Recourse in Matters of Violence or Harassment at Work

In cases of employment injury

According to section 2 of the *Act respecting industrial accidents and occupational diseases*, an employment injury "means an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation." It is important to specify that such an injury can arise from violence or harassment at work and that the following recourse is available:

THE COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL (CNESST)

- You can submit an application for indemnities with the CNESST.
  - To receive compensation from the CNESST, victims of violence or harassment must demonstrate that they have experienced an employment injury—either an industrial accident or an occupational disease. Generally, cases of violence or harassment are indemnified on the basis of the industrial accident.
  - The *Act respecting industrial accidents and occupational diseases* defines the concept of "industrial accident" in the following way in section 2:

    "a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him."
- If your employment injury is recognized, you may receive, for example:
  - an income replacement indemnity, in the event of loss of income;
  - reimbursement of expenses associated with services provided by health care professionals, medication, etc.
- **You have six months from the last occurrence to submit an application with the CNESST.**
- Your union representative can assist you with appropriately completing the required form.

GRIEVANCE

- You must also file a grievance since the arbitrator and the CNESST or the Administrative Labour Tribunal have different roles and order powers. Unlike the CNESST or the Administrative Labour Tribunal, an arbitrator may, in particular, order the employer to implement specific measures to put an end to the psychological harassment. In contrast, if the psychological harassment causes an employment injury, only the CNESST can order indemnities to compensate you for this period.
  - You have **two years** from the last occurrence of psychological or sexual harassment to file a grievance.

When there is no employment injury

GRIEVANCES

Recourse for employees under the collective agreement consists of grievances; grievance arbitrators have the authority to order remedies.

- Given that section 123.15 of the *Act respecting labour standards* grants various powers to the grievance arbitrator (see the next page), it is important to file a grievance.
  - You have **two years** from the last occurrence of psychological or sexual harassment to file a grievance.

FILING GRIEVANCES

grievances allow for protecting the rights of the alleged victim of violence or harassment, because they are the only recourse for unionized employees when an employment injury has not occurred. They also allow for reporting a problematic situation to the employer. However, whether there is a resulting employment injury or not, we encourage you to file the grievance as quickly as possible to ensure that recourse remains available. A grievance can always be withdrawn if it has no grounds or if there is a satisfactory agreement that allows for resolving the situation. It is always possible, even after filing a grievance, to use various alternative methods of managing disputes to try to resolve the problematic situation. These often have the advantage of more quickly putting an end to the situation. To learn more, see INFORMATION SHEET 5: *Methods for Managing Disputes.*

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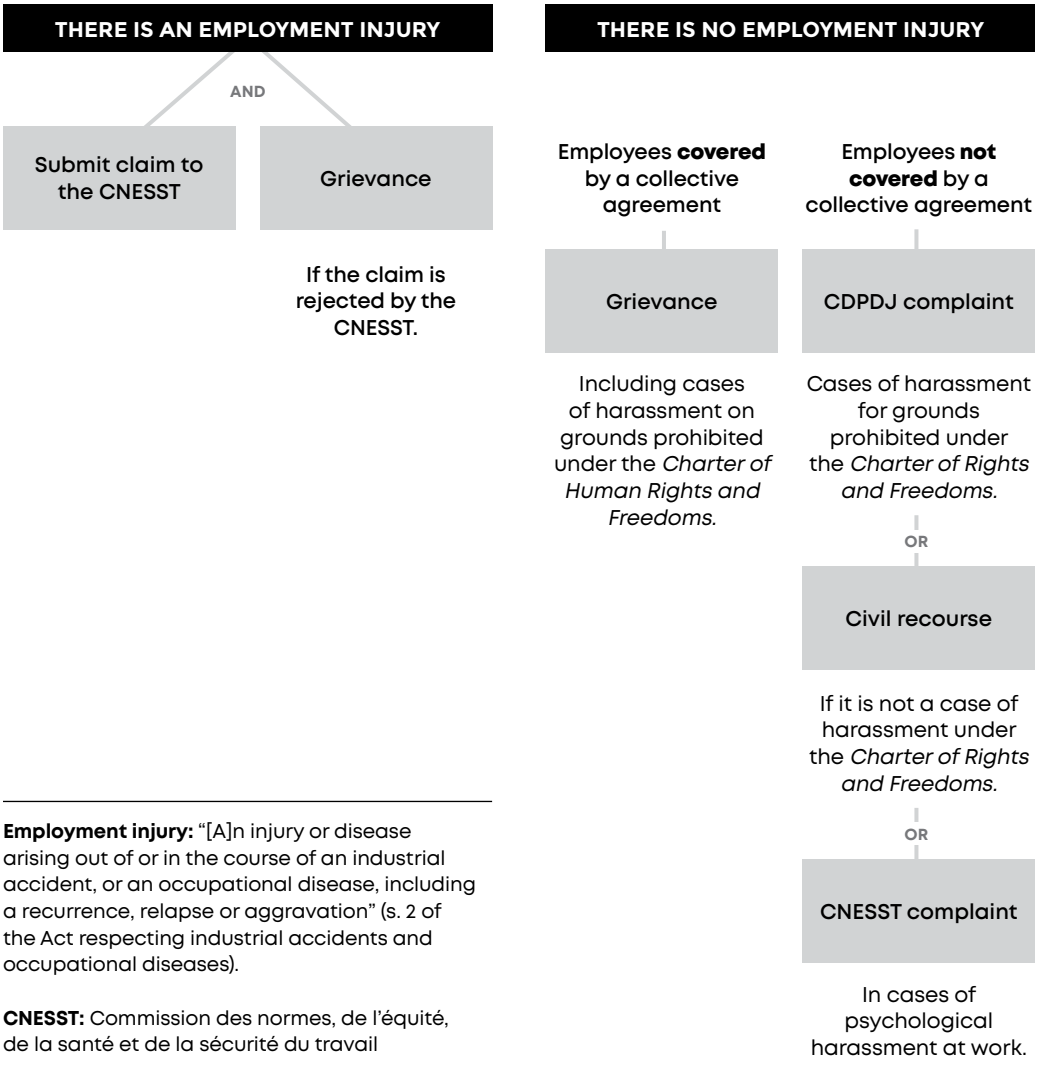
Section 123.15 provides grievance arbitrators with the following powers:

