

# Québec Adopts New Bill To Tackle Psychological Harassment And Sexual Violence In The Workplace



On March 27, 2024, Bill 42, [\*An Act to prevent and fight psychological harassment and sexual violence in the workplace\*](#) (Act), was sanctioned by the Lieutenant-Governor of Québec. The Act's purpose is to provide greater protection to workers who experience harassment and sexual violence in the workplace, as well as to facilitate the exercise of their recourses to ensure such protection. It also establishes a few more practical prevention measures that employers could implement.

In conjunction with the adoption of Bill 42, Québec's Minister of Labour (Minister) announced the establishment of a specialized group within the Administrative Labour Tribunal (ALT), consisting of administrative decision-makers and conciliators trained in sexual violence matters. The establishment of this group aims to make the process more accessible for individuals who file complaints or reports of sexual harassment or violence in the workplace.

This bulletin summarizes the key amendments made to certain Québec labour laws under the Act. While some provisions came into force on the date of assent of the Act, others will come into force later.

## **Amendments to Québec's Labour Code**

Under the new provisions of the Act, all arbitrators who receive grievances concerning psychological harassment will be required to complete mandatory training on sexual violence. The conditions for this training, such as its content and duration, as well as the persons or bodies authorized to offer it, will be determined by the Minister following consultation with the *Comité consultatif du travail et de la main-d'Suvre*, Québec's labour and workforce advisory committee. Additionally, parties to a grievance involving psychological harassment may also request a pre-hearing conference.

## **Amendments to the Act Respecting Industrial Accidents and Occupational Diseases (AIAOD)**

The Act also provides important amendments to the AIAOD, namely the introduction of two legal presumptions to facilitate proof so that an employment injury resulting from sexual violence may be recognized.

The first of these presumptions 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, any of the employer's executive officers or any of the employer's other workers.

The second presumption provides that a worker's disease arising within three months after the worker suffered sexual violence in the workplace is presumed to be an employment injury.

The Act also extends the time limit from six months to two years for filing a claim for an employment injury or occupational disease resulting from sexual violence. These amendments are intended to provide victims with more time to take the necessary steps, given that the main reason for denying psychological harassment compensation claims is the expiry of the time limit. Moreover, where the ALT deems it likely that the worker has suffered an occupational injury stemming from psychological harassment, certain time limits provided for in the AIAOD will be calculated from the date of the ALT's decision, provided that a notice of election for such an injury has not already been filed with Québec's compensation benefits administrator, *Commission des normes, de l'équité, de la santé et de la sécurité au travail* (CNESST). This also applies when similar decisions are rendered in the context of psychological harassment remedies arising from other statutes or agreements.

Changes were also made to certain rules pertaining to the right of access to workers' medical records to ensure the confidentiality of such records. In addition, specific offences were created for breaching any of these rules. Furthermore, an employer disputing a claim will not have access to the medical or physical rehabilitation record held by the CNESST. A health professional designated by the employer may provide the latter with a summary of the record and an opinion but by communicating only the information necessary to enable the employer to exercise its rights under the AIAOD. An employer or designated health professional who contravenes any of these rules will be deemed to have committed an offence and will be liable to a fine ranging from C\$1,000 to C\$5,000 in the case of an individual and from C\$2,000 to C\$10,000 in any other case.

The provisions concerning the new presumptions, time limits for filing a claim and access to workers' medical records will come into force on September 27, 2024.

## **Amendments to the Act Respecting Labour Standards (ARLS)**

Among the amendments contained in the Act, the Minister prescribes the minimum content of the workplace policy to prevent and manage situations of psychological harassment, which employers have been required to adopt since 2019 pursuant to the ARLS. Such policy must set out the following:

- The methods used to identify, control and eliminate the risks of psychological harassment, with particular emphasis on behaviour of a sexual nature
- The specific information and training programs on psychological harassment prevention that are offered to employees, as well as to persons designated by the employer for managing complaints and reports
- The recommendations on behaviours to adopt when participating in work-related social activities
- The persons designated by the employer for managing complaints and reports and their names
- The procedures for filing a complaint or report with the employer or for providing the employer with information or documents, the person designated to manage such complaints, reports, information and documents, and the follow-up information to be provided by the employer

- The protection measures for the persons affected by a situation of psychological harassment and those who have cooperated in the handling of a complaint or report regarding such a situation
- The directives for the employer's internal investigation process

The policy must also set out the measures taken for ensuring the confidentiality of complaints and documents. Documents made or obtained in the course of managing a situation of psychological harassment must be preserved for a period of two years. The Act provides that the policy will form part of the prevention program or action plan that the employer is required to implement under the *Act respecting occupational health and safety*.

