

Work Place Harassment and Violence Prevention

Interpretations, Policies and Guidelines

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General					
Overview					
Introduction	This chapter introduces Bill C-65, as amending Part II of the <i>Canada Labour Code</i> , and the <i>Work Place Harassment and Violence Prevention Regulations</i> , and describes the issue, background and scope of this Interpretations, Policies and Guidelines (IPG) document.				
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Introduction to Bill C-65 and the *Work Place Harassment and Violence Prevention Regulations*

Issue	<p>Despite progress in raising employment and health and safety standards in Canada and the existing provisions that offer protection to employees under the <i>Canada Labour Code</i> (the Code), incidents of harassment and violence, including sexual harassment and sexual violence, continue to occur in federally regulated work places. Many employees who have experienced harassment and violence in the workplace do not report it for fear of retribution, lack of support or a belief that what they have experienced does not substantiate a complaint. The previous legal framework was fragmented and did not adequately address occurrences of sexual harassment and sexual violence. In response to these issues, the Government of Canada committed to taking action to ensure that federal work places are free from harassment and violence and introduced Bill C-65, <i>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</i> (the Act) in the House of Commons in 2017.</p>
Background	<p>The Act, which received Royal Assent in October 2018, introduces a number of amendments to the Code to strengthen the existing framework for harassment and violence prevention, including sexual harassment and sexual violence, in federally regulated work places. As part of the amendments to the Code, Part XX of the Canada Occupational Health and Safety Regulations will be repealed and replaced with the <i>Work Place Harassment and Violence Prevention Regulations</i> (the Regulations). The Regulations include provisions to prevent harassment and violence through a comprehensive prevention policy, training, a resolution process that provides multiple options for seeking resolution, and improved data collection.</p>
Scope	<p>This IPG document seeks to address some of the main questions that arise from federally regulated employers and employees regarding employer and employee obligations under the Act and Regulations, in particular with respect to occurrences of harassment and violence in the workplace.</p>

	<p>Nothing in the Regulations prevent an employer from establishing and following their own procedures in addition to those prescribed by the Regulations to deal with harassment and violence.</p>
General Employee Protections	<p>Section 147 of the Code prohibits employers from taking, or threatening to take, any punitive or disciplinary action against employees who have acted in accordance with the Code and associated Regulations. If an employee believes their employer has violated this provision, they may notify their designated recipient and/or appropriate personnel in their organization (i.e. someone in the HR department). If this is not successful, the employee may file a complaint with the appropriate board (i.e. the Canada Industrial Relations Board, or the Federal Public Sector Labour Relations and Employment Board, as applicable) under section 133 of the Code.</p>

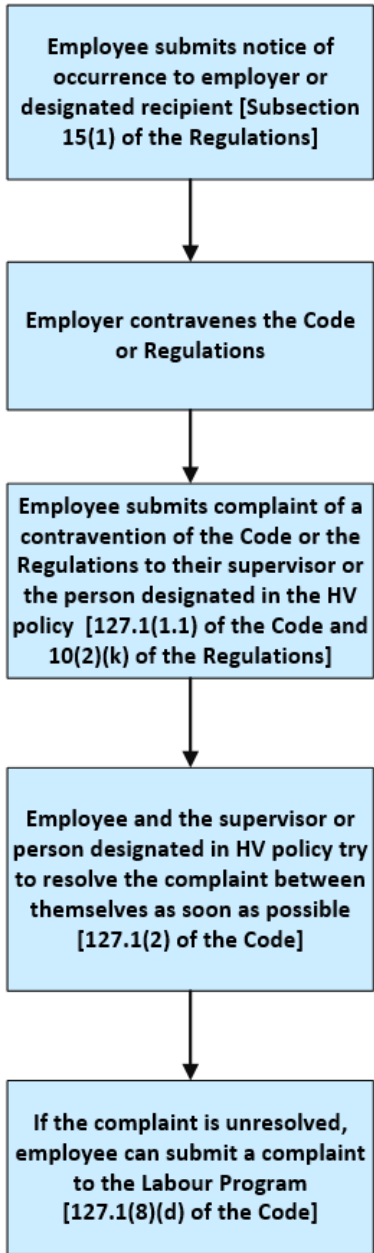
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Section 1	
Introduction	This section addresses questions concerning section 1 of the Regulations.
Question 1	Can an “occurrence” of harassment and violence include incidents that happen outside of the employer provided work place?
Guidance	<p>“Occurrence” is defined in the Regulations as: “... <i>an occurrence of harassment and violence <u>in the work place</u></i>” (underlining added). However, “work place” is defined in the Code as, “...<i>any place where an employee is engaged in work for the employee’s employer.</i>” Therefore, an employee’s “work place” is not limited to only the building and facilities that have been provided to them by their employer. Instead, an employee’s workplace follows them wherever they are performing work for their employer. An employee’s work place can include public spaces, third-party premises, and even the employee’s residence if the employer has allowed them to work-from-home.</p> <p>Given this interpretation of “work place,” if an employee is exposed to harassment and violence <u>at any location, while performing work for their employer</u>, this would constitute an “occurrence” of harassment and violence under the Regulations and incidents that arise out of or are linked with employment, such as incidents while on travel status or after work functions organized by the employer.</p>
Question 2	Does the term “occurrence” include an incident of family or domestic violence?
Guidance	An “occurrence” can include an incident of domestic or family violence that takes place in either the physical employer-provided workplace or in the employee’s home if the employee has a “work-from-home” agreement with their employer. However, if an employer is made aware of an incident of domestic or family violence that took place in the employee’s home that is not subject to a “work-from-home” agreement, or in any other location that is not a work place, the employer is encouraged to address the incident in order to prevent it from becoming an occurrence in the future.

