



Now and Tomorrow  
Excellence in Everything We Do



# PROPOSED REGULATORY FRAMEWORK: HARASSMENT AND VIOLENCE

Consultation paper

Labour Program Stakeholder Consultations

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## PREFACE

On November 7, 2017, the Government of Canada introduced Bill C-65, *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1* (the Act) to the House of Commons. The proposed Act will implement the commitment made in the November 2015 mandate letter to the Minister of Employment, Workforce Development and Labour to ensure that federal workplaces are free from harassment and violence.

The Government of Canada has indicated that it intends to bring the proposed Act into force within two years following Royal Assent. To support implementation of the Act, regulations will need to be enacted in a range of areas, such as the prevention of, the response to, and support to those who have been subject to harassment and violence, including sexual harassment and sexual violence, in the workplace.

The purpose of this consultation paper is to solicit public input on the proposed regulatory amendments to support the new harassment and violence prevention regime. To meet the Government of Canada's commitment to address issues of harassment and violence in the workplace in a timely manner, the final regulations will be published as early as possible following Royal Assent. The Labour Program intends to publish a summary of comments received, as well as a detailed outline of any changes to the regulatory proposal, which will continue to provide special interest groups and stakeholders with as much information as possible on the proposed regulatory requirements.

Please note that references to the provisions of the Act made throughout this consultation paper reflect the version of the Act as amended by the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities reported to the House on April 23, 2018 and passed to third reading on May 7, 2018 [<http://www.parl.ca/DocumentViewer/en/42-1/bill/C-65/third-reading>], and therefore do not reflect any amendments that may subsequently be made.

Regulatory proposals set out in this consultation paper have been made for consultation purposes only, and should not be interpreted as representing the final views of the Governor in Council, the Minister of Employment, Workforce Development and Labour, or the Government of Canada.

The Labour Program thanks all stakeholders for the valuable input they have provided to date in the development of the Act and its supporting regulations, and for their continued participation in this next stage of consultations on regulatory proposals.

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# 1 INTRODUCTION

## 1.1 Context

The Government of Canada has taken action by consulting Canadians to find out how harassment and violence, including sexual harassment and sexual violence, is currently treated in federally regulated workplaces, and how the approach could be strengthened.

In 2016, a series of roundtable meetings and teleconferences were held with stakeholders, including labour organizations, employer organizations, federal government departments and agencies, academics, and advocacy groups. These discussions provided insights on how the current legal and regulatory framework may be improved to better address harassment and violence in federally regulated workplaces.

The Minister of Employment, Workforce Development and Labour also worked with the Leader of the Government in the House of Commons to consult with Members of Parliament and Senators to discuss how to address harassment and violence on Parliament Hill.

In addition, Canadians had the opportunity to submit feedback through an online survey conducted by the Government of Canada.<sup>1</sup>

The results of the roundtables, teleconferences and online survey were captured in *Harassment and Sexual Violence in the Workplace Public Consultations - What We Heard Report* (herein referred to as *What We Heard*),<sup>2</sup> which highlighted the inadequacy of the current federal approach to harassment and violence prevention in the following ways:

- The current regime does not appropriately address the range of inappropriate workplace behaviours, and the regulations for many federally regulated workplaces fail to outline provisions for harassment;
- Canadians continue to report that they are on the receiving end of unwelcome sexual advances, requests for sexual favours, and sexually-charged talk while on the job;
- Most people who have experienced sexual harassment at work have experienced it on multiple occasions;

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<sup>1</sup> All online survey respondents self-selected to take part; therefore, responses are not representative of the Canadian population.

<sup>2</sup> Employment and Social Development Canada (2017). *Harassment and Sexual Violence in the Workplace*. Government of Canada. 2 Nov. 2017. [www.canada.ca/en/employment-social-development/services/health-safety/reports/workplace-harassment-sexual-violence.html](http://www.canada.ca/en/employment-social-development/services/health-safety/reports/workplace-harassment-sexual-violence.html).

- The majority of those who have experienced sexual harassment at work have never reported the behaviour to their employers, and many who do report do not feel that they received proper response or support;
- Those with disabilities and members of a visible minority group are more likely to experience harassment; and,
- Many workplaces have inadequate or weak policies on harassment and violence prevention, and many employees have never received training on existing policies.

The widespread nature of harassment and violence in the workplace is highlighted in the results of an online survey conducted by the Angus Reid Institute in 2014 where 28% of Canadians reported being on the receiving end of sexual harassment at work.<sup>3</sup> The results of the 2017 Government of Canada Public Service Employee Survey (PSES) further underscored the pervasiveness of the issue, finding that 22% of respondents had been subject to violence or harassment on the job in the past two years.<sup>4</sup>

Many employees who have experienced harassment or violence in the workplace do not report it for fear of retribution, lack of support, or a belief that what they had experienced did not substantiate a complaint.

