



## HARASSMENT AND BULLYING: FORMS OF WORK PLACE VIOLENCE

Federal Public Sector Employers are legally required under *Canada Labour Code (CLC) Part II* and *Part XX-Violence Prevention in the Work Place* of the *Canada Occupational Health and Safety Regulations (COHSR)* to provide employees with a safe and healthy work environment free of all types of violence including harassment and bullying.

While there are many definitions of harassment, traditionally, harassment has been defined as:

*any improper conduct by an individual that is directed at and offensive to another person or persons in the work place and which the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, or any act of intimidation or threat. It includes harassment within the meaning of the Canadian Human Rights Act (CHRA).*

With the introduction of *Part XX–Violence Prevention in the Work Place* of the *COHSR*, the landscape has significantly changed in terms of how we view and deal with harassment in the work place.

Part XX defines *work place violence* as:

*any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.*

It is apparent from reviewing the aforementioned definition that harassment is a form of work place violence that can cause harm, injury or illness to an employee and as such, should be dealt with in the context of the *CLC Part II* and *Part XX* of the *COHSR*.

Until recently, members experiencing harassment in the work place had the option of filing grievances, filing a complaint under Employer Harassment Policy or filing a complaint with the Canadian Human Rights Commission (**CHRC**) when the actions taken are alleged to have been based on prohibited grounds as defined under the CHRA.

**This Key Info Sheet is intended to assist Local Representatives when dealing with all forms of work place violence including but not limited to harassment and bullying.**

The Agriculture Union encourages members to access the provisions of *Part XX* of the *COHSR*, and/or the other relevant mechanisms available under the *CLC Part II*.

Employers are required to carry out their obligations under *Part XX–Violence Prevention in the Work Place* in consultation with and the participation of the Occupational Health and Safety (**OHS**) Policy Committee.

As a participant on OHS Policy Committees, the Agriculture Union has taken the lead in urging Employers to amend outdated Harassment Policies to properly reflect the provisions of the *CLC Part II* and *Part XX* of the *COHSR* or simply to nullify them and have harassment included in the Work Place Violence Prevention Policy.

*Part XX* requires Employers to develop and post a Work Place Violence Prevention Policy which sets out specific obligations of the employer which include providing a safe, healthy and violence-free work place, establishing emergency notification procedures to respond to work place violence as well as assisting employees who have been exposed to work place violence.

If a Work Place Violence Prevention Policy has not yet been implemented in your work place, you can expect it will be introduced soon. If you require any assistance, please contact your Local Union OSH Representative. If they require assistance, they will communicate with the Union Co-Chair of the OSH Policy Committee to obtain advice and guidance.

A specific procedure developed under Section 20.9 of the *COHSR* would be initiated by the option #1 below, but members who experience violence also have access to the other mechanisms listed.

- ***CLC Part II Mechanisms***

1. *Report to Employer - Subsections 126.(1)(g) and (h)*
2. *Section 127.1 – Internal Complaint Resolution Process*
3. *Raise Issue with Workplace OHS Committee or Union OSH Representative*
4. *Section 128 – Refusal of Dangerous Work*

- **Grievances**

- A- Corrective Measures Grievance
- B- No Discrimination Grievance

- **CHRC Complaint**

## **CLC Part II Mechanisms**

The provisions of *Part XX–Violence Prevention in the Work Place of the COHSR* apply to all available mechanisms under the *CLC Part II* to the extent possible.

When it comes to accidents, occupational diseases or hazardous occurrences involving violence in the workplace, *Part XX* requires Employers appoint a “**competent person**” to investigate the alleged work place violence. The *COHSR* defines a “**competent person**” as a person who is:

- a) *impartial and is seen by the parties to be impartial*
- b) *has knowledge, training and experience in issues relating to work place violence; and,*
- c) *has knowledge of the CLC Part II and its regulations.*

Under the *COHSR* there is reference to both a “*competent person*” and a “*qualified person*” in the context of investigations. It is important to note that a “*qualified person*” is different from the “*competent person*” in that the “*qualified person*” deals only with accidents, occupational diseases or other hazardous occurrences not related to violence. Where an employer appoints an investigator to investigate work place violence it is a “*competent person*” that will investigate the matter. This person must meet the full criteria outlined above.

### **1- Report to Employer per Subsections 126. (1)(g) and (h)**

*Subsection 125. (1)(c)* requires the Employer to investigate all accidents, occupational diseases and other hazardous occurrences known to the Employer. As such, when an employee reports violence instances/situations under *Subsections 126(1)(g) and 126(1)(h)*, the employer is required to deal with them under Section 20.9 of the *COHSR*. If the employer must have an investigation conducted a “*competent person*” would be tasked with conducting the investigation.

