Psychological harassment and sexual violence: New obligations for Québec employers

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On March 27, 2024, the government of Québec sanctioned Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace* (the Act), a few months after it was introduced before the Québec National Assembly by Minister of Labour Jean Boulet, on Nov. 23, 2023.

The Act amends the following three laws, each a cornerstone of Québec's framework for preventing and addressing psychological and sexual harassment in the workplace:

- the *Act respecting labour standards* (the ARLS)
- the *Act respecting industrial accidents and occupational diseases* (the AIAOD)
- the *Act respecting occupational health and safety* (the AOHS)

Below is an overview of the most important changes already in force, and those for which the coming into force is imminent.

Amendments to the ARLS

- **Broadening the obligation to prevent harassment and put a stop to it:** The Act expressly broadens the employer's obligations, extending them to psychological harassment coming from "any person" towards its employees, therefore including problematic behaviour from clients, suppliers or other third parties, in addition to such behaviour which may come from its other employees. **This amendment came into force on March 27, 2024**.
- **Prohibited practice recourse in case of reprisals**: The ARLS now protects employees against reprisals for having reported psychological harassment or for collaborating in the complaint process. Indeed, section 122 of the ARLS has been amended to allow an employee to file a complaint in prohibited practice in such event. **This amendment came into force on March 27, 2024**.
- **Psychological harassment prevention and processing policies:** The Act amends the ARLS, so that it will specifically prescribe the elements to be included in a compliant policy, including the following:

1. the methods and techniques used to identify, control and eliminate risks of psychological harassment (including a sexual harassment);

2. specific information and training programs on psychological harassment prevention offered to employees and to persons designated by the employer to deal with a complaint or a report;
3. recommendations for appropriate conduct in work-related social activities;
4. the terms applicable for making a complaint or report to the employer, or to provide related information or documentation, the person designated to receive them, and the follow-up information to be provided by the employer;
5. the protection measures for those concerned by a situation of psychological harassment, and those who have collaborated in the complaint process or report;
6. the intake process for situations of psychological harassment, including the process applicable when the employer conducts an investigation;
7. the measures aiming to ensure the confidentiality of a complaint, report, information or document received;
8. the retention period for documents produced or obtained in the course of addressing a situation of psychological harassment, which must be of at least two years.

This amendment comes into force on Sept. 27, 2024.

- **Enhanced confidentiality**: Where a psychological harassment complaint is resolved, parties will now be required to maintain the confidentiality of the resolution process, unless they agree, in the written settlement in agreement, to waive this obligation. **This amendment came into force on Sept. 27, 2024**.
- **Non-applicability of amnesty clauses**: As a development that will have major repercussions on the employment relationship, especially in unionized environments, the Act strips from all effect clauses meant to prevent an employer from taking into account a disciplinary measure previously imposed on an employee because of misconduct relating to physical or psychological violence that the latter has committed, including sexual violence, when comes the time to impose a disciplinary measure concerning new misconduct relating to one of these forms of violence. **This amendment came into force on March 27, 2024**.
- **Award of punitive damages in cases of psychological harassment, even in cases of employment injury:** The Administrative Labour Tribunal may as of now award punitive damages to an employee who is the victim of psychological harassment, even for a period during which the employee is the victim of an employment injury (which is not currently the case). Thus, the exception provided in the ARLS, which previously prevented the award of moral and punitive damages in the event of an employment injury, is no longer limited to preventing the award of moral damages. **This amendment came into force on March 27, 2024**.

Amendments to the AIAOD

- **Presumptions of employment injury**: The Act adds two presumptions of employment injury to the AIAOD, helping employees in their recognition for cases of sexual violence. Employers must reverse these presumptions in the event of such allegations:

The first presumption is that a worker's injury or illness will be presumed to have arisen out of, or in the course of, their work when it results from sexual violence suffered by the worker and committed by their employer, one of the employer's

officers in the case of a corporation, or any worker whose services are used by the employer.

The second presumption is that a worker's illness that occurs within the three months following sexual violence suffered by the worker in the workplace will be presumed to be an employment injury.

These amendments come into force on Sept. 28, 2024.

- **Extended claim period**: In the case of an employment injury resulting from sexual violence, a worker will be able to file a claim within two years of the employment injury. Currently, the time limit under the AIAOD is six months following the accident or, in the case of an illness, six months from the establishment of the medical relationship between the condition and the work. Claims relating to sexual violence will thus be given special status.

This amendment comes into force on Sept. 28, 2024.

- **Imputation:** Where an employee's injury is the result of sexual violence, benefits will now be imputed to employers in all units. The Act thus broadens the list of exceptions to the rule that the cost of benefits payable to an employee by reason of an industrial accident suffered by a worker while in the employ of the employer is imputed to the employer.

This amendment came into force on March 27, 2024.

- **Access to workers' medical records**: Although a strict application of the former section 39 of the AIAOD already prevented the employer from using a designated health professional as a "transmission belt" in procuring a worker's medical file, a significant difference between theory and practice was well established. For example, even the form published by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (the CNESST) for the designated health professional included a copy for the employer.

Going forward, the Act amends section 39 of the Act to expressly state that the employer "has no right of access" to the worker's medical file, and adds penal provisions in this regard.

As a result, employers who [our translation] "attempt to obtain, or obtains, in any manner whatsoever, the medical record to which they are not entitled," face fines of up to $10,000. We point out that the very broad wording of this penal provision could mean that an employer may be liable to a fine even if he unintentionally possesses a medical file to which he is not entitled. Employers will have to be very vigilant in this regard.

This amendment comes into force on Sept. 28, 2024.

Amendments to the AOHS

- **A definition of sexual violence**: The Act amends the AOHS by adding a definition of “sexual violence”, which reads as follows:

  [Our translation] *Any form of violence targeting sexuality or any other misconduct, including unwanted gestures, practices, words, behaviours or attitudes of a sexual nature, whether occurring on a single occasion or repeatedly, including sexual- and gender-diversity-related violence*.

This definition is inspired by the *Act to prevent and fight sexual violence in higher education institutions*. Educational institutions subject to this law may see this as a nod to their mandatory policies on the prevention of sexual violence.

This amendment came into force on March 27, 2024.

Conclusion

It is clear that the framework around the prevention and processing of situations of psychological harassment at work, eight years after the inception of the #metoo movement, is set to evolve substantially in 2024. Further, sexual violence at work now benefits from a firmer framework.

Several changes have already come into force, and many more obligations will come into force in September 2024, thus giving employers the spring and summer to ramp up to compliance.

As for next steps, employers should not only review their policies and procedures, but also train their managers on these various changes to ensure that their organisation complies with these new requirements.

Contact us

BLG’s Labour and Employment Law Group will continue to monitor these changes in practice. Make sure to reach out to any of the contacts below for assistance with complying with the new rules.

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