Harassment and violence in the workplace has consequences that affect both the employee directly and the workplace as a whole. Experiences of harassment and violence can increase workers' stress and anxiety, harm workers' health, reduce employee engagement and productivity, and foster a negative work environment. Employees may experience decreased morale and negative impacts to their mental health.

As a result of these extensive consultations, the Government of Canada introduced Bill C-65, *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1* (the Act) to the House of Commons on November 7, 2017.

The Act proposes several amendments to legislation, as well as grants authority to develop consolidated regulations for harassment and violence prevention.

The Government of Canada believes that focusing on prevention will have the greatest impact on reducing incidents of harassment and violence in the workplace. The amended regulations will include the following focused on prevention:

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<sup>3</sup> Angus Reid Institute. (2014). *Three-in-ten Canadians have experienced sexual harassment at work*. p. 1. Retrieved January 2018 from: <http://angusreid.org/wp-content/uploads/2014/12/2014.12.05-Sexual-Harassment-at-work.pdf>

<sup>4</sup> Treasury Board Secretariat. (2017). *2017 Public Service Employee Annual Survey Results for the Public Service*. Government of Canada. Retrieved February 2018 from: <https://www.tbs-sct.gc.ca/psessaff/2017/results-resultats/bq-pq/00/org-eng.aspx>

- Require employers to have comprehensive workplace harassment and violence prevention policies in place to protect all employees from occurrences of harassment and violence;
- Develop mandatory education and training for employers, employees, workplace committee members and health and safety representatives, including required training on harassment and prevention policies;
- Enhance the role of workplace committees in strengthening prevention measures;<sup>5</sup> and,
- Define harassment and violence to encompass the full continuum of inappropriate behaviours, including incivilities, teasing, bullying, sexual harassment, verbal assault, and physical and sexual assaults.

The new regime will ensure that employers respond appropriately to incidents of harassment and violence in the workplace. To achieve this, the amended regulations will include the following:

- Establish an employee driven resolution process that clearly states how to submit and address a complaint, appropriate timeframes throughout the process, and emphasizes the confidentiality of all parties;
- Define qualifications of a competent person with consideration given to impartiality;
- Mandate that employers implement corrective measures identified in the competent person's investigation report, as deemed appropriate by the workplace committee;
- Remove the responsibility of workplace committees to participate in specific investigations of workplace harassment and violence in order to best protect the confidentiality of all parties involved;
- Allow former employees to bring forward a complaint of harassment and violence;
- Outline how employers can best address incidents of harassment and violence perpetrated by a third party;
- Include the requirement for employers to outline how their workplace will deal with family violence in their policy; and,
- Require employers to record and report on all occurrences of harassment and violence in the workplace.

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<sup>5</sup> For the purpose of this consultation paper, whenever workplace committees are mentioned, the reference includes workplace policy committees, health and safety committees, and health and safety representatives.

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The new regime also emphasizes support to all parties involved in an incident of harassment and violence in the workplace. To address this, the amended regulations will include the following:

- Require employers to provide support to each party;
- Stipulate the timeframe for which the resolution process is to be completed; and,
- Enhance the role of workplace committees to assist employers in providing support to employees.

## EXISTING LEGAL FRAMEWORK

Bill C-65 proposes amendments to the *Canada Labour Code* (the Legislation), which sets out the current legal framework to address harassment and violence in federally regulated workplaces.

Part II of the Legislation (Occupational Health and Safety) addresses violence in the workplace. It applies to the federally regulated private sector, federal Crown corporations and the federal public service. Examples of industries captured under Part II are:

- Banking;
- International and inter-provincial rail, air and road transportation;
- Marine shipping;
- Many First Nation activities; and,
- Broadcasting and telecommunications.

Part II of the Legislation also gives authority to the *Canada Occupational Health and Safety Regulations* (the Regulations), which address violence prevention in the workplace under Part XX.<sup>6</sup>

Part III of the Legislation (Labour Standards) addresses sexual harassment in the workplace. Unlike Part II, Part III applies to federally regulated private sector workplaces and federal Crown corporations, but does not apply to the federal public service. Part III only addresses sexual harassment and does not address any other forms of harassment.

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<sup>6</sup> Amendments to the current harassment and violence prevention provisions will also amend other regulations contained under Part II of the *Canada Labour Code*, including occupational health and safety regulations related to aviation, maritime, oil and gas, and on board trains.

## PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

The *Parliamentary Employment and Staff Relations Act* (PESRA) applies to most employers and employees working in Parliament including:

- the Senate Administration;
- the House of Commons Administration;
- Members of Parliament;
- the Library of Parliament; and,
- Parliamentary Protective Services.

