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CHIEF PROFESSIONAL CONDUCT AND CULTURE

WORKPLACE HARASSMENT AND VIOLENCE PREVENTION CENTER OF EXPERTISE

Employer's Guide: Workplace Harassment and Violence Prevention Regulations for Defence Team Public Service Employees

Canada



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What you need to know

Background

To strengthen the policies that keep our employees safe, the [Work Place Harassment and Violence Prevention Regulations](#) (WHVPR), under the Canada Labour Code (CLC) Part II, came into effect on January 1, 2021. The new standalone Regulations replace the existing Prevention of Violence framework outlined in the Canada Occupational Health and Safety (COHS) Regulations. The new Regulations, strengthen provisions in the CLC by putting in place one comprehensive approach that takes all forms of harassment and violence into consideration.

All complaints of harassment or violence in the workplace, initiated prior to January 1, 2021, will be managed by the previous policies.

The Regulations apply to all Department of National Defence (DND) public service employees and Canadian Armed Forces (CAF) members involved in an occurrence with a DND employee, or any person granted access to the workplace. The Vice Chief of the Defence Staff (VCDS) has been tasked with addressing the potential changes to the CAF harassment policies and programs. For now, [DAOD 5012-0 Harassment Prevention and Resolution](#), and the [Harassment Prevention and Resolution Instructions - PDF version](#) will continue to apply when occurrences only involve CAF members.

The new WHVPR mandate that employers create a Workplace Harassment and Violence Prevention Policy. The Defence Team has created an interim policy ([Defence Team Workplace Harassment and Violence Prevention Interim Policy](#)) to meet the initial regulatory requirements and it will be updated as implementation tools are refined. Chief of Professional Conduct and Culture (CPCC) has been tasked with developing policies and programs to support the new Regulations.

Overview

Prevention

The new Regulations focus heavily on prevention and encourage attempts to resolve occurrences early, locally and informally. DND is committed to promoting a workplace that is physically and psychologically safe and free from harassment and violence. Prevention will be carried out by conducting workplace assessments that consist of the identification of hazards and risks related to harassment and violence in the workplace, as well as implementing preventive measures to eliminate or minimize the risks related to workplace harassment and violence.

Resolution

The new Regulations include a defined timeframe in which to resolve an occurrence. Employers must initiate the resolution process no later than 45 days from the receipt of the Notice of Occurrence and the occurrence must be deemed resolved within one year of receipt, including the implementation of any resulting recommendations.

Support

Defence Team personnel who are affected by or witness an occurrence of harassment or violence in the workplace that poses an immediate threat to individual health and safety, should immediately call the 911 emergency service and/or the Military Police if the threat occurs on DND property. Defence Team personnel

should also inform their supervisor/manager or another manager in the vicinity. DND and the National Health and Safety Policy Committee (NHSPC), have jointly developed emergency procedures which can be found in the [Workplace Harassment and Violence Prevention Interim Policy](#) (Annex B) to assist management to develop and prepare local procedures for responding to emergencies should they arise.

During the resolution process, both the principal party and responding party have the right to be represented or accompanied by a colleague, friend, family member or the person of their choosing for support.

DND offers support and assistance to all employees and their family members who are affected by workplace harassment and violence through the confidential [Employee Assistance Program](#) (EAP). For support and resources related to violence, conflict and abuse, consult [other support services and resources](#) available to Defence Team public service employees, or talk to an EAP Peer Advisor by calling HR Connect at 1-833-747-6363 from 8 a.m. to 4 p.m., Monday to Friday.

CAF members seeking assistance may contact Member and Family Assistance for confidential counselling service, by calling 1-800-268-7708 24 hours a day, seven days a week.

Confidentiality

The new Regulations include robust privacy and confidentiality requirements. The contents of the Notice of Occurrence and the investigator's report will be shared with the supervisor/manager or the Designated Recipient, and the parties who are involved with the occurrence. The workplace health and safety committee or health and safety representative will also receive a copy of investigator's report. The contents of the investigator's report must not reveal, directly or indirectly, the identity of parties and witnesses involved in the resolution process.

What to do when you receive a Notice of Occurrence

For a visual representation, consult the [Workplace Harassment and Violence Prevention \(WHVP\) Reporting and Resolution Process infographic](#).

