Work Place Harassment and Violence Prevention Regulations: SOR/2020-130

Canada Gazette, Part II, Volume 154, Number 13

Registration

SOR/2020-130 June 17, 2020

CANADA LABOUR CODE

P.C. 2020-456 June 17, 2020

Whereas, pursuant to subsection 157(3) [a] of the *Canada Labour Code* [b], regulations of the Governor in Council under subsection 157(1) [c] of that Act are to be made in respect of occupational safety and health of employees employed on ships, trains or aircraft, while in operation, on the recommendation of the Minister of Labour and the Minister of Transport and are to be made in respect of occupational safety and health of employees employed on or in connection with exploration or drilling for or the production, conservation, processing or transportation of oil or gas in “frontier lands”, as defined in the *Canada Petroleum Resources Act* [d], on the recommendation of the Minister of Labour, the Minister of Indigenous Services and the Minister of Natural Resources, the latter taking into consideration any recommendations made by the Canadian Energy Regulator in relation to the regulations;

And whereas the Canadian Energy Regulator has not made any recommendation in relation to the annexed Regulations;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Labour, the Minister of Transport, the Minister of Indigenous Services and the Minister of Natural Resources, pursuant to subsections 125(3) [e] and 157(1) [c] of the *Canada Labour Code* [b], makes the annexed *Work Place Harassment and Violence Prevention Regulations*.

Work Place Harassment and Violence Prevention Regulations

General

Interpretation

Definitions

1 (1) The following definitions apply in these Regulations.

Act means Part II of the *Canada Labour Code*. (*Loi*)

designated recipient means a work unit in a work place or person that is designated by an employer under section 14. (*destinataire désigné*)

occurrence means an occurrence of harassment and violence in the work place. (*incident*)

principal party means an employee or employer who is the object of an occurrence. (*partie principale*)

responding party means the person who is alleged to have been responsible for the occurrence in notice of an occurrence provided under subsection 15(1). (*partie intimée*)

witness means a person who witnessed an occurrence or is informed of an occurrence by the principal party or responding party. (*témoin*)

Applicable Partner

(2) In these Regulations, a reference to the “applicable partner” is to be read as a reference to the policy committee or, if there is no policy committee, as a reference to the work place committee or the health and safety representative.

Joint Matters

When unable to agree

2 If an employer and the policy committee, the work place committee or the health and safety representative are unable to agree on any matter that is required by these Regulations to be done jointly by them, the employer’s decision prevails.

Former Employees

Prescribed circumstances — extension

3 The Minister may extend the time period referred to in subsection 125(4) of the Act if a former employee demonstrates in an application to the Minister that they were unable to make the occurrence known to the employer within the time period because they incurred trauma as a result of the occurrence or because of a health condition.

Time period to make complaint

4 For the purpose of subsection 127.1(12) of the Act, a former employee may make a complaint under subsection 127.1(1) of the Act until the day that is the later of

- **(a)** three months after the day on which the former employee ceases to be employed by the employer, and
- **(b)** if notice of the occurrence was provided under subsection 15(1), three months after the day on which the resolution process is completed in respect of the occurrence.

Prevention and Protection Measures

Work Place Assessment

Joint assessment

5 (1) An employer and the applicable partner must jointly carry out a work place assessment that consists of the identification of risk factors under section 8 and the development and implementation of preventive measures under section 9.

Joint monitoring and updates

(2) An employer and the applicable partner must jointly monitor the accuracy of the work place assessment and, if necessary, update it in order to reflect a change to the information set out in the assessment, including

- **(a)** a change to the risk factors identified under section 8; and
- **(b)** a change that compromises the effectiveness of a preventive measure developed and implemented under section 9.

Review after three years

(3) An employer and the applicable partner must jointly review the work place assessment every three years and, if necessary, update it.

Joint review and update

6 (1) An employer and the work place committee or the health and safety representative must jointly review and, if necessary, update the work place assessment if notice of an occurrence is provided under subsection 15(1) and

- **(a)** the occurrence is not resolved under section 23 and the principal party ends the resolution process under section 18; or
- **(b)** the responding party is not an employee or the employer.

Review to consider circumstances

(2) A review conducted under subsection (1) must take into account the circumstances of the occurrence.

Multiple occurrences

(3) If a review and update are being conducted under subsection (1) and notice is provided under subsection 15(1) of another occurrence that involves substantially the same matters and for which a review and update are also required under subsection (1), those occurrences may be addressed together in the same review and update.

Qualifications

7 An employer must ensure that each individual who is directed by the employer to identify the risk factors referred to in section 8, or to develop and implement the preventive measures referred to in section 9, is qualified to do so by virtue of their training, education or experience.

Identification of risk factors

8 An employer and the applicable partner must jointly identify the risk factors, internal and external to the work place, that contribute to harassment and violence in the work place, taking into account

- **(a)** the culture, conditions, activities and organizational structure of the work place;

(b) circumstances external to the work place, such as family violence, that could give rise to harassment and violence in the work place;

(c) any reports, records and data that are related to harassment and violence in the work place;

(d) the physical design of the work place; and

(e) the measures that are in place to protect psychological health and safety in the work place.

Preventive measures — development and implementation

9 Within six months after the risk factors are identified under section 8, an employer and the applicable partner must jointly

(a) develop preventive measures that, to the extent feasible,

(i) mitigate the risk of harassment and violence in the work place, and

(ii) neither create nor increase the risk of harassment and violence in the work place;

(b) develop an implementation plan for the preventive measures; and

(c) implement the preventive measures in accordance with the implementation plan.

Work Place Harassment and Violence Prevention Policy

Joint development

10 (1) An employer and the applicable partner must jointly develop a work place harassment and violence prevention policy.

Policy content

(2) The policy must contain the following elements:

(a) the employer's mission statement regarding the prevention of and protection against harassment and violence in the work place;

(b) a description of the respective roles of the employer, designated recipient, employees, policy committee, work place committee and health and safety representative in relation to harassment and violence in the work place;

(c) a description of the risk factors, internal and external to the work place, that contribute to work place harassment and violence;

(d) a summary of the training that will be provided regarding work place harassment and violence;

(e) a summary of the resolution process, including

(i) the name or identity of the designated recipient, and

(ii) the manner in which a principal party or witness may provide the employer or the designated recipient with notice of an occurrence;

(f) the reasons for which a review and update of the work place assessment must be conducted under subsection 6(1);

(g) a summary of the emergency procedures that must be implemented when an occurrence poses an immediate danger to the health and safety of an employee or when there is a threat of such an occurrence;

(h) a description of the manner in which the employer will protect the privacy of persons who are involved in an occurrence or in the resolution process for an occurrence under these Regulations;

(i) a description of any recourse, in addition to any under the Act or these Regulations, that may be available to persons who are involved in an occurrence;

(j) a description of the support measures that are available to employees; and

(k) the name of the person who is designated to receive a complaint made under subsection 127.1(1) of the Act.

Policy to be made available

(3) An employer must make the policy available to all employees.

Joint review and update

(4) An employer and the applicable partner must jointly review and, if necessary, update the policy at least once every three years and following any change to an element of the policy.

Emergency Procedures

Joint development and implementation

11 (1) An employer and the applicable partner must jointly develop emergency procedures that are to be implemented if

(a) an occurrence poses an immediate danger to the health and safety of an employee; or

(b) there is a threat of an occurrence referred to in paragraph (a).

Procedures available

(2) An employer must make the emergency procedures available to all employees.

Joint review and update

(3) After every implementation of the emergency procedures under subsection (1), an employer and the applicable partner must jointly review and, if necessary, update the procedures.

Training

Joint development or identification

12 (1) An employer and the applicable partner must jointly develop or identify the training on work place harassment and violence that is to be provided to employees, the employer and the designated recipient.

Required training elements

(2) The training must be specific to the culture, conditions and activities of the work place and include the following elements:

(a) the elements of the work place harassment and violence prevention policy;

(b) a description of the relationship between work place 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 work place harassment and violence.

Joint review and update

(3) An employer and the applicable partner must jointly review and, if necessary, update the training at least once every three years and following any change to an element of the training.

Employee

(4) An employer must ensure that an employee is provided with the training

(a) within three months after the day on which their employment begins or, in the case of an employee whose employment began before the day on which these Regulations come into force, within one year after the day on which these Regulations come into force;

(b) at least once every three years after that; and

(c) following any update to the training under subsection (3) or their assignment to a new activity or role for which there is an increased or specific risk of work place harassment and violence.

Designated recipient

(5) An employer must ensure that the designated recipient is provided with the training before assuming their duties under these Regulations and at least once every three years after that.

Employer

(6) An employer must undergo the training within one year after the day on which these Regulations come into force and at least once every three years after that.

Support Measures

Information available to employees

13 An employer must make available to employees information respecting the medical, psychological or other support services that are available within their geographical area.

Resolution Process

Notice of an Occurrence

Designated recipient

14 An employer must designate a person or work unit as the designated recipient to whom notice of an occurrence may be provided.

Providing notice

15 (1) Subject to subsections (2) and (3), a principal party or witness may, in writing or orally, provide an employer or the designated recipient with notice of an occurrence.

Exception

(2) Notice must not be provided in respect of an occurrence if

(a) the responding party is neither the employer nor an employee;

(b) exposure to harassment and violence is a normal condition of the principal party's work; and

(c) the employer has measures in place to address that work place harassment and violence.

Employer is a party

(3) If the principal party or the responding party is the employer, the notice must be provided to the designated recipient.

Anonymous notice

(4) A witness may provide notice of an occurrence anonymously.

Content of notice

16 Notice of an occurrence must contain the following information:

(a) the name of the principal party and the responding party, if known;

(b) the date of the occurrence; and

(c) a detailed description of the occurrence.

Employer or designated recipient

17 For the purposes of sections 18 to 23, 26, 27, 29 and 34, a reference to "employer or designated recipient" is a reference to the one to whom notice of the occurrence was provided under subsection 15(1).

Principal party's choices

18 The principal party may end the resolution process at any time by informing an employer or designated recipient that they choose not to continue with the process.

Initial review

19 (1) An employer or designated recipient must conduct an initial review of every notice of an occurrence.

Occurrence deemed to be resolved

(2) Following the initial review, the occurrence is deemed to be resolved if the notice does not contain the name of the principal party or otherwise allow their identity to be determined.

Response to Notice of an Occurrence

Contact with principal party

20 An employer or designated recipient must, within seven days after the day on which notice of an occurrence is provided, 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) of the manner in which the work place harassment and violence prevention policy is accessed;

(c) of each step of the resolution process; and

(d) that they may be represented during the resolution process.

Contact with witness

21 If notice of an occurrence is provided by a witness who is not anonymous, an employer or designated recipient must, within seven days after the day on which the notice is provided, contact the witness to confirm that notice was received.

Contact with responding party

22 On the first occasion that an employer or designated recipient contacts the responding party regarding the occurrence, they must inform them

(a) that they have been named or identified as the responding party in the notice of an occurrence;

(b) of the manner in which the work place harassment and violence prevention policy is accessed;

(c) of each step of the resolution process; and

(d) that they may be represented during the resolution process.

Negotiated Resolution

Reasonable effort

23 (1) An employer or designated recipient, the principal party and, if contacted under section 22, the responding party, must make every reasonable effort to resolve an occurrence for which notice is provided under subsection 15(1) and those efforts must begin no later than 45 days after the day on which that notice is provided. However, if the occurrence is also investigated, it cannot be resolved under this section after the investigator has provided their report under subsection 30(1).

Review required

(2) For the purposes of subsection (1), the reasonable effort includes a review by the principal party and the employer or designated recipient to determine whether the notice of occurrence provided under subsection 15(1) describes an action, conduct or comment that constitutes *harassment and violence* as defined in subsection 122(1) of the Act.

Joint determination — harassment and violence

(3) For the purpose of subsection (1), resolution of the occurrence includes, but is not limited to, a joint determination by the principal party and the employer or designated recipient that the notice of occurrence provided under subsection 15(1) does not describe an action, conduct or comment that constitutes *harassment and violence* as defined in subsection 122(1) of the Act.

Conciliation

Conditions

24 The principal party and the responding party may attempt to resolve an occurrence for which notice is provided under subsection 15(1) by conciliation if they agree to conciliation and on a person to facilitate it. However, if the occurrence is also investigated, it cannot be resolved by conciliation after the investigator has provided their report under subsection 30(1).

Investigation

When investigation is required

25 (1) Subject to subsection (2), if an occurrence is not resolved under section 23 or 24, an investigation of the occurrence must be carried out if the principal party requests it.

Investigation discontinued

(2) If the occurrence being investigated is resolved under section 23 or 24 before the investigator has provided their report under subsection 30(1), the investigation must be discontinued.

Notice of investigation

26 An employer or the designated recipient must provide the principal party and the responding party with notice that an investigation is to be carried out.

Selection of investigator

27 (1) Subject to subsection (2), an employer or designated recipient must select one of the following persons to act as the investigator:

- **(a)** in the case where the employer and the applicable partner have jointly developed or identified a list of persons who may act as an investigator, a person from that list; and
- **(b)** in any other case,
  - **(i)** a person that is agreed to by the employer or designated recipient, the principal party and the responding party, or
  - **(ii)** if there is no agreement within 60 days after the day on which the notice is provided under section 26, a person from among those whom the Canadian Centre for Occupational Health and Safety identifies as having the knowledge, training and experience referred to in subsection 28(1).

Limit

(2) An employer or designated recipient may select a person to act as the investigator only if the person

- **(a)** possesses the knowledge, training and experience referred to in subsection 28(1); and
- **(b)** provides the employer or designated recipient, principal party and responding party with a written statement indicating that the person is not in a conflict of interest in respect of the occurrence.