Bill C-65 also proposes amendments to the PESRA to ensure that the occupational health and safety protections offered under the *Canada Labour Code* apply to all employees covered by the PESRA, subject to certain restrictions to respect parliamentary privilege.

### 1.2 New Regulatory Framework – What Will Change?

Existing regulatory provisions for preventing and responding to violence in the workplace (Part XX of the Regulations) provide a strong basis on which to build an effective and enhanced regulatory structure that encompasses the continuum of inappropriate behaviours, including harassment. By clarifying and expanding on key areas in the current Regulations, amendments will enhance protections for employees and outline an effective workplace prevention and resolution process.

The proposed regulatory amendments outlined in this consultation paper have been developed based on the following principles:

1. **Changing the culture of harassment and violence in the workplace:** Create a culture change in the workplace where civility and respect is the standard.
2. **Emphasizing the importance of prevention:** Prevention is the most critical step to effectively reducing the number of incidents of harassment and violence. Prevention also alleviates the financial burden on employers by reducing the need for outside mediators or specialists to be involved in the resolution process.
3. **Employee-driven resolution:** While early resolution is emphasized as a first step, the employee has the right to choose the avenue for resolution that they see fit.
4. **Acknowledgement of a continuum of behaviours that qualify as harassment and violence:** To support the concept of a continuum of inappropriate behaviours, all forms of harassment and violence, ranging from teasing and unwanted advances to assault, will be captured.

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5. **Importance of privacy and confidentiality:** In an effort to encourage complaints to come forward, recognize the rights of all parties to confidentiality, including those of the complainant, respondent, and witness.
  6. **Predictable timeframes for resolution:** In order to support all parties and minimize the impact on the workplace.

### 1.3 Purpose and Scope of Consultation

The purpose of this consultation paper is to solicit public feedback on the proposed regulatory amendments to support the new harassment and violence prevention regime proposed under Bill C-65. It also focuses on the transition from the current regulatory framework set out under Part XX of the Regulations to an amended framework that will create a single approach to harassment and violence prevention in the workplace.

This consultation paper will cover relevant facts, concepts and factors that will shape and influence the new harassment and violence prevention regime, and key elements and provisions that will help to achieve its desired objectives.

To support the changes proposed to the current regulatory framework, a survey with questions on which the Labour Program is specifically seeking ideas and input from stakeholders is available on the main consultation web page. Additionally, how to submit general feedback is outlined at the end of this paper and on the main consultation web page. Thank you for reviewing and commenting on the Labour Program's proposal to prevent all forms of harassment and violence in the workplace.

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## 2 RESOLUTION PROCESS

The goal of a resolution process is to resolve incidents of harassment and violence in the workplace in a fair, constructive, and timely manner. Effective resolution can be reached using a number of different methods, depending on the situation, and the needs and concerns of the parties involved. While the current Regulations outline a process for resolving incidents of violence, they do not provide employees with many options to achieve it.

The amended regulations will build on the existing requirements, and will create a more robust process that not only provides employees with more avenues for resolution, but that is employee-driven. By involving the complainant in the decision-making process, it ensures that the resolution process is guided by the needs and concerns of the complainant. The options in the amended regulations will emphasize early resolution, as well as providing the options of mediated/facilitated resolution or an investigation by a competent person.

For a visual on the proposed resolution process please see Annex 1.

### 2.1 Submitting a Complaint

Submitting a complaint to the employer is the first step in engaging in the workplace resolution process. Currently, the violence prevention process requires employees to submit a complaint to their supervisor. The amended regulations will allow for complaints to be submitted to an individual other than the employee's supervisor. Therefore, employers will have to specify an alternative to whom an employee may submit a complaint in the event they are not comfortable going to their direct supervisor. Additionally, the employer will be required to outline methods for submitting a complaint that are specific to their workplace, such as verbally, by phone, in writing or by email.

Within federally regulated workplaces, there are a number of small businesses. In some instances, they may consist only of the employer and the employee. In these work environments, the employer will be required to provide an alternative option for submitting a complaint of harassment and violence other than to the employer. This new requirement may create opportunities for sectors to collaborate to find solutions, such as combining resources to adequately respond to incidents of harassment and violence. Options may also exist for larger companies to assist small business in implementing the amended regulations.

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## 2.2 Employer Response to a Complaint

Once an employer becomes aware of an incident of harassment and violence in the workplace, the amended regulations will require that they respond to the incident as soon as possible, or within five calendar days.

The employer also will be required to communicate all avenues for resolution available to the employee who has experienced harassment and violence.

Once the options have been provided, the employer and the complainant will work together to develop a resolution plan. While early resolution is emphasized, employees will have the option to involve a mediator/facilitator or bring in a mutually agreed-upon competent person to conduct a formal investigation. The resolution plan may include one or all options in an attempt to resolve the complaint. There is no prescribed order in which the options must be tried, and in the event one option does not result in resolution, another option may be attempted. Similar to the current Regulations, the amended regulations will stipulate that the employer has a duty to meaningfully attempt to resolve a complaint of harassment and violence. Additionally, each party may have representation, such as a union representative, present throughout the process should they so choose.

