

Bill 30

An Act to Protect the Health and Well-being of Working Albertans

April 9, 2018

Submission from:
**The Public
Service
Alliance of
Canada,
Prairie Region**

To:
**Government of
Alberta**



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We would like to thank the Province of Alberta for the opportunity provide input on how to ensure The Occupational Health and Safety Regulations meets the needs of all involved.

As representatives of the Public Service Alliance of Canada (PSAC), we are involved in representing our members when they have questions or concerns with Health and Safety Legislation. In Alberta, our union represents over 9,000 members in the federally regulated sector. These members work in a wide variety of fields, including: revenue, agriculture, corrections, health, airports, environment, and defense, among many others. They are also an important part of the community, with friends and family that fall under the provincial legislation. As the province of Alberta is also aware, there are many similarities in approaches to Health and Safety, that will affect those that are not directly guided by the pertinent legislation. In our organization, we also represent members covered by provincial legislation. Specifically, within the prairies, the PSAC represents a large number of workers that are governed by provincial legislation in Saskatchewan and Manitoba.

As part of our role in representing workers, we help our members understand the relevant legislation. We assist members to navigate the resolution processes outlined in the legislation. We also provide extensive training to our membership on the topic of violence in the workplace. Through this work, we have identified a number of areas where changes can be made to ensure that safe and healthy workplaces in all its aspects are provided.

Based on our experiences in addressing workplace violence and harassment in various jurisdictions, we will reference the following pieces of legislation:

- The Canada Labour Code Part II;
- Regulation XX of the Canada Occupation Health and Safety Regulations;
- The Manitoba Workplace Safety and Health Act;
- Regulations 10 and 11 of the Manitoba Workplace Safety and Health Regulations
- The Saskatchewan Occupational Health and Safety Act; and
- Regulations 36 and 37 the Saskatchewan Occupational Health and Safety Regulations

In reviewing the discussion guide, it is apparent that the provincial legislations, including Manitoba and Saskatchewan, were referenced. In an effort to be brief, this submission will focus on the federal language, though the provincial corresponding language will also be referenced. Though we will reference these particular pieces of legislation in this report, our expectation is that the Province of Alberta also reviewed other jurisdictions for guidance.

Most importantly, it is our hope that the Province reviewed the comparable legislation with a view to be progressive and proactive, and to be a “trendsetter” on this issue. Understanding, awareness and intolerance on the issue of harassment and violence in the workplace in all its forms is constantly evolving. The Regulation that is ultimately created should be such that it is the gold standard for protecting workers, provides a mechanism that provides resolution and clearly outlines expectations for employees, those performing managerial functions and workplace Health and Safety Committee members/ Health and Safety Representatives.

It is also important to note that many federally regulated employees do not have the ability to directly access the Human Rights Commission. PSAC members under the *Public Service Staff Relations Act* do not have direct access to the grievance procedure with respect to human rights related issues. However, there is indirect access to the grievance procedure through the Canadian Human Rights Commission. A member must file a human rights complaint and request that the Commission "bounce back" or send the complaint to be processed through the grievance procedure. If this occurs, then the employer has agreed to process human rights related grievances.

The provided discussion guide offers a number of different discussion topics. In an effort to be clear and concise, this report will follow the areas of discussion raised in the discussion guide, and provide our opinion and rationale where appropriate.

Proposed Content for Harassment Prevention

- *How to report an incident of harassment by a worker who has been exposed to harassment to the employer, including when an incident is to be reported.*

We fully support language that is reflected in the Canada Occupational Health and Safety Regulation XX in regards to violence in the workplace. 20.9(2) states, "*If an employer becomes aware of work place violence or alleged work place violence, the employer shall try to resolve the matter with the employee as soon as possible.*"

The interpretation of this section is that the complaint need not be in writing on a formal document in order for the employer's obligation to resolve commence. Often, the amount of paperwork can deter employees from coming forward. The requirement for written documentation can also be used as a tactic to defer properly addressing the issue. The employer can be made aware via written complaint, email, or verbally. There may very well be documentation after the employer has been made aware, but the trigger is the employer be made aware, with the broad interpretation of this.

