



CAPE
Canadian Association
of Professional Employees

NEW FEDERAL VIOLENCE AND HARASSMENT LEGISLATION

DECEMBER 2021

1. Summary

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, came into effect on January 1, 2021 and applies to federal public service employees and employees on Parliament Hill. Its stated goal is to create a safe environment for workers who have experienced violence or harassment to come forward. It replaces multiple pieces of legislation, most notably Part XX of the Canadian Occupational Health and Safety Regulations.

If you have questions about the complaint process and wish to discuss a specific situation, please get in touch with your [Labour Relations Officer](#).

2. How are violence and harassment now defined under the law?

Bill C-65 has added a new definition of harassment and violence to the Code as “any action, conduct or comment, including of a sexual nature that can be reasonably expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.”

The government’s Interpretations, Policies and Guidelines (IPG) on the new regulations include the following examples of what constitutes violence and harassment.

Violence can include, but is not limited to:

- hitting
- kicking
- biting
- punching
- spitting
- scratching
- squeezing
- pinching
- battering
- homicide
- swearing or shouting in an offensive manner
- verbal abuse
- attack with any type of weapon
- contact of a sexual nature and
- sexual assault

Harassment can include, but is not limited to:

- cyberbullying (threatening, spreading rumours, or negatively talking to or about someone online or on social media);
- making offensive jokes or remarks;
- socially excluding or isolating someone;
- persistently criticizing, undermining, belittling, demeaning or ridiculing a person;
- abuse or misuse of authority to create hardship for an individual;
- verbal threats or intimidation;
- sexual innuendo/insinuation;
- retaliation of any kind; and
- any action against a person based on any of the prohibited grounds protected under the Canadian Human Rights Act.

[Interpretations, Policies and Guidelines \(IPG\)](#)

3. New legislative terms

The new regulations introduce the following terms:

DESIGNATED RECIPIENT – the person or group that receives and investigates complaints of harassment or violence in the workplace from principal parties.

OCCURRENCE – an occurrence of harassment and violence in the workplace.

PRINCIPAL PARTY – an employee or employer who is the subject of an occurrence.

RESPONDING PARTY – the person who is alleged to have been responsible for the occurrence in a notice of an occurrence provided to the designated recipient.

WITNESS – a person who witnessed an occurrence of harassment and violence or is informed of an occurrence by the principal party or responding party.

4. What has changed?

The regulation sets out:

1. The framework for a workplace harassment and violence prevention policy.
2. The procedures that must be in place in case an incident occurs in the workplace.
3. A new definition of the workplace:
 - According to the Code, workplace is defined as “any place where an employee is engaged in work for the employee’s employer.” This means that “workplace” is not limited to the employer’s premises. As long as the employee is performing work for the employer, they are at the workplace. This includes public places, third-party premises and the employee’s residence as long as they are allowed to work from home.
4. The roles and responsibilities of Health and Safety Committees in the investigative and investigation process:
 - Health and safety committees (policy or operations depending on the size of the workforce) will act as joint partners in the employer activities required by the new regulations, including but not limited to risk assessment, policy development and implementation of recommendations made by investigators.
5. Although the union’s role has been reduced, workers who report an incident of violence or harassment can have representation throughout all stages of the new resolution process. This can be a union representative, such as a steward.

5. What are the employer’s obligations under Bill C-65?

Under the new legislation, employers must:

1. Jointly, with the appropriate committee,
 - a. perform a workplace assessment that consists in identifying risk factors for violence and harassment;
 - b. develop a workplace harassment and violence prevention policy;
 - c. develop emergency procedures;
 - d. develop or identify training on workplace harassment and violence to be provided to employees, the employer and the designated recipients;
 - e. review the policy every three years;
 - f. consult with Health and Safety committees to implement recommendations from the investigator’s report.

2. Ensure the organization has the prescribed processes (described below) in place for resolving complaints.
3. Make information available to employees regarding the medical, psychological or other support services that are available within their geographical area.
4. Ensure a process that protects the confidentiality of the records.
5. Ensure that all workers are provided training specific to the culture, conditions and activities of the workplace which includes:
 - a. the elements of the workplace harassment and violence prevention policy;
 - b. a description of the relationship between workplace harassment and violence and the prohibited grounds of discrimination set out in subsection 3(1) of the Canadian Human Rights Act; and
 - c. a description of how to recognize, minimize, prevent and respond to workplace harassment and violence.