If any of the parties involved believe that the employer is not fulfilling the duties and obligations as outlined in the resolution process and set out in the harassment and violence prevention regulations, they may file a complaint to the Labour Program at any time. These regulations do not prevent employees from filing complaints with a human rights tribunal or from filing criminal charges.

## 2.3 Early Resolution

Early resolution means having affected parties attempt to resolve the matter through discussion with the employer. While incidents resolved through early resolution will still need to be documented and reported on by the employer, early resolution often allows the issue to be resolved more quickly and with the involvement of fewer parties. The current Regulations require the employer to make genuine attempts to resolve the complaint before moving to an investigation. As such, early resolution of complaints within the workplace is encouraged. Although this resolution option is encouraged, it may not be appropriate for all situations and the final resolution option should be the choice of the complainant.

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## 2.4 Mediated/Facilitated Resolution

Mediated/facilitated resolution provides parties involved in a complaint of harassment and violence with the ability to seek resolution without having to engage in an investigation, while still using a third party to help with the process. Complainants will have the option to request a mediator/facilitator to resolve the complaint. To identify a mediator/facilitator, the employer, the complainant, and the respondent must mutually agree on the individual. Mediated/facilitated resolution can take many forms, such as using elders in traditional Indigenous resolution processes or council-style resolution, or through mediators and counsellors. The type of resource used for this option should be appropriate for the situation and the parties involved. Regardless of the type of mediated/facilitated resolution, it is the role of the mediator/facilitator to work with all parties to resolve the complaint.

Employers may, individually or in collaboration with other employers, create a pre-approved list of mediators/facilitators. Existing resources, such as human rights commissions or provincial, sectoral or private rosters are also available for use. In an effort to ease the burden on employers, the Labour Program will develop and maintain a roster of mediators/facilitators from which parties can choose from should they wish. The cost of the mediator/facilitator will be the responsibility of the employer.

## 2.5 Investigation by a Competent Person

Building on the current Regulations, the amended regulations will require employers to make genuine attempts to resolve a complaint of harassment and violence before appointing a competent person to investigate. The competent person is responsible for investigating the incident of harassment and violence and providing the employer with a written report with their findings and recommendations. Details of the qualifications of the competent person, their impartiality, and their report and recommendations are discussed further in the section three.

## 2.6 Timeframes

The current Regulations do not stipulate timeframes for the resolution process; they require the employer to try to resolve the matter as soon as possible. To ensure that the resolution process is completed in a timely fashion, the amended regulations will require employers to resolve an incident within six months from the time they were made aware of the incident.

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The amended regulations will stipulate that employers must respond once they are notified of an incident of harassment and violence that occurred in their workplace as soon as possible, but no later than five calendar days. Employers should outline the complainant's options for resolution and provide them with a copy of the workplace's harassment and violence policy, either in the form of a paper copy or an electronic link. In the event of a serious incident that puts the physical or psychological health and safety of employees in immediate danger, employers will have to react immediately according to their emergency response procedures.

The amended regulations will also stipulate that the mediation/facilitation process or the competent person's investigation must be completed no later than six months from the date of the complaint. Additionally, the employer will be required to provide monthly updates to the complainant and the respondent on the status of the resolution process. Applying a timeframe to the resolution process and requiring regular communication on the status of the process will improve transparency and minimize the negative psychological impacts of a drawn-out process on all parties.

When the competent person's report is submitted, the amended regulations will require the employer to implement appropriate recommendations as soon as possible, but no later than six months.

Should the Labour Program receive a complaint from an employee that alleges an employer is not in compliance with the set timelines, the employer may be asked to explain delays to the process. Guidance documents will outline factors that may be considered as a justification for delays. Factors may include:

- One of the parties is on leave, or is not able to participate in the process due to medical reasons;
- Seasonal work renders a party not available;
- The situation is more complex and requires a longer investigation; and,
- Inability to hire a competent person.

### 3 COMPETENT PERSONS

Under the current Regulations, a competent person may be brought in to formally investigate an incident of violence in the workplace. Competent persons play an important role in helping to resolve a complaint in cases where the employer is unable to resolve the matter through other means.

The amended regulations will further define the role of the competent person to more effectively support the workplace resolution process. They will build on the existing qualifications of a competent person, emphasize the importance of mutual agreement and impartiality, and outline elements to be addressed in the competent person's report.