Investigator's qualifications

28 (1) For the purposes of these Regulations, an investigator must

- **(a)** be trained in investigative techniques;
- **(b)** have knowledge, training and experience that are relevant to harassment and violence in the work place; and

(c) have knowledge of the Act, the *Canadian Human Rights Act* and any other legislation that is relevant to harassment and violence in the work place.

Statement of qualifications

(2) A person or party referred to in subparagraph 27(1)(b)(i) who proposes that a person act as the investigator must provide the other persons and parties referred to in that subparagraph with the following information about the proposed investigator:

(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 that they meet the requirements of subsection (1); and

(d) a description of any experience that they have which is relevant to the nature of the occurrence that is to be investigated.

Information for investigator

29 An employer or the designated recipient must provide the investigator with all information that is relevant to the investigation.

Investigator's report

30 (1) An investigator's report regarding an occurrence must set out the following information:

(a) a general description of the occurrence;

(b) their conclusions, including those related to the circumstances in the work place that contributed to the occurrence; and

(c) their recommendations to eliminate or minimize the risk of a similar occurrence.

Identity of persons

(2) An investigator's report must not reveal, directly or indirectly, the identity of persons who are involved in an occurrence or the resolution process for an occurrence under these Regulations.

Copies of report

(3) An employer must provide a copy of the investigator's report to the principal party, responding party, the work place committee or health and safety representative and, if they were provided with notice under subsection 15(1), the designated recipient.

Implementation of Recommendations

Joint determination

31 (1) An employer and the work place committee or the health and safety representative must jointly determine which of the recommendations set out in the report are to be implemented.

Implementation

(2) The employer must implement all recommendations that are determined under subsection (1).

Completion of Resolution Process

Completion of process

32 The resolution process for an occurrence is completed when

- **(a)** if a work place assessment is required under subsection 6(1), the review and, if necessary, update of the assessment are carried out;
- **(b)** the occurrence is resolved under subsection 19(2) or under section 23 or 24;
- **(c)** if an investigator has provided a report in accordance with subsection 30(1), the employer implements the recommendations referred to in subsection 31(2).

Time limit

33 (1) Subject to subsection (2), an employer must ensure that the resolution process is completed within one year after the day on which notice of the occurrence is provided under subsection 15(1).

Temporary absence

(2) If the principal party or responding party is temporarily absent from work for more than 90 consecutive days after the day on which notice of the occurrence is provided under subsection 15(1), the employer must ensure that the resolution process is completed within the later of

- **(a)** one year after the day on which notice of the occurrence is provided under subsection 15(1), and
- **(b)** six months after the day on which the party returns to work.

Monthly status updates

34 For every occurrence for which notice is provided under subsection 15(1), an employer or designated recipient must provide monthly updates regarding the status of the resolution process to

- **(a)** the principal party, beginning on the first month after the month in which the notice is provided and ending on the month in which the resolution process is completed; and
- **(b)** the responding party, beginning on the first month after the month in which the responding party is first contacted by the employer or designated recipient concerning the occurrence and ending on the month in which the resolution process is completed.

Records and Reports

Health and Safety Records

Records to be kept

35 (1) An employer must keep the following health and safety records:

- **(a)** the work place harassment and violence prevention policy;
- **(b)** a copy of the documents that form part of the work place assessment;
- **(c)** a copy of the documents that form part of each review and update of the work place assessment;

(d) for each instance where the employer and the policy committee, the work place committee or the health and safety representative are unable to agree on a matter that is required by these Regulations to be jointly done by them, a record of the employer’s decision in that matter and the reasons for that decision;

(e) a record of each notice provided under subsection 15(1) and of each action taken in response to the notice;

(f) for each instance where a time limit set out in section 33 is not met, a document that sets out the reason for the delay;

(g) a copy of each report that is prepared by an investigator under subsection 30(1);

(h) a copy of each annual report; and

(i) a copy of each fatality report provided under subsection 37(1).

Time period

(2) An employer must keep the records referred to in paragraphs (1)(c) to (i) for a period of 10 years.

Annual Report to Minister

Content

36 On or before March 1 of each year, an employer must provide the Minister with an annual report that sets out

(a) their name or business name;

(b) their *business number*, as defined in subsection 248(1) of the *Income Tax Act*;

(c) the name of a person who can be contacted in respect of the report; and

(d) the following information respecting the occurrences for which notice was provided under subsection 15(1) in the preceding calendar year:

(i) the total number of occurrences,

(ii) the number of occurrences that were related, respectively, to sexual harassment and violence and non-sexual harassment and violence,

(iii) the number of occurrences that resulted in the death of an employee,

(iv) if known, the number of occurrences that fell under each prohibited ground of discrimination set out in subsection 3(1) of the *Canadian Human Rights Act*,

(v) the locations where the occurrences took place, specifying the total number of occurrences that took place in each location,

(vi) the types of professional relationships that existed between the principal and responding parties, specifying the total number for each type,

(vii) the means set out in section 32 by which resolution processes were completed and, for each of those means, the number of occurrences involved, and

(viii) the average time, expressed in months, that it took to complete the resolution process for an occurrence.

Fatality Report

Time period

37 (1) If an occurrence results in the death of an employee, an employer must report the occurrence to the Minister within 24 hours after becoming aware of the employee's death.

Content

(2) The report must set out the following information:

(a) the employer's name or business name;

(b) the employer's *business number*, as defined in subsection 248(1) of the *Income Tax Act*;

(c) a general description of the occurrence;

(d) the date and time of the occurrence; and

(e) the name of a person who can be contacted in respect of the report.

Consequential Amendments

Canada Labour Standards Regulations

38 Schedule II to the *Canada Labour Standards Regulations* [1] is amended by deleting the reference to "Sexual harassment".

Canada Occupational Health and Safety Regulations

Amendments

39 The *Canada Occupational Health and Safety Regulations* [2] are amended by adding the following after subsection 15.2(2):

(3) This Part does not apply in respect of occurrences of harassment and violence in the work place.

40 Paragraph 17.5(1)(a) of the Regulations is replaced by the following:

(a) to be implemented if any person commits or threatens to commit an act, other than an occurrence of harassment and violence, that may be hazardous to the health and safety of the employer or any of their employees;

41 Part XX of the Regulations is repealed.

Transitional Provision

42 Sections 20.1, 20.2 and 20.9 of the *Canada Occupational Health and Safety Regulations*, as they read immediately before the day on which the *Work Place Harassment and Violence Prevention Regulations* come into force, continue to apply to all "work place violence", as described in

section 20.2 of the *Canada Occupational Health and Safety Regulations* and alleged work place violence, of which the employer becomes aware before the day on which the *Work Place Harassment and Violence Prevention Regulations* come into force.

On Board Trains Occupational Health and Safety Regulations

43 The *On Board Trains Occupational Health and Safety Regulations* [3] are amended by adding the following after section 11.1:

Application

11.1.1 This Part does not apply in respect of occurrences of harassment and violence in the work place.

44 Paragraph 13.7(1)(a) of the Regulations is replaced by the following:

> **(a)** if any person commits or threatens to commit an act, other than an occurrence of harassment and violence, that may be hazardous to the health or safety of the employer or any employees;

45 Part XV of the Regulations is repealed.

Oil and Gas Occupational Safety and Health Regulations

46 The *Oil and Gas Occupational Safety and Health Regulations* [4] are amended by adding the following after section 16.1:

Application

16.1.1 This Part does not apply in respect of occurrences of harassment and violence in the work place.

47 Paragraph 18.9(1)(a) of the Regulations is replaced by the following:

> **(a)** if any person commits or threatens to commit an act, other than an occurrence of harassment and violence, that is likely to be hazardous to the safety or health of the employer or any employee;

Coal Mining Occupational Health and Safety Regulations

48 The *Coal Mining Occupational Health and Safety Regulations* [5] are amended by adding the following after the heading “Hazardous Occurrences” before section 162:

Application

161.1 This Part does not apply in respect of occurrences of harassment and violence in the work place.

Maritime Occupational Health and Safety Regulations

Amendments

49 Section 90 of the *Maritime Occupational Health and Safety Regulations* [6] and the heading “Interpretation” before it are repealed.

50 Division 2 of Part 5 of the Regulations is repealed.

51 The Regulations are amended by adding the following after section 274:

Application

274.1 This Part does not apply in respect of occurrences of harassment and violence in the work place.

52 Section 277 of the Regulations is amended by adding "or" to the end of paragraph (h), by striking out "or" at the end of paragraph (i) and by repealing paragraph (j).

Transitional Provision

53 Sections 90, 96 and 103 of the *Maritime Occupational Health and Safety Regulations*, as they read immediately before the day on which the *Work Place Harassment and Violence Prevention Regulations* come into force, continue to apply to all *work place violence*, as defined in section 90 of *Maritime Occupational Health and Safety Regulations*, and alleged work place violence of which the employer becomes aware before the day on which *Work Place Harassment and Violence Prevention Regulations* come into force.

Aviation Occupational Health and Safety Regulations

54 The *Aviation Occupational Health and Safety Regulations* [7] are amended by adding the following after section 10.1:

Application

10.1.1 This Part does not apply in respect of occurrences of harassment and violence in the work place.

Coming into Force

S.C. 2018, c. 22

55 These Regulations come into force on the day on which sections 0.1 to 16 and 18 of *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*, chapter 22 of the Statutes of Canada, 2018, come into force, but if they are registered after that day, they come into force on the day on which they are registered.

REGULATORY IMPACT ANALYSIS STATEMENT

(*This statement is not part of the Regulations*.)

Executive summary

Issues: Harassment and violence, including sexual harassment and sexual violence, continue to be pervasive in federally regulated work places. Many employees who have experienced harassment and violence in the work place do not report it for fear of retribution, lack of support or a belief that what they have experienced does not substantiate a complaint. The current legal framework is fragmented and not designed to adequately address occurrences of sexual harassment and sexual violence.

Description: The new stand-alone *Work Place Harassment and Violence Prevention Regulations* (the Regulations) will apply to all federal work places covered under Part II of the *Canada Labour Code* (the Code), including the federally regulated private sector, the federal public service and parliamentary work places. It will replace Part XX (violence prevention) of the *Canada Occupational Health and Safety Regulations* (COHSR), as well as portions of two other regulations that include violence prevention provisions. The Regulations will include provisions to prevent harassment and violence through comprehensive prevention policies, training and improved data collection; respond to occurrences when they do happen through a resolution process that requires employers to communicate regularly with parties and provide multiple options for seeking resolution; and make available information respecting support services to employees.

Rationale: The Government of Canada is committed to taking action to ensure that federal work places are free from harassment and violence. In response to this priority, 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 Bill) in the House of Commons on November 7, 2017.

The Regulations will streamline and consolidate harassment and violence provisions for all federally regulated work places that fall under Part II of the Code, including those covered by the *Parliamentary Employment and Staff Relations Act* (PESRA). They will also highlight the importance of harassment and violence prevention and make it easier for employers and employees to identify their rights and duties, which will now be contained within one stand-alone set of regulations. The Regulations will also include strengthened requirements with respect to preventing and responding to occurrences of harassment and violence and supporting those affected.

While the implementation of the Regulations is anticipated to cost federally regulated employers $587 million over 10 years, research and expert analysis suggest that they will result in a reduction in occurrences of harassment and violence, which in turn will economically benefit the work place through a decrease in absenteeism, job burnout, disability payments, lost work time and litigation costs.

The Regulations were developed following extensive consultations with employer and employee groups, as well as subject matter experts, advocacy groups and the Canadian public. These consultations were held in multiple rounds from March 2018 to October 2018. The Regulations were further refined following the publication in the *Canada Gazette*, Part I, and the associated public comment period.

Issues

The widespread nature of harassment and violence in the work place, including sexual harassment and sexual violence, is highlighted in the 2018 results of an online survey conducted by the Angus Reid Institute where 52% of Canadian women say they have been subject to sexual harassment in the work place. [8] The results of the 2017 Government of Canada Public Service Employee Survey (PSES) also underscore the pervasiveness of the issue, finding that 18% of respondents have been subject to harassment or violence on the job in the past two years. [9]

Evidence also shows that harassment is severely under-reported, with some studies estimating up to 80% of occurrences going unreported to anyone. [10] The lack of reporting is due to the employees' fear of retribution, including their job security, lack of support from the employer to rectify the situation and lack of knowledge of

what behaviour constitutes harassment and violence.

The current legal framework under the *Canada Labour Code* (the Code) and its regulations to prevent harassment and violence in federally regulated work places is fragmented and not designed to adequately address occurrences of sexual harassment and sexual violence.

Background

Part II of the Code establishes the legislative framework for occupational health and safety for federally regulated work places. Part II of the Code imposes a duty on employers to take steps to prevent and protect against violence in the work place. Part XX of the *Canada Occupational Health and Safety Regulations* (COHSR) outlines specific employer obligations related to preventing and protecting against work place violence.

Part III of the Code establishes minimum labour standards for the federally regulated private sector and federal Crown corporations, but unlike Part II, it does not apply to the federal public service. Part III includes provisions establishing that employees are entitled to employment free of sexual harassment, and requiring employers to adopt sexual harassment policies and make reasonable efforts to ensure no employee is subject to sexual harassment. However, these provisions only address sexual harassment and do not address any other forms of harassment.

Despite progress in raising employment and health and safety standards in Canada, and the existing provisions that offer protection to employees under the Code, too many people continue to experience harassment and violence at work.