Section 2	
Introduction	This section addresses questions concerning section 2 of the Regulations.
Question 1	What are the employer's obligations when the employer and the policy committee, the work place committee or the health and safety representative are unable to agree on a joint matter that is required by the Regulations to be done jointly by them?
Guidance	The employer's decision prevails in joint matters if an agreement cannot be reached. However, the employer must reasonably attempt to agree on any joint matter that is required by the Regulations. In addition, paragraph 35(1)(d) of the Regulations requires that the employer records its decision and the reason for that decision for each instance where the employer and the policy committee, the work place committee or the health and safety representative are unable to agree on a matter that is required by the Regulations to be done jointly by them. In addition, subsection 35(2) of the Regulations requires that the employer keep these records for a period of 10 years and make them available to the Minister of Labour if the Minister requests them.

Section 3	
Introduction	This section addresses questions concerning section 3 of the Regulations.
Question 1	<p>How can a former employee demonstrate in their request to the Labour Program for an extension to the three-month time period after their employment ended, that they were unable to notify their employer of an occurrence of harassment and violence due to:</p> <ul style="list-style-type: none"> • trauma incurred as a result of the occurrence; or, • a health condition.
Guidance	<p>For a former employee to substantiate their claim that they were unable to provide a notice of an occurrence to their former employer within the three-month time period after their employment ended, due to the trauma they incurred from the occurrence, they must provide the Labour Program with documentation such as, but not limited to:</p> <ul style="list-style-type: none"> • a current note or report from a social worker, counselor, domestic violence specialist organization (e.g. shelter, domestic violence crisis line, counselling service, etc.), physician, nurse practitioner, or other health practitioner such as a psychologist, or psychiatrist, • evidence that the former employee stayed at a shelter; • a statutory declaration, sworn before a notary public or other authorized individual; • a police report; or, • a restraining order. <p>For a former employee to substantiate their claim that they were unable to provide a notice of an occurrence to their former employer within the three-month time period after their employment ended, due to a health condition, they must provide the Labour Program with documentation such as, but not limited to:</p> <ul style="list-style-type: none"> • a current report from a physician, nurse practitioner, or other health care practitioner; or, • a statutory declaration, sworn before a notary public or other authorized individual.

Section 4	
Introduction	This section addresses questions concerning section 4 of the Regulations.
Question 1	What is meant by “ <i>a complaint under subsection 127.1(1) of the Act</i> ” in section 4 of the Regulations?
Guidance	<p>In this IPG, the term “complaint” refers to an allegation that the employer has failed to fulfill their duties under the Code or the Regulations relating to a notice of an occurrence of harassment and violence. When an employee experiences an occurrence of harassment and violence, they must first submit a “notice of an occurrence” to their employer or designated recipient. If the employee believes that the employer or designated recipient has failed to comply with the Code or Regulations when responding to this notice, the employee must follow the amended Internal Complaint Resolution Process (ICRP) that came into force in 2021, outlined below:</p> <ol style="list-style-type: none"> 1. the employee must notify their supervisor, or the person who is designated in the Harassment and Violence Prevention (HVP) Policy [see paragraph 10(2)(k) of the Regulations], of the contravention of the Code or Regulations as required by subsection 127.1(1.1) of the Code; 2. the employee must attempt to resolve the complaint with the supervisor, or the person who is designated in the HVP Policy, as soon as possible as required by subsection 127.1(2) of the Code; and, 3. If the matter is not resolved, the complaint can be referred to the Labour Program as outlined at paragraph 127.1(8)(d) of the Code. However, the Labour Program’s role is not to make a determination as to whether the occurrence is founded. The Labour Program’s role is to ensure that the workplace parties comply with the requirements of the resolution process outlined in the Regulations. <p>The flow chart below describes the amended ICRP related to the employer’s response to a notice of occurrence of harassment and violence.</p>



For all other alleged contraventions of the Code or Regulations, such as failure to develop a workplace harassment and violence prevention policy or failure to train workers on harassment and violence, employees and employers must follow the Internal Complaint Resolution Process outlined at subsection 127.1(3)-127.1(8)(a)-(c) of the Code.

Section 5	
Introduction	This section addresses questions concerning section 5 of the Regulations.
Question 1	What kind of external risk factors does an employer have to take into consideration when conducting the workplace assessment with the applicable partner?
Guidance	<p>Some examples of external risk factors include:</p> <ul style="list-style-type: none"> • working with customers; • working or interacting with members of the public, especially while working alone and/or at night; • family or domestic violence, such as: <ul style="list-style-type: none"> ○ repeatedly phoning or emailing the victim to interfere with the victim at work; ○ showing up at the victim’s workplace and pestering co-workers with questions about the victim (i.e. where is she/he, who is she/he with, when will she/he be back, etc.); • working with third party workers such as contractors or sub-contractors; and/or, • working with other third parties not listed above.
Question 2	What is the purpose of the initial workplace assessment referenced at 5(1) in the Regulations?
Guidance	<p>The purpose of the initial workplace assessment is to identify risk factors that contribute to harassment and violence in the workplace and to develop preventive measures to mitigate the risk of harassment and violence in the workplace.</p> <p>For examples of risk factors, see section 8 in this IPG.</p>
Question 3	How can an employer and applicable partner conduct the workplace assessment?