The interpretation of this section is also that it does not require that the person directly involved must be the individual reporting to the employer. The wording, "*If an employer becomes aware of work place violence...*", implies that the employer obligation to address the issue begins once they have been made aware, whether it be by the person affected, or a witness to the harassing behavior.

The wording, "*... or alleged work place violence...*" has also been an important factor when dealing with workplace complaints, as outlined in the Federal Court of Appeal Akon decision (link provided at the end of the submission), meaning that the employer does not have the ability to cease the resolution process if the employer has determined there was no harassment. If it is unresolved, where the affected employee does not agree with that determination, the resolution process will continue.

It is also important to note that Part 10.2(1) of the Manitoba Regulations state that the harassment prevention policy must contain a statement that every worker is entitled to work free of harassment. At first glance, this may appear to be an obvious statement, but many workplaces may be expected to tolerate a certain level of harassment, and this is not accurate. Every worker and workplace must be free of harassment. As an example, a store clerk dealing with the public may be told by an employer that working with the public may be a risk for harassment, and that a certain level should be tolerated. It must be abundantly clear that all forms of harassment have no place in the work environment, and every worker has a right to a harassment free workplace.

When an employer is made aware of an incident, the employer must take the appropriate steps to protect the worker and ensure that a similar incident will not occur in the future.

- *Procedures the employer will follow to document, investigate and prevent any incident of harassment that the employer is aware of.*

In drafting this discussion guide, it is apparent that the Manitoba Workplace Safety and Health Regulation was referenced. Though this an excellent and thorough piece of legislation, the federal Regulation XX provides clearer wording and guidance on areas of policy, identification of contributing factors, assessment, controls, measures review, response and investigation procedures and training. In an effort to be brief, a link to Regulation XX has been provided as a reference at the end of the submission.

The main concept that must be included in an Alberta Regulation is clear timelines. For example, under Manitoba legislation a violence report must be prepared annually. In the federal language, the policy must be re-evaluated at a minimum every three years, or any time there has been an incident that compromises the safety of the workplace. The procedures that are put in place must be evaluated to ensure they are effective, and reflect the changing culture.

Our recommendation is that any policies or procedures should be evaluated a minimum annually, or whenever there is a circumstance that brings into question the effectiveness of the policy or procedures. This evaluation must be performed by the Health and safety committee/representative.

- *A commitment that the employer will ensure privacy of the complainant and alleged offender, and take corrective action respecting any person under the employer's direction who subjects any worker to harassment.*

Confidentiality is paramount when dealing with issues such as harassment, though we recommend including wording in situations where the employee affected has the ability to consent and waive the right to confidentiality. If the affected member determines that their issue would be better addressed by sharing confidential information, then it should be done within the parameters set out by the affected employee. An example of such language can be

found in the COHS Regulation 20.9(5)(b), “... providing information whose disclosure is not prohibited by law and that would not reveal the identity of persons involved without their consent.” Manitoba’s language does not address the issue of consent, but sets standards where the information is necessary to investigate or take corrective action to resolve the issue.

- *A statement that the employer’s harassment policy is not intended to discourage workers from exercising any other legal rights including addressing complaints to the Alberta Human Rights Commission.*

As mentioned earlier, employees covered under the federal language do not have the ability to seek support, guidance, or resolution directly through the human rights legislation. This has created a less than ideal situation. In this instance, the federal legislation is not the recommended standard. Particularly within unionized workplaces, we believe that there should be a co-existence between the collective agreements and the human rights legislation. Manitoba is a much better model that should be followed. In our experience with the Manitoba Human Rights Commission, if there is a collective agreement with a grievance procedure in place, the human rights commission will document the complaint, and potentially provide guidance to the affected employee(s) or the employer, as well as mediation for those cases where it may be helpful. They will often not pass judgement if the grievance process is still available, but the involvement of the Commission has proved invaluable in the Manitoba example.

