Harassment And Violence In The Workplace: An Overview Of Recent Legislative Changes Introduced By Bill 42



Introduction

In 2020, faced with statistics showing that nearly one in two women and three in ten men believed they had suffered sexual harassment or assault in the workplace,[1] the Minister of Labour expressed its intention to help prevent and address this issue.

The government began by setting up a committee to examine cases of sexual harassment and assault (the "Committee"). Its mandate was to analyze how such cases are handled in workplaces across the province.[2]

The Committee made over 82 recommendations in its report titled *Mettre fin au harcèlement sexuel dans le cadre du travail : Se donner les moyens d'agir* [*putting an end to sexual harassment in the workplace by developing the means to act*], which was prepared in collaboration with law enforcement agencies and further to consultations with various stakeholders, including community groups, unions and employers , as well as groups of women workers.

The government included a number of recommendations from the report into Bill 42.[3]

This Bill, which is aimed at preventing and fighting psychological harassment and sexual violence in the workplace, was assented to on March 27, 2024. It introduces major amendments to various labour laws, which are likely to change existing practices within organizations. The following is an overview of these amendments and their potential impact.

A. Occupational health and safety

- The *Act respecting occupational health and safety* was first amended to introduce a definition of what constitutes”**sexual violence**,” whichcame into force on March 27, 2024, and reads as follows:

Any form of violence targeting sexuality or any other misconduct, including unwanted gestures, practices, comments, behaviours or attitudes with sexual connotations, whether they occur once or repeatedly, including violence relating to sexual and gender diversity.[4]

This broad definition could very likely affect existing employer policies and give rise to a host of problems needing to be resolved by the courts to ensure proper application.

- **Action programs and prevention programs [effective October 6, 2025]**: When developing an action program (for businesses with 20 workers or less) or a prevention program (for businesses with 20 workers or more), employers will be required to identify and anticipate psychosocial risks and risks related to sexual violence that may affect workers in their establishments.[5]

B. Industrial accidents and occupational diseases

- **New legal presumptions of employment injury [effective September 27, 2024]**: The Bill introduces two new legal presumptions of employment injury to reduce the burden of proof for victims of sexual violence in the following situations:
- Where injuries and diseases are the result of sexual violence suffered by a worker and perpetrated by the worker's employer, one of the employer's executives in the case of a legal person or a worker whose services are used by such employer; and
- Where a disease occurs within three months after the worker has been the victim of sexual violence.

The burden will then be on the employer contesting an injury of this nature to reverse the application of these presumptions. Handling employment injury claims will be even more difficult, as Bill 42 provides that employers will not have access to workers' medical records prior to hearings before the Administrative Labour Tribunal.

- **Employers prohibited from accessing medical records [effective September 27, 2024]**: Bill 42 sets out stricter obligations for health professionals designated by employers. Only the health professional designated by an employer will have access to the medical record in the possession of the Commission des normes, de l'équité, de la santé et de la sécurité du travail concerning the worker's employment injury.[6]

It will not be possible for the employer to obtain all information concerning a worker's medical condition, because the health professional will be required to limit disclosure to only the information needed to provide the employer with a summary of the file and an opinion on how to handle the

employment injury claim.[7]

The prohibition on access to medical records also carries important fines ranging from $1,000 to $5,000 for a natural person and from $2,000 to $10,000[8] for a legal person.

However, it does not preclude employers from obtaining medical records concerning the employment injury by way of an authorization or subpoena.

- **Extension of time limit for filing a claim [effective September 27, 2024]**: The new time limit for filing a claim for an injury or disease resulting from sexual violence is two years.[9] In all other cases, the time limit for filing a claim is six months from the occurrence of the injury.[10]
- **Cost of benefits imputed to all employers [effective March 27, 2024]**: As an exception to the principle that employers must cover the costs associated with employment injuries, where an employment injury is the result of sexual violence suffered by a worker, the Bill provides that the cost of benefits will automatically be imputed to the employers of all the units.[11]

However, we must bear in mind that the imputation of costs to all units will have repercussions as it will lead to an increase in the cost of compensation regime for all employers.

C. Labour standards

Bill 42 also introduces a number of amendments to the *Act respecting labour standards*, including the following.

- **Adjustments to harassment prevention and complaint processing policies [effective September 27, 2024]**: Such policies must now include:
    - The methods and techniques used to identify,

control and eliminate the risks of psychological harassment, including a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.
- The specific information and training programs on psychological harassment prevention that are offered to workers and the persons designated by the employer to handle complaints or reports.
- The recommendations on behaviour to adopt when participating in work-related social activities.
- The applicable procedures for making complaints or reports to an employer or providing an employer with information or documents; details about the person designated to handle complaints or reports; and information regarding the employer's obligation to follow up.
- The measures to protect the persons concerned by a psychological harassment situation and those who cooperated in processing a complaint or report regarding such a situation.
- The process for managing psychological harassment situations, including the process applicable to inquiries conducted by employers.
- The measures to keep complaints, reports, information or documents received confidential and, for the documents made or obtained in the course of managing a psychological harassment situation, the measures necessary to retain them for at least two years.[12]

The policy must form an integral part of the prevention program or action program under the *Act respecting occupational health and safety* **[as of the effective date to be set by the government, which will be no later than October 6, 2025]**.