<p>Guidance</p>	<p>It is up to the employer and the applicable partner to decide how to conduct the workplace assessment. A sample template to assist employers with identifying risk factors that contribute to harassment and violence in the work place is available at: https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention.html.</p> <p>Other aspects of a workplace assessment may include:</p> <ul style="list-style-type: none"> ● employee and management questionnaires, or surveys; ● employee and management interviews, including exit interviews; ● physical inspections of workplaces; ● internal incident/complaint metrics; ● assessments/reviews of past government and employer reports including human rights reports, ● studies and tests that relate to the health and safety of employees; and/or, ● assessments done by qualified Occupational Health and Safety professionals and/or security professionals where appropriate.
<p>Question 4</p>	<p>What is the purpose of the three-year review of the workplace assessment required at subsection 5(3) of the Regulations?</p>
<p>Guidance</p>	<p>The Regulations require at subsection 5(3) for the employer to conduct a review and, if necessary, update of the workplace assessment with the applicable partner once every three years.</p> <p>The purpose of this three-year review is to ensure that:</p> <ul style="list-style-type: none"> ● the risk factors that were identified in the initial assessment are still applicable; ● any new risk factors that contribute to harassment and violence in the workplace have been correctly identified; and, ● the preventive measures in place are effective at adequately mitigating the risk of harassment and violence in the workplace. <p>For the three-year review, the employer and applicable partner should take into consideration all reports, studies, data and new information that may assist with the identification of new risk factors and the development</p>

	of adequate preventive measures.
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Section 6	
Introduction	This section addresses questions concerning paragraph 6(1)(a) of the Regulations.
Question 1	What is the purpose of the review and update of the workplace assessment?
Guidance	<p>Subsection 6(1) of the Regulations requires that an employer conduct a review and, if necessary, update of the workplace assessment with the workplace committee whenever a notice of an occurrence is provided under subsection 15(1) and the:</p> <ul style="list-style-type: none"> • principal party ends the resolution process but the occurrence is not resolved; or, • responding party to an occurrence is a third party (not an employee or the employer). <p>The purpose of this review and update of the workplace assessment with the workplace committee is not to determine whether the notice of occurrence is founded, rather it is to:</p> <ul style="list-style-type: none"> • identify any risk factors that may have been overlooked when the initial workplace assessment was conducted that may have led to the occurrence; • assess whether the preventative measures in place adequately mitigate and/or minimize the risk of harassment and violence in the workplace; and, • develop new preventative measures to eliminate or minimize the risk of a similar occurrence if the current preventive measures are inadequate.
Question 2	<p>How does an employer and workplace committee conduct the joint review and update of the workplace assessment in a situation where:</p> <ul style="list-style-type: none"> • the occurrence is not resolved and the principal party ends the resolution process; and, • the responding party to the occurrence is an employee, the employer or a third party.
Guidance	The employer and workplace committee should rely on the information that the parties involved in the occurrence provided to the employer or

	<p>designated recipient up until the time that the principal party ended the resolution process. As well, the employer and workplace committee should consider if there are any systemic issues (e.g. systemic racism, systemic sexism, etc.), patterns of behaviour and barriers to resolving the occurrence. For example, the employer should consider other reviews and/or updates of the workplace assessment related to notices that were received in the past.</p> <p>The employer or designated recipient must ensure that the information provided to the workplace committee does not disclose the identity of the person(s) involved in the occurrence, unless those person(s) consent to their identity being disclosed.</p>
<p>Question 3</p>	<p>How does an employer and workplace committee conduct the joint review and update of the workplace assessment in a situation where:</p> <ul style="list-style-type: none"> • the responding party to an occurrence is a third party; and, • the principal party has not ended the resolution process.
<p>Guidance</p>	<p>The employer or designated recipient should obtain as much information as possible about the occurrence from the principal party and any witnesses and provide this information to the workplace committee without disclosing the identity of the person(s) involved in the occurrence, unless these person(s) consent to their identity being disclosed. As well, the employer and workplace committee should consider if there are any systemic issues, patterns of behaviour and barriers to resolving the occurrence. This process may involve interviewing the principal party and witnesses, considering other reviews and/or updates of the workplace assessment related to notices that were received in the past, and consulting with specialists as appropriate (i.e. security specialists, anti-racism specialists, etc.).</p>

Section 8	
Introduction	This section addresses questions concerning section 8 of the Regulations.
Question 1	What are some examples of risk factors that contribute to work place harassment and violence?
Guidance	<p>There are various risk factors that can contribute to workplace harassment and violence. Some of these risk factors could include: client characteristics, work environment, job factors, and other external factors. Below are examples of some of these risk factors.</p> <p>Client (Third Party) Characteristics Working with clients that exhibit certain characteristics can put employees at greater risk of harassment and violence. This can include working with:</p> <ul style="list-style-type: none"> • Members of the public who are frustrated with the system, in shock, or angry (e.g., clients or their relatives) who may lash out at the closest person. • Clients who have a history of violence. • Clients who are unable to control their behavior because of mental health conditions, emotional disorders, or a brain injury (i.e. resulting from a concussion, etc.). • Clients who have racist, sexist, homophobic, transphobic, ableist xenophobic, Islamophobic, or otherwise discriminatory attitudes and/or behavior. • Clients who may be under the influence of drugs and/or alcohol. <p>Work Environment Certain work environments and workplace designs can result in additional risks that may lead to harassment and violence. This can include:</p> <ul style="list-style-type: none"> • Working with the public. • Handling money, prescription medication or items of significant value. • Working with unstable or volatile persons (e.g. criminal justice system employees who work with inmates).

