

New Measures To Prevent And Fight Psychological Harassment And Sexual Violence In The Workplace



On March 21, 2024, the National Assembly adopted Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace*. The act modifies many labor laws to create a safer and more respectfully workplace, offering improved legislative protection for victims of psychological harassment and sexual violence.

Act Respecting Labours Standards

Minimum content of the policy to prevent and manage situations of psychological harassment

As of now, the law prescribes the minimum content of any policy adopted by an employer to prevent and manage situations of psychological harassment. Consequently, a significant update will be needed to include the following:

- The methods and techniques used to identify and control the risks of psychological harassment, including behaviour of a sexual nature;
- The procedures for making complaints or reports and the persons designated to manage a complaint of harassment and its follow-up information;
- The mention of specific information and training programs that are offered on psychological harassment prevention;
- The rules governing work-related social activities;
- The protection measures for the persons concerned by a situation of psychological harassment or persons who have cooperated in the processing of a complaint or report;
- The management process, including the process that applies to any inquiry by the employer;
- The measures to ensure the confidentiality of complaints, reports, information or documents received;
- The preservation period of confidential documents, which needs to be at least a two-year period.

Employers have until September 27, 2024, to review their policy on such matters. And, no later than October 6, 2025, for all employers subject to its implementation pursuant to Bill 59, the psychological harassment prevention and complaint processing policy will have to form part of the prevention program or action plan.

Inapplicability of amnesty clauses relating to sexual violence

Under Bill 42 and in unionized workplaces, amnesty clauses in collective agreements become inapplicable in order to permanently identify sexual violence perpetrators and to prevent any subsequent offence on their part. This way, prior disciplinary measures applied to an employee for physical or psychological violence, including sexual violence, cannot be concealed. Note that such provisions remain unenforceable even when they ensue from negotiations between the employer and employee.

Intensification of employer duties regarding prevention

The Act now specifies that the employer's obligation to prevent and stop psychological harassment includes harassment from "any person" present in the workplace, including, but not limited to, clients, suppliers, and other visitors. This addition clarifies the slight jurisprudential controversy regarding the lack of liability of employers for actions of persons with whom they have no subordinate relationship.

Prohibition of employer reprisals for reporting incidents

Bill 42 strengthens employee protection by extending the prohibition of reprisals to persons who report a situation of harassment that they have witnessed. Consequently, it is prohibited for an employer to take retaliatory measures against an employee to that effect, the latter benefiting from a remedy in the event of a violation.

Labour Code

Mandatory training for arbitrators

The *Labour Code* is amended to include mandatory training on sexual violence for arbitrators to whom grievances concerning psychological harassment are referred. This new requirement aims to ensure increased sensitivity among arbitrators regarding issues related to sexual violence and to eliminate prejudice surrounding victims.

Act Respecting Industrial Accidents and Occupational Diseases

Limited access to medical records

When someone files a claim for an employment injury with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST), intervenors have access to the person's medical records in order to process the claim. Under Bill 42, the employer's right to access this medical record is expressly restricted. This modification covers all types of employment injuries, including those resulting from

sexual violence.

New presumptions for victims of sexual violence

Bill 42 introduces in the *Act respecting industrial accidents and occupational diseases* two legal presumptions to facilitate recognition of employment injuries resulting from sexual violence. The first presumption states that a worker's injury or disease is presumed to have arisen out of or in the course of the worker's work when it results from sexual violence suffered by the worker and is committed by the worker's employer, the employer's officers, or a worker whose services are used by the employer. The second presumption provides that a worker's disease arising within three months after the worker suffered sexual violence at the workplace is presumed to be an employment injury. This addition considerably reduces the burden of proof borne by the victims.

Imputation to all employers of employment injuries resulting from sexual violence

The new exception in matters of imputation establishes that where an employee's injury is the result of sexual violence, benefits related to the injury will now be imputed to employers in all units.

Distinct two-year period to file a claim relating to sexual violence

The time limit established to file a claim with the CNESST for an employment injury resulting from sexual violence is set to two years, as opposed to the six-month usual period. In addition, if the labor relations division of the *Tribunal administratif du travail* considers it likely that psychological harassment, within the meaning of the ARLS, has caused the worker an employment injury, and it reserves its jurisdiction over reparation measures, it is as of this moment that the two-year period available to the worker to file a claim begins to run.

Act Respecting Occupational Health and Safety

Definition of "sexual violence"

The definition of "sexual violence", added to the *Act respecting occupational health and safety*, provides that any form of violence targeting sexuality or any other misconduct, including unwanted gestures, practices, comments, behaviours or attitudes with sexual connotations, whether they occur once or repeatedly, is sexual violence. It also includes all violence relating to sexual and gender diversity. Therefore, it will be essential for employers to stay alert and seriously address any misconduct of a sexual nature that may occur in the workplace. This includes, of course, any comments, jokes, or compliments of a sexual nature which, to this day, are unfortunately too often tolerated in the workplace.

Conclusion

The new measures introduced by Bill 42 are meant to enable intervenors to better prevent and fight against psychological harassment and sexual violence, and to support victims of such misconduct more adequately, all with a view to guarantee respectful and caring work environments. Given the onerous employer obligations in this matter, vigilance should be exercised, and it is safe to say that adjustments will be necessary both in practice and internal documentation.

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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