

# HANDOUT 1

## Prevention and Response - Assessment of Risks Factors within Federal Work Place Harassment and Violence Prevention Regulations

---

**Prevention I** - *The Work Place Harassment and Violence Prevention Regulations*, under section 5, *Prevention and Protection Measures*, requires a work place assessment of risk factors for violence and harassment, jointly with the policy committee.

### ***Prevention and Protection Measures***

#### ***Work Place Assessment***

##### ***Joint assessment***

**5 (1)** *An employer and the applicable partner must jointly carry out a work place assessment that consists of the identification of risk factors under section 8 and the development and implementation of preventive measures under section 9.*

##### ***Joint monitoring and updates***

**(2)** *An employer and the applicable partner must jointly monitor the accuracy of the work place assessment and, if necessary, update it in order to reflect a change to the information set out in the assessment, including*

- **(a)** *a change to the risk factors identified under section 8; and*
- **(b)** *a change that compromises the effectiveness of a preventive measure developed and implemented under section 9.*

**Prevention II** - The risk factors (outlined in section 8), include factors internal and external to the work place, that contribute to harassment and violence in the work place, taking into account the specific culture, conditions, physical design and psychological health and safety.

#### ***Identification of risk factors***

**8** *An employer and the applicable partner must jointly identify the risk factors, internal and external to the work place, that contribute to harassment and violence in the work place, taking into account*

# HANDOUT 1

## Prevention and Response - Assessment of Risks Factors within Federal Work Place Harassment and Violence Prevention Regulations

---

- *(a) the culture, conditions, activities and organizational structure of the work place;*
- *(b) circumstances external to the work place, such as family violence, that could give rise to harassment and violence in the work place;*
- *(c) any reports, records and data that are related to harassment and violence in the work place;*
- *(d) the physical design of the work place; and*
- *(e) the measures that are in place to protect psychological health and safety in the work place.*

### **Preventive measures — development and implementation**

**9** *Within six months after the risk factors are identified under section 8, an employer and the applicable partner must jointly*

- *develop preventive measures that, to the extent feasible,*
  - *(i) mitigate the risk of harassment and violence in the work place, and*
  - *(ii) neither create nor increase the risk of harassment and violence in the work place;*
- *develop an implementation plan for the preventive measures; and*
- *implement the preventive measures in accordance with the implementation plan.*

**Prevention III** - In cases where the responding party is a third party, the health and safety committee, must ensure the assessment of risk factors and control measures is updated. This should be communicated to the policy committee.

### **Joint review and update**

**6 (1)** *An employer and the work place committee or the health and safety representative must jointly review and, if necessary, update the*

---

# HANDOUT 1

## Prevention and Response - Assessment of Risks Factors within Federal Work Place Harassment and Violence Prevention Regulations

---

*work place assessment if notice of an occurrence is provided under subsection 15(1) and*

- *(a) the occurrence is not resolved under section 23 and the principal party ends the resolution process under section 18; or*
- *(b) the responding party is not an employee or the employer.*

### **Response:**

- **Revise the Violence Risk Assessment** - The employer must conducted a violence risk assessment and if the situation that occurred was not addressed in that document, then the assessment should be revised to include the violent incident. A copy of this assessment should be available by request to any member of the H&S committee. If there is no assessment - or it is not revised to include new information - the Union should state their objection in writing to the employer.
- **Training** – The employer must ensure workers are trained.
- **Address the Person who has Been Subjected to Violence** - The employer provide workers with mental health support services that could include access to counseling or critical incident debriefing, as appropriate.
- **Ensure the Incident is Documented** – If the incident is not documented remind the employer they must do so.
- **Ensure the Incident is Investigated** - If the incident is not investigated remind the employer they must do so pursuant their obligation under relevant occupational health and safety acts or associated regulations.
- The investigations mandate is to **determine the cause** of the incident and the actions needed to prevent **reoccurrence** not assign fault or blame - If there are concerns with the mandate or outcome of the investigation the Union should register its concerns in writing with the employer.