- Working on premises where alcohol is served.
- Working alone, in small numbers or in isolated or low-traffic areas (e.g. isolated reception area, washrooms, storage areas, utility rooms).
- Working in community-based settings (e.g. home visitors).
- Having a mobile workplace.
- Working during periods of intense organizational change (e.g. strikes, privatization, restructuring, downsizing).
- Working in an environment that tolerates or promotes racist, sexist, homophobic, ableist, or otherwise discriminatory attitudes and behaviours.
- Working in an environment that is not diverse or there are very few persons from groups covered under human rights legislation.
- Working in an environment where power is misused or abused.
- Working in an area that has poor visibility of clients.
- Working in an area that is cramped, requiring employees to work in close proximity to other employees or clients.
- Working in an environment with high noise levels.
- Working without required personal protective equipment.

Job Factors

Aspects specific to a job, such as the mental and physical demands of the job, can result in additional hazards that may lead to harassment and violence. This can include, working in an environment where there is:

- limited control over how work is done;
- excessive workload or inadequate resources to complete work;
- unreasonable or tight deadlines leading to high stress;
- confusing, conflicting or unclear job or roles;
- limited job security;
- limited or inadequate training and resources; and,
- any other job factors that can lead to an increased risk of harassment and violence.

Other External or Internal Factors

Other external factors that can result in harassment and violence include:

- Family violence/domestic violence, such as a family member or (ex)partner:

	<ul style="list-style-type: none">○ Threatening an employee or co-workers either verbally or over the phone/email.○ Stalking the employee.○ Verbally abusing the employee or co-workers.○ Destroying the employee or organization’s property.○ Physically harming the employee and/or co-workers.○ Inadequate training on harassment and violence prevention, including the employer’s workplace harassment and violence prevention policy. <ul style="list-style-type: none">● Demographics of employees. <p>The <i>DV at Work</i> website contains a comprehensive set of tools to help organizations understand, identify and address risks of family violence/domestic violence such as a Risk Screening tool, a Workplace Safety Planning template, and connections to experts. These tools can be accessed at the following link: https://www.dvatwork.ca.</p>
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Section 9	
Introduction	This section addresses questions concerning section 9 of the Regulations.
Question 1	What are some examples of preventive measures that mitigate the risk of harassment and violence in the workplace?
Guidance	<p>Some preventive measures that mitigate the risk of harassment and violence in the workplace can include any of the following workplace training, workplace design, and administrative practices:</p> <p>Training for employers and employees on:</p> <ul style="list-style-type: none"> • civility, respect and how to recognize, prevent and respond to harassment and violence in the workplace. • appropriate use of authority. • domestic violence and how it can contribute to harassment and violence in the work place, available through https://www.dvatwork.ca/. • how to de-escalate conflict. • how to report occurrences of harassment and violence when they are witnessed and encourage employees not to be a bystander when they witness an occurrence; and, • recourse mechanisms available for employees who feel they have been exposed to harassment and violence. • discrimination on the basis of human rights grounds. <p>Workplace design:</p> <ul style="list-style-type: none"> • Position office furniture/service counter to keep the employee closer to the exit than the client. • Install surveillance cameras throughout public spaces in the workplace. • Install physical barriers such as pass-through windows or bulletproof enclosures. • Control access to all or parts of the building through keys or coded cards. • Minimize the number of entrances to your workplace. • Use adequate exterior lighting near entrances and around the workplace. <p>Administrative practices:</p>

- Include employees, as much as possible, in decisions that affect their working environment and conditions.
- Ensure performance evaluation process is fair and transparent.
- Conduct regular “pulse check” with employees on workplace issues such as: workplace stress, workload and conflict.
- Consult with human rights experts on any potential issues with administrative practices.
- Introduce a “buddy system” for employees who work in isolated or unsafe areas.
- Have employees who work off-site prepare daily work plans so their locations and times are known.
- Identify a designated contact and back-up contact at the office.
- Use electronic payment system.
- Ensure firearms, tools, opiates, drugs, and other valuables are safely stored.
- Vary the time of day when cash registers are emptied or reduced.

Other resources on preventative measures can be found at, www.ccohs.ca, including preventative measures related to:

Bullying in the Workplace

<https://www.ccohs.ca/oshanswers/psychosocial/bullying.html>

Harassment and Bullying Prevention

<https://www.workplacestrategiesformentalhealth.com/psychological-health-and-safety/harassment-and-bullying-prevention>

Internet Harassment or Cyberbullying

<https://www.ccohs.ca/oshanswers/psychosocial/cyberbullying.html>

Section 10	
Introduction	This section addresses questions concerning subparagraph 10(2)(e)(i) and paragraph 10(2)(k) of the Regulations.
Question 1	What is the difference between the “designated recipient” cited at subparagraph 10(2)(e)(i) of the Regulations and the “person who is designated” cited at paragraph 10(2)(k) of the Regulations?
Guidance	<p>The “designated recipient” cited at 10(2)(e)(i) of the Regulations is the individual to whom a notice of an occurrence can be submitted by a principal party or witness regarding an occurrence of harassment and violence in a workplace.</p> <p>The “person who is designated” cited at 10(2)(k) of the Regulations is the person to whom an employee can submit a complaint alleging an employer’s failure to fulfill the requirements of the Regulations or Code relating to a notice of an occurrence of harassment and violence.</p> <p>For more information on this issue, see Sections 4 and 14 of this IPG.</p>
Question 2	Can the “person who is designated” referenced at 10(2)(k) of the Regulations be the same person who is acting as the designated recipient referenced at 10(2)(e)(i) of the Regulations?
Guidance	Yes, the “person who is designated” referenced at 10(2)(k) of the Regulations can be the same person who acts as the “designated recipient” referenced at 10(2)(e)(i) of the Regulations.