A member of the Defence Team who experiences or witnesses harassment and violence in the workplace can report an occurrence in one of three ways:

1. to their supervisor/manager either verbally or in writing using the [Notice of Occurrence form](#);
2. to the Designated Recipient (DR) as a third party outside of their chain of command. When the DR receives a Notice of Occurrence, they follow the same process as supervisors and managers to resolve the occurrence;

**If the occurrence involves the supervisor or manager, the Notice of Occurrence must be submitted to the DR*

3. anonymously by submitting a Notice of Occurrence verbally or in writing.

Harassment and Violence Prevention Process once the supervisor/manager receives a Notice of Occurrence

Initial Review

When a supervisor/manager receives a Notice of Occurrence, action must be taken if there are any immediate risks to the health and safety of any members of the Defence Team.

An initial review must be conducted to ensure all required information is included: name of the principal party and responding party, if known; date of the occurrence; and detailed description of the occurrence. If the notice does not contain all of the required information, the principal party may provide the missing information during the initial meeting. However, a principal party or a witness may choose to provide an anonymous Notice of Occurrence.

In view of enabling prevention, if the notice does not contain sufficient information to allow the identity of the principal party to be determined, the occurrence is deemed resolved. In these instances, the nature of the occurrence, if known, will be shared with the local Workplace Health and Safety Committee (WHSC) that will review and, if necessary, update the workplace harassment and violence assessment and determine if any additional preventative measures are required. **All information regarding the identity of parties must not be provided to the WHSC to maintain privacy and confidentiality of the person(s) involved.**

- ❖ **Note:** During negotiated resolution, the responding party should only be contacted once agreement is received from the principal party. However, the responding party must be contacted if the principal party chooses to proceed with conciliation and/or an investigation. The goal is to resolve the Notice of Occurrence at the most informal level. Some cases can be resolved at the negotiated resolution level civilly precluding the need to involve the responding party.

Official acknowledgement of receipt of the Notice of Occurrence

When a Notice of Occurrence is received, either verbally or in writing, the supervisor/manager must respond to the principal party or witness within **seven (7) calendar days** of receipt using the Response to a Notice of Occurrence Principal Party [Template](#).

If the notice is provided verbally, the person receiving the notice can work with the principal party or witness to capture the required information in the [Notice of Occurrence form](#).

- ❖ **Note:** All Notices of Occurrences must be tracked and health and safety records kept in a safe and secure location (Protected B). As such, receipt of any Notice of Occurrence must be reported to the [Workplace Harassment and Violence Prevention Center of Expertise](#) (WHVP CoE) within seven (7) calendar days as well as the Response to a Notice of Occurrence. Refer to the section, "Tracking and Reporting Obligations" for details of the records and data required for the WHVP CoE's reporting requirements.

Negotiated resolution

The supervisor/manager, principal party and, if contacted, responding party, must make every reasonable effort to resolve the occurrence and initiate resolution within 45 days of the notice's submission.

During the resolution process, the principal party and responding party have the right to be represented or accompanied by a person of their choice for support. The representative, of either the principal or responding party, can provide advice and guidance on any matters they feel are relevant. In addition, the representative may be able to speak on the behalf of the principal party or responding party, but only regarding matters related to the administration of the resolution process, such as:

- a. scheduling meetings or interviews; and
- b. receiving updates on the status of the resolution process.

The parties will still be required to personally provide the following, during conciliation or the investigation:

- a. information about the occurrence; and
- b. respond to questions regarding the occurrence during negotiated resolution, conciliation and/or the prevention investigation.

The supervisor/manager will work with the principal party to attempt to determine together whether the occurrence falls within the [definition of harassment and violence](#) as outlined at subsection 122(1) of the *CLC*, Part II which is defined as: *"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, including any prescribed action, conduct or comment"*.

- a. If both the supervisor/manager and the principal party agree that the occurrence does not fall within the definition of harassment and violence, then the occurrence will be deemed resolved. However, parties may continue to work together to find an informal resolution to address the situation;
- b. If the supervisor/manager does not believe that the occurrence falls within the definition of harassment and violence but the principal party disagrees, and wishes to continue with the resolution process, the principal party has the option of:

- continuing to work with the supervisor/manager to find a negotiated resolution;
- pursuing conciliation/alternative dispute resolution; and/or
- requesting a prevention investigation.

