace violence was narrowly defined under the *Canada Labour Code* (CLC) as "any action, conduct, threat, or gesture of a person towards an employee in their workplace that can reasonably be expected to cause harm, injury, or illness." Harassment was not explicitly defined, leaving a patchwork of workplace-specific definitions.

The *Workplace Harassment and Violence Prevention Regulations* introduced a broader definition:

"Harassment and violence means 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."

This inclusive definition offers clearer guidance, helping employers and employees identify what constitutes harassment or violence in the workplace.

Streamlined Processes and Timelines

The *Regulations* impose strict timelines for employers:

- **7 days:** Contact the employee after receiving a notice of occurrence.
- **45 days:** Attempt to resolve the issue through a negotiated resolution.
- **1 year:** Complete the entire resolution process (unless one of the parties is temporarily absent from the workplace for 90 consecutive days or more, then the

process can be resolved within 6 months after the party returns to work).

Employers who fail to meet these timelines must document the reasons and retain records for 10 years.

For employees, there are no time limits for reporting incidents (with an exception for former employees, who must report within 3 months of leaving their job). This flexibility acknowledges the challenges employees face, such as fear of reprisal or uncertainty about whether their experience qualifies as harassment or violence.

Employees can pursue resolution through:

- Negotiated resolution.
- Conciliation.
- Investigation

These processes can occur simultaneously.

Employees retain the right to withdraw from the resolution process at any time. While this provides agency to victims, it also raises concerns about incidents going uninvestigated, potentially enabling repeat offenses.

Employer Veto and Concerns

One controversial aspect of the regulations is the **employer veto**.

Section 31(1) of the *Regulations* specifies that employers and workplace committees must jointly decide which recommendations from an investigator's report to implement. However, if consensus cannot be reached, **the employer's decision prevails**.

This veto power allows employers to bypass recommendations they disagree with, potentially undermining the integrity of the investigative process.

Selection and Qualifications of Investigators

Investigators must meet certain qualifications, including:

- Expertise in investigative techniques.
- Knowledge of workplace harassment and violence.
- Familiarity with relevant legislation, such as the CLC and the *Canadian Human Rights Act*.

However, Parliament declined to include requirements for diversity, equity, and inclusion training or for investigators to reflect a range of lived experiences. This omission has been a point of critique, as it may limit the investigator's understanding of systemic issues that affect marginalized groups.

Limitations on Remedies

While the processes provided for under the *Workplace Harassment and Violence Prevention Regulations* provide a framework for finding and implementing solutions to situations of workplace harassment and violence, they do not provide for compensation to affected employees. Employees seeking financial compensation for violence and harassment in the workplace must pursue other avenues, such as filing a grievance or a human rights complaint, if these are available in their workplace.

Implications for Employers and Employees

For Employers:

- Compliance with the regulations requires not only adherence to timelines but also thoughtful implementation of recommendations. Employers should be proactive in fostering a safe and inclusive workplace culture to prevent incidents of harassment and violence.
- The employer veto may provide flexibility but should be exercised with caution to avoid undermining trust and morale.

For Employees:

- Employees should feel empowered to report incidents of harassment or violence without fear of reprisal. Understanding their rights and the available resolution options is key.
- The ability to exit the resolution process gives agency to victims, but it is important to consider the broader implications of uninvestigated incidents.

How Nelligan Law Can Help

Navigating the complexities of workplace harassment and violence can be challenging for both employers and employees. At Nelligan Law, we provide tailored advice to ensure compliance with the *Workplace Harassment and Violence Prevention Regulations*.

- **For Employers:** We offer guidance on policy creation, training programs, and investigative processes to meet your legal obligations.
- **For Employees:** We support individuals in understanding their rights, pursuing fair resolutions, and navigating other legal remedies if needed.

[Contact us](#) today to learn how we can assist you.

By addressing workplace harassment and violence with clarity and fairness, the *Workplace Harassment and Violence Prevention Regulations* provide a framework to create safer and more respectful workplaces across Canada. Compliance with these regulations is not just a legal obligation—it's a step toward fostering a culture of trust and accountability.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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