Section 11	
Introduction	This section addresses questions concerning section 11 of the Regulations.
Question 1	What should employers and their applicable partners take into consideration when developing and implementing emergency procedures to deal with an occurrence or threat of an occurrence that poses an immediate danger to the health and safety of an employee?
Guidance	<p>Employers and their applicable partners should take into consideration any of the following occurrence(s) or threats of occurrence(s) that may make their way into the workplace:</p> <ul style="list-style-type: none"> • an (ex)partner, family member, member of the public or other third party assaulting, stalking, or threatening (either verbally or over text/e-mail/social media, etc...) to harm the employee outside or inside of the workplace; • a verbally or physically violent person • a bomb threat; and/or, • an active shooter.

Section 12	
Introduction	This section addresses questions concerning section 12 of the Regulations.
Question 1	Who is required to take the training outlined at section 12 of the Regulations?
Guidance	<p>Subsection 12(1) of the Regulations requires that the work place harassment and violence training be provided to:</p> <ul style="list-style-type: none"> • all employees (including interns and students subject to subsection 123(3) of the Canada Labour Code); • the designated recipient; and, • the employer (supervisors, managers, directors, leaders/executives, business owners, or anyone else who has responsibility fulfilling the employer duties under the Regulations).

Section 13	
Introduction	This section addresses questions concerning section 13 of the Regulations.
Question 1	What are examples of “other support services” that an employer must provide information about to employees?
Guidance	<p>Examples of other support services may include:</p> <ul style="list-style-type: none"> • employee and family assistance services; • doctors, psychologists and psychiatric services; • counselling services, including for problematic substance use; • sexual assault services; • shelters; • domestic violence crisis line and other supports/resources; • sexual assault crisis unit/line; • suicide crisis line; and, • 211 National Service Provider Network (i.e. calling 211 or visiting https://211.ca/#/).

Section 14	
Introduction	This section addresses questions concerning section 14 of the Regulations.
Question 1	Who can act as the designated recipient to receive a notice of an occurrence of harassment and violence?
Guidance	<p>The Regulations allow the employer to select either a person or a work unit to act as the designated recipient. The person or work unit does not need to be an employee in the work place. For example, the designated recipient could be an Elder in the community or an association or third party organization that has been hired to fulfill the role of a designated recipient. A work unit could refer to a group of people, such as the Human Resources department, the Labour Relations department, etc.</p> <p>Consideration should be given to:</p> <ul style="list-style-type: none"> • the person/work unit having no direct personal or working relationship with any of the parties involved and no personal interest in the outcome of the matter; and, • the ability of the person/work unit to ensure that the confidentiality and privacy of the matter is preserved to the extent required by applicable legislation.

Section 19	
Introduction	This section addresses questions concerning section 19 of the Regulations.
Question 1	What is the purpose of the initial review at section 19 of the Regulations?
Guidance	<p>The purpose of the initial review at section 19 of the Regulations is to determine if the notice of occurrence contains the information required at section 16 of the Regulations. If the notice does not contain all of the information required by section 16, the principal party or witness should be given the opportunity to provide the missing information.</p> <p>However, if the notice does not contain sufficient information to allow the identity of the principal party to be determined, an employer is not required to take further action to resolve the occurrence and may therefore deem the occurrence resolved.</p>

Section 20 – 22	
Introduction	This section addresses questions concerning sections 20-22 of the Regulations.
Question 1	Who can represent the principal party or responding party during the resolution process, as referenced at subsections 20(d) and 22(d) of the Regulations?
Guidance	<p>A principal and responding party may be represented by the following individuals during the resolution process (not an exhaustive list):</p> <ul style="list-style-type: none"> • a union representative; • a colleague; • a spouse/partner; • a family member; or, • a friend. <p>However, to avoid a conflict of interest, a person cannot represent both a principal party and a responding party.</p> <p>An employee who wishes to be represented during the resolution process must inform the employer or designated recipient of this decision as soon as possible. The employee may choose to stop being represented, by informing the employer or designated recipient of this decision. Further, an employee may change the person they wish to represent them at any time.</p>
Question 2	What is meant by “represented” in paragraphs 20(d) and 22(d) of the Regulations?
Guidance	<p>The representative designated by the principal or responding party can provide advice and guidance to the principal or responding party on any matters they feel are relevant. In addition, the representative may be able to speak on behalf of the person they represent but only regarding matters related to the administration of the resolution process, such as:</p> <ul style="list-style-type: none"> • scheduling meetings and/or interviews; and,

