

## **Bill C-65: The New Federal Workplace Violence and Harassment Legislation - The Roles of the Union Side of the Workplace Health and Safety Committee**

*Bill C-65, An Act to amend the Canada Labour Code (harassment and violence)* is legislation that comes in to effect on January 1<sup>st</sup>, 2021 and will affect all workplaces that fall under the Federal jurisdiction under the Canada Labour Code, Part 2.

The current legal framework for dealing with harassment and violence in federally regulated workplaces is set out under parts II and III of the Code and related regulations. Bill C-65 consolidates this legal framework under Part II, so that workplace harassment and violence, including the complaint and resolution process, is addressed within the context of occupational health and safety.

This important legislation will affect thousands of workplaces and almost one million workers across the country and is the result of research that showed that harassment and violence in Canadian workplaces is persistent, and often incidents go unreported because people fear retaliation from their perpetrators or employers.

Bill [C-65](#)'s goal is to create a culture and workplace environment that makes victims feel safe coming forward. The bill eliminates a reporting "stumbling block" by requiring employers to appoint a person or work unit as a "designated party" to whom employees can report their harassment and violence concerns to, when they don't trust their employers to give them a fair response. Unfortunately, it also isolates the union in much the same manner. Health and safety committees are a strong voice for workers and it is unfortunate that they have been sidelined in the investigation process.

***The safety committee is not involved in the actual investigation of the facts of any individual workplace violence or harassment occurrence. The investigation is laid squarely in the hands of the employer's "designated recipient" or the "independent investigator." The union may, however, represent those involved as principal parties or respondents.***

The role of the workplace safety committee focuses on the development of the program, a risk assessment of factors in the workplace, training development, policing the program and the implementation of recommendations made by the investigator. The workplace committee also re-reviews the policy and assessments after each incident to ensure that all relevant elements and hazards are captured in the risk assessment and policy.

Before examining the limited role of the union in this issue lets take a quick look at what the new legislation requires...

## **The Policy and Program**

The policy regarding Workplace Violence and Harassment must be developed by the employer in consultation with the Workplace Health and Safety Committee.

Here are the main players in the *development of the policy and program*

**Employer** - also includes any person who acts on behalf of an employer.

**Designated Recipient** – the person or group that receives and investigates complaints of harassment or violence in the workplace from principal parties (victims)

**Investigator** – An independent person (not from the workplace or in relation to the employer) who can conduct the investigation at the behest of the principal party (victim)

**Policy Committee/Workplace Committee/Health & Safety Representative (depending on numbers)**

**Employees**

The written policy should contain many key components and as a union member of the workplace safety committee, you should ensure that the employer includes the following in their *Policy Statement*:

- who the policy applies to
- definitions and roles of the various parties
- the contributing factors to workplace violence and harassment
- the training program
- the resolution process
- a list of agreed upon independent investigators
- what can and cannot be obtained from the process
- the ability for representation during the process
- protection from reprisal
- reasons for reviewing the policy
- emergency procedures
- privacy protection
- other avenues of recourse alongside the Workplace Violence and Harassment Policy (Collective agreement, Human Rights Legislation, Criminal Code)
- support measures and services
- measures to be taken by submissions in bad faith.

## **The Definition of Harassment**

The Canada Labour Code (the Code) 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.”*

Harassment can include many various acts or attempted acts like:

- spreading rumours or gossip
- cyber bullying and making threats
- making offensive jokes or remarks
- stalking someone
- tampering or vandalizing someone’s work equipment or personal belongings
- deliberately physically impeding a person’s work
- undermining, belittling, demeaning or ridiculing a person intruding of a person’s privacy
- public ridicule
- unwelcome physical contact
- sexual innuendo
- unwanted and inappropriate invitations or sexual requests
- displaying offensive images
- making aggressive, threatening or rude gestures
- misusing authority, in an arbitrary manner

Engaging in any of the actions, conduct and comments outlined above against a person because of that person’s race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or any of the other prohibited grounds that are listed in the *Canadian Human Rights Act* is contained in the definition and would be considered harassment.

Defining what Harassment is not is also important to add to the policy.

Harassment is not:

- consensual workplace banter and interactions (unless the banter includes hurtful remarks about others, especially if they pertain to any of the prohibited grounds listed above) or
- reasonable management action carried out in a fair way, like day-to-day actions by a supervisor or manager related to performance, absenteeism, assignments, discipline and even dismissal – as long as it is not abusive or discriminatory.

## **Workplace Violence**

Workplace violence can include but is not limited to the following acts or attempted acts:

- Verbal threats or intimidation.
- Verbal abuse, including swearing or shouting offensively at a person
- Contact of a sexual nature
- Kicking, punching, scratching, biting, squeezing, pinching, battering, hitting or wounding a person in any way
- Attack with any type of weapon
- Spitting at a person

- Homicide
- Rape

The definition is wide and should be spelled in the policy with details. The above list is not exhaustive.

### **Other Important Terms in the Legislation**

Aside from the **designated recipient** and **investigator**, there are other terms that should be understood:

**Occurrence** means an occurrence of harassment and violence in the workplace.

**Principal party** means an employee or employer who is the object of an occurrence.

**Responding party** means the person who is alleged to have been responsible for the occurrence in a notice of an occurrence provided to the designated recipient.

**Witness** means a person who witnessed an occurrence of harassment and violence or is informed of an occurrence by the principal party or responding party.

