

ACT TO PREVENT AND FIGHT PSYCHOLOGICAL HARASSMENT AND SEXUAL VIOLENCE IN THE WORKPLACE: NEW EMPLOYERS' OBLIGATIONS THROUGH BILL 42 NOW IN FORCE

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Introduction

Bill 42, *An Act to Prevent and Fight Psychological Harassment and Sexual Violence in the Workplace* (the "Bill"), has several objectives, including the fight against psychological harassment and sexual violence and the protection of workers in their workplace.

The amendments strengthen the legislative framework with respect to labour and employment law in Quebec by amending, amongst other pieces of legislation, the *Act Respecting Occupational Health and Safety* ("AOHS"), the *Act Respecting Labour Standards* ("ALS") and the *Act Respecting Industrial Accidents and Occupational Diseases* ("IAOD").

While some provisions came into force on March 27, 2024, others came into force on September 27, 2024.

In this bulletin, we list the new obligations that employers will now have to comply with, as well as their related deadlines.

A) Amendments to the Occupational Health and Safety Act

The definition of "sexual violence" is introduced in the AOHS. It includes "any form of violence targeting sexuality or any other misconduct, including unwanted gestures, practices, comments, behaviours or attitudes with sexual connotations, whether they occur once or repeatedly, including violence relating to sexual and gender diversity."^[1]

In addition, Parliament now grants regulatory powers to the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the "CNESST") to determine measures to prevent or put an end to sexual violence.^[2]

This amendment came into force on March 27, 2024.

B) Amendments to the Act respecting labour standards

Employers are also impacted by the following important changes to the ALS:

i. Obligations related to psychological harassment prevention and treatment policies

Employers' obligations are specified in terms of preventing psychological harassment. They extend to those from any person (including customers and suppliers, for example) in the workplace. Although the obligation to implement a policy to prevent and treat psychological harassment was already well established, it now forms part of the prevention program or action plan under the AOHS. The minimum content of such a policy is also specified^[3]. It must contain the following elements:

- The methods and techniques used to identify, control and eliminate the risks of psychological harassment;
- Specific information and training programs on psychological harassment prevention that are offered to employees and to persons designated by the employer to handle a complaint or report;
- Recommendations regarding the conduct to be followed when participating in social activities at work;
- The applicable procedure for filing a complaint or report with the employer or for providing information or documents to the employer, the person designated to take charge of the complaint or report and the information on the follow-up that must be given by the employer;
- Measures to protect persons affected by a situation of psychological harassment and those who have cooperated in the processing of a complaint or report concerning such a situation;
- The process for handling a psychological harassment situation, including the process applicable when the employer conducts an investigation;
- Measures to ensure the confidentiality of a complaint, report, information or document received and the retention period for documents made or obtained in the course of handling a psychological harassment situation, which must be at least two (2) years.

These provisions came into force on September 27, 2024. Employers will need to ensure their policies for the prevention and treatment of psychological harassment are consequently updated.

ii. Other important changes for employers

There are also several other changes in the Bill that employers need to consider, including:

- Despite any amnesty clause with respect to discipline, employers will now be able to consider previous disciplinary measures for physical and psychological violence (including sexual harassment). This change allows employers to rely on progressive discipline for repeat offenders.^[4]
- It is now a prohibited practice for employers to retaliate or impose a penalty on the basis that an

employee reported psychological harassment from another person.^[5] Where reprisals are alleged, the employee will now be able to file a complaint with the CNESST.

- The Administrative Labour Tribunal may order employers to pay punitive damages and interest to a victim of psychological harassment, even if the employee is also recognized as being the victim of an employment injury resulting from this harassment.^[6]

These provisions came into force on March 27, 2024.

C) Amendments to the Act Respecting Industrial Accidents and Occupational Diseases

Two (2) statutory presumptions were added to facilitate proof of recognition of an employment injury stemming from sexual violence. Employers will have the burden of reversing these presumptions:

- An injury or disease of a worker is presumed to have arisen out of or in the course of his/her work if it results from sexual violence suffered by the worker and committed by his/her employer, one of the officers of the employer in the case it is a company, or one of the workers whose services are retained by the employer.
- A worker's disease that occurs within three (3) months of being subjected to sexual violence in the workplace is now presumed to be an employment injury.^[7]

The deadline is also extended from six (6) months to two (2) years to file a claim with the CNESST arising from such an injury. Note that the cost of benefits for such an injury will be charged to employers in all units if the injury is sexual in nature.

In addition, the rules governing the right of access to a worker's medical record as established by the CNESST were specified. Employers may only have access to the information in the worker's medical file that is necessary for the employer's contestation. In fact, the health professional will now only be able to provide what is necessary by sending the employer a summary of the file. In the case of a contravention that constitutes illegal access to the medical record by employers or, if the health professional contravenes these new provisions, fines may be imposed that range from \$1,000 to \$5,000 if the offence is committed by a natural person and \$2,000 and \$10,000 in other cases.^[8]

These provisions came into force on September 27, 2024.

D) Implications of Changes Adopted for Employers

It is worth noting a nuance that Parliament has made to the proposed definition of sexual violence, including the addition of "violence relating to sexual and gender diversity". There is some connection between the more general normative framework found in the *Charter of Human Rights and Freedoms* with respect to "gender

identity or expression” and the normative framework of labour and employment law. However, it remains to be determined how the courts will deal with these issues in due course, since these concepts are certainly contemporary to Quebec labour and employment law.

In addition, the Bill follows the relatively recent changes to provisions concerning conjugal violence that were adopted in fall 2021. With the passage of this Bill following the COVID-19 pandemic, Parliament tightened the legislative framework with respect to the various forms of violence that may exist in the workplace. It is therefore up to employers to know the extent of their obligations in order to avoid undesirable situations that can often lead to costly remedies.

With respect to access to medical data in the context of an employment injury, the legislative changes will have consequences for employers in terms of file management.

Then again, it should be noted that the number of complaints of psychological harassment (including sexual harassment) is growing in Quebec. It is clear that employers will have to remain vigilant and apprised of these new obligations as their role in developing workplaces that are free from psychological harassment is being broadened.

Finally, under the amendments introduced by the Bill, employers' policies to prevent and treat psychological harassment may have to be revised. Please reach out to one of our team members to help you with this process.

[1] *An Act to Prevent and Fight Psychological Harassment and Sexual Violence in the Workplace*, 1st Sess., 43rd Legislation (Qc), s. 33.

[2] *Id.*, s. 38.

[3] *Id.*, s.18.

[4] *Id.*, s. 20.

[5] *Id.*, s. 21.

[6] *Id.*, s. 24.

[7] *Id.*, s. 4.

[8] *Id.*, s. 7 and 16.

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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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