	<ul style="list-style-type: none"> receiving updates on the status of the resolution process. <p>The principal and responding party will still be required to personally provide information about the occurrence and respond to questions regarding the occurrence during negotiated resolution, conciliation and/or the investigation.</p> <p>Alternatively, the representative may accompany the principal or responding party solely for the purposes of providing emotional support.</p>
Question 3	What measures can an employer take regarding an incident of family or domestic violence that happens either in the workplace or outside of the workplace?
Guidance	<p>For all incidents of family or domestic violence that the employer is made aware of, the employer should conduct a Risk Screening and develop a Workplace Safety Plan if needed to prevent increased risk to the principal party and others in the work place. The employer should also provide the principal party with referrals for internal and external resources. If the incident also occurs in the workplace (i.e. meets the definition of an occurrence) the employer must also follow the process laid out in the Regulations at sections 19 to 34.</p> <p>The following link provides access to a Risk Screening tool, sample Workplace Safety Plan, and external resources: https://www.dvatwork.ca.</p>
Question 4	When does the responding party need to be contacted as part of the resolution process?
Guidance	During negotiated resolution, the responding party should only be contacted if the principal party agrees that it is appropriate. However, the responding party must be contacted if the principal party chooses to proceed with conciliation and/or an investigation.

Section 23	
Introduction	This section addresses questions concerning section 23 of the Regulations.
Question 1	What is negotiated resolution?
Guidance	Negotiated resolution is a form of informal resolution in which the principal party meets (either virtually or in-person) with the employer or designated recipient to discuss the occurrence, clarify the information that was submitted in the notice of an occurrence, and attempt to reach resolution.
Question 2	Is it mandatory for a principal party to participate in negotiated resolution before engaging in an investigation?
Guidance	<p>Yes, the principal party and the employer or designated recipient, (as well as the responding party if they have been contacted), must make every reasonable effort to resolve the occurrence before the matter is referred to an investigator.</p> <p>Specifically, at a minimum, the principal party must review the incident with the employer or designated recipient and attempt to jointly determine if the incident meets the definition of an occurrence as required by subsection 23(2) of the Regulations. In addition, the employer should seek clarification, if necessary, regarding:</p> <ul style="list-style-type: none"> • the details of the occurrence; and, • what the principal party is seeking in terms of resolution. <p>However, if despite the above efforts, the principal party:</p> <ul style="list-style-type: none"> • believes the incident meets the definition of an occurrence; • does not consider the occurrence resolved; and, • requests an investigation, <p>then an investigation must be carried out. This requirement applies whether or not the employer believes all parties have made all reasonable efforts to resolve the occurrence.</p>
Question 3	Concerning subsection 23(2) of the Regulations, what happens if the principal party and the employer or the designated recipient cannot agree

	on whether the occurrence is an action, conduct or comment that is harassment and violence as defined in subsection 122(1) of the Act?
Guidance	If the principal party and the employer or designated recipient cannot jointly agree on whether an occurrence is an action, conduct or comment that is harassment and violence as defined in subsection 122(1) of the Act, and the principal party wishes to proceed with the resolution process, then the employer or designated recipient must follow the resolution process chosen by the principle party, either negotiated resolution, conciliation (if the responding party agrees), and/or an investigation.
Question 4	What is the difference between the initial review at subsection 19(1) and the joint determination at subsection 23(3)?
Guidance	<p>The purpose of the review at subsection 19(1) is to determine whether the notice of occurrence contains all of the information that is required under section 16 of the Regulations and to eliminate any notices that do not contain the name of the principal party or otherwise allow the identity of the principal party to be determined.</p> <p>The purpose of the joint determination at subsection 23(3) is to review the content of the notice of occurrence with the principal party in order to determine if the occurrence, if accepted as true, meets the definition of harassment and violence, as defined at subsection 122(1) of the Act.</p>

Section 24	
Introduction	This section addresses questions concerning section 24 of the Regulations.
Question 1	Can a principal and responding party engage in negotiated resolution or conciliation while an investigation is ongoing?
Guidance	<p>Yes, the Regulations allow for negotiated resolution, conciliation and an investigation to run as parallel processes. However, once the investigator's report is provided to the employer, the occurrence can no longer be resolved through negotiated resolution or conciliation.</p> <p>The Regulations allow the principal party the flexibility to pursue multiple parallel avenues of resolution in order to let the principal party determine which path(s) is most effective at reaching resolution.</p>
Question 2	Can the employer ask the investigator to suspend the investigation if the principal party wishes to engage in negotiated resolution or conciliation?
Guidance	Yes, the employer can ask the investigator to suspend the investigation. However, this would not extend the one year time period to complete the resolution process.

Section 30	
Introduction	This section addresses questions concerning section 30 of the Regulations.
Question 1	What recourse is available if the principal or responding party is not satisfied with the conclusions and/or recommendations in the investigator's report, or the way in which the investigation was conducted?
Guidance	<p>Under the Regulations, the resolution process is considered complete once the employer implements the recommendations in the investigator's report. As such, if a principal or responding party is not satisfied with the conclusions and/or recommendations in the investigator's report, or believes the investigation was flawed, there is no appeal process under the Code or Regulations. However, they should communicate these concerns to their employer or designated recipient as soon as possible.</p> <p>If the principal or responding party's concerns are not resolved, they may be able to request a judicial review of the investigation by the Federal Court, within 30 days of receiving the investigator's report. The principal or responding party should consult a lawyer regarding this process, since it is not prescribed by the Regulations.</p>
Question 2	What kind of recommendations should be included in the investigator's report?
Guidance	The investigator's report should contain recommendations on methods of eliminating or minimising the risk of a similar occurrence in the future without revealing directly or indirectly the identity of the persons involved in the occurrence or in the resolution process for the occurrence. For example, the report could contain recommendations on methods to eliminate systemic issues related to the organizational culture or structure, or specific training that should be undertaken by the parties involved.