For those workers not protected by a collective agreement, a clear reference to the Alberta Human Rights Commission will be an invaluable resource in resolving workplace complaints, and must be included. It must be clear in the workplace policy that this avenue of recourse is available to anyone in the workplace that is affected.

- *An employer must ensure that a worker who has been harmed as a result of an incident of harassment at the workplace is advised to consult the worker’s health care provider for treatment or referral for post-incident counselling, if appropriate and this would be considered time at work.*

There are a number of thoughts within this statement which we support. The first thought is ensuring the affected worker seeks counselling if needed. It is also important to note that the worker will be able to consult a care provider of their choice. Often, if available, workers will be provided information on EAP programs, but these are not often equipped or suitable options for providing the needed support. The ability to seek support from a care provider that is knowledgeable of the worker’s care history, or referred to a specialist with knowledge and experience with post-incident counselling is an important piece of information to include in the Alberta legislation.

It is also important for this time to be considered time at work. Missing pay due to a workplace incident will often cause additional stress that will negatively affect a worker’s recovery. Workers’ Compensation may also be available, but that process has its drawbacks. WCB is not

well suited to address psychological injuries, and can take weeks or months to adjudicate. As well, not all workplaces are covered by WCB. The ability for the worker to not have to worry about the financial implications of a workplace event will aid recovery, and must be included in an employer policy.

Proposed Content for Violence Prevention

As many of the points made will be similar to those that were outlined when addressing the new regulations regarding harassment, in an effort to be brief we acknowledge some of the responses will be similar, and will share our opinion on areas that may differ, or require clarification.

- *A commitment that the employer will take corrective action respecting any person under the employer's direction who subjects any worker to violence.*

Under Regulation XX in the federal language, an employer is obligated to resolve any issue they are made aware of, and appoint a competent person to investigate, should the issue not be resolved at this level. Where Regulation XX has not been effective, is when the employer has not taken their obligations earnestly.

- *A commitment that the employer will not disclose the name of the complainant, of the alleged offender, or of the circumstances related to the complaint; except where necessary to investigate the complaint, to take corrective action, or as required by law.*

As mentioned previously, our opinion would be that there should also be language that clearly provides the opportunity for the person affected to consent to the information being provided, on top of the references to the legal aspects that were provided, which are consistent with the Manitoba provincial legislation.

- *A statement that the employer's violence prevention policy is not intended to discourage workers from exercising any other legal rights including lodging a complaint with police or other law enforcement.*

Regulation XX 20.8 (3) states, *"In the development and implementation of emergency notification procedures, the employer's decision of whether or not to notify the police shall take into account the nature of the work place violence and the concerns of employees who experienced the work place violence."*

Procedures could include a statement that any physical assault in the workplace is to be reported to the police. The employer should call the police in case of uncertainty and the police would then decide whether the incident is a matter for them to handle. If the employees involved do not wish to contact the police, it remains the responsibility of the employer to make the final decision regarding police involvement; if the employees involved request to have the police notified, the employer must do so.

- *Actions and measures the employer will take to eliminate or control the risk of violence.*

Again, we find that the clearest language regarding the actions and measures can be found in the federal legislation, though the Manitoba regulation is also clear.

20.5(1) The employer shall assess the potential for work place violence (...) by taking into account, **at a minimum**, the following:

- (a) the nature of the work activities;
- (b) the working conditions;
- (c) the design of the work activities and surrounding environment;
- (d) the frequency of situations that present a risk of work place violence;
- (e) the severity of the adverse consequences to the employee exposed to a risk of work place violence;
- (f) the observations and recommendations of the policy committee (or workplace committee or representative), and of the employees; and
- (g) the measures that are already in place to prevent and protect against work place violence.

20.6 (1) Once an assessment of the potential for work place violence has been carried out under section 20.5, the employer shall develop and implement systematic controls to eliminate or minimize work place violence or a risk of work place violence to the extent reasonably practicable.

(2) The controls shall be developed and implemented as soon as practicable, but not later than 90 days after the day on which the risk of work place violence has been assessed.

(3) Once controls referred to in subsection (1) are implemented, the employer shall establish procedures for appropriate follow-up maintenance and corrective measures, including measures to promptly respond to unforeseen risks of work place violence.