The Government of Canada consulted Canadians to find out how harassment and violence, including sexual harassment and sexual violence, is treated under the current legal framework for federally regulated work places and how the framework can be strengthened. Consultations with employers, labour representatives, subject matter experts, advocacy groups and the public took place between March and October 2018, in the form of round-table meetings and teleconferences. An online survey was also conducted with the public. The top three sectors represented by survey respondents were educational services, the federal public service and health care and social assistance. Additionally, 89% of all respondents were women.

The results of these consultations are captured in *Harassment and Sexual Violence in the Work Place Public Consultations – What We Heard Report*, which highlights the inadequacies 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 work place behaviours;
- 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;
- The majority of those who have experienced sexual harassment at work have never reported the behaviour to their employers, and many who do report it do not feel that they received a proper response or support;
- Those with disabilities and members of a visible minority group are more likely to experience harassment and violence;

- Many work places have inadequate or weak policies on harassment and violence prevention, and many employees have never received training on existing policies; and
- Employees in parliamentary work places do not have the same occupational health and safety protections as other federally regulated work places.

To address the issues raised in these 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* in the House of Commons on November 7, 2017. Bill C-65 was passed by the Senate and received royal assent on October 25, 2018.

Bill C-65 addresses many of the inadequacies identified through the consultations and has resulted in changes to Part II of the Code as it relates to harassment and violence prevention. For instance, Bill C-65

- amends the purpose of Part II to explicitly indicate that it includes the prevention of harassment and violence and of physical and psychological injuries and illnesses;
- defines harassment and violence 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;
- extends employers' obligations in respect of former employees in relation to an occurrence of harassment and violence in the work place if the occurrence becomes known to the employer within three months after the day on which the former employee ceases to be employed by the employer;
- requires employers to ensure that all employees receive harassment and violence prevention training;
- restricts policy committees, work place committees and health and safety representatives from participating in investigations related to an occurrence of harassment and violence in the work place; and
- subject to some exceptions and modifications, extends the provisions under Part II of the Code to parliamentary work places covered by the *Parliamentary Employment and Staff Relations Act* (PESRA).

Objective

To support the goals of Bill C-65, which includes authority to make regulations to prevent and protect against harassment and violence, respond to occurrences and support those affected by harassment and violence in the work place, new stand-alone regulations were created.

Creating a separate set of regulations will streamline the harassment and violence provisions, as they will apply to all federally regulated work places that fall under Part II of the Code, including those covered by the PESRA. They will also highlight the importance of harassment and violence prevention and make it easier for employers and employees to identify their rights and duties as they are contained within one set of regulations separate from any other.

The regulatory provisions to address harassment and violence as a continuum of behaviours have been developed based on the following goals:

1. **Change the culture of harassment and violence in the work place:** Create a culture change in the work place where civility and respect are the standard.

2. **Greater empowerment for affected employees:** While negotiated resolution is emphasized as a first step, in the case where that step does not complete the resolution process, the employee who is the object of the occurrence (principal party) will have a voice to decide on the next step for resolution, which could be conciliation, investigation or both.

3. **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.

4. **Emphasize the importance of prevention:** Prevention is the most critical step to effectively reduce the number of occurrences of harassment and violence. Prevention also alleviates the financial burden on employers by reducing the need for outside conciliators or investigators to be involved in the resolution process.

5. **Importance of privacy and confidentiality:** In an effort to encourage those who have experienced or witnessed harassment and violence in the work place to come forward.

6. **Predictable timeframes for resolution:** In order to support all parties and minimize negative impacts on the work place.

Description

The new stand-alone Regulations will apply to all federally regulated work places that fall under Part II of the Code. They will replace violence prevention provisions currently under Part XX of the COHSR. Portions of two other regulations that include violence prevention provisions will also be repealed.

The following table outlines the regulations that will have provisions repealed.

Regulations	Section
Canada Occupational Health and Safety Regulations	Part XX Violence Prevention in the Work Place
Maritime Occupational Health and Safety Regulations	Part 5 – Division 1 – section 90 Part 5 – Division 2 Violence Prevention in the Work Place Part 21 – subsection 277(j)
On Board Trains Occupational Safety and Health Regulations	Part XV – Violence Prevention in the Work Place

Main elements of the new Regulations

In developing the Regulations, consideration has been given to the COHSR, specifically Part XV (Hazardous Occurrence Investigation, Recording and Reporting), Part XIX (Hazard Prevention Program) and Part XX (Violence Prevention). This allowed the Labour Program to develop a proposed regulatory framework for stakeholders to react to during consultations and thus finalize this proposal.

The main elements of the new Regulations are outlined below. Note that wherever there is a mention of the employer having to do something jointly, they must do it with the policy committee, the work place committee or the health and safety representative.

Work place harassment and violence prevention policy

Employers will be required to jointly develop and make available a prevention policy that outlines information on how their organization will address harassment and violence in their work place.

Work place assessment

Employers will have to jointly conduct a work place assessment that identifies risk factors related to harassment and violence in the work place and develop and implement preventive measures to protect the work place from these risks.

At least every three years, the work place assessment will need to be reviewed and, if necessary, updated. A work place assessment review must also be undertaken in certain situations where the resolution process cannot proceed: when the occurrence is not resolved by negotiated resolution and the principal party ends the resolution process or when the responding party is not an employee or the employer.

Emergency procedures

The employer will have to jointly develop and implement emergency procedures to address occurrences that pose an immediate danger to an employee or situations where there is a threat of such an occurrence. The employer will be required to jointly review and, if necessary, update the emergency procedures following situations where they have been implemented.

Training

Employers will be required to jointly identify or develop harassment and violence training and ensure it is delivered to employees, employers and the designated recipient. The training will have to be delivered at least every three years and provide instruction on the elements of the prevention policy, as well as various other elements including how to recognize, minimize, prevent and respond to work place harassment and violence.

Support measures

The Regulations require employers to make available information respecting support services that employees may access should they be in need of them.

Resolution process

The Regulations outline a resolution process that focuses on greater communication between the employer and the parties through monthly updates; reduced negative impacts on the work place through prescribed timelines for completing the resolution process; and increased control on the part of the principal party regarding the subsequent steps for resolution should negotiated resolution not complete the process.

The resolution process will require employers to respond to every notice of an occurrence of harassment and violence in their work place with the exception of those notices that do not contain the name of the principal party or otherwise allow their identity to be determined. The employer or the designated recipient will also review a notice of an occurrence with the principal party to assess whether the occurrence is an action,

conduct or comment that falls under the definition of harassment and violence as outlined in Bill C-65. Employers will also be required to designate a person or work unit as the "designated recipient" to whom a notice of an occurrence may be provided.

The resolution process includes multiple options for resolution: negotiated resolution, conciliation and investigation. While negotiated resolution and conciliation are more flexible, if an investigation is chosen to address the occurrence, employers will have to follow the requirements regarding the qualifications of an investigator, how they may be appointed, the report the investigator must submit and how the employer will handle this report.

Additionally, if an employer wishes to develop or identify a list of investigators, they must do so jointly with the applicable partner. In the event that a list has been jointly developed, the employer or designated recipient can appoint an individual from the list to conduct the investigation. In the case where an employer and their applicable partner have not jointly developed or identified a list of investigators, the employer or the designated recipient, the principal party and the responding party will have 60 days to jointly agree upon an investigator. If, after 60 days, there is no joint agreement on the person who is to act as an investigator, the employer or designated recipient may choose a person from among those whom the Canadian Centre for Occupational Health and Safety identifies as having the necessary knowledge, training and experience (as outlined at subsection 28(1) of the Regulations) to act as an investigator.

Records and reports

To support enforcement of the Regulations, employers will have to keep a number of records, including: records of all notices of occurrences of harassment and violence in their work place; records of the actions taken to address the notices; records of the decisions they make in the event they are unable to agree on an issue that they must do jointly; and records of any delays to the timelines.

In order to improve data collection on the prevalence and types of occurrences of harassment and violence in federal work places, employers must report an occurrence that results in the death of an employee within 24 hours after becoming aware of the death and aggregated data on all occurrences annually to the Minister.

Regulatory development

Consultation

The Labour Program began consultations with key stakeholders in March 2018. The consultation sessions were held in three phases and the proposed regulatory framework was amended at the end of each phase in order to ensure that the final proposal reflects the feedback received during consultations. Throughout this process, while there were some elements of the proposal that were revised based on the first two phases of completed consultations, the regulatory changes were generally well received by all interested parties. The increased visibility of the "#MeToo" movement prior to the regulatory consultations also played a role in increasing public support from all stakeholders to eliminate sexual harassment and violence from the work place. Details of each consultation phase are outlined below.

Phase One (March-May 2018): The Labour Program convened eight round tables across Canada with employers and unions who will be impacted by the new Regulations, as well as with subject matter experts and special interest groups. The all-day facilitated forums allowed the Labour Program to gauge initial reactions to the proposed regulatory framework. All participants were engaged in the sessions and provided very specific

comments and feedback, which was used to refine the regulatory proposal. Phase One helped to clarify the qualifications of individuals undertaking work place harassment and violence investigations; highlight the essential elements of an investigation report; clarify that the investigator should not make recommendations regarding discipline in the investigation report; and inform the timelines for the resolution process.

Phase Two (May-July 2018): Based on the comments and feedback received during the round tables in Phase One, the proposed regulatory framework was revised. The Labour Program held six WebEx sessions and attended many forums at the request of stakeholders, such as Federally Regulated Employers – Transportation and Communications (FETCO), Royal Canadian Mounted Police (RCMP), Public Service Alliance of Canada (PSAC) and the National Joint Council. Participants of these sessions, many of whom had attended one or more of the face-to-face consultations in Phase One, were very appreciative that their feedback had been taken into consideration. The feedback in Phase Two was very positive with regards to the main elements of the regulatory framework. Key input from Phase Two included the recommendation to qualify the terms “mediators” and “mediation” to broader language so that Elders and spiritual leaders could see themselves in the redefined terms and be considered as mediators; clarification on the timelines for the resolution process; and clarification on the concept of co-development.

Phase Three (July-October 2018): Phase Three consisted of online public consultations, additional face-to-face meetings and teleconferences. Feedback received during phases One and Two informed the Labour Program’s discussion paper, which provided a detailed description of the proposed regulatory framework. The discussion paper and associated survey questions were posted online for public comment for 74 days, with the comment period closing on October 5, 2018.

The public feedback was very positive from the 1 018 people who responded to the online survey. Specifically:

- 91% of respondents agreed that employers should be required to acknowledge receipt of a notification of harassment and violence that occurred in their work place as soon as possible;
- 93% agreed that the employer should be obligated to provide monthly updates on the status of the resolution process to the principal party and the responding party;
- 85% of respondents agreed that parties should have two months or less to agree on an investigator or the Labour Program will identify one for them;
- 83% of respondents agreed that employers should implement all appropriate recommendations in the investigator’s report as soon as possible but no later than six months;
- 87% of respondents agreed that physical support to the principal party should be made available, while 85% of respondents agreed that a list of local psychological support resources should be made available to all parties;
- 80% of respondents agreed that adjustments to the work place environment to reduce the potential for continued harassment and violence (e.g. removing one of the parties form the physical workspace, moving offices of one of the parties, adjusting shift schedules, etc.) should be made available to all parties; and
- 78% of respondents indicated that an employer’s harassment and violence prevention policy should outline how that employer will provide support to an employee dealing with family violence, for example, by developing a safety plan with them.

In addition to completing the online survey, many employer and labour organizations submitted detailed written responses to the discussion paper, which were reviewed and considered by the Labour Program during the preparation of the Regulations. Supporting policy instruments will include the new grants and contributions program, the outreach hub, guidance documents and a list of investigators from which employers can select an investigator to investigate an occurrence.

The following suggestions from stakeholders have been addressed in the Regulations:

- Putting in place a fair resolution process for the principal and responding parties, while outlining conditions for which the employer must conduct a work place assessment review instead of undergoing the resolution process, such as when the occurrence is not resolved through negotiated resolution and the principal party wishes to end the resolution process;
- Greater clarification on when the resolution process is considered complete;
- Requiring negotiated resolution as a first step to resolve a notice of occurrence;
- Setting clear timelines for completing the resolution process;
- Clarifying that the employer has ultimate responsibility for decisions regarding which of an investigator's recommendations in their report are appropriate for implementation; and
- Not requiring prevention policies to address disciplinary action.

Some comments that were received addressed elements that are beyond the scope of the policy in the context of Bill C-65 and therefore will not be addressed in this regulatory proposal:

- Ensuring union accountability for responsibilities in the Regulations. For example, an employer's ability to complain if the union is not adhering to the Code;
- Providing a dispute resolution mechanism for unions and employers;
- Providing an appeals process for an investigator's report;
- Including a statute of limitations for complaints;
- Ensuring that work place harassment and violence prevention policies outline appropriate behaviours for performance management;
- Establishing a standard rate or fee for service for investigators; and
- Outlining an extension of time for those acting as competent persons under Part XX of the COHSR for them to acquire the qualifications of an investigator under the new Regulations. [11]

The face-to-face meetings and teleconferences during Phase Three were held with FETCO, PSAC, federal public service organizations and the National Joint Council. A half-day facilitated session took place on September 28, 2018, with the Union Management Consultation Committee (UMCC), including management representatives from Parliament Hill's Chief Human Resource Officer's management team, as well as the senior union representative of non-political staff on Parliament Hill.

A variety of stakeholders were present at the in-person and/or WebEx consultation sessions conducted by the Labour Program since March 2018.

To gain a greater understanding of provincial and territorial work being undertaken on harassment and violence prevention, the Labour Program consulted, often regularly, with British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and New Brunswick.

Many federally regulated employers, employer groups and employee representatives in the following sectors participated in the sessions: band offices; rail, air, road and marine transportation; ports; banks; telecommunications; nuclear and oil and gas. In addition, almost every federal department, agency and crown corporation attended a minimum of one consultation session.