# HANDOUT 1

## Prevention and Response - Assessment of Risks Factors within Federal Work Place Harassment and Violence Prevention Regulations

---

- The H&S committee, including the union appointed worker representatives, have a mandate under the H&S Legislation to **participate in investigations** concerning the occupational health and safety of the employees. – The Union executive should coordinate with their representatives on the committee to ensure the concerns and suggestions of members are brought to the committee. If there is no participation by the unions' representatives of the committee, document your objection and remind the employer of the committees mandate to participate in the investigation.
- **Inform The H&S Committee, and the Worker Affected by Violence of the Actions Taken to Prevent Reoccurrence** – If no actions are taken or if you believe the actions are insufficient the Union should state their objection in writing to the employer.
- **Make Recommendations**, ask questions and file a 127.1 when appropriate.
- The H&S committee, including the union appointed worker representatives, have a mandate under the H&S Legislation to participate in investigations concerning the occupational health and safety of the employees.
- **Communicate with the Policy Committee** – the employee members on the H&S committee should inform the Policy and/or Regional Committee, if appropriate
- **Survey Members** – One of the best sources of information regarding workplace hazards is our members. In fact, they may be the only source of information on workplace violence hazards (since management may not document incidents or near misses). In addition, conducting regular surveys may also enable the local union to evaluate workplace violence prevention measures, and educate members about both hazards and control measures, at the same time.

*Generic version*

### **BASIC HEALTH AND SAFETY CONCEPTS**

- All workers have a legal right to a healthy and safe work environment, and a duty to report hazards.
- Occupational health and safety is a legally binding and mandatory employer responsibility.
- The main purpose of health and safety legislation is to prevent accidents and injuries.
- Knowledge and understanding of worker rights are key to fully exercising them.
- The law recognizes that creating and maintaining a safe work environment requires a collaborative approach.
- The Internal Responsibility System (IRS) is the philosophy by which all jurisdictions apply health and safety laws.
- The foundation of the IRS philosophy is that everyone in the workplace has a role to play in health and safety and that the workplace parties are most likely to find effective solutions when they work together.
- The IRS puts in place a worker-employer partnership intended to have employers and workers deal with health and safety issues internally via the health and safety committee, working together towards the common goal of safer workplaces.
- The most important tool for exercising worker rights is the Health and Safety Committee.
- Committee members play a crucial role in ensuring that OHS is a priority in the workplace.
- Union involvement on the committee has a direct impact on the health and safety of all workers.
- Committees make important recommendations, but the employer is ultimately responsible for their implementation.

- Health and safety training in the workplace is crucial because it significantly reduces accidents and injuries, ensures legal compliance, and ultimately benefits both the employees and the organization.
- It equips employees with the knowledge to identify hazards, follow safety procedures, and respond to emergencies, fostering a safer and more productive work environment.
- Employees should receive orientation their first day on the job, so that they understand everyone's role and can contribute to an effective Internal Responsibility System (IRS).
- Most importantly, an employee needs to be trained on the correct way to do their job.
- Any employer facing legal proceedings (often following a serious or fatal injury) will be required to demonstrate that everything reasonable was taken to prevent the incident - the offence - from occurring.
- What is consider reasonable will be based on the following:
  - What would a knowledgeable person consider reasonable in the circumstances?
  - Did the employer consider more than simple compliance with legislation?
  - Did the employer consider 'best practices' in their type of operations?
- The training program is always considered an essential component to the health and safety management system. It includes:
  - Specific training for specific jobs
  - Specific training for various tasks within those jobs
  - Evaluation methods for the training
  - Training content must address local "rules" as well as legislation
  - It must cover all "known and foreseeable" hazards

- It covers an understanding of obligations and responsibilities under the applicable legislation as well as any employer policies and safety procedures
- All training (including “safety talks”) should be documented and records kept

### Get the employer to document their position

- Generally, it is always a good idea to make a formal request **in writing** to the employer (often through the joint health and safety committee or representative) as to what legislation applies to your organisation and what the employer believes is the mandatory health and safety training required by law (for workers and health and safety committees).
- This step documents the official position of the employer as to their legal obligations on health and safety training.

