

# FEDERALLY REGULATED EMPLOYERS: POLICY AND OTHER REQUIREMENTS FOR THE PREVENTION OF VIOLENCE AND SEXUAL HARASSMENT IN THE WORKPLACE

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The *Canada Labour Code* (the "Code") requires that every federally regulated employer have policies on the prevention of workplace violence and sexual harassment.

## **Violence**

Workplace violence is any action, conduct, threat or gesture of a person towards an employee in their workplace that can reasonably be expected to cause harm, injury or illness to that employee. The Code requires employers to "take the prescribed steps to prevent and protect against violence in the workplace."<sup>[1]</sup>

Part XX of the *Canada Occupational Health and Safety Regulations* (the "Regulations") requires employers to take the following steps:

- establish a framework for consultation with the policy committee, or alternatively the workplace committee or health and safety representative;
- develop the workplace violence prevention policy and post it at a place accessible to all employees;
- identify all the factors that contribute to workplace violence;
- assess the potential for workplace violence;
- implement systemic controls as soon as practicable, but not later than 90 days after assessment to eliminate or minimize the risk of workplace violence;
- establish and implement procedures for follow-up maintenance of corrective measures, including measures to respond to unforeseen risk of workplace violence; and
- at least every three years review the effectiveness of the workplace violence prevention measures, and update them whenever there is a change that compromises the effectiveness of those measures.

The workplace violence prevention policy must set out the following obligations of the employer:<sup>[2]</sup>

- to provide a safe, healthy and violence-free workplace;
- to dedicate sufficient attention, resources and time to address factors that contribute to workplace

violence, including but not limited to, bullying, teasing, and abusive and other aggressive behaviour to prevent and protect against it;

- to communicate to its employees information in its possession about factors contributing to workplace violence; and
- to assist employees who have been exposed to workplace violence.

Furthermore, employers have the following additional obligations:<sup>[3]</sup>

- to develop in writing, implement and make employees aware of emergency notification procedures for workplace violence;
- provide training on the factors that contribute to workplace violence to employees exposed to workplace violence or the risk of workplace violence, and keep a record of such training for two years; and
- investigate any incidents of workplace violence.

### **Sexual Harassment**

The Code defines sexual harassment as any conduct, comment, gesture, contact of a sexual nature likely to cause offence or humiliation or that might, on reasonable grounds, be perceived as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.<sup>[4]</sup>

The Code requires federally regulated employers to make reasonable effort to ensure that no employee is subject to sexual harassment.<sup>[5]</sup> Furthermore, every employer must issue a policy statement concerning sexual harassment after consulting with its employees or the employees' representatives.<sup>[6]</sup>

The policy statement must include a definition of sexual harassment substantially the same as the one in the Code, and the following statements:

- every employee is entitled to employment free from sexual harassment;
- the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;
- the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's director who subjects an employee to sexual harassment;
- explaining how sexual harassment complaints may be brought to the attention of the employer; the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation to the complaint; and
- informing employees of their right to make a complaint under the *Canadian Human Rights Act*.

Furthermore, employers are obligated make each person under the employer's direction aware of the policy statement by posting and keeping copies of the policy statement where it is likely to be seen by employees.[7]

If you require assistance, including preparing your violence prevention policy or sexual harassment policy statement please contact Louis Zivot or Natalie Cuthill.

by Louis J. Zivot and Natalie Cuthill, Student-at-Law

1 *Code* at section 125(1)(z.16). [ps2id id='1' target='']

2 *Regulations* at section 20.3. [ps2id id='2' target='']

3 *Regulations* at sections 20.8, 20.9, and 20.10. [ps2id id='3' target='']

4 *Code* at section 247.1.[ps2id id='4' target='']

5 *Code* at section 247.3. [ps2id id='5' target='']

6 *Code* at section 247.4. [ps2id id='6' target='']

7 *Code* at section 247.4.[ps2id id='7' target='']

#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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