We firmly believe that the above language clearly outlines the actions and measures the employer must take in order to protect the workplace from incidences of violence. It is understood that this will not eliminate incidences of violence in the workplace, but the above language provides for the identification of factors, implementation and assessment to ensure that the controls are adequate. There is also language in the federal legislation requiring that employers take into account instances of violence in similar workplaces. As an example, if there was a bank robbery at a specific bank location, this should serve as a trigger for all other banks in the province to evaluate the measures put in place in their particular workplace, to ensure the measures currently in place are reasonably practicable.

- *Regarding domestic violence in the work place, the employer must take every reasonable precaution to protect the worker and those affected at the work site.*

We commend the province of Alberta for including the concept of domestic violence as a workplace issue to be addressed in a violence prevention policy. The emergence of domestic violence as a workplace issue is a more recent concept, and one that must be in place. We would implore the province of Alberta to follow the lead of Manitoba, and provide workers experiencing domestic violence with paid leave from work to get help, without fear of losing their job. In Manitoba this is currently set at up to five days, though our opinion is that the standard should be up to ten days. The time could be for legal services, finding shelter, medical and psychiatric appointments, or other reasons related to domestic violence.

- *An employer must ensure that a worker is advised to consult a health professional of the worker's choice for treatment or referral if the worker reports an injury or adverse symptom resulting from workplace violence or exposure to workplace violence this would be considered time at work.*

As mentioned previously, we agree with much of this wording. The acknowledgement that the employer has an obligation to suggest support, the ability of the worker to access a health professional of their choice, and for this time to be considered time at work (paid) are all important to capture. We would also recommend that there be wording that would provide non-discrimination for any worker that requests or accesses this support. No worker should be treated differently, or adversely affected by a workplace violence incident.

This recommendation would be consistent with the language in most other jurisdictions, including Saskatchewan and Manitoba.

What things can the government do to support the development and implementation of these workplace policies?

Education. Each and every employer representative must receive training on the employer's obligations under this new language. Each and every employee must receive training as to the content of the new legislation, and each and every member of a JWSHSC or representative must receive adequate training on the new legislation and their role in the inspections and evaluations of the policies and procedures.

The employer should also receive assistance in creating policies and procedures regarding violence prevention. They should also receive information regarding the value of having effective policies and procedures in place. There is a value in cost, productivity and employee retention to an organization that sets violence prevention as a priority in the workplace.

There also needs to be enforcement. Though not the first option, there must be tangible consequences for employers that do not follow the legislation, and do not take adequate steps to protect workers from violence in the workplace.

What can an employer do to assist an employee who they believe is affected by violence and harassment?

Even prior to an incident of violence or harassment in the workplace, the employer should have a clear policy that outlines supports available, and expectations of every person in the workplace. Each worker should receive training to ensure they are aware of the policy and its contents, including supports available and consequences should they perform acts of violence or harassment to another person in the workplace.

This policy must be posted at a location accessible to all, and there must be an annual review by the workplace committee /representative to ensure that workers are aware of the contents.

Each and every worker should receive training on all of the potential or foreseeable risks in the work being performed prior to performing the work. Anytime a worker starts a new job duty, this training should be reviewed.

Other recommendations have been captured previously. The employee should be able to seek assistance if required or requested, this time should be considered time worked, and there should be no discrimination for any worker that is acting reasonably within the workplace policy, or within the pertinent legislation.

COMMITTEES/REPRESENTATIVES

Proposed functions of JWSHSC/Representatives

Within the Federal legislation, there is reference to workplace committees and representatives, which is similar to Alberta provincial legislation. There are also provisions for Policy committees, which is required for workplaces of greater than 300 workers, but may also be created for workplaces of less than 300 workers. These policy committees will often address issues that will cover more than one site, but have issues common within the workforce, and dispose of issues that require resolution beyond the workplace level.

As with the provincial legislation, the duties and responsibilities of committees and representatives are similar, with the main difference being the size of the workplace.