### **2- Section 127.1 – Internal Complaint Resolution Process**

When filing a complaint under *Section 127.1* of the *CLC Part II*, employees and Local Representative should refer to the Section which clearly outlines every step of the complaint process. Should you require any assistance,

please first contact your local OHS Union Representative who will contact either the Regional Vice President (RVP) or Union Co-Chair of the OSH Policy Committee should they require further advice and guidance.

Any investigation resulting from a complaint under 127.1 must only deal with the process that has or has not been followed. It cannot deal with the violence issues raised since these can only be investigated by a competent person.

### **3- Raise Issue with Workplace OHS Committee or Union OSH Representative**

In accordance with *Section 135 (7) of the CLC Part II, a workplace committee:*

*shall participate in all of the inquiries, investigations, studies and inspection pertaining to the health and safety of the employees, including any consultations that may be necessary with persons who are professionally and technically qualified to advise the committee on these matters.*

Under this mechanism, it may be as simple as a workplace assessment by the Committee followed by prevention recommendations, or it may lead to an investigation where the conditions of *Part XX* apply including the appointment of a “*competent person*” to investigate the matter. Local OHS Committees and OHS Representatives will decide to what extent they will participate in investigations under *Part XX*.

### **4- Section 128 – Refusal of Dangerous Work**

When filing a refusal to work under *Section 128* of the *CLC Part II*, employees and Local Representative should refer to the Section which clearly outlines every step of the refusal to work process.

Should you require any assistance, please first contact your Local Union OSH Representative who will contact either the RVP or Union Co-Chair of the OSH Policy Committee should they require further advice and guidance.

## **Grievances**

All workplace violence situations must be dealt with under *Part XX* of the *COSHR*. However, there may be instances where grievances are also warranted. If the Local requires assistance, the RVP is available to provide advice and guidance.

### **A- Corrective Measures Grievance**

Employees, who have lost pay, leave and/or benefits because of violence in the workplace should file a grievance as soon as possible. The grievance statement

will relate to the leave provisions in the collective agreement. For example, corrective measures could include but are not limited to reinstatement of pay, sick leave, vacation leave or compensatory leave, etc.

The grievance should be placed in abeyance until such time as the investigation process under the *CLC Part II* has been concluded. Where the complaint or refusal action is successful and no corrective measures have been provided, the grievance should be taken out of abeyance and pursued through the grievance process. Where the complaint or refusal action is unsuccessful, an assessment of each grievance will need to be made to determine whether or not there is merit to proceed.

#### **B- No Discrimination Grievance**

Harassment/violence based on a **prohibited ground** constitutes discrimination which is contrary to the No Discrimination Article in the collective agreement and the *Canadian Human Rights Act (CHRA)*. As with all violations of the No Discrimination Article, members should file a grievance within the prescribed timelines.

## **Complaint with the Canadian Human Rights Commission**

Where harassment is linked to a **prohibited ground** under the *CHRA*, the Agriculture Union recommends members file a complaint with the CHRC. This should be done concurrently with the filing of the aforementioned grievance and any recourse mechanism pursued under the *CLC Part II*. The timeframe for filing a human rights complaint with the CHRC is one year from the event and/or circumstances which are believed to be discriminatory. The process requires members contact the CHRC to advise they wish to file a complaint. The CHRC will advise the member of the next steps required. More details on the process for filing a human rights complaint can be found on the *CHRA* web site:

<http://www.chrc-ccdp.ca/eng/content/i-want-complain> .

### **APPENDICES (see below)**

Appendix A - What to do when an Employer becomes aware of workplace violence and fails to deal with it as prescribed by the *Canada Occupational Health and Safety Regulations (COHSR)*?

For more information visit the following sites:

*Canada Labour Code (CLC) Part II*

<http://laws-lois.justice.gc.ca/eng/acts/L-2/page-73.html>

*Part XX-Violence Prevention in the Work Place of the Canada Occupational Health and Safety Regulations*

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>

*Canadian Human Rights Act (CHRA)*

<http://laws-lois.justice.gc.ca/eng/acts/h-6/>

Canadian Human Rights Commission

<http://www.chrc-ccdp.ca>

Canadian Centre for Occupational Health and Safety

<http://www.ccohs.ca/oshanswers/psychosocial/violence.html>

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## APPENDIX A:

### **What to do when an Employer becomes aware of workplace violence and fails to deal with it as prescribed by the *Canada Occupational Health and Safety Regulations (COHSR)*?**

The process to deal with workplace violence (which includes all forms of harassment) is described in *Section 20.9 - Notification and Investigation*, of the *Canada Occupational Health and Safety Regulations (COHSR)*.

Essential elements of *Section 20.09* include the following:

- 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.
- If the matter is unresolved, the employer shall appoint a competent person to investigate the work place violence.