**Workplace** means any place where an employee is engaged in work for the employee's employer as per 122(1) of Code.

### **The Union's Role from an OHS perspective (Top 20 Items)**

The role of the union is to ensure that:

1. The Work place Health and Safety Committee (WH&SC) is involved in the risk assessment process.
2. The WH&SC helps in the development of the employer's policy and program.
3. The employer provide training to employees related to the jointly developed policy and program.
4. The employer provide employees with copies of the new policy, a copy of Part II of the Canada Labour Code and the Regulations, and any other information related to health and safety that is prescribed.
5. The WH&SC is involved in the development of emergency procedures to use if an occurrence of harassment and violence poses an immediate danger to the health and safety of an employee; this includes threats.
6. The employer provide training related to the jointly developed emergency procedures to all employees. This would be reviewed again by the WH&SC after each time they are used.
7. The employer provides proper training to the Designated Recipients.
8. A complete review of the program is conducted by the WH&SC every three years at a minimum.
9. The employer make available to all employees, information respecting the medical, psychological or other support services that are available within their geographical area.
10. The employer reports occurrences of harassment and violence that result in a fatality to the Minister of Labour within 24 hours of being notified of an occurrence.
11. The employer contacts the parties involved in an occurrence within 7 days of receiving notice.

12. The employer initiate resolution with principal party within 45 days after notice is provided and conduct a joint review of the circumstances against the definition of harassment and violence with the principal party.
13. The employer provide monthly status updates to the principal and responding parties regarding the status of the resolution process until the resolution process is complete.
14. The employer allows the principal and responding parties to participate in conciliation if both agree to conciliation and on the person to facilitate it.
15. When an Investigation is requested by the principal party, the employer provide notice and appoint an agreed upon investigator from an agreed upon list, previously developed with the WH&SC.
16. The employer provide a copy of the completed report to both the principal and responding parties and the WH&SC.
17. The WH&SC jointly determines, with the employer, the recommendations to be implemented from the investigator's report.
18. The recommendations are implemented within one year after the day on which notice of the occurrence was provided.
19. The WH&SC be involved in reviewing the details of the program after incidents have been investigated and recommendations have been made by an investigator.
20. The employer provide the Minister of Labour an annual report that summarizes data on all occurrences of harassment and violence.

### **Special Circumstances of Harassment and Violence**

Unfortunately, the new legislation does not adequately address incidents where a client, visitor, customer, passenger or other person not employed in the workplace is the responding party. This is often the case in the transportation industry and affects our members on an ongoing basis. In these cases, there is no provision to do a joint investigation, nor follow the independent investigation process. In such cases the employer would do an investigation and share the results with the WH&SC. This would trigger a re-review of the risk assessment by the workplace parties. Other options are still open to the principal party (see below).

Another special circumstance occurs if the principal party chooses to end the resolution process and the occurrence is not resolved. In this case, the workplace committee would also review the circumstances of the case and review the risk assessment to ensure it is adequately protective and encompassing.

***It should be noted that if there is not joint agreement on a required step, the employer's decision will prevail. This gives the employer veto power in circumstances of disagreement. In these cases, the union will have to contact the local federal labour program inspector, if it sees fit. Any such veto decision by the employer will involve formal receipt of related documents and maintaining of evidence for a period of ten years.***

## **Other Options to Seek Remedy Available to Workers**

Under the new legislation, the victim of harassment or violence (the principal party) has many avenues to seek remedy to their complaint. The union should ensure that the principal party is made aware of all of their options including not only the steps under the C65 legislation, but also through the grievance process, pursuing recourse under the *Canadian Human Rights Act* with the Canadian Human Rights Commission or pursuing recourse under the *Criminal Code*.

## **Role of Employees**

The role of all employees in relation to harassment and violence prevention include:

- Refraining from being involved in harassment and violence.
- Where appropriate and safe, informing a perpetrator of harassment and violence that their actions are inappropriate and not welcome.
- Reporting all occurrences of harassment and violence to their supervisor or the Designated Recipient when they experience or witness harassment and violence.
- Cooperating with an investigator and the investigation process if involved in an investigation of an occurrence.
- Refraining from retaliatory behaviour against the principal party, responding party, witnesses and any other individuals who are involved in the resolution process for an occurrence.
- Respecting the confidentiality of the information shared throughout the resolution process of an occurrence.

## **Representation**

An employee may be accompanied or represented by a union representative at any time during the resolution process.

## **Protection Against Reprisal**

Parties involved in an occurrence are forbidden from seeking any type of retaliation. If you experience any retaliatory action or threat of retaliatory action from the responding party, witnesses, management, or other people within or outside the organization, please inform your union or supervisor immediately!

## **Notices Submitted in Bad Faith**

Notices of harassment and violence that are identified throughout the resolution process as having been made in bad faith may be subject to disciplinary action.

## **Information Likely to Reveal Identity**

The parties involved in a workplace occurrence shall not be identified in any report, without the person's consent, to a policy committee or a work place committee with any information that is likely to reveal the identity of a person who was involved in an occurrence of harassment and violence in the workplace. Neither a policy committee nor a work place committee shall have access to that information without the person's consent.

### **Work Refusal Procedure**

In the event that a worker refuses to work as a result of a dangerous condition (which could include workplace violence or the threat of violence) and the issue remains unresolved through the initial process, the workplace committee CAN INVESTIGATE the circumstances of the refusal with the employer and appropriate parties. This new legislation does not curtail the powers of the committee to investigate the work refusal in these circumstances.

The new legislation will provide new challenges to workplace health and safety committees and their respective unions. Unifor has negotiated, in many cases, language and representation that can be of benefit to our members in these circumstances. Work place Health and Safety Committees play a vital role in resolution of harassment and violence issues. Ensure that your WH&SC is prepared.

For further information you can contact the National Health and Safety Department at or 1(800) 268-5763 [healthandsafety@unifor.org](mailto:healthandsafety@unifor.org).

To read the new legislation in it's entirety visit: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-65/royal-assent>

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