Subject matter experts on human resources, academia, occupational health and safety and human rights, as well as advocacy groups for Indigenous peoples, the lesbian, gay, bisexual, transgender, queer and two-spirit (LGBTQ2) community, visible minorities, women and persons with disabilities were also integral in the policy development.

The following parties attended the in-person consultation sessions, specifically given the impact on parliamentary work places covered under the PESRA:

- House of Commons Administration
- Library of Parliament
- Office of the Conflict of Interest and Ethics Commissioner
- Office of the Parliamentary Budget Officer
- Office of the Senate Ethics Officer
- Parliamentary Protective Service
- Public Service Alliance of Canada
- Senate Administration
- Union of National Employees
- Unifor

The consultation process undertaken for developing the new Regulations was extensive and far-reaching. These consultations, thanks to the participation of many committed stakeholders and Canadians at large, refined all aspects of the Regulations, from overarching elements to minute details.

Modern treaty obligations and Indigenous engagement and consultation

The Regulations would not change which work places are under federal jurisdiction and subject to labour provisions in the Code. Indigenous bands and band councils are generally subject to the Code.

Indigenous groups participated in the round-table discussions and WebEx sessions and provided feedback through the online survey. Throughout these consultations, the Labour Program heard positive support from Indigenous peoples for the changes.

With respect to harassment and violence, some Indigenous participants indicated that the term “mediation” does not resonate with them. For example, they were concerned that the proposed regulatory requirement to engage in mediation would not allow for the use of an Elder in dispute resolution processes. To address this concern, the Regulations now use the term “conciliation.”

Much of the feedback received raised the need for capacity building within band and tribal councils in regards to all employer obligations laid out in Part II of the Code. The Labour Program also heard about the issue of lateral violence [12] and the power imbalance between Chiefs and employees. These are barriers that will need to be addressed in order for the Regulations to achieve the intended reduction in occurrences of harassment and violence in the work place. The Labour Program is working with the G'minoomaadozimin initiative to provide grants and contributions funding for a project that would help mitigate this issue. The project will focus on developing a toolkit and workshop to implement Bill C-65 and its regulations. The project will begin in Ontario, but will scale up into British Columbia, Saskatchewan and Manitoba.

Canada Gazette, Part I – Public comments

The draft Regulations were published for 30 days from April 27 to May 27, 2019, for public comments and feedback. In the days leading up to the public comment period, the Labour Program convened information sessions for all federally regulated employers and employee representative. Approximately 1 000 individuals attended the sessions, which included a formal presentation and questions and answers. In addition, the Labour Program held meetings with Treasury Board of Canada Secretariat, the RCMP, the Department of National Defence (DND), the Correctional Service of Canada (CSC) and the Canada Border Services Agency (CBSA) to receive comments and feedback specific to the federal public service.

During the formal public consultation period, the Labour Program received 60 written submissions, 47 of which were from individuals and organizations within the federal public service.

The following summarizes the key comments and the Labour Program responses.

Work Place Harassment and Violence Prevention Regulations Regulatory Impact Analysis Statement (RIAS) – Summary of public comments:

A. Definition of harassment and violence

Employer stakeholders were concerned that the definition of harassment and violence outlined in Bill C-65 is too broad and may result in a high number of notifications regarding occurrences that do not qualify as incidents of harassment and violence.

The definition of harassment and violence was not amended in the Regulations because the definition is found in the legislation and Bill C-65 provides limited regulatory-making power to expand on the definition. However, the Regulations have been revised to state that an occurrence is resolved if the principal party and the employer or designated recipient jointly determine that the occurrence is not an action, conduct or comments that constitute harassment and violence as defined in Bill C-65.

B. Time limit for current employee to notify employer of an occurrence

Employer stakeholders were concerned that there is no time limit for current employees to notify the employer of an occurrence.

The Regulations have not been amended to include a time limit for current employees to notify the employer of an occurrence. However, the Regulations provide some limitations in the event that the responding party is no longer employed in the work place. For example, if a notice of an occurrence is submitted concerning a responding party who is no longer an employee of the work place, the employer will not need to proceed with the resolution process but will instead need to conduct a joint review and update of the work place assessment.

C. Definition of responding party (*Canada Gazette*, Part I [CG I], and *Canada Gazette*, Part II [CG II]: section 1)

Employer stakeholders felt that the definition of “responding party” presumes culpability or guilt and suggested that the definition should be amended so that a more neutral phrase is used in the definition.

The Regulations have been amended so that the definition of responding party makes reference to a person who is “alleged” to have been responsible for the occurrence. This change establishes greater clarity, which will help to eliminate any presumption of guilt. The word “alleged” is a term used in other legislation, such as the *Criminal Code*, where individuals are presumed innocent unless found guilty.

D. Definition of occurrence (CG I and CG II: section 1)

Employer stakeholders felt that the definition of occurrence presumes guilt and should present the connotation of “alleged” until established as harassment and violence. Employer stakeholders also felt that the term is too broad and should be better defined by linking the term with a more detailed definition of harassment and violence or by giving examples of what an occurrence is.

Careful consideration was given to this input, but ultimately it was determined that the use of the term “alleged” in the definition of occurrence would be problematic because the term must encompass both founded and unfounded occurrences in order to be congruous with its usage in all sections of the Regulations. For example, at paragraph 30(1)(c) of the Regulations, the investigator is required to set out in the report their recommendations to eliminate or minimize the risk of a similar occurrence. In this section of the Regulations, it would not make sense for an investigator to provide recommendations on eliminating unfounded occurrences. An investigator would only provide recommendations for eliminating similar occurrences if the occurrence is founded. Therefore, the term must allow for a definition that could capture both founded and unfounded occurrences.

Concerning stakeholder input that the term should be better defined, the term cannot be linked with a more detailed definition of harassment and violence because the definition is found in the legislation and Bill C-65 provides limited regulatory-making power to expand on the definition. Examples of what can encompass an occurrence will be provided in interpretation documents that will be made publicly available to federally regulated employers and employees.

E. Definition of third party (CG I and CG II: section 1)

Employer stakeholders felt that the term “third party” already has an established meaning in the field of occupational health and safety and as such, the definition in the Regulations that was published in the *Canada Gazette*, Part I (CG I Regulations), is confusing.

Based on these comments received, the Labour Program undertook further research and concluded that the term “third party” could, indeed, be confusing for human resources and occupational health and safety professionals. The Labour Program further determined that the term “witness” would be more appropriate as it is a term commonly used in investigations of this nature. As a result, the term “third party” has been changed to “witness” in the Regulations.

F. Definition of designated recipient (CG I and CG II: section 1)

Employer stakeholders felt that the term “designated recipient” should also encompass a work unit because, in practice, one person would not necessarily perform the role of the “designated recipient” at all times, but rather a team of individuals could be supporting a person in his or her responsibilities. Further, it would be

administratively burdensome to continually update the work place harassment and violence prevention policy every time the name of the designated recipient changed. Therefore, they wish to see the definition amended to include a work unit.

The intention of the Regulations is not to prohibit a work unit from carrying out the functions of the designated recipient. Therefore, the definition has been amended to include a work unit in the work place or a person.

G. Applicable partner term (CG I subsection 2(1); CG II: subsection 1(2))

The term “applicable partner” was new to both employer stakeholders and employee representatives and both raised concerns that the definition precludes work place health and safety committees from being involved in the identification of risk factors and the implementation of preventive measures. Both employer and union stakeholders felt that the applicable partner should be the policy committee for some joint matters and the work place committee or health and safety representative for others.

The Labour Program recognizes that in some circumstances it is more appropriate for the work place committee or the health and safety representative to participate in a joint matter with the employer. Therefore, the Regulations have been amended to specify which activities will be under the responsibility of the work place committee or the health and safety representative as opposed to the applicable partner.

H. Joint matters (CG I subsection 2(2); CG II: section 2)

Employer stakeholders felt that the joint responsibilities outlined in the CG I Regulations would bring challenges to the timing and delivery of various requirements under the new Regulations. Employee representatives were concerned that allowing the employer’s decision to prevail will potentially be abused in matters where the employer and applicable partner are unable to agree.

Based on further research and analysis, the Labour Program determined that it is imperative that work place parties work together to address work place harassment and violence in order to create a cultural shift in the work place. Furthermore, the proposed language regarding joint matters also aligns with the National Standard for Psychological Health and Safety. Therefore, the Regulations have not been amended to remove the joint responsibilities.

Relating to the concern that allowing the employer’s decision to prevail will lead to abuse, the Code ultimately places the responsibility of employee health and safety with the employer and, as a result, the employer’s decision must prevail in joint matters. However, the Regulations require that the employer keep a record of each instance where it cannot agree with the policy committee, work place committee or the health and safety representative on a joint matter and the reasons for that decision.

I. Time limit for former employee to apply to the Minister for extension (CG I and CG II: section 3)

Employer stakeholders were concerned that there is no time limit for a former employee to apply to the Minister for an extension of the time period to notify their employer of an occurrence, and suggested including a maximum time limit in the Regulations.

Although the Regulations were not amended to include a limit on the extension to the time period, they establish the criteria that must be met in order for an extension to be granted. The Minister may extend the time period if the former employee demonstrates that they were not able to make the occurrence known to the employer within three months because of trauma as a result of the occurrence or because of a medical condition.

J. Overly prescriptive policy content and training elements (CG I: subsection 5(2) and 12(3); CG II: subsection 10(2) and 12(2))

Employer stakeholders were concerned that the policy content and the required training elements are overly prescriptive and burdensome from a cost and resource perspective.

Upon review of the required policy and training elements, the Labour Program found that some of the policy and training elements could be considered sub-elements of existing elements or that some elements could more appropriately be captured under other requirements in the Regulations. For example, the requirement to train in crisis prevention, personal safety and de-escalation techniques included in the CG I Regulations has been removed as it can be captured under basic training on how to recognize, minimize, prevent and respond to work place harassment and violence. This will allow employers more flexibility in fulfilling the basic training requirements. Further, the requirement in the CG I Regulations that the policy must contain the means by which the employer is to be informed of external dangers has been removed as it can be better addressed under the identification of risks factors in the Work Place Assessment section.

K. Responsibilities of employees (CG I: paragraph 5(2)(b); CG II: paragraph 10(2)(b))

Employer representatives requested that the work place policy also speak to the role of employees in the prevention of and protection against harassment and violence in the work place.

The Labour Program continues to emphasize the obligation of all work place parties to work together to address and reduce harassment and violence in the work place. Further, the suggestion to include the role of employees vis-à-vis harassment and violence in the work place policy aligns with existing employee health and safety obligations under the Code, such as the duty at paragraph 126(1)(e) to cooperate with any person carrying out a duty imposed under Part II of the Code. Therefore, the Regulations have been amended to add, as an element of the policy, a reference to the roles of employees in relation to harassment and violence in the work place.

L. Role of unions (CG I: paragraph 5(2)(b); CG II: N/A)

Employer stakeholders were confused about the role of unions mentioned in paragraph 5(2)(b) of the CG I Regulations, as unions play a limited role in the context of Part II of the Code. Stakeholders believe that unions should not be referenced at all in this paragraph, as they have no role in the context of harassment and violence under Part II of the Code.

The Labour Program agrees that unions play a limited role in the context of Part II of the Code. Thus, the Regulations have been amended to remove mention of the role of unions in relation to harassment and violence.

M. Available recourse (CG I: paragraph 5(2)(j); CG II: paragraph 10(2)(i))

Employer representatives were confused by the use of the term “recourse” in the policy content at paragraph 5(2)(j) of the CG I Regulations because they associate the term “recourse” with financial compensation.

The definition of the term “recourse” is the use of someone or something as a source of help. [13] Therefore, this is the appropriate term in the context of the Regulations because the intent of this requirement is for the employer to list all the avenues that an employee may take in addressing the occurrence (e.g. the *Canadian Human Rights Act*, the *Criminal Code,* a grievance procedure). Therefore, this term has not been amended in the Regulations.

N. Employer responsibility to make policy available to employees (CG I: subsection 5(3); CG II: subsection 10(3))

Employer and employee representatives both indicated that the responsibility to make the work place harassment and violence prevention policy available should lie solely with the employer, as it aligns with current employer obligations under the Code and the existing Part XX (Violence Prevention in the Work Place) of the COHSR. More specifically, under the COHSR, it is the employer's responsibility to post in the work place the violence prevention policy. Further, under the Code, it is also the employer's responsibility to make available any other information related to health and safety that is prescribed or that may be specified by the Minister. Representatives also suggested that it would be impractical to require both the employer and the applicable partner to simultaneously make the policy available to all employees.

In response to these concerns, the Regulations have been amended so that it is the sole responsibility of the employer to make the policy available to all employees. This would be more administratively efficient for the employer and would align with current employer duties.

O. Joint policy review and update (CG I: subsection 5(4); CG II: subsection 10(4))

Employer stakeholders were concerned that there will be excessive resource pressures to update the policy following every update to the work place assessment. This is because the CG I Regulations stipulated that the work place assessment must be reviewed and, if necessary, updated following a notice of an occurrence if (1) the principal party chooses to remain anonymous or not to proceed with the resolution process; or (2) the responding party is not an employee or the employer. Therefore, depending on the number of notices of occurrences that an organization receives, the work place policy may be in a constant state of review and update, which would cause an excessive administrative burden for the employer.