Section 31	
Introduction	This section addresses questions concerning section 31 of the Regulations.
Question 1	What happens if the employer and the work place committee or health and safety representative cannot agree on which recommendations set out in the investigator’s report should be implemented?
Guidance	<p>The employer must reasonably attempt to come to agreement with the workplace committee or health and safety representative on the decision of which recommendations to implement. If the employer and the work place committee or health and safety representative cannot agree on which recommendations set out in the investigator’s report should be implemented, then the employer’s decision of which recommendations to implement prevails. However, the employer must document its decision and the reason for that decision as per paragraph 35(1)(d) of the Regulations, and keep a record of the decision and its reasons for 10 years as per subsection 35(2) of the Regulations.</p> <p>If an employee believes that an employer’s decision to not implement a recommendation is a failure to protect their health and safety, see Section 4 for more information on the ICRP process. Parties could also exercise their right to file a grievance under their collective agreement or a complaint under the <i>Canadian Human Rights Act</i>, as applicable.</p>

Section 32	
Introduction	This section addresses questions concerning section 32 of the Regulations.
Question 1	What is meant by “resolution process of an occurrence is completed” at section 32 of the Regulations?
Guidance	<p>The resolution process of an occurrence is considered complete when any one of the following conditions are met:</p> <ul style="list-style-type: none"> • the work place assessment has been reviewed and, if necessary, updated under subsection 6(1) of the Regulations, following a principal party informing the employer or designated recipient of their choice under section 18 of the Regulations to end the resolution process; • the identity of the principal party cannot be determined from the notice of an occurrence as per subsection 19(2) of the Regulations; • upon review of the notice of an occurrence under subsection 23(3) of the Regulations, the principal party and employer or designated recipient jointly determine that the occurrence does not meet the definition of harassment and violence; • the principal party agrees that the occurrence is resolved through negotiated resolution under section 23 of the Regulations or conciliation under section 24 of the Regulations; or, • the employer has implemented the recommendations in the investigators report that have been jointly agreed to by the work place committee or health and safety representative under subsection 31(1) of the Regulations. <p>It is recommended that employers document any of the principal party’s:</p> <ul style="list-style-type: none"> • choice to end the resolution process; • joint determination with the employer or designated recipient that the occurrence does not meet the definition of harassment and violence; or, • agreement that the occurrence has been resolved through negotiated resolution or conciliation. <p>This either can be done through the monthly status update or through another means (i.e. written confirmation letter from the principal party).</p>

Section 33	
Introduction	This section addresses questions concerning subsections 33(1) and 33(2) of the Regulations.
Question 1	What happens if the employer cannot complete the resolution process within the timelines set out at subsections 33(1) and 33(2)?
Guidance	If an employer cannot complete the resolution process within the timelines set out at subparagraphs 33(1) and 33(2) then they are required to document the reason for the delay, as outlined at paragraph 35(1)(f) of the Regulations, and must keep a copy of the record for 10 years under subsection 35(2) of the Regulations.

Section 34	
Introduction	This section addresses questions concerning section 34 of the Regulations.
Question 1	What information should be contained in the monthly status updates?
Guidance	<p>The monthly updates must contain information on the status of the resolution process, such as:</p> <ul style="list-style-type: none"> • the process that is being followed; • the status on the review and update of the workplace assessment; • the status on timelines for the selection and/or hiring, if applicable, of a conciliator; • the status on timelines for the selection and/or hiring, if applicable, of an investigator; • the status of the investigation report; and, • the status of implementing the recommendations from the investigator’s report.
Question 2	If the occurrence is being resolved through an investigation, can the investigator provide the monthly status updates instead of the employer or designated recipient?
Guidance	No, only the employer or designated recipient can provide the monthly status updates.

Section 35	
Introduction	This section addresses questions concerning section 35 of the Regulations.
Question 1	Who should have access to the health and safety records that the employer is required to keep under section 35 of the Regulations?
Guidance	The employer is required to keep the health and safety records outlined at section 35 of the Regulations and make these records available, upon request, to the policy committee and/or the workplace committee or health and safety representative. However, for notices of an occurrence, the employer must first obtain the consent of the principal party before disclosing copies of the notice(s). If no such consent is received, then the employer shall not provide these notices to the policy committee, workplace committee or health and safety representative.

Section 36	
Introduction	This section addresses questions concerning subparagraphs 36(d)(vi) and 36(d)(vii) of the Regulations.
Question 1	What is meant by “the types of professional relationships that existed between the principal and responding parties” at subparagraph 36(d)(vi) in the Regulations?
Guidance	For the purposes of these Regulations, the term “professional relationships” refers to an: <ul style="list-style-type: none"> • employee-employee relationship, including students and interns; • employee-supervisor/manager relationship; and, • employee-third party (individual who is not an employee) relationship.
Question 2	What is meant by “the means set out in section 32 by which resolution processes were completed and, for each of those means, the number of occurrences involved” at subparagraph 36(d)(vii)?
Guidance	For the purposes of these Regulations, this section refers to how many occurrences were resolved through any of the following avenues: <ul style="list-style-type: none"> • a review and update of the workplace assessment under subsection 6(1) of the Regulations; • negotiated resolution; • inability to identify the principal party from the notice of an occurrence (subsection 19(2) of the Regulations); • conciliation; and, • an investigation.
Question 3	What period of time is covered in the annual report that the employer must provide to the Minister on or before March 1 st of each year?
Guidance	The employer must provide the information outlined at paragraph 36(d) for the preceding calendar year (January 1 st to December 31 st of the preceding year). Annual reporting will start on March 1 st , 2022.