Specific to workplace committees, the following language can be found in the federal legislation:

- 135(7) A work place committee, in respect of the work place for which it is established,
 - (a) shall consider and expeditiously dispose of complaints relating to the health and safety of employees;
 - (b) shall participate in the implementation and monitoring of the program referred to in paragraph 134.1(4)(c);
 - (c) where the program referred to in paragraph 134.1(4)(c) does not cover certain hazards unique to the work place, shall participate in the development,

implementation and monitoring of a program for the prevention of those hazards that also provides for the education of employees in health and safety matters related to those hazards;

(d) where there is no policy committee, shall participate in the development, implementation and monitoring of a program for the prevention of hazards in the work place that also provides for the education of employees in health and safety matters related to those hazards;

(e) shall participate in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters;

(f) shall participate in the implementation and monitoring of a program for the provision of personal protective equipment, clothing, devices or materials and, where there is no policy committee, shall participate in the development of the program;

(g) shall ensure that adequate records are maintained on work accidents, injuries and health hazards relating to the health and safety of employees and regularly monitor data relating to those accidents, injuries and hazards;

(h) shall cooperate with the Minister;

(i) shall participate in the implementation of changes that might affect occupational health and safety, including work processes and procedures and, where there is no policy committee, shall participate in the planning of the implementation of those changes;

(j) shall assist the employer in investigating and assessing the exposure of employees to hazardous substances;

(k) shall inspect each month all or part of the work place, so that every part of the work place is inspected at least once each year; and

(l) where there is no policy committee, shall participate in the development of health and safety policies and programs.

We believe that this piece of legislation expands on, and clarifies the examples of the proposed content that were cited in the discussion guide.

Are there any JWSHSC /representative provisions that should be added to support employer and worker participation in ensuring health and safety at workplaces?

The federal legislation has a couple of key provisions that must be included in the Alberta regulations:

135(9) A work place committee, in respect of the work place for which it is established, shall have full access to all of the 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.

This section provides the information a committee or representative need in order to make informed decisions that will protect the health and safety of all of the employees in the workplace. Often, committees will only receive pieces of information, and not all of the information needed. This includes any information the employer may be in possession of, including reports of violence or harassment in the workplace.

135(7)(i) shall participate in the implementation of changes that might affect occupational health and safety, including work processes and procedures and, where there is no policy committee, shall participate in the planning of the implementation of those changes;

Among the concepts that must be included in the Alberta legislation is the above section. The committee or representative will participate in the planning, implementation, and assessment of work processes and procedures. It is also important to note the use of the word "might". Our interpretation is that if it might affect the health and safety of the workplace, the committee or representative must participate.

Any provisions must also reference that time to perform the functions and duties of a committee member or representative are considered time worked. In the Manitoba Act for committee members 40(11)&(12) states:

Members paid while carrying out committee duties

40(11) A member of a committee is entitled to take time off from his or her regular work duties in order to carry out his or her duties as a committee member under this Act and the regulations. The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all time spent carrying out his or her duties as a committee member under this Act and the regulations.

Entitlement to pay for work as committee member

40(12) A member of a committee is deemed to be at work during the times described in subsection (11) and is entitled to be paid for those times by his or her employer at the member's regular or premium pay, as applicable.

Proposed training

We support the proposed content in the discussion guide. There must be audits and reports to ensure the agency providing training, and the training itself is meeting the needs of the participants. There must be verification that the committee member or representative fully complete the training. This training should also be documented and recorded by the employer. The employer must be responsible for ensuring the committee or representative participates

and completes the required training, and that the costs including the training itself, and any other associated costs with the training be covered by the employer.

In addition to the proposed content in the discussion guide, we have the following opinions. In regards to training, the Saskatchewan legislation is the preferred language to reference. Whereas the federal language refers to prescribed training, without minimum or maximum, the wording in Saskatchewan is much clearer.

In the Saskatchewan legislation, the following is referenced:

46(3) Where a member of a committee or a representative gives reasonable notice, an employer or contractor shall permit the member or representative to take leave for a period or periods of **not more than five working days per year** to attend occupational health and safety training programs, seminars or courses of instruction.

