

December 17, 2020

As a Band Council subject to the *Canada Labour Code* – are you prepared for the new obligations to proactively address work place harassment and violence coming into effect on January 1, 2021?

The *Canada Labour Code* (the *Code*) defines the rights and responsibilities of employers and employees in federally-regulated workplaces. Because the operations of Band Councils are considered a “federal work, undertaking or business”, First Nation Band Councils, in their role as employers, are federally-regulated and covered by the *Code*.¹

Part II of the *Code* – Occupational Health and Safety

Part II of the *Code* deals with occupational health and safety. The purpose of Part II is to prevent workplace accidents and injuries, including occupational diseases. However, **effective January 1, 2021**, changes will come into effect that will significantly expand the obligations of employers under the *Code*.² The new rules are designed to ensure that federally-regulated workplaces are free from harassment and violence.

As of January 1, 2021, employers who are subject to the *Code* are required to develop a workplace Harassment and Violence Prevention Policy. The new workplace policy must address, among other things: training, a process for resolving complaints, conducting workplace assessments, emergency procedures and support measures for employees who complain of harassment or violence in the workplace. For employers who employ 19 or fewer employees, this policy must be developed with the health and safety representative. Different requirements apply in the development of policies and procedures for larger employers. The employer’s policy will need to be made available to employees and employees will need to be provided with training on the policy and related procedures.

Defining workplace harassment and violence

The definition of workplace harassment and violence under the *Code* is broad – it includes “any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee,

¹ *Francis v. Canada (Labour Relations Board)*, [1982] 2 SCR 72; *Pressault v. Temagami First Nation*, 2019 CanLII 76063 (CA LA); *Quebec (Attorney General) v. Picard*, 2020 FCA 74.

² 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*, received Royal Assent on October 25, 2018; *Work Place Harassment and Violence Prevention Regulations*: SOR/2020-130.

including any prescribed action, conduct or comment.” The federal government has provided some examples of conduct that would meet this definition:

- aggressive or threatening behaviour, including physical assault, as well as verbal threats or abuse
- spreading malicious rumours or gossip about an individual or a group
- damaging, hiding or stealing someone’s personal belongings or work equipment
- persistently criticizing, undermining, belittling, demeaning or ridiculing someone
- using the Internet to harass, threaten or maliciously embarrass someone
- using the Internet to make sexual threats, or to harass or exploit someone sexually
- making abusive or derogatory remarks or jokes about someone’s gender, gender identity or gender expression, sex or sexual orientation (for example, homophobic remarks)³

It should also be noted that, under the changes to the *Code*, domestic violence will be considered a workplace hazard when it occurs in the workplace (i.e., when it puts the targeted worker at risk and may pose a threat to coworkers). This places an additional obligation on employers in circumstances where spouses or partners may work together or in close proximity to each other (which is much more likely in small communities).

In addition to the requirement to develop a workplace Harassment and Violence Prevention Policy, effective January 1, 2021, there will also be new obligations on employers covered by the *Code* to:

- investigate occurrences of harassment and violence that are known to the employer and to provide support to employees affected by harassment and violence in the workplace;
- ensure that employees receive training in harassment and violence prevention, including the new obligations under the *Code*;
- ensure that the employer representative who receives complaints of harassment and/or violence has knowledge, training and experience in these issues, and knowledge of the legislative requirements; and
- provide employees with copies of Part II of the *Code*, any applicable Regulations and copies of the employer’s relevant policies (as well as any other information required under Regulations).

Things you should be doing now

- Employers are required to conduct a **Work Place Assessment**, to identify risk factors in the work place, taking specific factors into account

³ For more information, and a full list of the examples provided, see the following link:
<https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention.html>

- Employers are required to **develop preventative measures and an implementation plan for those preventative measures**, within 6 months after the risk factors have been identified
- Develop **emergency procedures** to be implemented in the event of an occurrence of harassment or violence which poses an immediate danger to the health and safety of an employee
- Designate a person or a work unit as the **Designated Recipient**, who will be the person (or unit) to whom notice of an occurrence of harassment or violence is to be provided
- Employers must either develop or identify **work place harassment and violence training** to be provided to employees. The training must cover: the elements of the employer's Work Place Harassment and Violence Prevention Policy, as well as a number of other elements.
 - For new employees hired after January 1, 2021, this training must be given within 3 months after the start date of their employment; and
 - For existing employees, employers have 1 year (to January 1, 2022) to provide them with training

Helpful resources

It is important to note that this summary is intended to be a high-level overview of the upcoming changes to the *Code*, and should not be taken as legal advice.

There are many resources available to help federally-regulated employers understand their obligations under the *Code*. For example, the Labour Program recently published one of its Interpretations, Policies and Guidelines (IPG) documents which addresses some key questions regarding these new obligations.⁴

In addition, the federal government provided funding to a variety of organizations to develop tools and resources related to these upcoming changes. We would draw your attention to the materials produced by the Nokiwin Tribal Council, designed specifically for Indigenous employers, which can be found here: <https://www.nokiwin.com/article/health-and-safety-resources-books-and-posters-166.asp>

If you need assistance in better understanding these new requirements, we are here to help.

Please contact **Westaway Law Group (Senior Counsel, Patricia Lawrence)** for a complimentary one-on-one briefing on what your Band needs to know and the simple tools we can help you put in place to meet your obligations as an employer. We look forward to discussing how we might be of help.

⁴ This IPG document can be found at the following link: <https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/104-harassment-violence-prevention.html>