- c. If both the supervisor/manager and the principal party agree that the occurrence meets the definition, continue with the resolution process.

If an occurrence is submitted by a witness or anonymously, conduct an initial meeting with the principal party to confirm the details of the occurrence, whether it falls under the definition, and if the principal party agrees to continue the process. If the principal party does not wish to continue with the process, the occurrence is considered resolved. However, the applicable Workplace Health and Safety Committee (WHSC) or Health and Safety Representative should be advised of the nature of the occurrence to allow for a review of the workplace assessments and update if necessary. **In order to maintain privacy and confidentiality, no information that could identify any party involved can be provided to the WHSC or Health and Safety Representative.**

The principal party can request conciliation/alternative dispute resolution (ADR) and a prevention investigation at the same time, however, a preventative investigation will only be considered once reasonable effort has been demonstrated at the earlier stages in the process. These processes can be conducted in tandem until:

- Resolution is reached through the requested conciliation/ADR process; or
- Up until the investigator provides the report to the employer.

As the supervisor/manager, you are responsible to determine if modified working conditions should be implemented for the principal party or responding party during the process such as separate work areas, different shifts, different work partners, etc.

- ❖ **Note:** If at any point during the interaction with the witness, principal party or responding party, there are concerns for their mental health, please encourage them to contact [EAP](#) at **1-800-268-7708** or to consult the [Support Services list](#) that are available to DND employees.

Once the review of the occurrence has been done to ensure it meets the definition of harassment and violence, your role as the supervisor/manager requires you to work with the principal party to attempt a negotiated resolution. The Regulations state that the employer, principal party and responding party, if notified at this point, **must make every reasonable effort** to resolve an occurrence during the negotiated resolution process.

Efforts at the negotiated resolution stage should be through direct dialogue with the principal party and active listening by asking open-ended questions in an attempt to find possible options that will resolve the occurrence. The most beneficial means to resolving the occurrence will be through resolution at the lowest level involving respectful and sincere dialogue.

Resolutions are tangible and reasonable measures that can be put in place to resolve and help prevent further occurrences.

Negotiated resolution is an opportunity to:	Negotiated resolution is not an opportunity to:
✓ Share harassment and or violence experience and impact	• Accuse, confront or discipline

✓ Share tangible measures that can be implemented to resolve and prevent further occurrences <i>*Consult 'Resolution options' below for more information</i>	• Make a request that does not fall in line with responding or preventing the occurrence <i>*Consult 'Resolution options' below for more information</i>
✓ Negotiate a resolution in a unified way	• Make orders through confrontation
✓ Respond and prevent harassment and violence in the workplace	• Resolve other issues Ex: issues concerning classification, collective agreements, letters of expectations, performance management, etc.
✓ Restore and mend the relationship between parties involved	• Make unreasonable requests

Resolution options:

A resolution is a tangible and reasonable measure that can be implemented by the employer to respond and prevent further occurrences of harassment and violence within the workplace. As harassment and violence are seen as risks to overall workplace health and safety, resolution options are considered mitigation measures and are implemented to ensure that a principal party and others feel safe and comfortable in the workplace all whilst preventing further occurrences.

Below are examples of what are and what are not considered resolutions within (WHVP):

WHVP Resolution:	Not a WHVP Resolution:
<p>Workplace training regarding:</p> <ul style="list-style-type: none"> • Communication; • Conflict resolution; or • WHVP, etc. <p>The WHVP Center of Expertise can propose training according to a specific occurrence as well as propose a training plan.</p> <p>Workplace design, including:</p> <ul style="list-style-type: none"> • Change office location; • Placement of furniture; or • Access to building, etc. <p>Administrative practices, including:</p> <ul style="list-style-type: none"> • Workplace Assessment; • Assignments; • Implementing stronger internal procedures; • Outlining of roles and responsibilities; • Review of internal procedures, etc. 	<ul style="list-style-type: none"> • Monetary compensation; • Vacation days; and • Request that involves prescribed action against the responding party (i.e. have the responding party dismissed). <p>(See below regarding disciplinary/administrative measures)</p>

If the supervisor/manager believes there could be a performance management issue or considers remedial/disciplinary measures following an established case of employee misconduct, contact the local [Labour Relations Advisor](#).