The amendments also specify employers' obligations to prevent psychological harassment, including taking reasonable steps to prevent psychological harassment from any person in the workplace. This provision further clarifies that employers also have an obligation to protect their employees against harassment from customers and suppliers.

The Act further aims to prevent the use of amnesty clauses in individual employment contracts, collective agreements, collective agreement decrees or any other agreement relating to conditions of employment. In Canada, many collective agreements contain amnesty clauses, allowing for the removal of disciplinary measures from an employee's record after a specified period, which usually ranges between six and 24 months. An amnesty clause provides that, when determining an appropriate disciplinary measure to impose on an employee, an employer may not consider any disciplinary measure taken against that employee prior to the amnesty period. However, pursuant to a new section in the Act, if an employee has previously been disciplined for physical or psychological violence, including sexual violence, an employer must now heed previous disciplinary measures imposed on an employee when disciplining them for new acts of violence. This addition to the Act ensures that disciplinary measures involving these forms of violence cannot "lapse," allowing employers to establish a progression of disciplinary actions.

The Act also provides that employers may not take reprisals against or impose any other sanction on employees on the grounds that the employee has made a report to the employer on psychological harassment behaviour targeting another person.

The provisions of the Act specify that, in settling a psychological harassment complaint, the parties must undertake to preserve the confidentiality of the settlement process. However, the parties may agree to waive this confidentiality obligation by written agreement, in which case they must specify the elements that are the subject of this agreement and indicate when the agreement takes effect.

The Act also provides mediators with the authority to end a mediation if they consider, in the circumstances, that their intervention is not useful or appropriate. This amendment aims to allow for a certain flexibility concerning the various realities of complaints regarding psychological harassment and sexual violence, including situations where it may be impossible to reach an agreement. It also reduces the risk of secondary victimization that may be caused by the pursuit of a settlement at all costs. Secondary victimization occurs when victims are subjected to situations of minimization or insensitivity to the violence they previously experienced that then exacerbates their initial trauma.

The Act also provides that the ALT may order an employer to pay punitive damages to an employee who has been the victim of psychological harassment where the employer is personally responsible for such harassment. These punitive damages may go beyond compensation provided for under the occupational health and safety regime and may be

awarded even if the employee is likely to suffer from an employment injury resulting from that harassment. For awarding punitive damages, the ARLS does not require proof of unlawful and intentional interference, contrary to section 49 of the *Charter of Human Rights and Freedoms*. Punitive damages are not intended to compensate for harm suffered but are used and evaluated for prevention, deterrence and denunciation. It should be noted that this amendment is part of a jurisprudential debate as to whether the awarding of damages under a compensation plan constitutes double compensation.

The Act also raises the fines for offences against any provision concerning psychological harassment. Employers will be liable for fines ranging between C\$600 to C\$6,000 for a first offence, and fines ranging between C\$1,200 to C\$12,000 for subsequent offences.

The amendments to be made to workplace psychological harassment policies, as well as those pertaining to mediations and the confidentiality of settlements, are set to come into force on September 27, 2024.

## **Amendments to the Act Respecting Occupational Health and Safety (AROHS)**

Pursuant to amendments provided under the Act, sexual violence will be defined by the AROHS as “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, including violence relating to sexual and gender diversity.”

The amendments to the AROHS provide the CNESST with the regulatory authority to determine measures to be implemented by employers to prevent and eliminate sexual violence in the workplace. If the CNESST does not adopt a regulation to this effect within two years of the assent of Bill 42 to prevent and combat psychological harassment and sexual violence in the workplace, the Québec government may enact such regulation itself.

In addition, the policy to prevent and manage psychological harassment under the ARLS will form an integral part of the prevention program provided for under the AROHS. This requirement will come into force on October 1, 2025, on which date the regulatory provisions on prevention and participation mechanisms in an establishment will also come into force.

## **Conclusion**

Given the increase in recourses related to psychological and sexual harassment in the workplace, the passing of this Act highlights a willingness to legislate on strengthening the prevention of and fight against psychological harassment and sexual violence in the workplace.

Pending the coming into force of certain provisions of the Act, employers should review their policies and practices regarding the prevention of psychological harassment and sexual violence in the workplace to comply with the new legal requirements and provide their employees with healthy and safe work environments.

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