Where an employee who experiences or witnesses harassment in the workplace makes their manager or supervisor aware of work place violence, they should inform them they wish to have the matter dealt with under *Section 20.09* of ***Canada Occupational Health and Safety Regulations (COHSR)***. Such notification can be sent by e-mail or by letter. **Verbal notification is also valid but a written record is preferable.** Sufficient details should be provided to the Employer so they can resolve the matter with the employee as soon as possible.

If the employer does not deal with the complaint in a timely manner or attempts to have the matter investigated by Corporate Security and/or under the Treasury Board Secretariat's or its own internal policy on the Prevention and resolution of harassment in the workplace, there are steps you can take to ensure the matter is dealt with properly under *Part XX - Violence Prevention in the Work Place* of the COHSR.

The first step is for the employee and/or the union representative to reiterate to the employer that it must "*take the prescribed steps to prevent and protect against violence in the work place*" as per Section 125.1 (z.16) of the *Canada Labour Code (CLC) Part II*. Within legislation, "*prescribed*" means by Regulation. In this case, the *Regulation* is the *COHSR, Part XX - Violence Prevention in the Work Place*.

If the employer still refuses to deal with the matter under *Part XX* or delays taking action to address the matter, the next step is to initiate the Internal Complaint Resolution Process as described in *Section 127.1* of the *Canada Labour Code (CLC) Part II*. **This complaint is not about the violence situation itself, but rather the Employer's failure to comply with Part XX of the COHSR.**

The complaint should raise concerns and issues in a way that would allow the regulator (Health and Safety Officer appointed under the *Canada Labour Code* to enforce compliance. To that end, we recommend that the following information be clearly conveyed in the *Section 127.1* complaint to the employer:

- Advise the Employer you want the following issues dealt with:
  - The employer failed to deal with the alleged violence as per *Section 125.(1)(z.16)* of the *CLC Part II* and *Section 20.9, Part XX Violence Prevention in the Work Place*.
  - The employer failed to provide violence-related training for managers as per *Section 125.(1)(z)* of the *CLC Part II* or for employees as per *Section 20.10 of the COHSR*.
  - **Include only if applicable** - The employer does not have a Work Place Violence Prevention Policy as required by *Section 20.03 of the COHSR*.
  - **Include only if applicable** - The employer has not completed the assessment of the potential for work place violence required by *Section 20.05 of the COHSR*.

Although not mandatory, using complaint form ESDC LAB 1060 which can be accessed at: [http://www.servicecanada.gc.ca/eforms/forms/esdc-lab1060\(2004-07-003\)e.pdf](http://www.servicecanada.gc.ca/eforms/forms/esdc-lab1060(2004-07-003)e.pdf) will ensure you include the required information and make it easier for the Health and Safety Officer to focus on the important facts which will lead to a more timely decision.

We strongly urge employees and their representatives to familiarize themselves with *Section 127.1 – Internal Complaint Resolution Process* of the *CLC Part II*. The steps and requirements are clearly outlined and will provide you all the information you need to follow the complaint process effectively. The *CLC Part II* should be posted in your workplace and is readily available at the following website: <http://laws-lois.justice.gc.ca/eng/acts/L-2/>.

As indicated in *Section 127.1* of the *CLC Part II*, the complaint is given to the employee's supervisor and the parties have an opportunity to try to resolve the matter.

The *Internal Complaint Resolution Process* is a key process toward having a Health and Safety Officer (the regulator appointed under the *Canada Labour Code* involved if it proves to be necessary. In fact, a Health and Safety Officer from Employment and Social Development Canada (ESDC) will often refuse to get involved until you can demonstrate that you have tried to deal with the issue through the *Internal Complaint Resolution Process (Section 127.1)*. You can, however, call ESDC for advice on filing your complaint.

If the supervisor and the employee cannot resolve the complaint between themselves as soon as possible, the employee may refer the unresolved complaint to the Occupational Health and Safety (OHS) Committee Co-Chairs or to the OHS Representative for investigation as per *Section 127.1(3)* of the *CLC Part II*.



A referral to a Health and Safety Officer occurs only in the conditions set out under Section 127.1 (8) of the *CLC Part II* which states as follows:

*The employee or employer may refer a complaint that there has been a contravention of this Part to a health and safety officer in the following circumstances:*

- (a) where the employer does not agree with the results of the investigation;*
- (b) where the employer has failed to inform the persons who investigated the complaint of how and when the employer intends to resolve the matter or has failed to take action to resolve the matter; or*
- (c) where the persons who investigated the complaint do not agree between themselves as to whether the complaint is justified.*

If the complaint reaches the Health and Safety Officer at ESDC, he/she will investigate the complaint. The duty and powers of the Health and Safety Officer are listed under *Section 127.1(10)* of the *CLC Part II*. Directions may be issued or recommendations to the employee and employer to resolve the matter between themselves.

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