The CLC resolution process addresses harassment and violence as a workplace hazard and obligates management to address and prevent similar occurrences by looking at the risks that exist (environmental, organizational, etc.). The [WHVP Assessment Guide](#) (accessible only on the National Defence network) was developed by subject matter experts, in consultation with the National Health and Safety Policy committee to identify risks within the workplace.

- If an accommodation is required within the workplace, a request can be initiated through the Office of Disability Management as a separate but parallel process.
- If the principal party, responding party (if made aware) and the employer come to an agreement through a negotiated resolution then the occurrence is deemed resolved and the file is closed.
- If appropriate measures have been implemented by the employer to respond and to prevent reoccurrence and the principal party feels these measures are insufficient and does not want to close the file, the principal party will be requested to propose additional resolution options to present to the employer as reasonable effort to resolve the occurrence to their satisfaction.

Negotiated resolution may involve one or more informal meetings with:

- a. supervisor/manager and principal party;
- b. supervisor/manager, designated recipient and principal party;
- c. supervisor/manager, principal party and responding party (if the principal party agrees to meet with responding party); and/or
- d. supervisor/manager, designated recipient, principal party and responding party (if the principal party agrees to meet with responding party);

If the principal party agrees to meet with the responding party, the supervisor/manager must contact the responding party using the [Response to a Responding Party Template](#). This correspondence must be kept as a record (refer to “Tracking and reporting obligations” for more information).

If an agreement with the principal party is reached through a negotiated resolution, then the occurrence is deemed resolved. The supervisors/manager must then advise the [WHVP CoE](#) for tracking purposes and close the file.

If parties are unable to come to a negotiated resolution agreement or if the circumstances warrant, the principal party has the option of requesting a conciliation/ADR and/or a prevention investigation. All parties must make every reasonable effort to resolve the occurrence before the matter is referred to an investigator.

- ❖ **Note:** Monthly updates regarding the status of the process to all parties involved must be provided. Supervisors/managers are encouraged to use the [Monthly Resolution Process Status Update email template](#).

Conciliation/Alternative Dispute Resolution (ADR) Process

Conciliation/ADR is an informal and confidential process in which a neutral person, the conciliator, helps the parties find a satisfactory solution. Conciliation/ADR can only proceed if both the principal party and responding

party agree to it and agree on who will facilitate the process. If Conciliation/ADR cannot proceed or is unsuccessful, and the principal party chooses to proceed with the resolution process, the Notice of Occurrence must be investigated.

Conciliation/ADR can run parallel to resolution methods, such as negotiated resolution or a prevention investigation.

If Conciliation/ADR is chosen, contact the [Conflict and Complaint Management Services Centres](#) for Conciliation/ADR services. They can provide guidance to help move parties through the resolution process. All Alternative Dispute Resolution processes are confidential, therefore, as the employer, you will only be informed if the process was or was not successful.

If the Conciliation/ADR process was successful, the occurrence is deemed resolved. Advise the [WHVP CoE](#) for tracking purposes and close the file. All actions related to a Notice of Occurrence or its resolution must be documented and retained as a record (refer to “Tracking and reporting obligations” for more information).

- ❖ **Note:** Negotiated Resolution and Conciliation/ADR are considered the best means for a mutually acceptable resolution. Although a prevention investigation will take individual perspectives into account, its primary focus will be on determining organizational root cause of the occurrence(s) and developing recommendations on how to prevent occurrences within the workplace.

Workplace Prevention Investigation Process

Workplace prevention investigations are preventive in nature and focus on the root cause of occurrences in the workplace and develop recommendations around how to prevent similar occurrences.

For workplace misconduct, supervisors/managers should contact [Labour Relations](#) as a separate, but parallel process. The outcome of the prevention investigation cannot be used for remedial or disciplinary measures.