### SEEKING ENFORCEMENT

- To seek enforcement of health and safety training in the workplace, you should start by working with your union health and safety representative to research the legal requirements on health and safety training applicable to your workplace.
- Your union local, Component and various PSAC resources are a good source of information as to the applicable legislation.
- The laws and regulations vary across Canada but there are always specific provisions requiring health and safety training for workers and more specifically for health and safety committees or representatives.
- In some cases, they will be within a more detailed prevention program where training is an important component of the legal requirements.

### STEPS TO ENFORCE HEALTH AND SAFETY TRAINING:

#### For federal workplaces

- An internal complaint resolution process is established in section 127.1 of *Part II of the Canada Labour Code*.
- This internal complaint resolution process has to be used before other recourses available under Part II of *the Code*, except for the right to refuse dangerous work and the right of pregnant or nursing workers to temporarily withdraw from dangerous work.
- A specific document listing the process found in the *Canada Labour Code Part II* is also available (HANDOUT 4: Seeking Government Enforcement – Hazard Prevention Program Regulations).

#### For provinces and territories

##### 1. Report your health and safety concern to your supervisor:

The immediate supervisor is the first management level responsible for addressing workplace concerns. Inform your employer about the lack of or inadequate health and safety training and your willingness to work with them in ensuring compliance with the law. A verbal complaint is fine, but it must be followed by a written complaint. Ensure you provide a reasonable period to respond and a statement that explains that in absence of a response, it will be considered as a negative answer.

##### 2. Involve your health and safety committee or representative:

If your supervisor doesn't resolve the issue (or does not respond), bring the concern to your workplace's health and safety committee or a worker representative. The health and safety committee members may be asked to investigate the complaint and make recommendation to the employer. Union representatives must be part of the investigation process.

### 3. File a complaint with the relevant government agency:

**For provincial or territorial workplaces:** Contact your provincial or territorial occupational health and safety agency.

Here is a list of the Canadian government departments responsible for health and safety: <https://www.ccohs.ca/oshanswers/information/govt.html>

**For federal workplaces:** Contact the federal occupational health and safety agency, which enforces *Part II of the Canada Labour Code*. Employment and Social Development Canada can be reached using the toll-free number: **1-800-641-4049**. You can also check their Web Site to contact the closest regional office near you.

### 4. Report incidents or illnesses:

In addition to complaints about training, you should also document and report any workplace incidents or illnesses to the relevant authorities and your health and safety committee.

### 5. Understand your rights:

You have the legal right to refuse work if you believe it's unsafe, and it is against the law for your employer to retaliate against you for reporting health and safety concerns.

### 6. Appeals:

If you disagree with a decision made by an inspector, you may have the right to appeal to the relevant administrative board. You should always contact your union representative to seek advice.

# HANDOUT 3

## How Workers Can Influence the Employer's Responsibilities for H&S

---

**Other means that workers have to influence and better define the employer's responsibilities on health and safety:**

**Acts & Regulations:**

Health and Safety Act

Worker's Compensation Act

Human Rights Act

Labour Relations Act

Labour Standards Act

---

---

**Regulations:**

Regulations: Provide specific rules for many circumstances and cannot exceed the general authority of the Act (health & safety committees, violence prevention regulations, generic prevention programs, hazards-specific regulations, first aid requirements, etc.)

**Collective Agreements:**

Health and safety language (Including National Joint Council Directives):

Union-management consultative committees

Health and safety language

Anti-discrimination and harassment language

Allocation of leave (including injury-on-duty leave)

Hours of work

Technological change

---



# HANDOUT 3

## How Workers Can Influence the Employer's Responsibilities for H&S

---

Appendix on specific action (mental health, Joint Learning Program, etc.)