It was not the intent of the Regulations to create an administrative burden through continuous updates to the policy. Therefore, the Regulations have been amended so that the employer and the applicable partner must jointly review and, if necessary, update the policy at least once every three years or any time there is a change to any element of the policy. This aligns with requirements under Part XIX and XX of the COHSR, which requires that the hazard prevention program and the work place violence prevention measures be reviewed at least once every three years, or whenever there is a change with respect to the hazards or a change that compromises the effectiveness of the measures (see subsections 19.7(1) and 20.7(1) of the COHSR).

P. Change in order of provisions

Employer stakeholders commented on the order of the provisions and requested that the section on work place assessment come ahead of the section on work place harassment and violence prevention policy because the initial work place assessment must be conducted before the development of the policy.

To ensure that the Regulations are organized in a logical and consistent manner, the Regulations have been amended so that the Work Place Assessment Section precedes the Work Place Harassment and Violence Prevention Policy Section. These are not substantive changes.

Q. Use of term "risk" (CG I: subsection 6(1), paragraph 6(2)(a), sections 8 and 9, subsection 10(1), paragraph 10(1)(a), subsection 10(2); CG II: subsections 5(1) and (2), sections 7, 8 and 9 and paragraph 10(2)(c))

Employer and employee representatives felt that the term “risk” is inconsistent with the term that is currently used in Part II of the Code (“hazard”) and that it may undermine the existing regime, as the introduction of new terms may lead to disagreement in the application of the term between employers and employees.

Following a review of the literature and discussions with Canadian subject matter experts, the Labour Program concluded that the term “risk factor(s)” is most appropriate. This is because, simply stated, humans are the hazard when it comes to harassment and violence, and employers have an obligation to address the risk factors that contribute the inappropriate behaviour. Therefore, the Regulations have been amended accordingly to replace the term “risk” with “risk factor(s).”

R. Work place committee or health and safety representative involved in review and update of the work place assessment (CG I: subsection 7(1); CG II: subsection 6(1))

Stakeholders pointed out that it would be more appropriate for the employer to conduct the joint review and update of the work place assessment with the work place committee or the health and safety representative rather than with the policy committee. This is because in large organizations with multiple work sites, the work place committee would be more aware of the culture, conditions and activities of the work place and, as such, better equipped to jointly review and update the risks factors related to harassment and violence that were originally identified in the work place and the preventive measures that have been developed.

The Labour Program recognizes that work place committees and health and safety representatives are indeed in a better position to review the risks factors and preventive measures that were developed and implemented as part of the work place assessment. Therefore, the Regulations have been amended so that the employer conducts the joint review and update of the work place assessment with the work place committee or the health and safety representative. This also aligns with the current work place committee and health and safety representative responsibilities under paragraphs 135(7)(b) and 136(5)(d) of the Code, which include the duty to participate in the implementation and monitoring of a hazard-prevention program.

S. Exceptions to the resolution process – Occurrences involving individuals who are not employees (CG I: N/A; CG II: section 16)

Employee representatives were concerned that the CG I Regulations did not sufficiently address occurrences of harassment and violence perpetrated by an individual who is not an employee, since the resolution process does not have to be followed in circumstances where the responding party is not an employee or the employer. In the absence of a resolution process, employee representatives would like to see detailed information about the occurrence gathered by the employer made available to the work place committee or health and safety representative in order to adequately review and update the work place assessment.

The Labour Program recognizes the concern raised by stakeholders that, in the absence of a resolution process, a review and update of the work place assessment will not be adequately rigorous without adequate information on the nature of the occurrence. Therefore, the Regulations have been amended to require that the notice of an occurrence contain the name of the principal party and responding party, if known, the date of the occurrence and a detailed description of the occurrence. Further, the Regulations have been updated to require that the review and update of the work place assessment take the circumstances of the occurrence into account. However, pursuant to Bill C-65, the employer shall not, without the person’s consent, provide the policy committee, work place committee or health and safety representative with any information that is likely to reveal the identity of a person who was involved in an occurrence of harassment and violence.

T. Items to consider in identifying risk factors (CG I: section 9; CG II: section 8)

Employee representatives felt that the elements that must be taken into account when identifying risk factors that contribute to work place harassment and violence, namely the culture, conditions and activities of the work place and any reports, records and data related to harassment and violence in the work place, were not adequate when compared to the elements that are required to be taken into consideration under Part XX of the COHSR.

The Labour Program recognizes that employers will require more guidance and direction when conducting a work place assessment for the purpose of harassment and violence. Therefore, the Regulations have been amended to include the requirement that the employer also take into consideration the organizational structure of the work place; the circumstances external to the work place, such as family violence, that could give rise to harassment and violence in the work place; the physical design of the work place; and the measures that are in place to protect psychological health and safety in the work place. These factors are not only better aligned with the requirements under section 20.5 of the COHSR, but they also enhance the requirements by requiring employers to take into consideration additional factors that are currently not taken into consideration, such as circumstances external to the work place. It is anticipated that this will lead to a more thorough and effective work place assessment.

U. Review and update of emergency procedures (CG I: N/A; CG II: section 11(3))

Employee representatives were concerned that this section did not adequately address immediate danger in the work place because, once an emergency procedure is deployed, there is no requirement to review the procedure in order to assess whether it was effective at addressing the occurrence that posed an immediate danger to the employee.

The Labour Program recognizes the need for a joint review and update of the emergency procedures, which would indeed improve the emergency procedures so that they better respond to occurrences that pose an immediate danger to employees. Therefore, the Regulations have been amended to add an additional requirement that the employer must jointly review and, if necessary, update the emergency procedures with the applicable partner every time the employer implements its emergency procedures in response to a specific occurrence.

V. Employer responsibility to make emergency procedures available (CG I: 11(2); CG II: subsection 11(2))

Employer and employee representatives both indicated that the responsibility to make the emergency procedures available should not be a joint responsibility, but that it should lie solely with the employer. This responsibility would align with employer obligations under subparagraph 125(1)(d)(iii) of the Code to make available any other information related to health and safety that is prescribed or specified by the Minister. Further, these representatives believe that it would be impractical to require both the employer and the applicable partner to simultaneously make the emergency procedures available.

The Regulations have been amended so that it is the sole responsibility of the employer to make the emergency procedures available to all employees. This will be more administratively efficient for the employer and would align with current employer duties.

W. Training joint review and update (CG I: subsection 12(2); CG II: subsection 12(3))

Employer stakeholders were concerned that there will be excessive resourcing pressures to update training following an update to the work place harassment and violence prevention policy because the CG I Regulations required that the policy be updated every time there is an update to the work place assessment or

if there is a change to any element of the policy. Therefore, depending on the number of notices of occurrence that an organization receives, the training may be in a constant state of update, which would cause an excessive administrative and financial burden for the employer.

It was not the intent of the Regulations to create an administrative burden through continuous updates to the training. Therefore, the Regulations have been amended so that the employer and the applicable partner must jointly update the training at least once every three years and if there is any change to any element of training. This aligns with requirements under Part XX of the COHSR, which requires that the training be reviewed at least once every three years, when there is a change in respect of the risk of work place violence or when new information on the risk of work place violence becomes available (see sections 20.10(4) of the COHSR).

X. Notice of an occurrence submitted where principal party cannot be identified (CG I: N/A; CG II: sections 16 and 19)

Employer stakeholders were concerned about their ability to respond to a notice of an occurrence where the principal party cannot be identified, as it would be difficult, if not impossible, to respond to such notifications in practice.

The Labour Program recognizes that it would be practically impossible for an employer to pursue the resolution process when they are not aware of the identity of the principal party. In response to this concern, amendments have been made to the Regulations to require that the notice of an occurrence sets out the name of the principal and responding parties, if known, the date of the occurrence and a detailed description of the occurrence. Further, the Regulations have been amended so that an occurrence is deemed resolved if the notice of occurrence does not set out the name of the principal party or otherwise allows their identity to be determined.

Y. Exception when harassment and violence are considered normal conditions of work (CG I: N/A; CG II: subsection 15(2))

Employer stakeholders pointed out that, unlike Part XX of the COHSR, the CG I Regulations did not address work environments where normal conditions of work include regular exposure to harassment and violence, such as for correctional officers at Correctional Services Canada and law enforcement officers at the RCMP.

It was not the intention of the Regulations that individuals employed in fields where harassment and violence are normal conditions of work (such as law enforcement or correctional services) could notify, pursuant to the Regulations, their employer or designated recipient of an occurrence every time they are harassed or subject to violence by a member of the public or a client, and for a consequential review and update of the work place assessment be undertaken. To address this gap, the Regulations have been amended to prohibit an individual from providing a notice of an occurrence if the responding party identified in the notice is not an employee or employer; if exposure to harassment and violence is a normal condition of the principal party's work; and if the employer has effective measures in place to address work place harassment and violence. This aligns with the exemptions under Part XX at subsection 20.9(6) of the COHSR.

Z. Exception to the joint review and update and the resolution process (CG I: paragraph 7(1)(a); CG II: paragraph 6(1)(a))

The CG I Regulations proposed a requirement that the employer conduct a joint review and update of the work place assessment if a notification of an occurrence is given and the resolution process cannot proceed because the principal party chooses to remain anonymous or, at any time before an occurrence is investigated,

chooses not to proceed with the resolution process. Employer stakeholders were concerned that this requirement would result in unnecessary reviews and updates of the work place assessment due to unfounded notifications being submitted by third parties.

The Labour Program recognizes that employers could be unduly burdened with having to conduct reviews and updates to their work place assessments because of notifications submitted by third parties. To address this issue, the Regulations have been amended to require the employer to conduct a review and update of the work place assessment only in situations where (1) the occurrence was not resolved by negotiated resolution and the principal party ends the resolution process, and (2) the responding party is not an employee or the employer.

AA. Number of days to respond to principal party and witnesses (CG I: subsections 15(3) and 16(1); CG II: sections 20 and 21)

A number of employer stakeholders raised concerns regarding the feasibility of responding to the principal party and witnesses within five days, as they felt it was not enough time to provide a response. Stakeholders preferred being able to give a response to a notice of an occurrence within a week to account for lost days during the weekend for those employers that do not have operations on the weekend.

Given these concerns, the Regulations were revised to extend the time period to seven days instead of five days in order to allow employers the full span of a week when responding to a notice of an occurrence.

BB. Employee obligation during negotiated resolution (formerly Early Resolution in the CG I Regulations) (CG I: subsection 17(1); CG II: subsection 23(1))

Employers and employee representatives alike spoke of the importance of reflecting in the Regulations the employee’s obligation to make every reasonable effort to resolve an occurrence during negotiated resolution.

The Regulations have been revised to also speak to the responsibility of the principal party and, where applicable, the responding party in making every reasonable effort to resolve an occurrence during negotiated resolution. This aligns with duties of employees that already exist in Part II of the Code, such as the duty to cooperate with any person carrying out a duty imposed under Part II of the Code (see paragraph 126(1)(e)).

CC. Joint determination – Harassment and violence (CG I: N/A; CG II: subsections 23(2) and (3))

Employer stakeholders were concerned that their inability to screen out notices of occurrence that do not meet the definition of harassment and violence will lead to an increased number of non-harassment notifications, such as work place interpersonal conflict, which they believe could be addressed with other avenues of recourse.

To address this concern, the Regulations have been amended to state that the reasonable efforts required in the negotiated resolution process include a review by the principal party and the employer or designated recipient of whether the occurrence is an action, conduct or comments that constitute harassment and violence as defined in Bill C-65. If it is determined that the action, conduct or comment is not harassment and violence as defined in Bill C-65, the occurrence is resolved. In such cases, the employer is no longer required to continue with the resolution process outlined in the Regulations.

DD. Conciliation (CG I: section 18; CG II: section 24)

Both employer and employee representatives indicated that it is quite common for the parties involved in an occurrence to request conciliation after an investigation has begun. Furthermore, the stakeholders indicated that they wish for this choice to be available as it typically allows for a more immediate resolution and often supports “re-establishment” of a productive working relationship.

It was always the policy intent of the Regulations to encourage collaboration and conciliation between the principal party and responding party. To ensure flexibility in the process and prevent any unintended consequences, the Regulations have been amended to allow for conciliation to proceed so long as the investigator has not provided the investigation report. As such, parties can now choose to engage in conciliation either before an investigation has commenced or while an investigation is ongoing.

EE. Appointment of investigator from joint list (CG I: N/A; CG II: paragraph 27(1)(a))

A number of employer stakeholders commented that they have jointly developed rosters of investigators and that this approach has been very successful. They requested that when a roster has been developed with the applicable partner, that the employer have the ability to appoint an investigator from the jointly developed list.

The Regulations are intended to be flexible, while also mitigating against potential abuse. Having a jointly developed list with the applicable partner is an innovative and efficient way to meet the requirements of the Regulations, while reducing the risk of abuse. Therefore, the Regulations have been revised to allow the employer or designated recipient to appoint an investigator from a list of investigators jointly developed or identified with the applicable partner.

FF. Conflict of interest (CG I: paragraph 20(2)(a); CG II: paragraph 27(2)(b))

Employee representatives raised concerns regarding conflict of interest. Employee representatives were concerned that the CG I Regulations do not preclude a friend or colleague of the responding party or third party from acting as an investigator, neither do they preclude a principal party, a person who directly reports to the principal party or a friend or colleague of the principal party from acting as the investigator.

To address the concern of a potential conflict of interest between the investigator and the parties involved in an occurrence, the Regulations have been amended to provide that an employer may only select a person to act as an investigator if that person provides the employer or designated recipient, principal party and responding party with a written statement that indicates that the investigator is not in a conflict of interest in respect of the occurrence.