"(1) ordering the employer to reinstate the employee;
(2) ordering the employer to pay the employee an indemnity up to a maximum equivalent to wages lost;
(3) ordering the employer to take reasonable action to put a stop to the harassment;
(4) ordering the employer to pay punitive and moral damages to the employee;
(5) ordering the employer to pay the employee an indemnity for loss of employment;
(6) ordering the employer to pay for the psychological support needed by the employee for a reasonable period of time determined by the Tribunal;
(7) ordering the modification of the disciplinary record of the employee."

However, pursuant to section 123.16 of the *Act respecting labour standards*, "paragraphs 2, 4, and 6 do not apply […] [when the person who was harassed has] an employment injury within the meaning of the *Act respecting industrial accidents and occupational diseases* that results from psychological harassment."

RECOURSE AGAINST THE EMPLOYER IN CASES OF PSYCHOLOGICAL HARASSMENT



Employment injury: "[A]n injury or disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation" (s. 2 of the Act respecting industrial accidents and occupational diseases).

CNESST: Commission des normes, de l'équité, de la santé et de la sécurité du travail

CDPDJ: Commission des droits de la personne et des droits de la jeunesse

Right of Refusal

Pursuant to section 12 of the *Act respecting occupational health and safety*, "[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."

Although, according to the *Act respecting occupational health and safety*, the word "health" includes both physical and psychological health, it remains no less complicated to assert this right for a situation of violence or harassment at work. The challenge of this form of recourse is to be able to establish the existence of genuine danger to psychological health. An important concept involved in the right of refusal is "danger," which should not be confused with the concept of "risk."

DANGER VS. RISK

- Danger is more imminent than risk. It involves a real threat, while risk refers to an event that, while possible, is less certain. The threat must be more than potential and must consist of more than simple fear, concern, or apprehension.[1]

Burden of proof

The burden of proof is on the alleged victim of violence or harassment at work who wants the situation to be recognized. This means that the individual must show, using concrete facts (date, location, verbal comments, gestures, conduct), that violence or harassment was experienced in the course of the individual's work. However, while the burden of proof is on alleged victims, they are not left to their own devices when faced with this task that may seem difficult at first glance. The role of the union is to support such individuals and help them gather such evidence.

Frivolous or bad faith complaints

A complaint is considered frivolous when the allegations are unreliable and trivial.[2] A harassment complaint is said to be frivolous when the alleged conduct, verbal comments, actions, or gestures are objectively trivial.

Complaints are made in bad faith when they are filed by individuals who know in advance that they are unfounded and who have questionable intentions. This is the

case if individuals exaggerate or misrepresent facts. Such complaints can lead to disciplinary measures from the employer.

For example, an individual's performance is unsatisfactory and the individual is the subject of a performance management process undertaken in a respectful manner by the manager, who provides the employee with ways to improve. The employee may still feel cornered and in a difficult position. If this person were to file a harassment complaint about the manager in order to get out of this uncomfortable situation, it would consist of a complaint in bad faith.

Confidentiality and support

Confidentiality does not mean that those involved are required to be completely silent. Of course, it is desirable not to disclose the problematic situation in public or to discuss the facts related to the situation with colleagues. It is entirely appropriate to seek assistance from a professional via the employee assistance program. Moreover, it would be inhumane to ask those directly involved not to discuss the situation and their distress with a trusted person in the workplace (a co-worker or immediate supervisor). Naturally, it is important that this trusted person remains very discreet.

Close colleagues will see that those involved in a problematic situation are preoccupied and seem a little off. Those involved may each discuss how they feel about the difficult situation with another person in whom they have complete confidence so that they can receive support. Of course, such individuals should not aim to try to form alliances when seeking out such support.

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1. *Syndicat des agents de la paix en services correctionnels du Québec et Québec (Ministère de la Sécurité publique) (Détention)*, 2007 QCCLP 4912. [Consulted in April 2020].

2. Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). 2016. "Act *respecting labour standards*, section 106." CNESST interpretation. https://www.cnt.gouv.qc.ca/en/in-case-of/complaint-related-to-wages/labour-standards/section-106/index.html.