---

---

### **Employer Policies**

- Health & Safety Policies
  - Workers Compensation Policies
  - Telework Policies
  - Duty-to-Accommodate Policies
  - Code of Conduct Policies
  - Anti-discrimination and Harassment Policies
  - Workplace Training Policies
- 
- 

### **Terms of Reference for Health and Safety Committee**

- Adding agenda items
  - Process to access to information and reports
  - Taking minutes
  - Approving minutes
  - Observers and guests
- 
-



# HANDOUT 3

## How Workers Can Influence the Employer's Responsibilities for H&S

---

### National Standards, Codes of Practices, Guidelines, Workplace Procedures

Canadian Standards Association

Guidelines for Canadian Drinking Water Quality (Health Canada)

Others:

---

---

### **PART XIX - HAZARD PREVENTION PROGRAM REGULATIONS**

#### ***CANADA LABOUR CODE - PART II***

##### **Legislative authority**

The main purpose of the Canada Labour Code, Part II is to prevent accidents and injury. This legislation is the minimum standard of protection awarded to all federal jurisdiction workers. Knowledge and understanding of worker rights are key to fully exercising them.

The most important tool for exercising worker rights is the Policy and Workplace Health and Safety Committees. Union involvement on these committees has a direct impact on the health and safety of all workers.

The specific duties of the employer are very significant and are not restricted to workplaces controlled by the employer. They also apply to every work activity carried out by a worker in a workplace that is not controlled by the employer, to the extent that the employer controls the activity. Activities performed outside of the workplace and third party premises are also covered.

Section 125(1) states:

(...) Every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity

Of special interest are sections 125(1)(z.03) and 125(1)(z.04) that call for a prevention program as well as an training program.

Section 125(1)(z.03) states:

*(Every employer shall)* develop, implement and monitor, in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative, a prescribed program for the prevention of hazards in the work place appropriate to its size and the nature of the hazards in it that also provides for the training of employees in health and safety matters;

Section 125(1)(z.04) further states:

*(Every employer shall)* where the program referred to in subparagraph (z.03) does not cover certain hazards unique to a work place, develop, implement and monitor, in consultation with the work place committee or the health and safety representative, a prescribed program for the prevention of those hazards that also provides for the training of employees in health and safety matters related to those hazards;

Section 125(1)(z.04) was added to address situations where an employer, department or agency has a truly unique workplace having hazards that do not occur anywhere else in the organization and which have not been addressed at the national level.

### **Regulatory Requirements**

Regulations actually specifies the legal requirements imposed by sections 125(1)(z.03) and 125(1)(z.04). The Hazard Prevention Program Regulations (Part XIX) of the Canada Occupational Health and Safety (COHS) Regulations establishes a process for workplace parties in dealing with health and safety hazards before an injury or illness occurs. In turn, the training program within the regulations addresses specific training needs for all employees.

The prevention and training program is the vehicle through which most of the Code and regulatory requirements are delivered. Combined with the associated supervisor and management training, the confirmation of the development, implementation and monitoring of an overall prevention program forms an essential part of being able to demonstrate the “due care and diligence” associated with demonstrating compliance with all the employer duties under the Code.

The Hazards Prevention Program Regulations includes the following six components:

- the implementation plan;
- the hazard identification and assessment methodology;
- hazard identification and assessment;
- preventive measures;
- employee training;
- program evaluation.

In addition, the Hazards Prevention Program Regulations requires the employer to prepare a program evaluation report. This report must be kept readily available every program evaluation report for six years after the date of the report.

### **Participation of the Policy and Workplace Committees**

(Sections 134.1(4)(c) and 135(7)(b), (c), and (d))

The policy health and safety committee must participate in the development and monitoring of the implementation plan, the development of the hazard identification and assessment methodology. The workplace health and safety committee must participate in respect to hazard identification and assessment.

The workplace health and safety committee must also participate in the development and implementation of the preventive measures that address the assessed hazards. The policy health and safety committee must participate in

---

the development and review of the training materials established for the employees.

The policy health and safety committee must also participate in the evaluation of the effectiveness of the hazard prevention program, and in any necessary revisions of the program.