#### 3.1 Qualifications

Under the current Regulations, a competent person is defined as:

- A person who is impartial and seen by the parties to be impartial;
- Has knowledge, training and experience in issues relating to workplace violence; and,
- Has knowledge of relevant legislation.<sup>7</sup>

While the current definition provides basic guidance to choosing a competent person, it focuses primarily on the competencies required for conducting investigations into physical safety hazards and violence. The amended regulations will outline the necessary education, training and qualifications that must be met in order for an individual to be deemed competent to investigate incidents of harassment and violence.

For individuals to qualify as a competent person, they will be required to demonstrate that they have the appropriate knowledge and experience relevant to the nature of the incident. For example, some incidents may require specific experience in areas such as sexual harassment, human rights, or third party violence. The regulations will stipulate that the competent person is defined as a person who:

- Is impartial and perceived by all to be impartial;
- Has training in investigative techniques;
- Has knowledge of relevant Canadian labour law and employment law, including the *Canada Labour Code* and the *Canadian Human Rights Act*; and,

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<sup>7</sup> (COHSR, Part 20.9)

- Depending on the nature of the incident has knowledge, training and experience in some or all of the following: workplace violence, harassment, sexual harassment, equity and human rights.

The following factors may help guide parties to identify a mutually agreed upon and impartial competent person. If a competent person has one or more of the following characteristic, then he or she may not be suitable:

- A personal interest in the outcome of the investigation;
- A close professional relationship with any of the parties;
- A close personal relationship with any of the parties;
- A personal or professional conflict with any of the parties; and/or,
- A financial interest (ownership or shares) in organization.

Guidance materials to be developed will suggest that workplace committees create a roster of competent persons for incidents that require a formal investigation. Pre-identifying a roster will allow for adequate assessment of the impartiality and qualifications of competent persons in advance of an incident of harassment and violence that is not resolved through early or mediated/facilitated resolution. This will also shorten the response time of an employer to put an investigation in place, and ensure that the incident is resolved efficiently and with the most positive impact on the workplace.

As with the roster of mediators/facilitators, the Labour Program will create an independent roster of competent persons that may be accessed at any time. The cost of hiring anyone from the roster will be at the expense of the employer. The Labour Program roster will also be used in situations where parties cannot agree on a competent person. The amended regulations will stipulate that, if after two months parties are still not able to agree on a competent person, the employer will be required to contact the Labour Program, who will assign one from its roster.

### 3.2 Competent Person's Report

As is currently required in the Regulations, once the competent person has conducted their investigation they are required to provide a written report of the findings of their investigation to the employer. This report must include findings from the competent person's investigation and recommendations to address the incident, broader workplace hazards, and systemic issues that may exist. The amended regulations will build on these requirements to ensure that there is a reliable record of the investigator's process and findings.

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The amended regulations will require that the competent person's report includes:

- Details of the incident;
- Methodology used for investigation;
- Analysis and findings;
- Recommendations to the employer; and,
- Whether or not the employer should consider disciplinary actions (the report template will include a yes or no checkbox for this item).

Currently in the Regulations, employers are required to take steps to assess risks and implement controls in efforts to reduce incidents of violence in the workplace. However, this obligation does not include the requirement to implement the recommendations made in the competent person's report. The amended regulations will change this: employers will be required to implement recommendations made as a result of an investigation that are determined by the workplace committee as appropriate.

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## 4 WORKPLACE HARASSMENT AND VIOLENCE PREVENTION POLICY

Prevention is of the utmost importance to create workplaces that are free of harassment and violence. In *What We Heard*, stakeholders expressed the need for clearly written policies outlining how organizations will respond to allegations of workplace harassment and violence with explicit protection against retaliation for reporting an incident.

The amended regulations will require employers to develop comprehensive workplace harassment and violence prevention policies. The elements to be included in the prevention policy will build on those already stipulated in the Regulations. Additionally, employers will have to develop their prevention policies in collaboration with their employees and workplace committees. These policies will help guide and educate both employers and employees on preventing incidents of harassment and violence in their workplaces.

Currently in the Regulations, employers are required to develop and post a workplace violence prevention policy that sets out the obligations of the employer, including:

- To provide a safe, healthy and violence-free workplace;
- To dedicate sufficient attention, resources, and time to address factors that contribute to violence;
- To communicate to employees information about factors contributing to workplace violence; and,
- To assist employees who have been subject to incidents of violence in the workplace.

The intent of the new framework is to capture the continuum of inappropriate workplace behaviours that go beyond the definition of violence currently set out in the Regulations. For this reason, the proposed regulations will require employers to develop prevention policies that will properly address all forms of harassment and violence. The current requirements outlined above, with the inclusion of harassment, will remain in the regulations.