GG. Investigator duty to protect identity of persons involved (CG I: paragraph 22(1)(b) and subsection 22(2); CG II: subsection 30(2))

Employer and employee representatives were concerned that the requirement not to disclose directly or indirectly the identity of a principal party, responding party, or any witness in the investigator’s report precludes the investigator from disclosing the identity of a witness to the principal party or responding party when conducting an investigation. Therefore, they were concerned that this would not follow principles of procedural fairness and natural justice, especially in circumstances where the responding party is required to respond to testimonies by an anonymous witness.

The Regulations do not preclude an investigator from revealing the identity of witnesses in circumstances they consider appropriate during an investigation. Investigators must meet all of the qualifications outlined in the Regulations, which include being trained in investigative techniques and having knowledge, training and

experience relevant to harassment and violence in the work place. The only requirement imposed by the Regulations is that an investigator's report does not reveal the identity of the persons involved in an occurrence or in the resolution process for an occurrence.

HH. Criteria for completion (CG I: section 24; CG II: sections 18 and 32)

Employer and employee representatives felt that the criteria for completion of the resolution process should allow for completion to occur if the principal and responding parties agree between themselves that the matter is resolved.

It was not the intent of the Regulations to prohibit the principal and responding parties from agreeing between themselves that the matter is resolved. Therefore, the Regulations have been updated to allow the principal party to end a resolution process at any time after a notice of an occurrence is provided (under section 18 of the Regulations). The occurrence may also be resolved by agreement between the principal party and the responding party through negotiated resolution or conciliation, which are processes that can now run concurrently in an investigation.

II. Time period for negotiated resolution (formerly Early Resolution in the CG I Regulations) (CG I: subsection 25(1); CG II: subsection 23(1))

Employer representatives felt that a 180-day period for negotiated resolution was too long. Employer representatives indicated that in most cases an initial meeting with the principal party and responding party (if applicable) to resolve the occurrence would happen within the first two months of an occurrence.

To address this concern, the Regulations have been amended to require that the employer or designated recipient, principal party and responding party must, within 45 days after notice is provided, initiate negotiated resolution and make every reasonable effort to resolve the occurrence. This timeline is based on the experience of employer and employee representatives in their respective organizations when dealing with occurrences that do not require an investigation. If the occurrence is not resolved through negotiated resolution, it may be resolved through conciliation or an investigation. The Regulations do not prohibit the principal and responding party from engaging in negotiated resolution or conciliation while an investigation is ongoing.

JJ. Extension to the time period to complete the resolution process (CG I: section 25; CG II: subsection 33(2))

Employer representatives were concerned about not being able to adhere to the prescribed timelines related to the resolution process. They requested that the Regulations contain an exception for extenuating circumstances, such as when the principal party or responding party is absent from work for a prolonged period of time.

It was not the intent of the Regulations to deny the employer flexibility when it comes to completing the resolution process in the instance of a temporary absence on the part of the principal or responding party. Therefore, in the case of a temporary absence of more than 90 consecutive days, the Regulations have been amended to allow for the employer to complete the resolution process within the later of one year after the day on which notice of the occurrence is provided *or* six months after the day on which the absent party returns to work.

KK. Reporting (CG I: section 28; CG II: N/A)

Employer representatives felt that there was an excessive reporting burden, especially as it relates to the semi-annual report to the applicable partner, which was proposed in the CG I Regulations.

To respond to these concerns, the Regulations have been amended to remove the requirement to submit a semi-annual report to the applicable partner. This will significantly reduce the reporting burden as the employer will now only be required to submit an annual report to the Minister and a fatality report.

LL. Clarification of the term “relationship” (CG I: paragraph 28(d) and subparagraph 29(c)(vi); CG II: subparagraph 36(d)(vi))

Stakeholders raised concerns regarding the employer requirement to report annually on the types of work place relationships that existed between the principal and responding parties. More specifically, they are concerned with the use of the term “relationship” as they believe this term is referring to whether the responding party is a spouse, romantic interest or friend, which they see as problematic and a violation of the employee’s privacy and rights.

It was not the intention of the Regulations to require employers to report on whether the parties involved in an occurrence were involved in a personal relationship. The wording was intended to capture the type of professional relationship (e.g. co-workers, employee-supervisor, employee-business owner relationship). Therefore, the wording has been amended to require employers to specify only the type of professional relationship that exists or existed between the principal and responding parties.

Instrument choice

Part II of the Code establishes the legislative framework for occupational health and safety for federally regulated work places. Part II of the Code imposes a duty on employers to take steps to prevent and protect against violence in the work place. The current regulatory framework to address violence is not in line with the new legislative changes introduced by C-65, nor with best practices gleaned from international jurisdictions and subject matter experts. Therefore, regulatory amendments must be made to achieve the goal of consolidating provisions for all federally regulated work places covered by Part II of the Code under one regulatory instrument.

In addition to these changes to the legal framework, non-regulatory measures to change work place culture in this area include a new grants and contributions program to fund joint employer and employee projects that assist federally regulated work places in implementing the new regime, and increase knowledge and data on harassment and violence in the work place; an awareness campaign; the establishment of a harassment and violence prevention outreach hub (the Hub) to support employers and employees in navigating their rights and obligations under the legal framework; a list of investigators from which employers can select an investigator to investigate an occurrence; and improved data collection. These initiatives are discussed further below.

Regulatory analysis

Benefits and costs

Methodology and data sources

Harassment data and estimates in this document are based on the 2015 Federal Jurisdiction Work Place Survey (FJWS).

Although the Federal Public Service Survey (FPSS) was considered as a data source for this study, as it comprises semi-annual and more recently annual surveys related to employment, including questions related to harassment, the FPSS was not retained for the purpose of this cost-benefit analysis due to consistency and

scope issues.

Unless stated otherwise, all cost estimates, including those for small businesses, are expressed as present values (PV), in 2019 dollars, based on a 7% discount rate and forecasted over a 10-year period (2020–2029).

The Regulations will affect just under 19 000 employers and 1 200 000 employees subject to Parts II of the Code. Total costs are estimated at approximately $0.59 billion.

Anticipated monetized benefits

Although the Regulations are expected to yield tangible economic benefits to the federally regulated sector and the broader Canadian economy, it was found that the scientific literature and the data currently available are not yet sufficient to enable a full and robust quantitative estimation of such benefits, since the outcomes of harassment and violence on the work place still constitutes an emerging field of research.

The reporting requirements prescribed in the Regulations, as well as other initiatives that will be funded by the Labour Program, such as future iterations of the FJWS, will go a long way towards addressing the data limitations and research gaps inherent to work place harassment and violence issues.

Anticipated benefits – Qualitative summary

Economic benefits expected from the mitigation of harassment and violence in the work place may be wide ranging and include a reduction in absenteeism, job burnout, disability payments, lost work time and litigation costs.

Perhaps more significantly, a lower prevalence of work place harassment and violence holds the potential to foster a collaborative work environment based on trust and accountability as well as a psychologically healthier and more motivated workforce. These positive outcomes are expected to reflect favourably on labour productivity. One study [14] found that work place harassment had a statistically significant negative impact on work place productivity.

There is a growing perception that training employees on work place harassment and violence is most effective when it is part of a broader set of organizational initiatives that intend to shift attitudes towards harassment and violence at work. Nevertheless, another study, based on data from the United States Merit Systems Protection Board, found that such training alone could result in a positive shift in attitudes towards unwanted sexual behaviours in employees and managers. [15]

Regulatory proposal “break-even” point

While current data limitations preclude a complete characterization of the economic benefits expected from the Regulations, an attempt was made to estimate a “break-even” point, where a decline in work place harassment and violence anticipated from this regulatory proposal fosters an increase in labour productivity that results in a GDP (from the federally regulated sector) increase equal to the cost of this proposal. The following approach was selected:

1. Statistics Canada’s data on hours worked [16] and the 2015 FJWS suggest that the average number of hours worked by federally regulated employees will average approximately 1.7 billion for the 2020–2029 period considered in this impact assessment. This estimate was obtained by extrapolating the referenced data on hours worked from 1997 to 2017 through a linear regression model.

2. Estimates of a labour productivity metric, the GDP contribution per hour worked, as well as the federally regulated sector GDP, were obtained for the 2020–2029 period through the same sources and method.

3. With the above data, the increase in labour productivity in the federally regulated sector that would be required for this sector's GDP increase to equal the projected cost of the regulatory proposal, the break-even point, was calculated.

Over the 10-year period considered, the discounted hourly labour productivity increase required in the federally regulated sector to break even against the $587 million cost (discounted at 7%) anticipated from this regulatory initiative would only amount to about **$0.35**, which corresponds to an overall productivity growth rate of less than **0.5%** for the entire period.

From a historical standpoint, the average annual increase in labour productivity, expressed in GDP per hour, has been 2.2% during the 1997–2017 period. While our regression model suggests that the average annual labour productivity gain will be around 1.5% for the 2020–2029 interval, a yearly break-even contribution of only **0.05%** to this gain would be required to offset the anticipated costs of this regulatory initiative.

The annual rise in labour productivity needed to offset regulatory costs would amount to less than **$0.05**, which corresponds to less than **4%** of the expected annual increase in labour productivity or about **0.05%** of the GDP per hour contribution from federally regulated workers.

This annual productivity increase is equal to about **3%** of the average **1.5%** annual gain in GDP per hour expected from 2020 to 2029.

All monetary estimates in this section are expressed in 2019 dollars.

Anticipated costs

Costs associated with the Regulations would be incurred by employers, most of which (78%) are due to new requirements for employee training, followed by enhanced roles of policy committees, work place committees and health and safety representatives (12%). The remaining costs include requirements on the employer to develop a harassment and violence prevention policy, conduct a work place assessment, develop and implement preventive measures and follow the work place resolution process, as well as record keeping and reporting.

Employee training

Currently, Part XX of the COHSR requires that employees who are exposed or are at risk of being exposed to work place violence be trained on this subject and its prevention. Based on the FJWS, it is estimated that about 54% of employees have already received this type of training. Therefore, approximately 569 000 employees (46%) would need to take this type of training once the Regulations are implemented.

The Regulations require that the training be provided to employers and employees at least every three years. A scan of presently available training in this domain revealed that the duration of training varies between two hours (online training), four hours (online or in-class training) and one day (in-class training), and that costs (per employee) averaged, across training providers sampled, approximately $56, $132 and $172, respectively. It is then assumed that most medium and large employers (with at least 100 employees) would opt for the four-hour training, while the majority of small employers (with fewer than 100 employees) would also choose the four-hour training. It was deemed that this length of training would be sufficient to meet the new training requirements. Such training would be provided to all employers and employees within the first 12 months of the implementation of the Regulations (2020), as well as to new employees within their first three months of work.

After that, all employers and employees would be required to renew their training at least once every three years, which is assumed to be half the time in duration of the initial training. It is estimated that employees who have already received training (approximately 54% of employees in the FJ) will require a special one-time training of approximately two hours to update their training to meet the requirements of the Regulations.

In addition, employers would also incur the opportunity cost of training, which is the employees' salaries that have to be paid while they are on training. Based on the FJWS, the average wage rate per hour in the federally regulated work place in 2019 is $37.49.

The total training costs to employers are estimated at $460 million, or an annualized cost of $65 million.

Enhanced roles of policy committees, work place committees and health and safety representatives

The Regulations will impose enhanced duties on the policy committees, work place committees and health and safety representatives related to harassment and violence prevention in the work place. These enhanced roles include, but are not limited to

- jointly carrying out a work place assessment and jointly monitoring, reviewing and updating the assessment with the employer;
- jointly developing a work place harassment and violence prevention policy and jointly reviewing and updating the policy with the employer;
- jointly developing or identifying the training and jointly reviewing and updating it with the employer; and
- jointly developing or identifying a list of investigators with the employer.

It is assumed that jointly participating in the development of the prevention policy, work place assessment and training material would be a one-time duty, which will take the policy committee or, if there is no policy committee, the work place committee or the health and safety representative, approximately 12 hours to finalize. Reviewing and implementing such policies would be an ongoing task that will require approximately six hours to complete. With the number of policy and work place committee members and health and safety representatives estimated at 51 400, and their average wage rate per hour at $37.49, the total costs to employers due to the policy committees, work place committees and health and safety representatives' enhanced roles are expected at approximately $69 million, or an annualized cost of $10 million.

Other costs

The Regulations will also require that employers develop a harassment and violence prevention policy, follow the work place resolution process and make information respecting support services available to employees within their geographical area. These costs to employers are relatively small compared to costs related to training and the enhanced roles of policy committees, work place committees and health and safety representatives. It is estimated that these costs are approximately $58.4 million in total, or an annualized cost of $9.1 million.

The development of a harassment and violence prevention policy will affect all employers and is estimated to take, on average, 12 hours for small employers (less than 100 employees) and 24 hours for larger employers, with a review taking approximately 2.5 hours for small employers and 5 hours for larger employers at least once every three years. Total costs over 10 years (PV) are estimated at about $9.8 million and approximately $1.4 million on an annualized basis.

Carrying out a harassment and violence work place assessment is estimated to take approximately 26 hours for small employers (less than 100 employees) and 49 hours for larger employers, with a review taking approximately 5 hours for small employers and 10 hours for larger employers, at least once every three years. Total costs over 10 years are estimated at about $12.8 million and approximately $1.8 million on an annualized basis.

The work place resolution process begins with the employer or designated person conducting an initial review of the notice of occurrence, informing the principal party or witness that their notice of occurrence has been received and informing the responding party, where applicable, that they have been identified as the responding party in an occurrence. Both parties must also be informed of the manner in which the work place violence and harassment prevention policy is accessed, each step of the resolution process and their right to representation. In addition to negotiated resolution, the occurrence may proceed to conciliation if both the principal and responding party agree to it and agree on who will act to facilitate the conciliation. An investigation must be carried out if the occurrence is not resolved by negotiated resolution or conciliation and the principal party requests an investigation. Throughout the resolution process, the employer must provide monthly updates to the principal and responding parties regarding the status of the resolution process. It is estimated that this requirement will cost employers approximately $34.3 million over 10 years, or annualized costs of approximately $4.9 million.