Please see the [regulations for greater detail](#).

6. What is the new complaint process?

6.1 Third-party violence

Third-party violence is violence perpetrated by someone who is not employed by your employer. This includes clients, patients, customers, contractors and other non-employees with whom a worker may interact.

The new complaint process requires the reporting of third-party violence. Workers must report incidents of violence and harassment to the designated recipient in their organization. The health and safety committee will then review the current risk assessment to ensure that it is adequate.

There is no requirement for a formal investigation of third-party violence, so it is very important that workers provide as much detail as possible when reporting an occurrence. This will enable the health and safety committee to properly review the risk assessment.

6.2 Violence within your organization

When violence or harassment is perpetrated by an employee within an organization (including supervisors or higher), the new regulations require a very specific set of steps:

A) NOTICE OF OCCURENCE

A verbal or written notice of occurrence must include the name of the principal party or otherwise allow their identity to be determined. If this is not done, the employer will be able to close the investigation.

Within seven (7) days of the notice of occurrence, the employer or the designated recipient must contact the principal party to inform them:

- a. that their notice has been received or that they have been named or identified as the principal party in notice provided by a witness, as the case may be;
- b. how they can consult the workplace harassment and violence prevention policy;
- c. regarding each step of the resolution process; and
- d. that they have a right to be represented during the resolution process.

The principal party may end the resolution process at any time by informing the employer or designated recipient of their decision.

B) NEGOTIATED RESOLUTION

- Parties must make reasonable efforts to resolve the issue within 45 days.
- Reasonable effort includes review by the parties to determine whether conduct meets the definition of harassment and violence.
- If the Principal Party still considers the conduct or comment meets the definition and does not consider the matter resolved, they can require that an investigation be carried out.
- Parties may use conciliation if it is unanimously accepted by all. All parties involved in the process should be notified if conciliation is the selected resolution method.
- Use of conciliation does not rule out a formal investigation if the process is not successful. The employer will provide the conciliator.
- Negotiated resolution, conciliation and an investigation can run as parallel processes up to submission of the investigator's report to the employer.

C1) CONCILIATION

If the complaint has not been resolved in the negotiated resolution phase, one option is conciliation. The principal party and the responding party may attempt to resolve an occurrence by conciliation if they both agree to conciliation and a facilitator.

C2) INVESTIGATION

If the complaint has not been resolved, an investigation of the occurrence must be carried out if the principal party requests it. If an occurrence being investigated is resolved through an alternate route, the investigation must be discontinued.

Selection of an investigator

- The employer or designated recipient selects an investigator from a list of competent persons, accepted by both parties. This list should be in the employer's policy.
- A competent person is:
 - ▶ trained in investigative techniques;
 - ▶ has knowledge, training and experience relevant to harassment and violence in the workplace; and
 - ▶ is familiar with the Act, the Canadian Human Rights Act, and any other relevant legislation.
- If an investigator cannot be mutually agreed upon within 60 days, one will be appointed by Labour Canada from a list provided by the Canadian Centre for Occupational Safety (CCOHS).

INVESTIGATION REPORT

The investigator's report must include:

- a general description of the occurrence;
- conclusions, "including those related to the circumstances in the workplace that contributed to the occurrence", and linked to point 2, and;
- their recommendations to minimize the risk of such occurrences happening again.

The employer and the workplace committee or the health and safety representative jointly determine which of the recommendations set out in the report will be implemented. The employer is then required to implement these recommendations.

7. Other options for violence and harassment

Under the new legislation, workers who experience harassment or violence have other options available to seek remedy. These options include the new process described in this sheet as well as the grievance process, filing complaints with the Canadian Human Rights Commission and filing criminal reports to the police.

The union should ensure that complainants are made aware of all their options.

8. Useful resources

- [Workplace Harassment and Violence Prevention Regulation: SOR/2020-130](#)
- [Workplace Harassment and Violence Prevention Interpretations, Policies and Guidelines \(IPGs\)](#)
- [Canadian Labour Code, Part II](#)
- [Canadian Human Rights Act](#)
- [Canadian Association of Professional Employees – Your Labour Relations Officer](#)

Collective agreements : [EC](#), [TR](#), [LoP](#), [OPBO](#)



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