The Manitoba legislation provides for a maximum two days per year.

It is our opinion that committee members and representatives should receive a minimum of two days per year, and a maximum ten days per year of training. It should be clearly outlined that this training should be in person training. The training must also be approved by the committee or representative, or the Department of Labour, to sufficiently cover all of the roles and responsibilities of the committee or representative.

The proposed content is consistent with the language in other jurisdictions, and must be clearly captured in the new regulations. There must also be checks and balances in place to ensure the training is being provided. In our experience, it is often left to the committee member or representative to search out the training, and demand it from the employer. Ultimately, it must be the responsibility of the employer to provide the opportunities, and ensure the training is being taken; it is not the obligation of the committee member or representative to identify the needs.

Skill sets the training should develop

Aside from the training required of committee members or representatives, it is also important to identify the training required for each and every worker.

The Saskatchewan regulation is a good guide for training of workers:

Training of workers

19(1) An employer shall ensure that a worker is trained in all matters that are necessary to protect the health and safety of the worker when the worker:
(a) begins work at a place of employment; or

- (b) is moved from one work activity or worksite to another that differs with respect to hazards, facilities or procedures.
- (2) The training required by subsection (1) must include:
 - (a) procedures to be taken in the event of a fire or other emergency;
 - (b) the location of first aid facilities;
 - (c) identification of prohibited or restricted areas;
 - (d) precautions to be taken for the protection of the worker from physical, chemical or biological hazards;
 - (e) any procedures, plans, policies and programs that the employer is required to develop pursuant to the Act or any regulations made pursuant to the Act that apply to the worker's work at the place of employment; and
 - (f) any other matters that are necessary to ensure the health and safety of the worker while the worker is at work.

Each and every worker must receive training on each and every foreseeable risk to the health and safety, both physical and psychological. This training must be monitored regularly, to ensure it provides proper training.

Specific to the training required in regards to violence prevention, the below section from the federal legislation provides clear guidance. Our recommendation would be that the training be evaluated at a minimum annually.

- 20.10 (1) The employer shall provide information, instruction and training on the factors that contribute to work place violence that are appropriate to the work place of each employee exposed to work place violence or a risk of work place violence.
- (2) The employer shall provide information, instruction and training
 - (a) before assigning to an employee any new activity for which a risk of work place violence has been identified;
 - (b) when new information on work place violence becomes available; and
 - (c) at least every three years.
- (3) The information, instruction and training shall include the following:
 - (a) the nature and extent of work place violence and how employees may be exposed to it;
 - (b) the communication system established by the employer to inform employees about work place violence;
 - (c) information on what constitutes work place violence and on the means of identifying the factors that contribute to work place violence;
 - (d) the work place violence prevention measures that have been developed under sections 20.3 to 20.6; and
 - (e) the employer's procedures for reporting on work place violence or the risk of work place violence.

(4) At least once every three years and in either of the following circumstances, the employer shall review and update, if necessary, the information, instruction and training provided:

- (a) when there is a change in respect of the risk of work place violence; or
- (b) when new information on the risk of work place violence becomes available.

(5) The employer shall maintain signed records, in paper or electronic form, on the information, instruction and training provided to each employee for a period of two years after the date on which an employee ceases to perform an activity that has a risk of work place violence associated with it.

In closing we would like to sincerely thank the Province of Alberta for the opportunity to share our thoughts, experiences and opinions. Referenced in this submission is the relevant federal legislation, which can be found at:

- <http://laws-lois.justice.gc.ca/eng/acts/L-2/page-23.html#docCont> - Canada Labour Code Pt. II
- <http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/page-55.html> - Regulation XX of the COHS
- <https://www.canlii.org/en/ca/fca/doc/2015/2015fca273/2015fca273.pdf> - A Federal Court of Appeal decision in reference to the investigation process for violence in the workplace. This case has provided clarification on the investigation process, and has been referenced in this decision.

Should you require further clarification, please feel free to contact us at any of the coordinates below.

Thank you,

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