

Québec Follows In Other Provinces' Footsteps And Deploys An Arsenal Of Measures And Protections Against Psychological Harassment And Sexual Violence In The Workplace



On March 22, the National Assembly passed Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace* (hereinafter “**Bill 42**”), which has since been assented on March 27.

As a result, a number of laws regulating working conditions for workers in Québec and the corresponding obligations of employers have been revised, with the clear aim of preventing and fighting harassment (in all its forms), as well as ensuring greater protection for workers in this respect, including regarding the remedies relating to this protection.

Thus, the *Act respecting industrial accidents and occupational diseases* (the “**AIAOD**”), the *Labour Code*, the *Act respecting labour standards* (the “**LSA**”) and the *Act respecting occupational health and safety* (the “**AOHS**”) have been partially amended.

The purpose of this publication is therefore to provide an overview of the main changes arising from Bill 42, as well as the general considerations that employers will need to keep in mind in that context.

In the context of industrial accidents and occupational diseases

- **Extension of the time limit for filing claims** : Bill 42 extends from six (6) months to two (2) years the time limit for filing a claim with the *CNESST* for an employment injury resulting from sexual violence.
- **The addition of legal presumptions** : In order to lighten the burden of proof and facilitate recognition of an occupational injury resulting from sexual violence, the following legal presumptions have been introduced:
- Unless it occurs in a strictly private context, an injury or a disease resulting from violence of a sexual nature suffered by a worker and committed by his or her employer, one of its directors in the case of a corporation, or one of the workers whose services are used by this employer for the purposes of the same

establishment, is presumed to have occurred “by reason of” or “in the course of” his or her work; and

- A worker’s disease that occurs within three (3) months of being subjected to sexual violence in the workplace is presumed to be an employment injury.
- **Imputation of the costs of benefits due as a result of sexual violence :** When the sexual violence in question has been committed by the worker’s employer, a director in the case of a corporation, or a representative in their relations with workers, the costs will be borne exclusively by the employer of the victim.
- **Limited access and penalties for unlawful disclosure of medical records:** As it is already the case, access to workers’ medical files held by the *CNESST* is limited to health professionals designated by employers. Bill 42 specifies that information shared with employers must be limited to what is strictly necessary to provide them with an opinion and summary allowing them to exercise their rights. Failure to comply with such disclosure restrictions will result in fines ranging from \$1,000 to \$5,000 for individuals and from \$2,000 to \$10,000 for companies.

In the context of occupational health and safety

- **Introduction of a definition of “sexual violence”:** Section 1 of the AOHs defines violence of a sexual nature 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”*.

With regards to employment standards

- **Minimum content that must be included in the policy for preventing and manage situations of psychological harassment:** In a manner similar to what prevails in most other provinces, the policy for preventing and manage situations of psychological harassment that the employer must adopt ought from now on to contain multiple elements, including the following:
 - The specific information and training programs on psychological harassment prevention that are offered to employees;
 - The procedures for making complaints or reports to the employer or providing information or documents to the employer as well as the information on the follow-up that must be provided by the employer;
 - The measures to protect the persons concerned by a situation of psychological harassment and the persons who have cooperated in the processing of a complaint or report regarding such situation;
 - The process for managing a situation of psychological harassment, including the process that applies to the holding of an inquiry by the employer;
 - The measures to ensure the confidentiality of complaints, reports, information or documents received and to ensure a preservation period of at least two (2) years for the documents made or obtained in the course of managing a situation of psychological harassment.
- **End of amnesty-type clauses for incidents involving physically or psychologically violent behaviour:** Individual employment contracts, collective agreements, decrees or other agreements on working conditions can no longer prevent an employer from taking into account a disciplinary measure previously undertaken against an employee for physical or psychological violence, including sexual violence, when imposing a new disciplinary measure concerning a new case of misconduct relating to this type of violence.
- **Punitive damages:** The *Tribunal Administratif du travail* can now order an employer to pay punitive damages to an employee who has been the victim of psychological harassment, even though the employee is suffering from an employment injury resulting from that harassment.

- ***Regulatory offences relating to psychological harassment:*** The has been granted regulatory power to determine, by regulation, measures aimed at preventing or putting an end to a situation of sexual violence, thus reinforcing its role in protecting workers against such situations.

Conclusion and transitional provisions

It is important to note that a significant portion of these changes came into force on the date Bill 42 was assented to, i.e. March 27, 2024.

That being said, the main amendments affecting the *AIAOD* and those relating to the minimum mandatory content of the policy for preventing psychological harassment and dealing with situations of harassment will only come into force as of September 27, 2024.

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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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