Bill C-65									
Overview									
Introduction	<p>This chapter provides interpretation guidance on various sections of the <i>Canada Labour Code</i> (the Code) that have been amended as a result of Bill C-65, <i>An Act to Amend the Canada Labour Code (harassment and violence)</i>, the <i>Parliamentary Employment and Staff Relations Act</i> and the <i>Budget Implementation Act, 2017, No. 1</i> (the Act). The chapter seeks to answer some of the most prevalent questions related to the applicable sections.</p>								
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Section 122	
Introduction	This section addresses questions concerning subsection 122(1) of the Code.
Question 1	Can a single action, conduct or comment be considered harassment and violence?
Guidance	Yes, the definition at subsection 122(1) of the Code allows for a single action, conduct or comment to constitute harassment and violence.
Question 2	What is meant by “including any prescribed action, conduct or comment” at subsection 122(1) of the Code?
Guidance	The term “prescribed” in the Code refers to the provision under section 157 of the Code, which allows for additional information or requirements to be provided in regulations. In this case, the Regulations do not prescribe any specific actions, conducts or comments that would constitute workplace harassment and violence. Therefore, the definition provided at 122(1) of the Code contains the full extent of what is considered harassment and violence under the Code.
Question 3	What are some examples of harassment and violence?
Guidance	Harassment can include, but is not limited to an employee: <ul style="list-style-type: none"> • spreading malicious rumours or gossip about an individual or group; • cyber bullying (threatening, spreading rumours, or negatively talking to or about someone online or on social media); • making offensive jokes or remarks; • playing unwanted practical jokes, including hazing and other pranks; • socially excluding or isolating someone; • unwanted remarks about a person’s body, clothing, or appearance; • tampering with someone’s work equipment or personal belongings, or impeding a person’s work in any deliberate way;

	<ul style="list-style-type: none"> ● vandalizing or hiding personal belongings or work equipment; ● persistently criticising, undermining, belittling, demeaning or ridiculing a person; ● misusing authority to create hardship for an individual, including: <ul style="list-style-type: none"> ○ maliciously changing work guidelines; ○ restricting information or setting impossible deadlines that will lead to failure; and, ○ blocking applications for leave, training, or promotion in a malicious manner. ● intruding a person’s personal space; ● stalking; ● public or private ridicule; ● verbal threats or intimidation; ● unwelcome physical contact; ● sexual innuendo/insinuation; ● unwanted and inappropriate or persistent invitations, gifts, messages, calls, or requests, including of a sexual nature; ● displaying offensive posters, cartoons, images or other visuals; ● using workplace resources (i.e. the work email, phone, computer, etc.) to stalk or intimidate an (ex)partner or other third party. ● making aggressive, threatening or rude gestures; ● retaliation of any kind (e.g. in the form of threats, punitive or disciplinary action, bribery, etc.) for submitting a notice of an occurrence; and, ● engaging in any of the actions that is against a person because of that person’s race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or any of the other prohibited grounds that are listed in the <i>Canadian Human Rights Act</i>. <p>Violence can include, but is not limited to:</p> <ul style="list-style-type: none"> ● hitting; ● kicking; ● biting; ● punching; ● spitting; ● scratching; ● squeezing; ● pinching; ● battering; ● homicide; ● swearing or shouting in an offensive manner;
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	<ul style="list-style-type: none">• verbal abuse;• attack with any type of weapon;• contact of a sexual nature; and,• sexual assault.
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Section 123.1	
Introduction	This section addresses questions concerning section 123.1 of the Code.
Question 1	Can an employee pursue the resolution process under the Regulations if they have initiated a complaint under the <i>Canadian Human Rights Act</i> or are pursuing resolution under a collective agreement?
Guidance	Yes, an employee can pursue multiple concurrent proceedings under the Code/Regulations, the <i>Canadian Human Rights Act</i> and grievances under their collective agreement.

Section 125	
Introduction	This section addresses questions concerning subparagraph 125(1)(z.16) and subsection 125(5) of the Code.
Question 1	Concerning subparagraph 125(1)(z.16) of the Code, is there a time limit for current employees to notify their employer of an occurrence of harassment and violence?
Guidance	No, there is no time limit for a current employee to submit a notice of an occurrence of harassment and violence to their employer. However, lapse of time may impact the employer's ability to properly assess the situation. Employees are therefore encouraged to submit their notice as soon as they are able to. If the responding party identified in the notice of an occurrence is no longer in the work place, the employer will not be required to pursue an investigation. Instead, they will have to conduct a review and update of the work place assessment, as required by paragraph 6(1)(b) of the Regulations.
Question 2	Concerning subsection 125(5) of the Code, is there a time limit for a former employee to apply to the Minister for an extension to the three month time period after their employment ended to notify their employer of an occurrence?
Guidance	No, there is no time limit for a former employee to submit an application to the Minister to extend the time period for notifying their employer of an occurrence. However, the former employee will be required to demonstrate in their request for an extension that: <ul style="list-style-type: none"> • they incurred trauma as a result of the occurrence; or, • they have a health condition that prevented them from notifying their employer within the prescribed three-month time period.