A principal party may choose to proceed with a preventive investigation at any point in the resolution process as long as reasonable effort has been demonstrated at the Negotiated Resolution and conciliation steps. As the supervisor/manager, you must:

- Provide the principal party and the responding party with an [Investigation Elected notice](#) that a prevention investigation will be carried out.
- Provide the following information to the principal party and responding parties about the proposed investigators:
 - a. their name;
 - b. if they are an employee of the employer, their job title and the name of their immediate supervisor;
 - c. a description of their knowledge, training and experience demonstrating in investigative techniques, harassment and violence in the workplace and the Canadian Human Rights Act; and
 - d. a description of any experience that they have which is relevant to the nature of the occurrence that is to be investigated.
- ❖ **Note:** The [WHVP CoE](#) is responsible for contracting an investigator from the National Master Standing Offer, until further notice. All actions related to a Notice of Occurrence or its resolution must be documented and retained as a record. Monthly updates regarding the status of the resolution process must be provided to the principal party and responding parties (if involved in the process).

All parties must then agree on the selection of the investigator, yourself as the employer, the principal party and the responding party.

- a. If there is no agreement within 60 days of the initial notice of occurrence, an investigator with the proper knowledge, training and experience will be selected by the Canadian Centre for Occupational Health and Safety (CCOHS).

Once an investigator has been chosen or provided, you, as the employer, will share all relevant information with the investigator such as:

- a. Names and contact information of all the parties including witnesses
- b. General description of the Notice of Occurrence
- c. Work that has been done to date to resolve the occurrence

Once the investigator has completed the investigation process, they will provide you, as the employer, and the designated recipient for tracking purposes, with a copy of the report. The supervisor/manager must then:

- a. Provide a copy of the investigator's report to the principal party, responding party, the local workplace health and safety committee or health and safety representative.
- b. Jointly determine with the local workplace health and safety committee or the health and safety representative the recommendations to be implemented from the investigator's report. If the employer and the workplace health and safety committee or health and safety representative cannot agree on which prevention recommendations set out in the investigator's report should be implemented, then it is the employer's decision (at the appropriate authority level) as to which prevention recommendations to implement that prevails. However, the employer (at the appropriate authority level) must document its decision and the reason for that decision.
- c. Inform the principal and responding parties of which prevention recommendations will be implemented and by when.

- ❖ **Note:** Privacy and confidentiality must be maintained throughout the entire process. Privacy requirements do not allow information to be disclosed about the occurrence unless it is necessary for the investigation, required when taking corrective measures, or legally necessary. Employees and other parties involved in the process must understand and follow these requirements.

Final steps

The resolution process, including any agreed prevention recommendations, must be completed and implemented within one year after the Notice of Occurrence is submitted.

The occurrence is deemed resolved once the recommendations are implemented. Advise the [WHVP CoE](#) for tracking purposes and close the file. Further details on policies regulating the process can be found on the [Workplace Harassment and Violence Prevention Interim Policy web page](#).

Training and support

To support this policy, all Defence Team personnel are required to complete the mandatory training, [Harassment and Violence Prevention for Employees](#) (available through GC Campus) within the first 3 months of employment and at least once every three years.

Visit the [Training section](#) of the WHVP web page to learn more about the specific training required for Defence Team members, supervisors/managers, Workplace Health and Safety Committee members, Health and Safety representatives, Designated Recipients, and Harassment and Violence Specialists. For any technical questions regarding the new Harassment and Violence Prevention policy and process, please contact [WHVP CoE](#).

The [Conflict and Complaint Management Services Centres](#) also offer helpful training and tools for managing conflict.

If you are concerned for the mental health of the parties involved in the occurrence and you need guidance or coaching on how to manage the situation, please contact Health Canada Employee Assistance Program (EAP) at **1-800-268-7708** or **1-800-567-5803 (TTY)** and request the managers' coaching services.

For CAF members, contact Member and Family Assistance services at **1-800-268-7708** for 24 hour, 7 days a week bilingual telephone and face to face confidential counselling services.

Tracking and reporting obligations

DND has significant reporting obligations under the new Regulations such as a requirement to keep records for a period of ten (10) years and provide an annual report to Employment and Social Development Canada (ESDC). All Notices of Occurrences as well as supporting documents must be kept in a safe and secure location (Protected B).

