Federal Employers: Prepare for a Wave of Change in Workplace Harassment Obligations

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In the last few years, and particularly with the advent of the #MeToo movement, some employers may have seen a rise in the number of harassment complaints in the workplace, including sexual harassment complaints. Employers under federal jurisdiction have been affected as well.

However, the current legal framework surrounding harassment and violence in federally regulated workplaces is fragmented. The results of many public consultations have shown that this framework is not currently designed to adequately address occurrences of sexual harassment and sexual violence.

In that context, in the past 18 months, significant changes have been proposed to the current legislation to address workplace harassment situations.

Bill C-65

The first wave of significant changes came with the adoption of Bill C-65. As previously reported, Bill C-65 was adopted to strengthen existing laws on the prevention of harassment and violence in all federally regulated workplaces.

One of Bill C-65's goals was to amend Part II of the Canada Labour Code (the Code) in a number of significant ways, including by establishing definitions of harassment and violence, extending the employers' obligations in respect of former employees relative to an occurrence of harassment and violence in the workplace, requiring employers to provide harassment and violence prevention training to everyone in the workplace, and providing specific rules regarding investigations, such as the employer's obligation to appoint a "competent person" to investigate occurrences of workplace violence or harassment.

Although Bill C-65 was adopted on October 25, 2018, it has not yet come into force.

Work Place Harassment and Violence Prevention Regulations

To support the goals of Bill C-65, the proposed new stand-alone Work Place Harassment and Violence Prevention Regulations (the Proposed Regulations) were

proposed on April 27, 2019. The Proposed Regulations would effectively streamline and consolidate harassment and violence provisions in all federally regulated workplaces that fall under Part II of the Code.

Although not yet adopted or implemented, we have summarized below the intended new rights and obligations of both employees and employers with respect to workplace harassment and violence under the Proposed Regulations.

1. “Applicable Partner” (Policy Committee)

The Proposed Regulations provide that a number of the obligations established must be performed by the employer “jointly” with its “applicable partner”, which is reference to an employer’s workplace violence and workplace harassment policy committee or, if there is no policy committee, the employer’s workplace committee or their health and safety representative.

It must be noted, however, that if the employer and the applicable partner are unable to agree on any matter that is required by the Proposed Regulations to be done jointly by them, the employer’s decision will prevail.

2. Workplace 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 the workplace.

The policy must also outline how an employer will be informed of external dangers, such as family violence and stalking, that could result in harassment and violence in the workplace, and the measures that the employer could implement to minimize those dangers. The policy must outline a number of additional requirements, including relating to training of workers.

Employers will have to jointly update their policy, if necessary, following an update to the workplace assessment, or any time there is a change to any element of the policy.

3. Workplace assessment

Employers will be required to jointly conduct a workplace assessment that identifies risks of harassment and violence in the workplace. Within six months from the time that the risks are identified, employers will have to jointly implement preventive measures to protect the workplace from these risks.

At least once every three years, the workplace assessment will need to be reviewed and updated. A workplace assessment review will also have to occur in certain situations where the resolution process (described below) cannot advance, such as when the person in question wishes to remain anonymous or such person chooses to stop proceeding with the resolution process prior to an investigation being started.

4. Resolution process

The Proposed Regulations provides for a resolution process that would require employers to respond to every notification of an occurrence of harassment and violence in their workplace. The proposed resolution process includes multiple options for resolution such as “early resolution”, conciliation and investigation.

The new resolution process outlined by the Proposed Regulations focuses on greater communication between the employer and the parties through monthly updates and provides for specific timelines for completing the resolution process.

If an investigation is chosen to address the occurrence, employers will have to follow the prescribed requirements, including those regarding the qualifications of an investigator, how the investigator may be appointed, what types of reports the investigator must submit, and how the employer will handle those reports.

Moreover, if an employer wishes to develop or identify a list of investigators, they must do so jointly. Notably, if the employer, the principal party and the responding party are unable to agree on an investigator within 60 days, the employer must request that the minister select the investigator.

5. Emergency procedures

Employers will be required to jointly develop and implement emergency procedures to be followed in situations where an occurrence of harassment and violence poses an immediate danger to the health and safety of employees or when there is a threat of such an occurrence happening in the workplace.

6. Training

Employers will be required to jointly identify or develop harassment and violence training. The training will have to be delivered at least every three years and will have to provide information about, amongst other things, the prevention policy, crisis prevention, personal safety and de-escalation techniques.

Employers will have to ensure that each new employee receives training within the first three months of employment. Additional training will have to be provided in certain circumstances.

7. Support measures

Employers would have to make available information respecting support services that employees may access if they need it.

8. Records and reports

To support enforcement of the Proposed Regulations, employers will have to keep several records, including records of all notifications of harassment and violence in their workplace, records of the actions taken and records of the decisions they made in the event that they were unable to agree on an issue that they must address jointly.

Conclusion

As is apparent from the above-noted, the Proposed Regulations would broaden the workplace harassment and workplace violence-related requirements on employers under federal jurisdiction in significant ways. Although the Proposed Regulations have not been adopted in their current form, it is recommended that employers begin to consider how existing policies and processes relating to workplace harassment and violence might be revised, particularly considering that Bill C-65 has already clearly signalled the government's increased focus on these issues.

We will be following the status of the Proposed Regulations closely, and will keep you informed of any further developments. In the meantime, please feel free to contact us with any questions or for further information.

By

Maria Gergin Phillips, Audrey Belhumeur

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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