New Federal Workplace Harassment And Violence Prevention Regulations



Workplace Harassment and Violence Prevention Regulations (the Regulations), as well as related changes to Part II of the *Canada Labour Code,* came into force on Jan. 1, 2021.

This new legal framework introduces significant changes to the obligations of **federal employers** in preventing and addressing work place harassment and violence. The framework also sets out procedural requirements for resolving complaints.

In this article, we provide answers to some of the questions employers may have related to the complaint resolution process under the Regulations, as well as provide a glossary to define some of the important terms in resolving a complaint.

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GLOSSARY

“Designated recipient” is a work unit in a work place or person is designated by an employer to receive notices of occurrences of work place harassment or violence. Concretely, this is the person who will be identified as receiving the notices in the employer’s policy.

“Notice of occurrence” is the term used to refer to an internal complaint of harassment or violence.

“Occurrence” means an occurrence of harassment or violence in the work place.

“Principal party” refers to the person who is the object of an occurrence referred to previously as the “complainant.”

“Responding party” refers to the person alleged to be responsible for the occurrence, referred to previously as the “respondent.”

“Witness” refers to a person who witnessed an occurrence or is informed of an occurrence by the principal party or responding party.

“Applicable Partner” refers to the policy committee or, if there is no policy committee, the work place committee or the health and safety representative.

Q&A

NOTICES OF OCCURENCE AND RESPONSE

Who can file a notice of occurrence?

A principal party (for themselves) or a witness (for the victim of the alleged occurrence).

Is an anonymous notice of occurrence valid?

Yes, where this notice is filed by a witness to the occurrence. However, if the notice does not contain the name of the principal party or otherwise allow their identity to be determined, it may be considered resolved and will require no further action.

Must the employer respond to a verbal notice of occurrence?

Yes. A principal party or witness may provide a notice of an occurrence in writing or orally.

How soon must the employer respond to a notice of occurrence?

The employer or designated recipient must contact the principal party within seven (7) days of the notice.

What must this response include?

The response must mention:

- That the notice has been received;
- The manner in which the work place harassment and violence prevention policy is accessed;
- Each step of the resolution process; and
- That the principal party may be represented during the resolution process.

Must an employer respond to the notice of occurrence of a former employee?

Yes. The Canada Labour Code now notably specifies that the employer’s obligations to respond to occurrences of harassment and violence in the work place apply in respect of a former employee, if the occurrence becomes known to the employer within three months after the day on which the former employee ceases to be employed by the employer.

Once they have filed their notice of occurrence, does the principal party have control over the process?

Yes, to a certain extent. They may decide to end the resolution process at any time by informing their employer or designated recipient that they choose not to continue

with the process. In such case, the employer must end the resolution process.

What are the different means of resolution available to the parties under the Regulations?

Negotiated resolution, conciliation and investigation.

SELECTION OF THE INVESTIGATOR

How is the investigator selected?

The investigator will be selected by the employer or designated recipient, from the list of investigators jointly developed with the applicable partner.

If such a list has not been developed, the investigator must be agreed to by the employer or designated recipient, the principal party and the responding party. Where an agreement is not reached within a specific period of tie prescribed by the Regulations, then the employer or designated recipient will select the investigator from the list to be published by the Canadian Centre for Occupational Health and Safety.

What qualifications must the investigator possess?

The concept of “competent person” previously applicable to the investigator no longer applies. Instead, the Regulations provide the following requirements:

- Being trained in investigative techniques;
- Having knowledge, training and experience relevant to harassment and violence in the work place; and
- Having knowledge of the Canada Labour Code, the Canadian Human Rights Act and any other legislation that is relevant to harassment and violence in the work place.

THE INVESTIGATION REPORT

Do the parties have a right to receive a copy of the report?

Yes. The employer must provide a copy of the investigator’s report to the principal party, responding party, applicable partner and, in some circumstances, the designated recipient.