### **Employee Training**

Section 19.6 of the Hazard Prevention Program states:

- (1) The employer shall provide health and safety training to each employee which shall include the following:
  - (a) the hazard prevention program implemented in accordance with this Part to prevent hazards applicable to the employee, including the hazard identification and assessment methodology and the preventive measures taken by the employer;
  - (b) the nature of the work place and the hazards associated with it;
  - (c) the employee's duty to report under paragraphs 126(1)(g) and (h) of the Act and under section 15.3; and
  - (d) an overview of the Act and these Regulations.
  
- (2) The employer shall provide training to an employee
  - (a) whenever new hazard information in respect of a hazard in the work place becomes available to the employer; and
  - (b) shortly before the employee is assigned a new activity or exposed to a new hazard.
  
- (3) The employer shall review the employee training program, and, if necessary, revise it
  - (a) at least every three years;

- (b) whenever there is a change in conditions in respect of the hazards; and
  - (c) whenever new hazard information in respect of a hazard in the work place becomes available to the employer.
- (4) Each time training is provided to an employee, the employee shall acknowledge in writing that they received it, and the employer shall acknowledge in writing that they provided it.
- (5) The employer shall keep, in paper or computerized form, records of the training provided to each employee, which shall be kept for a period of two years after the employee ceases to be exposed to a hazard.

### *Content and duration of training*

Although the detail of instruction and its duration may vary depending on the requirements of each work position, the requirements of 19.6(1) must be addressed.

### *Training schedule*

As soon as the content and the duration of the training sessions have been determined, a training schedule must be prepared. There is no requirement to educate every employee every three years, although refresher sessions in between are a good idea. However, they must be educated before performing their tasks, before being exposed to a hazard and every time you receive new information about the hazards they are exposed to. The employer must review his training program accordingly. If there is no change in the hazards, the program must be reviewed every three years.

### *Confirmation of training*

Whenever a training session is given, the employer must acknowledge in writing that the training took place, and employees must also acknowledge in writing that they have received such training.

### Accessing Training Records

Union representatives on the Workplace Health and Safety Committees should request that the committee get a copy of all health and safety training records required under the Hazard Prevention Program Regulations. As committee members, you have the right to get that information. Section 135(9) states:

A work place committee, in respect of the work place for which it is established shall have full access to all government and employer reports, studies and tests relating to the health and safety of the employees, or to the parts of those reports, studies and tests that relate to the health and safety of employees, but shall not have access to the medical records of any person except with the person's consent.

If the request is not responded to by the employer or if the management representatives on the health and safety committee refuse to support a formal committee request for this information, the following process can be used to seek government enforcement of these provisions.

### Seeking Enforcement

*Employment and Social Development Canada (ESDC)* through its Labour Program are responsible for the enforcement of the Canada Labour Code, Part II and all its Regulations. It is important to note that the workplace parties must first attempt to resolve the complaint through the internal complaint resolution process set out in the Code (section 127.1). A complaint cannot be handled if this internal resolution process has not been followed.

*Employment and Social Development Canada* can be reached using the toll-free number: **1-800-641-4049**. You can also check their Web Site to contact the closest regional office near you.

- Not having a Hazard Prevention Program in your workplace is a contravention.
- Not providing health and safety training to employees is also a contravention.
- Not keeping adequate records of any health and safety training provided to employees is also a contravention.

Under section 126(1)(j) of the Canada Labour Code Part II, every worker must report to the employer any situation that he/she believes to be a contravention of Part II of the Code by the employer, another worker or any other person.

Section 126(1)(g) further requires that every worker must report to the employer any thing or circumstance in a work place that is likely to be hazardous to the health or safety of the employee, or that of the other employees or other persons granted access to the work place by the employer;

The employee's right to complain is limited only by the need to have "reasonable grounds" for the belief.

The employer is required to respond to these reports as mandated in section 125(1)(z.02) of the Code. Worker complaints must be responded to and, more importantly, acted upon.