- **Harassment by third-parties [effective September 27,**

2024]: Employers are expressly obliged to prevent psychological harassment "**from any person**." This includes any third parties they do business with, such as customers, subcontractors and suppliers.[13]

- **The passage of time does not clean the slate [effective March 27, 2024]**: An amnesty clause contained in a collective agreement will have no effect on disciplinary measures resulting from behaviours relating to physical or psychological violence within the meaning of the law.[14] This major amendment is aligned with developments in case law on applying amnesty clauses in psychological harassment situations.
- **Confidentiality of the psychological harassment complaint resolution process [effective September 27, 2024]**: Where the parties to a settlement of a psychological harassment complaint do not wish to undertake to keep the agreement confidential, they must expressly agree in writing to waive the confidentiality obligation in the agreement.[15]
- **Punitive damages even in cases involving employment injury [effective March 27, 2024]**: Where a worker's psychological harassment complaint is upheld and they have suffered an employment injury resulting from the psychological harassment, they may also be entitled to punitive damages.[16] The Administrative Labour Tribunal was previously prohibited from ordering an employer to pay punitive damages to a worker having suffered an employment injury resulting from psychological harassment.[17]
- **Expanded prohibition against reprisals [effective March 27, 2024]**: In addition to the cases already provided for in the ALS, an employer may not take reprisals against a worker on the ground that the worker has made a report involving psychological harassment or cooperated in the processing of such a report or a complaint.[18]

Pratical considerations

Given the many amendments introduced by Bill 42, all employers should keep abreast of new developments and best practices in preventing and handling harassment and violence in the workplace.

In the short term, we recommend that employers:

- Hire experts to review and update their prevention of harassment and violence in the workplace policies before **September 27, 2024**.
- Depending on each situation, retain the services of a health professional who will play a proactive role and liaise with the employer in the handling of an employment injury claim.
- Explicitly define the terms of the mandate given to such expert in order to pinpoint what information is required to handle the employment injury claim.
- Schedule training sessions for all staff, including managers and executives. These training sessions should cover not only the aforementioned amendments, but also the procedure for reporting a sexual harassment or violence situation, filing and handling a complaint and making sure the process remains confidential.
- Inform members of their organization of the new definition and the updated company policy and establish response guidelines for managers who will have to deal with the various situations that can arise.
- Designate a person who will be in charge of enforcing and applying the harassment prevention and complaint processing policies.
- Carefully and meticulously document all aspects of inquiries conducted further to sexual violence or sexual harassment situations.
- Enlist the help of specialists in the field to help them identify and analyze the psychosocial risks and risks

related to sexual violence that may affect workers in their establishment.

Lastly, as regards handling employment injury claims, despite the fact that employers will no longer have to cover associated costs all on their own, employers may still need to handle claims or contest them in some situations, and they will have the burden of reversing the application of the presumptions benefiting workers.

Limited access to medical records means more grey areas and more complex claims management. Given these significant changes, we believe it will be all the more important for employers to turn to qualified experts. When they do so, they should carefully set out the mandate that they wish to entrust to the expert in question to make sure that the opinion they obtain is detailed enough to adequately manage the employment injury claim.

The terms of the mandate will need be drafted such that the expert understands whether the information requested is relevant for the employer to properly handle the claim.

Footnotes

1. Statistics Canada, "Gender Results Framework: A new data table on workplace harassment," released on February 12, 2024, online: The Daily — Gender Results Framework: New and updated data tables (statcan.gc.ca).

2. This initiative was prompted by recommendation 138 of the report titled *Rebâtir la confiance : Rapport du comité d'experts sur l'accompagnement des victimes d'agressions sexuelles et de violence conjugale* [rebuilding trust: report from the committee of experts on support for victims of sexual assault and domestic violence], released in 2020.

3. *An Act to prevent and fight psychological harassment and sexual violence in the workplace*, Bill42 (assented to on March 21, 2024), 1st Sess.,

43rd Legis. (Qc) (hereinafter “B. 42”). The Bill’s provisions will gradually align with other legislative changes introduced by other recent bills, such as *An Act to modernize the occupational health and safety system*[3] and *An Act respecting the regulation of work by children*.

4. Section 33, B. 42; section 1, *Act respecting occupational health and safety* (“AOHS”).

5. Sections 35 and 36, B. 42; sections 59 and 61.2, AOHS.

6. Section 5, B. 42; section 38, *Act respecting industrial accidents and occupational diseases* (“AIAOD”).

7. Section 7, B. 42; section 39, AIAOD.

8. Section 16, B. 42; section 458.1, AIAOD.

9. Section 16, B. 42; section 271 and 272, AIAOD.

10. Section 10, B. 42; section 271, AIAOD.

11. Section 12, B. 42; section 327, AIAOD.

12. Section 18, B. 42; section 81.19 *Act respecting labour standards* (“ALS”).

13. Section 18, B. 42; section 81.19, ALS.

14. Section 20, B. 42; section 97.1, ALS.

15. Section 25, B. 42; section 123.17, ALS.

16. Section 24, B. 42; section 123.15(4.1), ALS.

17. s. 123.15(4) and 123.16, ALS.

18. Section 21, B. 42; section 122(2.1), ALS.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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