Does this mean that the parties have full access to the entire analysis and the witness statements that lead to the investigator’s conclusions?

No. The Regulations only provide that the report must set out the following information:

- A general description of the occurrence;
- The investigator’s conclusions, including those related to the circumstances in the work place that contributed to the occurrence; and
- Their recommendations to eliminate or minimize the risk of a similar occurrence.

The report must not reveal, directly or indirectly, the identity of the parties nor of any person involved in the investigation.

Is the employer required to implement all the recommendations set out in the investigator’s report?

Not necessarily. The employer is required to determine, jointly with the applicable partner, which recommendations are to be implemented.

COMPLETION OF THE RESOLUTION PROCESS

How is the resolution process considered "complete"?

In any of the following circumstances:

- If a work place assessment is required under the Regulations, the review and, if necessary, update of the assessment are carried out;
- If the occurrence is considered resolved because it does not contain the name of the principal party or otherwise allow their identity to be determined;
- If the occurrence is resolved following a negotiated resolution or conciliation; or
- If an investigator has provided a report and the employer has implemented the recommendations (as appropriate).

What is the time limit for employers to complete the process?

An employer must ensure that the resolution process is completed within one year following the day on which notice of the occurrence is provided. Some possibilities of extension are provided by the Regulations.

Training

Is training mandatory under the new framework?

Yes. The employer must develop or identify appropriate training on work place harassment and violence, jointly with the applicable partner.

How soon must employers ensure that training is provided in 2021?

An employer must ensure that employees are trained as follows:

- Employees hired after Jan. 1, 2021: within three months after their first day of employment;
- Employees already employed on Jan. 1, 2021: no later than Dec. 31, 2021.

How often must training be provided thereafter?

After this initial training, all employees must be trained at least once every three years, and following any update to the training by the employer, or the employees' assignment to a new activity or role for which there is an increased or specific risk of work place harassment and violence.

What elements must the training include?

The training must be specific to the culture, conditions and activities of the work place and include the following elements:

- The elements of the work place harassment and violence prevention policy;
- A description of the relationship between work place harassment and violence and the prohibited grounds of discrimination set out in the Canadian Human Rights Act; and
- A description of how to recognize, minimize, prevent and respond to work place harassment and violence.

Who is covered by mandatory training?

The employer, the employees and the designated recipient.

Must the designated recipient receive particular/specific training?

Yes. The designated recipient must be provided with specific training preparing them for their duties before starting to assume them, and at least once every three years after that.

Thus, designated recipient training should be a priority for employers in order to have such internal resources ready to receive notices of occurrence and handle them appropriately. Employers can choose to appoint external designated if they do not have qualified and trained internal resources for this important role.

CONSULTATION WIT THE APPLICABLE PARTNER

Can the employer develop and implement a new harassment and violence prevention policy (which is required since Jan. 1, 2021), of its own initiative?

Yes and no. While the employer should definitely implement a policy drafted to comply with the legislation as soon as possible, if it is not already done, it must develop it jointly with the applicable partner.

In case of disagreement between the employer and the applicable partner, whose decision prevails?

The Regulations provide for a higher level of consultation with the applicable partner. This naturally brings to mind the following question: what happens when the employer and the applicable partner do not agree?

The Regulations confirm that if an employer and the applicable partner are unable to agree on any matter required by these Regulations to be decided on jointly by them, the employer’s decision shall prevail.

This confirms that the applicable partners have a consulting role, not decision-making authority.

REPORTING OBLIGATIONS

Must the employer keep specific records under the Regulations?

Yes. These records must be kept for a time period of 10 years, and include, among other things:

- The workplace harassment and violence prevention policy;
- The documents forming part of the work place assessment (including reviews and updates);
- A record of each employer decision where it was unable to agree with the applicable partner;
- A record of each notice of occurrence and the actions taken in response to the notice;
- A copy of investigator’s report provided under the Regulations;
- A copy of each annual report.

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