To address the continuum of harassment and violence, employers will be required to include the following elements in their prevention policy in addition to the existing requirements listed above:

- Outline the available options and steps in the workplace resolution process, including where the employer or supervisor is the alleged perpetrator;
- How to submit a complaint, including when the employer or health and safety representative is the alleged perpetrator;
- Outline appropriate and inappropriate behaviours in the workplace, including what is considered reasonable conduct of an employer or supervisor in respect to performance management;

- Outline steps that will be taken in the event that family violence poses a risk to the workplace;
- Available support to those who experience harassment and violence;
- Harassment and violence prevention training;
- The role of the workplace committee;
- Confidentiality;
- How the workplace will address third party harassment and violence;
- Former employees' ability to submit a complaint;
- Appropriate disciplinary measures that the employer can use following an investigation into an incident of harassment and violence;
- Reporting policies and requirements; and,
- A commitment to ensuring the privacy of all parties is protected should a complaint be brought forward.

The regulations will continue to require the employer to post their policy at a place accessible to all employees. They will also require the employer to provide regular training on the policy to everyone in the workplace. The workplace harassment and violence prevention policy is not intended to discourage employees from exercising their other legal rights.

#### 4.1 Role of the Workplace Committee

Workplace committees play a vital role in creating safe and healthy workplaces that are free from harassment and violence. They also work to prevent accidents and injuries, and improve the overall understanding of occupational health and safety issues in the workplace through prevention policies, training and education.

Under the amended regulations, these committees will be integral to maintaining a safe work environment for all employees. The workplace harassment and violence prevention policy must outline the roles and responsibilities of the workplace committee. Including this section in the policy will educate all employees on the important role that workplace committees play in preventing and addressing incidents of harassment and violence, and providing support to those who have experienced it.

Responsibilities of workplace committees are outlined in the Legislation and in the Regulations. They require the participation of workplace committees and representatives in areas such as the internal complaint resolution process, and identifying and addressing hazards in the workplace. Workplace committees will continue to play a valuable role in maintaining a safe work environment for all employees by continuing with the following duties:

- Participate in the development of a harassment and violence prevention policy;
- Monitor the effectiveness of the prevention policy;
- Observe and provide recommendations to the employer of hazards that could contribute to workplace harassment and violence;
- Participate in inquiries, studies, and proactive inspections as it considers necessary;
- Address matters raised by its members or referred to it by a workplace committee;
- Participate in the development of harassment and violence training materials and awareness materials and tools;
- Help ensure training and awareness materials are shared with employees;
- Communicate information to employees about factors contributing to workplace harassment and violence;
- Participate in the development of emergency notification procedures to summon assistance where immediate assistance is required, in response to workplace harassment and violence;
- Help ensure that employees are made aware of the emergency notification procedures applicable to them and that the text of those procedures is posted at a location readily accessible to those employees;
- Assist employees who have been exposed to workplace harassment and violence;
- Provide the workplace committee with the report and recommendations of the competent person and,
- Monitor data on incidents of workplace harassment and violence.

The amended regulations will enhance the roles and responsibilities of workplace committees by requiring them to:

- Review the competent person's recommendations and identify those that are appropriate for implementation;
- Work with the employer to implement appropriate recommendations;
- Review and ensure accuracy of incidents of workplace harassment and violence data before it is sent to the Labour Program; and,
- Participate in identifying a list of pre-approved impartial mediator/facilitators and a list of competent persons.

## 4.2 Workplace Committee Exemptions

Currently in the Legislation, employers with twenty or more employees are required to establish a workplace committee. Workplaces with fewer than twenty employees are required to appoint a health and safety representative. Employers are allowed to request an exemption from establishing a workplace committee if the workplace is relatively free from risks to health and safety. This is an outdated approach that was reasonable when

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workplace health and safety was focussed on physical hazards and did not recognize the importance of psychological ones. Workplace committees play a critical role in preventing all occupational health and safety issues.

Under Bill C-65, the legislation will be amended to ensure that more employers put in place workplace committees. Exemptions from the requirement for a workplace committee will be granted only in instances where there is a committee already in place performing the same functions related to health and safety. Therefore, any organization that currently has an exemption will be required to either establish a workplace committee or seek an exemption based on the new legislative requirements.

### 4.3 Employee Protection

The Legislation will continue to prohibit the employer from retaliating against an employee who comes forward to complain or testify in any proceeding regarding a contravention against the health and safety of employees.

Fear of reprisal is a main factor that prevents employees from submitting a complaint or testifying about an incident of harassment and violence. An employer may not dismiss, suspend, layoff or demote an employee, or impose any penalties or disciplinary action against an employee under these circumstances. As with any other contravention of the Legislation, employees can submit a complaint to the Labour Program in the event the employer has not complied with their obligation to protect the health and safety of their employees.

### 4.4 Confidentiality

Protecting the identities and the privacy of the complainant and the respondent is one of the foundational principles of the amended harassment and violence prevention legislation. *What We Heard* found that most stakeholders identified the need for confidentiality for all parties in any harassment or violence investigation to be a legal requirement of the new regime.