The supervisor/manager must track and record the following information and report to the [WHVP CoE](#) to fulfill departmental reporting and record keeping obligations:

- Any Notice of Occurrence must be reported to the WHVP CoE within seven calendar days of receipt.
- The Response to a Notice of Occurrence;
- Whether the occurrence was related to sexual harassment and violence or non-sexual harassment and violence;
- If the occurrence falls under one of the prohibited grounds of discrimination set out in subsection 3(1) of the Canadian Human Rights Act;
- The location where the occurrence took place;
- The type of professional relationships that existed between the principal and responding parties;
- The manner and date that the occurrence was resolved (negotiated resolution, Conciliation/ADR or prevention investigation);
- For each instance where a time limit set out is not met, a document that sets out the reason for the delay;
- A copy of each report that is prepared by an investigator under subsection 30(1), the recommendations implemented, and/or the employer's decision and the reason for that decision and the date on which recommendations were implemented.
- If an occurrence results in the death of a DND employee, the supervisor/manager who receives the Notice of Occurrence must report the fatality to ESDC within 24 hours of notification as per the DND General Safety Hazardous Occurrence standards.

Annexes

Annex A: Templated messages

Below are links to templated messages that can be used by supervisors/managers in response to receiving a notice of occurrence and during the resolution process.

- [Response to Responding Party Regarding a Notice of an Occurrence](#)
- [Response to Principal Party Regarding a Notice of an Occurrence](#)
- [Monthly Resolution Process Status Update](#)
- [Investigation Elected – Informing Principal Party](#)

Annex B: Useful definitions

Applicable Partner: To be read as a reference to the National Health and Safety Policy Committee (NHSPC)

Designated Recipient: A work unit in a workplace or person that is designated by an employer under section 14 of the Workplace Harassment and Violence Prevention Regulations, to whom a notice of occurrences may be submitted

Harassment and Violence: The CLC, Part II defines harassment and violence at subsection 122(1) as: “*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, including any prescribed action, conduct or comment*”.

Occurrence: An incident of harassment and violence in the workplace.

Principal Party: A DND employee or CAF member who is the object of an occurrence

Responding Party: A DND employee, supervisor or manager, CAF member, or any person granted access to the workplace who is alleged to have been responsible for the occurrence.

Witness: A person who witnessed an occurrence or is informed of an occurrence by the principal or responding party

Workplace: Any place where an employee is engaged in work or work relationships for the employer as per section 122(1) of CLC. This may include, but is not limited to, the workplace or any location or event related to work including:

- working remotely including from home;
- when using communication technologies with a connection to the workplace or employment conditions;
- while on travel status;
- at DND sponsored training activities/information sessions;
- at a conference where attendance is sponsored by DND; and
- at DND sanctioned events, including social events.

Workplace assessment: Identification of risk factors, internal or external to the workplace that contribute to harassment, violence, and the development and implementation of preventative measures.

Annex C: Manager/Supervisor Notice of Occurrence Process Checklist

Date Received: _____

Received by: _____

If there is a risk to the health and safety of any member of the Defence Team immediate action must be taken.

Action	Status (N/A, complete, pending, not initiated)	Date	Comments
Review the Notice of Occurrence Form (Confirm name of the principal party/witness, responding party, date and description of occurrence. If any information is missing, the principal party may provide it during the initial meeting.)			
Respond to Notice of Occurrence within 7 calendar days of receipt using the Response to Principal Party Regarding a Notice of an Occurrence Template			
Report Notice of Occurrence to WHVP CoE within 7 calendar days via email (WHVPCoE-PHVCE@forces.gc.ca)			
Initiate the negotiated resolution process within 45 days of receipt of the Notice of Occurrence (Discuss the occurrence and determine if it falls under the definition of harassment , facilitate resolution process, and discuss immediate needs.)			
Notify the Responding Party if there is agreement from the Principal Party using the Response to Responding Party Regarding a Notice of an Occurrence Template			
If the Principal Party requests ADR/Conciliation, contact the Conflict and Complaint Management Services Centres for services			
If the Principal Party requests a Preventative Investigation, contact WHVP CoE and notify the Principal Party and Responding Party using the Investigation Elected Template (The outcome of the prevention investigation cannot be used for remedial or disciplinary measures. For workplace misconduct, contact Labour Relations.)			
Continuously advise the WHVP CoE throughout process in order to update the file			

For additional information including communication templates, infographics, and videos please visit the [New workplace harassment and violence prevention regulations involving Defence Team Public Service Employees](#) web page.