In addition, employers would be required to record a number of items, including employer decisions on matters that must be done jointly with the policy committee (or work place committee, or the health and safety representative, as the case may be), but for which they cannot agree; every notice of an occurrence of harassment and violence and action taken in response to it; and the reasons for any delays in meeting the required timelines. Employers would also be required to report occurrences that result in the death of an employee as they occur and aggregated data on all occurrences of harassment and violence in the work place annually to the Minister. The anticipated PV of the resulting administrative burden costs is approximately $974,000 over 10 years.

In total, the Regulations would result in an additional cost of $587 million on employers, or an annualized cost of $84 million.

Costing statement

		Base Year	Other Relevant Years	Final Year	Total (Present Value)	Annualized Average
A. Quantified impacts (Present value [2019] in millions of Canadian dollars, 2019 price level, 7% discount rate, 2020–2029)						
Benefits	Medium/large employers	2020		2029	N/A	N/A
	Small employers	2020		2029	N/A	N/A
	All employers	**2020**		**2029**	**N/A**	**N/A**

Costs	Medium/large employers	2020		2029	484	69
	Small employers	2020		2029	103	15
	All employers	**2020**		**2029**	**587**	**84**
Net benefits					**N/A**	**N/A**
B. Quantified non-monetary impacts (e.g. from a risk assessment)						
Positive impacts	By stakeholder				N/A	
Negative impacts	By stakeholder				N/A	

Cost Item	Present Value 10 years, 7%, 2019 Price Year, 2019 PV, 2020 Base Year	Annualized
Opportunity cost of training	$254,803,225	$36,278,247
Training provider	$205,085,521	$29,199,564
Total training	$459,888,747	$65,477,811
Harassment and violence prevention policy	$9,759,343	$1,389,511
Work place assessment	$12,774,919	$1,818,861
Cost of conciliation services	$3,892,598	$554,218
Cost of investigator	$16,461,841	$2,343,796
Cost of resolution process	$13,943,020	$1,985,172
Opportunity costs for additional functions of policy, health and safety committees/representatives	$69,299,559	$9,866,698
Administrative costs	$974,092	$138,689

Total costs	$586,994,118	$83,574,757

Small business lens

The small business lens applies as there are impacts on small businesses associated with the Regulations. A small business is any business, including its affiliates, that has fewer than 100 employees or less than $5 million in annual gross revenues. [17]

Small, federally regulated businesses are not expected to be unduly or disproportionally affected by the Regulations. While larger employers may enjoy economies of scale in arranging one-day training to employees on work place harassment and violence prevention, it is anticipated that many small employers will opt for four-hour training to employees. The market for this type of training shows that third-party providers typically offer training at one day, four hours and two hours in duration. It is anticipated that smaller employers will opt for the four-hour variant due to cost constraints.

In addition, costs to small businesses are expected to be lower per firm than for larger businesses (100 or more employees), for both the development of the work place harassment and violence prevention policy and work place assessment. It is estimated that the cost to develop the harassment and violence prevention policy and work place assessment, per small business, will be approximately $450 and $961, respectively. For larger businesses, the costs per firm to develop the policy is estimated at approximately $900 and $1,822 for the work place assessment.

The total costs to be incurred by small businesses (expressed in 2019 dollars and 2019 PV) are estimated at approximately $103 million, which includes administrative burden costs of approximately $47,000. The annualized costs to small employers across the federal jurisdiction are approximately $14.6 million. Annualized costs per small business are estimated at approximately $826, and for the period 2020 to 2029, total costs per small business are estimated at approximately $5,800.

Small business lens summary

Number of small businesses impacted	17 695
Number of years	10
Base year for costing	2020

Small business lens summary

Compliance costs	Annualized value ($)	Present value ($)
Total	**14,615,179**	**102,650,902**

Small business lens summary

Administrative costs	Annualized value ($)	Present value ($)
Total	6,685	46,952
Total cost (all impacted small businesses)	14,621,864	102,697,854
Cost per impacted small business	826	5,804

One-for-one rule

The one-for-one rule applies since there is an incremental increase in administrative burden on business and a new regulatory title is being introduced.

The Regulations would impose requirements on employers to record a number of items, including every notice of an occurrence of work place harassment and violence and the actions taken to address them, employer decisions on matters that must be done jointly with the policy committee (or work place committee, or health and safety representative), but for which they cannot agree; and reasons for delays in meeting the required timelines. In addition, employers must report aggregated data on occurrences, as well as report occurrences that result in the death of an employee.

The Labour Program assumed that an administrative clerk would spend 30 minutes on recording and retaining each notice of an occurrence and another 10 minutes to complete the report. It is also assumed that employers would spend 2 minutes each year to review each stored record. Additionally, 30 minutes would be required to create and file separate fatality reports with the Minister.

An estimated 27% of federally regulated businesses would experience a reportable occurrence of work place harassment and violence every year, which represents approximately 5 100 employers. The hourly cost of labour related to occupational categories involved in managing and reporting these occurrences would range from $26 to $29 in 2012 dollars.

Using the TBS Regulatory Cost Calculator and the methodology developed in the *Red Tape Reduction Regulations (https://laws-lois.justice.gc.ca/eng/regulations/SOR-2015-202/page-1.html)*, it is estimated that the total administrative burden costs over 10 years will be $69,415 (2012 annualized dollars, 2012 dollar value), which entails an annualized administrative cost per business of $3.74. This is represented in the following table.

Annualized administrative costs	$69,415
Annualized administrative costs per business	$3.74

Regulatory cooperation and alignment

The Labour Program met with officials from the provincial and territorial jurisdictions on a regular basis to align the Regulations with similar regulations in the other jurisdictions. The Labour Program also participated in Canadian Association of Administrators of Labour Legislation Occupational Health and Safety (CAALL-OSH)

meetings with all the jurisdictions in Canada where discussions were held on the intent of Bill C-65 and more recently on the Regulations and how they align with similar regulations in the other jurisdictions.

Overall, the Regulations align with the other jurisdictions in terms of employer requirements to develop a harassment and violence prevention policy, conduct work place assessments, develop mandatory harassment and violence training, provide information about support services to employees and report on occurrences of harassment and violence on an annual basis. The requirement for a harassment and violence prevention policy, work place assessments and the development of training also aligns with the International Labour Organization's (ILO) Convention Concerning the Elimination of Violence and Harassment in the World of Work (the Convention), which was adopted in June 2019. Paragraphs 9(a), (c) and (d) of the Convention call for each member state to adopt regulations that require employers to implement a work place policy on harassment and violence; identify hazards and assess the risks of harassment and violence; and provide concerned workers with information and training on the identified harassment and violence hazards and risks.

The primary area in the Regulations where there is a gap in alignment with the other jurisdictions concerns defining harassment and violence on a full continuum of inappropriate behaviours. However, treating harassment and violence on a continuum aligns with paragraph 1(a) of the Convention, where harassment and violence is similarly defined as a range of unacceptable behaviours and practices.

Another major difference in the Regulations is that they will require employers to take into account external circumstances, such as family violence, when they are jointly identifying risk factors with the applicable partner. After identifying the risk factors, employers must jointly develop and implement preventive measures with the applicable partner. However, this change does align with regulatory amendments in a number of provinces, including New Brunswick, Ontario and Alberta, who have recently introduced domestic violence in their harassment and violence legislation. This also aligns with the ILO Convention, where the preamble notes that domestic violence can affect employment productivity and health and safety, and that organizations can help to recognize, respond to and address the impacts of domestic violence. Paragraph 10(f) of the Convention also calls on member states to take the appropriate measures to recognize the effects of domestic violence on the world of work and mitigate its impact.

Further, Bill C-65 ensures that employer obligations apply in respect of former employees in relation to occurrences of harassment and violence if the occurrence becomes known to the employer within three months after the day on which the employee ceases to be employed. British Columbia, Quebec and Saskatchewan have also moved in this direction and currently allow former employees to bring forward a complaint.

Strategic environmental assessment

In accordance with the guidance on conducting strategic environmental assessment (SEA), a preliminary scan was completed and revealed that these Regulations have no environmental implications and therefore no further assessment is required.

Gender-based analysis plus

Issue identification

A gender-based analysis plus (GBA+) assessment was conducted as part of the development of Bill C-65 and the Regulations.

Harassment and violence tend to affect different groups differently. Below, some of those different impacts are discussed for women, men, sexual minorities (LGBTQ2+), Indigenous peoples, persons with disabilities and workers in Canadian territories.

Women

In the Angus Reid Institute 2014 survey, Canadian women are more than three times as likely as men to say they have experienced sexual harassment at work — 43% versus 12%. [18]

Statistics Canada's 2014 General Social Survey (GSS) recorded a higher rate of violent victimization (including sexual assault, robbery and physical assault) for women than for men, 85 occurrences per 1 000 women compared with 67 per 1 000 men. This finding is primarily based on sexual assault, a crime in which the majority of victims are women. [19]

Work place bullying literature suggests that women are bullied by both men and women, while men are more likely to be bullied by other men. Evidence also points to women in senior management roles, compared to their male peers, experiencing higher levels of bullying from supervisors, colleagues and subordinates. [20]

Men

Compared to women, men are more at risk of being physically assaulted. [21] Additionally, evidence suggests that male victims of sexual assault are less likely than female victims to report the occurrence, due to a number of reasons including shame, guilt and fear of not being believed, as well as prejudices surrounding male sexuality. [22]

Further, Statistics Canada's 2014 GSS suggests that men are much less likely than women to use victim services. While 19% of female victims of violent crime contacted at least one such source of support, most often a psychologist or social worker, only 7% of male victims did so. [20]

Sexual minorities (LGBTQ2+)

In the 2014 GSS, people who self-identified as homosexual or bisexual recorded the highest rate of violent victimization (including sexual assault, robbery and physical assault), at 207 occurrences per 1 000 people, compared to 69 per 1 000 for heterosexuals. [20]

Statistics based on the 2010 National Intimate Partner and Sexual Violence Survey from the United States also suggest an elevated risk of harassment and sexual violence for sexual minorities:

- 46% of bisexual women have been raped in their lifetime, compared to 17% of heterosexual women and 13% of lesbian women.
- 37% of bisexual women have experienced stalking victimization at some point during their lifetime in which they felt very fearful or believed that they or someone close to them would be harmed or killed. This is more than double the rate among heterosexual women (16%).
- 40% of gay men and 47% of bisexual men, compared to 21% of heterosexual men, have experienced sexual violence other than rape in their lifetime. [23]

Indigenous peoples

Statistics Canada research using the 2014 GSS shows that the overall rate of violent victimization among the Indigenous population was more than double that of the non-Indigenous population (163 occurrences per 1 000 people versus 74 occurrences per 1 000 people). Regardless of the type of violent offence (sexual assault, robbery or physical assault), rates of victimization were almost always higher for the Indigenous than for the non-Indigenous population. [24]

Persons with disabilities

Research based on the 2004 GSS shows that the rate of violent victimization (including sexual assault, robbery and physical assault) for persons with activity limitations (367 per 1 000 people) was more than double the rate for persons without limitations (150 per 1 000 people). Moreover, persons with activity limitations were more likely to experience multiple victimization, with 46% of those who were victims of a violent crime being victims more than once during the 12 months preceding the survey. This is in comparison to 35% for persons without limitations. [25]

Research based on the 2014 GSS suggests that the higher violent victimization rate experienced by persons with disabilities was specifically the result of violent victimization experienced by those with a mental or learning disability. About one in ten Canadians reported a mental health-related disability, a developmental or learning disability, or self-assessed their mental health as poor or fair. The rate of violent victimization among these individuals was more than four times that of individuals who self-assessed their mental health as excellent or very good, 230 occurrences per 1 000 population compared to 53. [20]

Workers in Canadian territories

Residents of the territories reported about 15 000 violent occurrences in the 2014 GSS, of which about 20% occurred at the victim's place of work. This translated to a rate of 170 violent occurrences per 1 000 population for the territories, which was more than twice the rate in the provinces. [26]

Consequences of work place harassment and violence

It is widely recognized that work place violence can increase workers' stress and anxiety, harm workers' health and reduce employee engagement and productivity. As well, nonphysical acts of violence, such as verbal and psychological violence, can lead to consequences at least as serious as physical violence. [27] In the United States, surveys suggest that 37% of workers have been bullied (either currently or previously) at work and 45% of the bullying targets reported stress levels that affected their health. [28] A vast amount of literature documents the negative effects of work place sexual harassment for targets and organizations, for example, reduced job satisfaction. [29]

There are also negative consequences for perpetrators of work place violence. Studies show that being a target of bullying strongly predicts involvement in bullying others. In a British study focusing on the perspectives of alleged bullying perpetrators, all participants reported severe mental health problems, which they identified as being the result of the allegations made against them. Twenty-five percent of participants were either dismissed or reported that they were forced to resign from their positions as a result of bullying allegations. [30]

Research also suggests that there are significant negative impacts of work place violence on bystanders. Coworkers witnessing the negative event may fear a similar fate and experience increased stress, decreased morale and undermined productivity. Bystanders may withdraw due to these negative effects, which further

increases a target's vulnerability. An Australian study shows that up to 20% of witnesses of bullying decided to leave their work place as a result of their experiences. [31]

Anticipated impact of the Regulations

By creating a single, streamlined regime that would encompass the full continuum of actions from teasing and bullying to physical violence, the legislation and the Regulations will increase protections for workers and eliminate the current duplication regarding prevention of work place harassment and violence. The continuum demonstrates that harassment can quickly escalate to acts of physical violence. It is expected that the new regime will reduce federal jurisdiction workers' exposure to harassment and violence in the work place.

