

## **Quick Reference Guide for Employees**

### **for Non-punitive Harassment and Violence Prevention Regulations**

#### Introduction

The non-punitive harassment and violence regulatory framework under the Canada Labour Code came into effect on January 1, 2021. Its stated goal is to create a safe environment for employees who have experienced harassment and violence in the workplace to come forward.

According to Part II of the *Canada Labour Code* (the Code), ‘harassment and violence’ means “*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.*”

This definition includes all types of harassment and violence, including sexual harassment, sexual violence, and domestic violence under the non-punitive process.

The updated legislation and regulations affect all workplaces that fall under the federal jurisdiction. The former Part XX of the Canadian Occupational Health and Safety Regulations was repealed, as was the TB policy on Harassment Prevention and Resolution.

#### Where to Start

Show care and consideration for others to help create a welcoming, safe, inclusive work environment. If you or someone else feels harm, you should consider having an informal conversation. Consider showing empathy and de-escalate the situation by speaking to the person directly in a calm, warm, respectful way. The spirit and intent of the *Work Place Harassment and Violence Regulations (Regulations)* [<https://laws-lois.justice.gc.ca/eng/Regulations/SOR-2020-130/index.html>] is to prevent occurrences of harassment and violence.

If you decide to go through conciliation and/or an investigation, the goal would be to find resolution and to identify what preventative measures can be put in place to prevent a recurrence of the workplace harassment and violence (i.e., institute preventative measures) and provide a non-punitive root-cause analysis. There is no financial remedy.

#### When to File a Notice of Occurrence:

A notice of occurrence should be filed when there is/are or was a specific incident, pattern of behaviour, or most commonly series of incidents. For instance, where another employee experiences aggressive or threatening behaviour, like verbal threats, from another employee. Harassment and Violence as defined in the *Regulations*, could include incidents where someone was offended, such as by spreading malicious rumours or gossip about an individual or group, cyberbullying, unwanted pranks, micro aggression, making offensive jokes, racist remarks, unwanted physical contact, unwelcome remarks particularly of a sexual nature... etc. For a longer list of examples or what could constitute harassment and violence, [please see the IPG \(Section 122, Question 3\)](https://www.canada.ca/en/employment-social-development/programs/laws-122, Question 3) [[https://www.canada.ca/en/employment-social-development/programs/laws-](https://www.canada.ca/en/employment-social-development/programs/laws-122, Question 3)

regulations/labour/interpretations-policies/104-harassment-violence-prevention.html#:~:text=Bill%20C%2D65-,Section%20122,-This%20section%20addresses].

## When to File a Grievance:

Should a principal party be seeking a personal remedy, there are many other avenues, notably grievances under the appropriate collective agreement. It is recommended that the principal party contact their union representative or union shop steward regarding filing a grievance.

## Privacy

Privacy and confidentiality are highly important elements, which play a vital role in protecting the integrity of a process. Notice of occurrences of harassment and violence will be handled with the utmost sensitivity and discretion, and information must only be shared on a need-to-know basis.

Any individual, regardless of their position, who becomes aware of a work place harassment and violence notice of an occurrence, even as a witness or other party, should not disclose any information in the work place unless it is a requirement by law to do so. It's important to remember that it may be acceptable for management to disclose information within the organization on a "need to know" basis for the purpose of the process.

Privacy and confidentiality protocols are maintained throughout the process by:

- ✓ All parties involved in the resolution of an occurrence are informed of their obligations regarding privacy and confidentiality and the "need to know".
- ✓ The designated recipient shall review the investigation report to ensure that the content does not in any way, shape, or form, reveal, directly or indirectly, the identity of any person involved.

If you have any questions about privacy and confidentiality, the designated recipient is your best resource.

## Negotiated Resolution and Conciliation

Negotiated resolution and conciliation offer significant advantages at the same time as being powerful restorative processes. They both offer a wide range of potential outcomes that could be of benefit to the principal party, the workplace, or both parties. The *Regulation* does not restrict what may be negotiated within these two processes. All parties may bring potential solutions for consideration by the other parties as part of the negotiations. This could include creative solutions to restore the workplace, such as joint training, manager 360, or team building exercises, etc. that address the root cause that created the situation where the harassment or violence occurred.

Check the FAQ [<https://www.njc-cnm.gc.ca/communique/35/896/en>] for various outcomes that conciliation can provide, under question 14.

## Consider Human Rights

When initiating discussion with the Designated Recipient (DR), it is important for you to consider possible [human rights infringements](#). If there is any overlap with any of the prohibited grounds (race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction for an offence for which a pardon has been granted) please be sure to contact your union representative.

## Process

The non-punitive regulatory framework requires your employer to:

### *Prevention*

- Provide employees with harassment and violence training
- Jointly assess the workplace for risk factors for harassment and violence
- Jointly draft a policy, including information on how the parties' privacy will be protected

### *Response*

- Assist current and former employees with issues of harassment and violence
- Develop a joint list of investigators
- Offer conciliation and provide a conciliator
- Facilitate an investigation if the principal party requests it

### *Support*

- An employer must make available to employees information respecting the medical, psychological or other support services (such as EAP) that are available within their geographical area.
- The jointly developed policy must contain a description of the support measures that are available to employees.

These changes aim to make your workplace safer, by making it easier to prevent and report workplace harassment and violence in a non-punitive way.

## Your rights as an employee:

- A workplace free of harassment, violence, discrimination, and bullying
- A right to representation, a support person of your choosing (not a witness)
- Employees have a right to training every 3 years
- An investigation, if requested
- Conciliation, if requested
- A right to use other complementary processes, including the grievance process, ICMS, and Canadian Human Rights complaint process

## Dos:

- Inform your employer of risk factors or hazards related to harassment and violence, including from the general public.
- If you are represented, contact your union representative about your rights and available options for recourse, including a grievance.
- Ask any questions of clarification about the process to the Designated Recipient (DR), your manager, or Ombuds.
- Keep a log/thorough written documentation of dates, times, incidents, witnesses, details (all the facts) relating to and specifying the behaviors and actions.
- Reference the [Canadian Human Rights](#) prohibited grounds for any potential violations.
- Manage expectations: there is no financial remedy, this is non-punitive. This is a root-cause analysis process that is focused on prevention in the future, and not placing blame or faulting an individual or group.
- Think about specific things you can ask for at conciliation to repair the workplace (training, 360, team building, etc.).
- Hold the employer accountable for their obligation on taking appropriate steps to ensure similar incidents do not happen in the future.
- Remember that you have to participate at the Negotiated Resolution phase. Your union can work with you to come up with potential preventative measures, a resolution, or help have someone attend as a support person (not a witness).

## Don'ts:

- Assume all conflict is harassment or violence.
- Assume an outside investigator or investigation will resolve all issues and solve all your problems.
- Be discouraged should the results be unfounded; the most important part of this process is prevention and recommendations on how to move forward.
- Assume that because you were not informed of the specific Employer actions in response to your allegations means that no actions were taken.
- Assume that the responding party will be dismissed or that there will be a change in the reporting structure.
- Assume that a finding that harassment and violence occurred in an investigative report automatically means it meets the requirements for a specific consequence under other processes (e.g. discipline under the Public Service Code of Ethics, laying charges under the Criminal Code).

## Reminder:

The goal of a punitive process is punishment, where this preventive process has a different goal - to eliminate or minimize the risk of a similar occurrence.