The current Regulations require employers to only release identifying information to the competent person if they have consent from that individual. Additionally, when submitting the competent person's report to the workplace committee, employers must not include information that would reveal the identities of parties involved in the investigation. The amended regulations will build on these requirements by emphasizing employers' duty to

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take necessary steps to best protect the confidentiality of all parties, including witnesses, throughout the resolution process.

Protecting the identifying information of all parties involved in a complaint will help eliminate the fear of repercussions when making a complaint. However, on occasion, where there is concern for the health and safety of others, personal information may be provided on a need to know basis.

#### 4.5 Third Party Harassment and Violence

Within the federally regulated context, many employees experience harassment and violence by third parties. Through the initial consultations for the regulations, the Labour Program heard from employers and employee representatives that third party harassment and violence continues to be a hazard in the workplace. Many federally regulated workers, such as bank tellers and flight attendants, experience harassment and violence from customers. The need for measures to address third-party harassment and violence also aligns with discussions taking place at the International Labour Organization's conferences related to ending violence and harassment in the world of work.<sup>8</sup>

In the current Regulations, employers have a duty to assess an incident of third party violence and implement measures and controls to reduce the risk of it happening again. Current guidelines suggest that employers fulfill this obligation within 90 days. The amended regulations will build on the current requirements. Employers will be required to address third party harassment and violence in their workplace policy. While third parties cannot be compelled to cooperate with an investigation and cannot be disciplined, employers can still make available the option for an investigation by a competent person. Employers will also be required to provide support options to the complainant following the incident, and involve them in the review of the prevention policy.

#### 4.6 Family Violence

The Public Health Agency of Canada defines family violence as any form of abuse or neglect that a child or adult experiences from a family member, or from someone with whom they

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<sup>8</sup> International Labour Organization (2018). *Ending violence and harassment in the world of work*. International Labour Conference, 107<sup>th</sup> Session, 2018.  
[http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS\\_619730/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_619730/lang-en/index.htm)

have an intimate relationship. This definition of family violence includes intimate partner violence which refers to physical, sexual or psychological harm by a current or former partner or spouse. Family violence can affect anyone in Canada regardless of age, race, religion, sexual orientation, economic standing, or level of education.<sup>9</sup>

Family violence affects not only the home, but also communities and society at large, including the economy. According to a 2013-2014 survey, one third of respondents (33.6%) have experienced violence from an intimate partner. Of that number, 81.9% stated that this negatively affected their work performance; 53.5% stated that at least one type of abusive act happened at or near the workplace; and, 38% stated it impacted their ability to get to work.<sup>10</sup> Family violence is a distinct form of violence that needs to be identified within the continuum of unacceptable behaviours in the workplace under the amended regulations.

In the workplace, family violence can include harassing calls, texts and emails, threats, inappropriate visits and even violent confrontations. Family violence can happen not only in the traditional work space but also during an employee's commute to and from work, while working from home or in the community, at work-related events and on duty travel. Therefore, employers will be required to address family violence in their harassment and violence prevention policies. This will include outlining how and in what situations an employer should intervene, stating the support options available to an employee dealing with family violence, such as developing a safety plan, and including family violence in their training for employees to educate them on how to identify warning signs.

#### 4.7 Training

Creating and maintaining a respectful, healthy and safe environment, free of harassment and violence requires participation from everyone in the workplace. A little over half of survey respondents captured in *What We Heard* stated that education for everyone in the workplace would help provide support to those subjected to harassment and violence.

The current Regulations require employers to provide training to their employees on the nature and extent of workplace violence, factors that contribute to it, and the workplace's prevention measures, communication plans, and reporting procedures. Training must be

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<sup>9</sup> Public Health Agency of Canada. (2014). *What is family violence?* Government of Canada. Retrieved February 2018 from: <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/family-violence.html>

<sup>10</sup> Wathen, C. N., MacGregor, J. C. D., MacQuarrie, B. J. with the Canadian Labour Congress. (2014). *Can Work be Safe, When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*. London, ON: Centre for Research & Education on Violence Against Women and Children.

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provided to each employee exposed to, or at risk of experiencing workplace violence. Employers must provide training every three years, when an employee is assigned a new work activity identified as having an increased risk for violence, or when there is new information on workplace violence.

Currently, employers are required to post their violence prevention policies, but are not required to provide training on the policy. The amended regulations will change this by outlining mandatory elements of harassment and violence prevention training that will include:

- What constitutes harassment and violence;
- Where workplace harassment and violence may occur and circumstances where increased risk may exist, specific to the workplace;
- How to recognize, minimize, and prevent harassment and violence;
- Overview of relevant laws and regulations, including the *Canada Labour Code*, the harassment and violence regulations, and the *Canadian Human Rights Act*;
- Elements covered in the workplace harassment and violence prevention policy;
- Employer obligations and employee rights as set out in the regulations and the workplace policy;
- The workplace's emergency response process;
- Crisis prevention, personal safety, and de-escalation techniques;
- How to respond sensitively to incidents or complaints, particularly when it includes sexual harassment and sexual violence;
- Where relevant, third party harassment and violence in the workplace;
- The workplace's reporting process; and,
- Support services and resources.