It is anticipated that individuals and groups that currently experience disproportionate amounts of harassment and violence will benefit disproportionately from the Regulations. For example, all federal jurisdiction employees in sex-segregated work places or teams (i.e. male-dominated sectors like police, military or prisons) would benefit from this initiative as they are at increased risk of being the victim of work place harassment and violence. Additionally, the Regulations are expected to have greater benefits for employees in the federal jurisdiction in occupations where they tend to

- work with the public (e.g. workers in public transportation);
- work with valuables and handle cash (e.g. workers in banks and shops);
- work in an environment where violence is "accepted" as part of the job (e.g. call centres, security and public law enforcement);
- work with people with special vulnerability (e.g. precarious work situations); and
- work alone (e.g. workers in small businesses).

Further, the Regulations are expected to have greater benefits for women, as they form a significant percentage of workers in higher risk occupations (e.g. banking clerks) and studies have demonstrated that they are three times as likely as men to have experienced sexual harassment at work. [19] Studies have also shown that women in senior management positions have greater exposure to harassment and violence than their male counterparts.

While men are overrepresented among work place violence perpetrators, federal jurisdiction male workers are also expected to benefit from the proposed initiatives. First, perpetrators experience negative outcomes as a result of their violent act, as studies show that being a target of bullying strongly predicts involvement in bullying others. Second, compared to women, men are more at risk of being physically assaulted. Third, working in male-dominated sectors, like the military or security, heightens the risk of experiencing violence. Moreover, male victims are less likely than female victims to report the occurrence and to use victim services.

Research has also identified several demographic groups with elevated risks for violent victimization, including sexual minorities (LGBTQ2+), Indigenous peoples, persons with disabilities (especially those with mental or learning disabilities) and workers living in Canadian territories. It is expected that these groups will benefit disproportionately from the proposed initiatives.

As well, greater exposure to various forms of work place violence has been found to be associated with different categories of nonstandard employment, particularly temporary or fixedterm employment. Furthermore, several studies have found that temporary employees are at increased risk of exposure to sexual harassment.

Finally, while the overarching policy intent is to reduce and eliminate harassment and violence, particular initiatives will attempt to take into consideration GBA+ concerns. For example, the first rounds of grants and contributions funding will be focused on those groups who experience harassment and violence disproportionately (e.g. Indigenous peoples). Additionally, the training will be work place–specific and the communications plans developed by the Labour Program will not be uniform, but targeted to diverse groups with different perspectives to ensure initiatives have appropriate relevance to different audiences and work places. Additionally, Labour Program investigators and Hub call receivers have been and will be trained to be able to sensitively interact with disadvantaged populations to accommodate a variety of needs or communication styles.

Monitoring of the Regulations

While there are data internal to the Labour Program on the number of occurrences of violence in federally regulated work places, there are no reliable data on the number of occurrences of harassment. The amendments made to the Code and the Regulations requiring reporting will help to close this gap. The increased data collection from surveys or Hub contacts will be assessed to ascertain as much useful demographic and GBA+ data as possible to better understand GBA+ impacts as the various aforementioned initiatives are implemented.

Implementation, compliance and enforcement, and service standards

The Regulations will come into force on the same day as the provisions of Bill C-65.

The successful implementation of the new harassment and violence prevention regime consists of six key elements:

1. Awareness campaigns: Creating awareness campaigns to challenge misconceptions and stereotypes related to harassment and violence in the work place, including awareness of existing legal provisions that have reprisal protection for employees who exercise their rights under Part II of the Code. One of the major factors underlying the failure to comply with legislated obligations in small and medium-sized businesses is a lack of awareness and resources. Generally, the campaigns would bring awareness to work place parties of their rights and obligations through initiatives such as ministerial announcements and speeches, social media, infographics, web content, publications and outreach.

2. Enforcement: The Labour Program investigates complaints regarding non-compliance with the Code, not actual occurrences of harassment and violence. At any point in the resolution process, a party may make a complaint that the employer is or has been non-compliant with the Code.

It is complaints of non-compliance that lead to Labour Program investigations. It is anticipated that the number of investigations will initially increase as employees become more comfortable coming forward and then eventually decrease because cultural change takes place in the work place and there are fewer complaints of non-compliance with the Code. To conduct the estimated initial increase of investigations into non-compliance with the Code and undertake enforcement-related activities, such as the enforcement of Part II of the Code in parliamentary work places, the Labour Program is hiring and training additional health and safety officers (HSOs).

If the Labour Program observes particular employers or industries with a higher number of complaints or complaints of a particular nature, then the Labour Program will conduct reactive inspections of those work

places. While investigations pertain to specific complaints, inspections can be an exploration of how a particular work place may not be compliant with the Code based on trends or risks within a sector.

3. Development of materials, tools and a list of investigators: Developing materials such as guidelines for the implementation of the new regime, links to provincial/territorial support services and toolkits (e.g. videos, sample policies, posters, etc.) will support employers and employees in implementing the new regime and provide them with available resources. Additionally, a list of investigators from which employers can select an investigator to investigate an occurrence was co-developed by a labour and employer working group.

4. Harassment and Violence Prevention Hub: The Hub is being established to provide support to employers and employees on the topic of harassment and violence in the work place. The Hub includes a 1-800 number linking employers and employees with Labour Program experts who can help them navigate the harassment and violence provisions under the Code, help the caller determine whether the occurrence meets the definition of harassment and violence in the work place, direct them to support services in their regions and, if they are not federally regulated, direct them to the appropriate jurisdiction.

The Hub will also make available educational tools and trained individuals from the Labour Program who can help employers meet their legal obligations. For processing of engagements, service standards are 24 hours.

5. Annual reporting and program review: Presently, federally regulated employers are obligated to submit annual reports to the Minister on all hazardous occurrences, including violence, within the work place. However, there is no explicit obligation to report on occurrences of harassment, including sexual harassment. Consequently, there is insufficient data on the spectrum of work place harassment and violence. To address this data gap, Bill C-65 requires employers to report annually all occurrences of harassment and violence to the Minister and secondly, that the Minister prepare and publish an annual report related to harassment and violence within federally regulated work places.

In addition to the requirement to prepare and publish an annual report, the Minister is required to conduct a review of the provisions of Part II of the Code related to harassment and violence every five years. To support this review, the Labour Program will be collaborating with Statistics Canada to undertake a biennial survey of federally regulated workers. The survey will include specific questions related to harassment and violence.

6. Grants and contributions: To support the implementation the new legislative and regulatory provisions associated with Bill C-65 and achieve the culture shift that will be required to reduced occurrences of harassment and violence, the Labour Program is putting in place a new grants and contributions program that will provide funding for management and union parties to co-develop sector-specific training and resources. The intended results of the program are the co-development of tools and resources related to harassment and violence prevention and more collaborative work places. The ultimate outcome is federally regulated work places that are free of harassment and violence.

Evaluation and review of the Regulations

At least every five years a review of the provisions of Part II of the Code related to harassment and violence will occur and provide an opportunity for the Minister to evaluate the success of the regime and identify any potential changes that are needed for improvement. Additionally, the Labour Program, as part of its due diligence, continually monitors performance through regular internal monitoring and performance measurement. This work includes monitoring of the ongoing impacts of Labour Program activities on vulnerable workers.

Contact

Duncan Shaw
Senior Director
Occupational Health and Safety
Labour Program
Employment and Social Development Canada
Place du Portage, Phase II, 10th Floor
165 De L'Hôtel-de-Ville Street
Gatineau, Quebec
K1A 0J2
Telephone: 819-654-4450
Email: duncan.shaw@labour-travail.gc.ca (mailto:duncan.shaw@labour-travail.gc.ca)

Footnotes

a S.C. 2019, c. 29, par. 375(1)(c)

b R.S., c. L-2

c S.C. 2018, c. 22, s. 14

d R.S., c. 36 (2nd Supp.)

e S.C. 2018, c. 22, s. 3(4)

1 C.R.C., c. 986; SOR/2019-168, s.1

2 SOR/86-304; SOR/94-263, s.1; SOR/2002-208, s. 1

3 SOR/87-184; SOR/2015-143, s. 1

4 SOR/87-612

5 SOR/90-97; SOR/2002-143, s. 1

6 SOR/2010-120

7 SOR/2011-87

8 Angus Reid Institute (2018). "#MeToo: Moment or movement? (http://angusreid.org/me-too/)"

9 Government of Canada (2018). "2017 Public Service Employee Survey (https://www.canada.ca/en/treasury-board-secretariat/services/innovation/public-service-employee-survey/2017-public-service-employee-survey.html)."

10 Government of Ontario (2015). *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment (PDF) (http://docs.files.ontario.ca/documents/4136/mi-2003-svhap-report-en-for-tagging-final-2-up-s.pdf)*.

11 A competent person is used under the current Part XX (Violence Prevention) of the COHSR to mean the qualified person appointed to undertake the investigation into an occurrence of violence in the work place and providing the employer with a written report with their findings and recommendations.

12 In a pamphlet titled "Aboriginal Lateral Violence (PDF) (https://www.nwac.ca/wp-content/uploads/2015/05/2011-Aboriginal-Lateral-Violence.pdf)," the Native Women's Association of Canada explains that "[…] Unlike work place bullying, lateral violence differs in that Aboriginal people are now abusing their own people in similar ways that they have been abused. It is a cycle of abuse and its roots lie in factors such as: colonisation, oppression, intergenerational trauma and the ongoing experiences of racism and discrimination. Through these factors Aboriginal people now become the oppressor and within the work place or community they now direct abuse to people of their own gender, culture, sexuality, and profession. In other words, instead of directing their anger at the oppressor, these work place or community aggressors now direct their anger at their own peers or community members."

13 Merriam-Webster (2020) "recourse (https://www.merriam-webster.com/dictionary/recourse)."

14 Anjum et al., "An Empirical Study Analyzing Job Productivity in Toxic Work place Environments", *International Journal of Environmental Research and Public Health*, May 21, 2018.

15 Antecol et al., "Does Sexual Harassment Training Change Attitudes? A View from the Federal Level", *Social Science Quarterly*, Volume 84, Number 4, December 2003.

16 Statistics Canada, Table: 36-10-0480-01 (formerly CANSIM 383-0033).

17 Treasury Board of Canada Secretariat, *Policy on Limiting Regulatory Burden on Business (https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-limiting-regulatory-burden-business.html#toc5)*.

18 Angus Reid Institute (2014). "Three-in-ten Canadians Say They've Been Sexually Harassed at Work, But Very Few Have Reported This to Their Employers (PDF) (http://angusreid.org/wp-content/uploads/2014/12/2014.12.05-Sexual-Harassment-at-work.pdf)."

19 Perreault, Samuel (2015). *Criminal Victimization in Canada, 2014*. Canadian Centre for Justice Statistics. Catalogue No. 85-002-X.

20 Hutchinson, Jacquie and Joan Eveline (2010). “Work place Bullying Policy in the Australian Public Sector: Why Has Gender Been Ignored?” *The Australian Journal of Public Administration* 69(1): 47-60.

21 Piquero, Nicole Leeper, Alex R. Piquero, Jessica M. Craig, Stephen J. Clipper (2013). “Assessing Research on Work place Violence, 2000–2012”. *Aggression and Violent Behavior* 18: 383-394.

22 Krug, Etienne G., Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi, and Rafael Lozano, eds. (2002). *World Report on Violence and Health (http://www.who.int/violence_injury_prevention/violence/world_report/en/)*. Geneva, World Health Organization. Accessed on March 14, 2017.

23 U.S. Centres for Disease Control and Prevention (2010). *NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation (PDF) (https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf)*. Accessed on March 14, 2017.

24 Boyce, Jillian (2016). *Victimization of Aboriginal People in Canada, 2014*. Canadian Centre for Justice Statistics. Catalogue No. 85-002-X.

25 Perreault, Samuel (2009). *Criminal Victimization and Health: A Profile of Victimization Among Persons with Activity Limitations or Other Health Problems*. Canadian Centre for Justice Statistics. Catalogue No. 85F0033M - No. 21.

26 Perreault, Samuel and Laura Simpson (2016). *Criminal Victimization in the Territories, 2014*. Canadian Centre for Justice Statistics. Catalogue No. 85-002-X.

27 Vickers, Margaret H. (2014). “Towards Reducing the Harm: Work place Bullying as Work place Corruption - A Critical Review”. *Employee Responsibilities and Rights Journal* 26(2): 95-113; and, Treasury Board of Canada Secretariat (2017). *Toward a Public Service Free From Harassment and Sexual Violence: Foundation of a Respectful Work place*. Discussion Document.

28 Public Services Health & Safety Association (2010). *Bullying in the Work place: A Handbook for the Work place*. Toronto, ON.

29 Clark, Heather M., Dianne P. Ford, and Lorne M. Sulsky (2016). “Moderating Effects of Harasser Status and Target Gender on the Relationship Between Unwanted Sexual Attention and Overall Job Satisfaction”. *Journal of Applied Social Psychology* 46: 701-717.

30 Jenkins, Moira F., Dieter Zapf, Helen Winefield, and Aspa Sarris (2012). “Bullying Allegations from the Accused Bully’s Perspective”. *British Journal of Management* 23: 489-501.

31 Vickers, Margaret H. (2010). “The Shifting Sands of ‘Acceptable’ Violence”. *Administrative Theory & Praxis* 32(1): 7-24; and 21.