

# Rights and Obligations in Matters of Violence or Harassment at Work

This information sheet covers various legislative provisions that guarantee workers the right to work in a safe and healthy workplace. It also covers recourse that can be taken in situations of violence or harassment at work.



## Employee rights and employer obligations

### ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY

- **Section 9:** “Every worker has a right to working conditions that have proper regard for his health, safety and physical well-being.”
- **Section 12:** “A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical well-being, or would expose another person to a similar danger.”
- **Section 13:** “No worker may, however, exercise his right under section 12 if his refusal to perform the work puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions under which the work is to be performed are ordinary conditions in his kind of work.”
- **Section 51:** “Every employer must take the necessary measures to protect the health and ensure the safety and physical well-being of his worker.”

### QUEBEC'S CHARTER OF HUMAN RIGHTS AND FREEDOMS

- **Section 10:** “Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap. Discrimination exists where such a distinction, exclusion, or preference has the effect of nullifying or impairing such right.”
- **Section 46:** “Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.”

**CIVIL CODE OF QUÉBEC**

- **Article 2087:** “The employer is bound not only to allow the performance of the work agreed upon and to pay the remuneration fixed, but also to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee.”

**ACT RESPECTING LABOUR STANDARDS**

- **Section 81.19:** The employer has an obligation to provide a workplace free of psychological harassment:
  - “Every employee has a right to a work environment free from psychological harassment.
  - Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.”

Since January 1, 2019, the employer must “adopt and make available [...] a psychological harassment prevention and complaint processing policy that includes [...] a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.”

**Other legislation**

In general, violence and sexual assault are covered under the *Criminal Code*, which allows all victims to press charges. If victims experienced personal loss, they may bring proceedings under the *Civil Code of Québec*. Any person who is the victim of sexual violence or assault can also make use of the provisions of the *Crime Victims Compensation Act* and receive compensation related to the application of the Act administered by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST).

**CANADIAN HUMAN RIGHTS ACT**

For businesses under federal jurisdiction, the *Canadian Human Rights Act* provides, in section 14, that “[i]t is a discriminatory practice [...] to harass an individual on a prohibited ground of discrimination.” Prohibited grounds are listed in sections 3 and 14 (2) of this Act.

### CANADA LABOUR CODE

The *Canada Labour Code* was amended in 2018<sup>1</sup> to include a definition of harassment at work and employer obligations. These amendments were made to Part II of the Code, which relates to occupational health and safety.

- **Section 122(1) Harassment and violence:** “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, including any prescribed action, conduct or comment[.]”
- **Section 122.1:** “The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.”
- **Paragraph 125(1)(c):** The employer must, “except as provided for in the regulations, investigate, record and report, in accordance with the regulations, all accidents, occurrences of harassment and violence, occupational illnesses and other hazardous occurrences known to the employer[.]”
- **Paragraph 125(1)(z.16):** The employer must “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[.]”

### CANADA OCCUPATIONAL HEALTH AND SAFETY REGULATIONS

The *Canada Occupational Health and Safety Regulations* provide, in section 20.3 (a), for the employer’s obligation “to provide a safe, healthy and violence-free work place”. As of January 1, 2021, Part XX on violence at work will be replaced by the *Work Place Harassment and Violence Prevention Regulations*. The Regulations set out a number of employer obligations. Below are some of said obligations:

- **Section 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 [...].”
- **Section 9:** “Within six months after the risk factors are identified under section 8, an employer and the applicable partner must jointly
  - (a) 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;

- (b) develop an implementation plan for the preventive measures; and
- (c) implement the preventive measures in accordance with the implementation plan.”
- **Subsection 10(1):** “An employer and the applicable partner must jointly develop a work place harassment and violence prevention policy.”<sup>2</sup>
- **Subsection 12(1):** “An employer and the applicable partner must jointly develop or identify the training on work place harassment and violence that is to be provided to employees, the employer and the designated recipient.”
- **Section 13:** “An employer must make available to employees information respecting the medical, psychological or other support services that are available within their geographical area.”



## Employee obligations

- **Section 49 of the Act respecting occupational health and safety:** “A worker must [...] take the necessary measures to ensure his health, safety or physical well-being [and] see that he does not endanger the health, safety or physical well-being of other persons [...]”
- **Article 2088 of the Civil Code of Québec:** “The employee is bound not only to perform his work with prudence and diligence, but also to act faithfully and honestly and not use any confidential information he obtains in the performance or in the course of his work.”

**Obligation of civility:** Workers are required to act with civility in their relationships with both their superiors and their colleagues. This obligation is not provided for in legislation, but it has been developed in doctrine and case law. Under this obligation of civility, employees must conduct themselves with politeness appropriate to the workplace, refrain from bringing about interpersonal conflicts, and strive to maintain harmonious working relationships.

### THE FIVE RULES OF CIVILITY

Respect ◦ Politeness ◦ Courtesy ◦ Co-operation ◦ Manners

1. These amendments will come into force on January 1, 2021.
2. Note that a number of paragraphs contain elements that the policy must include.