#### 4.8 Disciplinary Measures

Outlining appropriate disciplinary measures that the employer can take against an employee found to have perpetrated harassment and violence in the workplace will help to create clear and concrete expectations. It is the duty of the employer to be transparent in the ways in which perpetrators of harassment and violence may be disciplined.

#### 4.9 Recording and Reporting

In *What We Heard*, stakeholders identified under-reporting and insufficient data on workplace harassment and violence as major issues that should be addressed in any new

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regulatory regime. They also agreed that collecting data to track the impact of the amended regulations would reduce the number of incidents and lead to more timely resolution.

The current Regulations strongly recommend that employers maintain internal records and reports on incidences of violence; however they do not require them. The amended regulations will require employers to do so. This will assist employers and workplace committees in updating the workplace harassment and violence prevention policy, provide a history of remedial steps taken, and serve to strengthen the employer's overall demonstration of due diligence.

In efforts to collect useable and accurate data, the amended regulations will also require employers to report all occurrences of harassment and violence that happen in their workplace to the Labour Program. Employers will need to include the following information in their reporting:

- The nature of the incident;
- Number of individuals involved;
- How the incident was resolved, whether informally, by a mediator/facilitator, or through an investigation by a competent person;
- Recommended corrective measures and evidence of their implementation;
- Time in which the resolution process was completed; and,
- Any disciplinary action taken.

To protect the privacy and confidentiality of those involved, information provided to the Labour Program will not include any personal identifiers. To minimize the administrative burden on employers, reporting will be done through an amended Labour Program Employer's Annual Hazardous Occurrence Report (LAB 1009). This reporting requirement will address the lack of data available on the rate of incidents of harassment and violence in federally regulated workplaces.

## 5 SUPPORT

Providing support to all parties involved in an incident of harassment and violence is a critical element of the amended regulations. *What We Heard* reported that most respondents believe that support should be offered to victims to help them feel safe and secure in their workplace. Respondents also believe that employers should be responsible for providing resources to employees who allegedly perpetrated harassment and violence in the workplace. While supporting those who have directly experienced harassment and violence is of utmost importance, it is also important that support be offered to witnesses and respondents. Therefore, the amended regulations will require employers to provide adequate support to all parties.

The current Regulations require employers to assist employees who have been exposed to workplace violence; however they do not outline what forms of assistance need to be provided. Current guidance documents state that assistance can take various forms, such as employee assistance services, or counselling programs.

The amended regulations will require the employer to provide support to the complainant, witnesses and respondent. Examples of support that can be provided by the employer include:

- Physical support to the victim, including medical care, if necessary;
- Environmental support, such as removing one of the parties from the environment or adjusting the environment to reduce the potential for continued harassment and violence;
- Providing a list of local resources available, including legal, psychological, and social supports;
- Social support for the victim and witnesses from co-workers, peers or supervisors, if consent from the parties is obtained; and,
- Assistance to the victim in liaising with appropriate services, such as Worker Compensation Boards.<sup>11</sup>

Employers may provide the required support measures to employees in collaboration with their workplace committees. However, consent must always be obtained from the employee before involving the committees in order to protect the confidentiality of the individual.

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<sup>11</sup> Work Safe Alberta and Government of Alberta Employment and Immigration. (2010). *Preventing Violence and Harassment at the Workplace*. VAH001 – Violence and Harassment. Retrieved March 2018 from: <https://work.alberta.ca/documents/WHS-PUB-VAH001.pdf>

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## 6 COMMENTS AND FEEDBACK

Following the regulatory proposals as outlined in this consultation paper, the Labour Program would like to solicit your comments and feedback. Your ideas will help develop a streamlined and strengthened set of regulations to address the continuum of behaviours of harassment and violence.

Thank you in advance for the time and effort you are devoting to this initiative. As a government we are committed to push for change of culture where these profoundly damaging behaviours are no longer tolerated.

Please send us your feedback by responding to the online survey at **(WEBSITE)**:

Your feedback may also be submitted:

- By email to [EDSC.TRA.PHV-HVP.LAB.ESDC@labour.travail.gc.ca](mailto:EDSC.TRA.PHV-HVP.LAB.ESDC@labour.travail.gc.ca)
- By fax to (418) 566-2462
- By mail to:
  - Labour Program
  - C.P. 1155
  - Matane, QC
  - G4W 0L2

# ANNEX 1: PROPOSED HARASSMENT AND VIOLENCE RESOLUTION PROCESS