An internal complaint resolution process is established in section 127.1. This internal occupational health and safety complaint resolution process has to be used before other recourses available under Part II of the Code, except for the right to refuse dangerous work and the right of pregnant or nursing workers to temporarily withdraw from dangerous work. The process will include the following main steps:

### **The Internal Complaint Resolution Process**

### *Step 1*

A worker who believes on reasonable grounds that there has been a contravention to the Code or that there is likely to be an accident or injury to health makes a complaint to the supervisor (section 127.1(1));

### *Step 2*

The worker and the supervisor must attempt to resolve the complaint between themselves as soon as possible (section 127.1(2));

### *Step 3*

Referral of an unresolved complaint on the initiative of either of them to a chairperson of the workplace committee to be investigated jointly (section 127.1(3));

### *Step 4*

The persons who investigate the complaint must inform the worker and the employer in writing of the results of the investigation (section 127.1(4));

### *Step 5*

The persons who investigate the complaint may make recommendations to the employer with respect to the situation that gave rise to the complaint, whether or not they conclude that the complaint is justified (section 127.1(5));

### *Step 6*

If the complaint is found to be justified, the employer must in writing and without delay inform the persons who investigated of how and when it will resolve the matter and must take appropriate action (section 127.1(6));

### *Step 7*

If the persons who investigate the complaint conclude that a danger exists, the employer must ensure that no worker is exposed to that danger until the situation is rectified (section 127.1(7));

### Step 8

The worker or employer may refer a complaint to a health and safety officer in the following circumstances (section 127.1(8)):

- (a) the employer does not agree with the results of the investigation;
- (b) the employer has failed to take action to resolve the matter or to inform the persons who investigated the complaint of how and when it intends to proceed; or
- (c) the persons who investigated the complaint do not agree as to whether the complaint is justified.

### Step 9

The health and safety officer must investigate the complaint (section 127.1(9));

### Step 10

After the investigation, the health and safety officer (section 127.1(10)):

- (a) can issue directions to an employer or worker;
- (b) can recommend that the employer and worker resolve the matter between themselves; or
- (c) if the officer concludes that a danger exists, he/she must issue directions.

Any failure in following this process by an employer is also a contravention. If the employer fails to initiate this process, a health and safety officer must be called immediately asked to intervene immediately.

To ensure better communications, there is also a requirement on the health and safety officer to provide the employer and the workplace committee with a copy of the report within ten days after completing a written report on the findings of an inquiry or investigation (section 141(6)).

## **National Joint Council Agreements – Health and Safety**

The NJC Occupational Health and Safety Directive contain enhancements to the Canada Labour Code Part II. The Code and its pursuant applicable

regulations (version in force on March 1<sup>st</sup>, 2022) are incorporated in the Directive to ensure that we do not lose any rights incorporated in legislation should the Government of Canada decide to eliminate specific legal requirements in the future. In other words, if the law is significantly amended as to reduce the legal protection to all workers in the federal jurisdiction, we would still be able to retain our rights with our present inclusion of the Code and all its Regulations within our NJC Collective Agreement.

### **NJC Grievance Procedure**

The NJC grievance procedure can be used to file a grievance for any collective agreement language that provides additional protection to the Canada Labour Code, Part II. It cannot be used if any alternative administrative procedure for redress is available under the Code.

There exists a fundamental problem with an adjudicator's jurisdiction to hear a grievance where there is an "administrative procedure for redress". Subsection 208(2) of the Public Service Labour Relations Act says:

*“An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the Canadian Human Rights Act.”*

It has been decided by the Board that - where such a procedure exists - the Board has no jurisdiction and, indeed, you can't even file the grievance in the first place.

This applies even where there is a hook in our collective agreement (i.e. an NJC Directive incorporated the Canada Labour Code into our collective agreement).

The NJC OHS Directives should be read in concert with the appropriate sections of the Canada Labour Code, Part II, and the Regulations.

## HANDOUT 4

# Seeking Health & Safety Enforcement

---

The CLC, Part II is the most appropriate mechanism for addressing the health and safety concerns of employees and it also provides the most effective way to ensure early resolution of such matters. Health and safety committees and representatives, in particular, ensure that health and safety concerns are addressed in the workplace.

