

Last month, the Federal Government 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*.

Workplace Violence and Harassment: Federal Government Proposes New Legislation

Bill C-65 applies to all federally-regulated workplaces (e.g. the federal public service, airlines, banks), including Parliament Hill, and is designed to strengthen obligations and protections with respect to violence and harassment in the workplace. Most of the changes proposed under the bill involve the Occupational Health and Safety (“OHS”) section of the *Canada Labour Code* (“Code”). Government officials say that it would affect about 8 per cent of the Canadian workforce.

Given that the bill is still in the early stages of the legislative process, it will likely undergo significant revision before it officially becomes law. In the meantime, what should federally-regulated employers expect with respect to the legislative changes and how can they start to prepare?

1. Be prepared to update your policies

Under Bill C-65, employers will have a duty to take the “prescribed measures to prevent and protect against harassment and violence in the work place, respond to occurrences of harassment and violence in the work place and offer support to employees affected by harassment and violence in the work place;”. Among other things, these “prescribed measures” may include the creation of a targeted policy, the provision of assistance to employees who are involved in complaints, and the delivery of training.

RT Launches Workplace Investigation Practice in Vancouver, Welcomes Fiona McFarlane

We are pleased to welcome lawyer and workplace investigator Fiona McFarlane. Fiona leads our Vancouver practice.

At RT, Fiona conducts workplace investigations, workplace assessments and reviews. Fiona also provides workplace investigation and human rights training to staff at all levels.

To learn more about Fiona, please visit rubinthomlinson.com.

To contact Fiona, please call 604-790-5888 or email fmcfarlane@rubinthomlinson.com.

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Although it is too early in the legislative process to start revising internal policies to comply with Bill C-65, employers should prepare themselves for some kind of policy development or amendment exercise once the bill is approved. Among other things, internal workplace violence policies will need to be updated to ensure that they capture a broader range of behaviours (i.e. harassment).

2. Be prepared to update your process

Under Bill C-65, federal employers will have to approach investigations involving allegations of harassment and violence somewhat differently from investigations where other health and safety issues are concerned. This is to account for the fact that investigations involving harassment and violence are often highly-sensitive in nature and characterized by power imbalances.

In contrast with other types of health and safety complaints, policy health and safety committees, workplace health and safety committees, and health and safety representatives shall not participate in investigations involving occurrences relating to harassment and violence in the workplace nor shall they have access to information that would be likely to reveal the identity of a person who was involved in an occurrence of harassment or violence in the workplace.

3. Train your internal investigators

According to Bill C-65, “except for as provided in the regulations,” employers will have a duty to “investigate, record and report” all occurrences of harassment and violence known to the employer.

Based on the existing regulations that relate to the investigation of workplace violence, it seems that the employer and employee are encouraged to resolve the matter themselves (via informal resolution) before moving to the investigation stage. If they are unable to do so, the employer must appoint a “competent person” to investigate. A “competent person” is defined in the regulations as someone who is impartial and is seen to be impartial and is knowledgeable of the issues and the relevant legislation.

With the addition of “workplace harassment” to the legislation, internal investigators will have to become “competent” in a new area of the law. Among other things, they should know the legal tests pertaining to harassment. They should also understand how

New for 2018 Conducting Workplace Violence Investigations

May 17, 2018 in
Toronto

An employee tells you that a co-worker said something that made them upset, but also that they fear for their personal safety. You're well-versed in dealing with complaints about harassment and bullying. What about complaints that raise a risk of someone getting injured?

This course provides a framework for assessing complaints to determine whether they meet the definition of workplace violence and teaches participants how to maintain the safety of employees and conduct a meaningful investigation. Visit rtworkplacetraining.com to learn more and to register.

To see our full 2018 training calendar, please visit rtworkplacetraining.com.

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investigations into workplace harassment and violence differ from “traditional” occupational health and safety-related inquiries.

4. Have a roster of qualified third-party investigators on hand

Because the definition of “competent person” contemplates both an objective and subjective assessment of “impartiality”, parties to a complaint may object to a particular investigator based only on their perception that the person may be biased.

In light of this, federally-regulated employers should have a roster of pre-selected and pre-vetted external investigators on hand to conduct investigations where concerns with impartiality are present and for cases where the complexity and/or subject matter warrant external expertise.

5. Be prepared for an uptick in complaints

Among other things, Bill C-65 encourages employees (not just those on the receiving end of the conduct in question) to make a complaint to their supervisor whenever they “believe on reasonable grounds” that there has been a contravention of the OHS portion of the legislation or that there is likely to be an accident, injury or illness flowing from employment. With the changes proposed under Bill C-65, it seems that this would include “occurrences of harassment and violence”.

Whereas the new legislation will help to increase awareness about workplace harassment and provide a clearer mechanism for complaint and resolution, it may result in a (short-term) uptick in terms of the number of complaints federally-regulated employers receive.

Employers should welcome this temporary uptick as it will enable them to address behaviours that would have previously been driven underground. In order to do this effectively, they should dedicate appropriate resources and staff to the resolution of any complaints that arise.

Because the bill is still in the early stages of legislative process, it will likely undergo significant revision and change before it receives “Royal Assent” and officially becomes law. That said, federally-regulated employers should be aware that change is on the horizon and prepare their workplaces accordingly. 

By Megan Forward



Respect, Diversity and Change in the Workplace Series

**Part 1: Navigating
‘Difference’
9am - 12 noon**

**Part 2: Modelling
Respect 1pm - 4pm**

**June 26, 2018 in
Toronto**

In this one-day, two-part course, we provide a framework for how to approach cultural differences in the workplace in a way that allows you to be both comfortable and engaged with your colleagues, and addresses the natural fear of saying the wrong thing at the wrong time.

Once you understand how to manage and navigate the expression of ‘difference’ in the workplace, we then go on to examine how to incorporate respect as part and parcel of enhancing the diversity of Canadian workplaces.

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