

How to Comply with OHS Workplace Harassment and Violence Requirements



The 14 things employers must do to protect workers from harassment and violence.

The OHS laws of all jurisdictions require employers to protect workers from workplace violence and harassment. But they do it in slightly different ways. And these subtle but significant legal differences can be quite confusing and frustrating, especially if you have operations in multiple jurisdictions. Here's a briefing that sorts it all out by providing an integrated workplace violence and harassment compliance checklist. Go to the OHSI website for Tools, how-to analysis and other resources for each item on the checklist.

Workplace Violence vs. Workplace Harassment

Although closely related, workplace violence and harassment aren't exactly the same. Violence, which deals primarily with physical acts and threats, has been a staple of OHS laws for much longer. Once Yukon implements its new rules, every jurisdiction in Canada will have a specific OHS regulation specifically addressing violence in the workplace.

Traditionally considered an HR issue, workplace harassment has steadily made its way into OHS laws, starting in 2010 when Ontario adopted Bill 168. Today, all but 2 jurisdictions' BC and Nova Scotia' specifically require employers to address not only violence but also harassment in the workplace. And even in those provinces, the duty to tackle harassment is likely implied under the 'general duty' clause of the OHS legislation requiring employers to take reasonable measures to protect workers from known risks, even if they're not actually listed in the regulations.

The 14 Basic Required Measures

While the details vary by jurisdiction, there are 14 basic measures employers must implement to prevent workplace harassment and workplace violence regardless of where in the country they're located.

1. Perform a Workplace Violence Hazard Assessment

All but 4 jurisdictions' NT, NU, QC, SK' require employers to perform a workplace violence hazard assessment at each workplace, typically in consultation with the JHSC, safety representative, or if there is no JHSC or safety representative, the workers. Some jurisdictions list the risk factor the assessment must consider, which typically includes:

- Previous experience in that particular workplace;
- General experience in workplaces of that industry or type; and
- The location and circumstances in which work may take place.

The new federal C-65 rules, which represent the current state-of-the-art for workplace violence and harassment regulations, also require consideration of workplace culture, demographics and physical design.

Rule: You don't have to perform a hazard assessment for workplace harassment.

Exception: Federal, Alberta and Yukon do require assessment of both violence and harassment. Under C-65, this must be done in one combined assessment. This is also advisable in Alberta and Yukon.

2. Select Appropriate Controls

Once the assessment is complete, employers must implement controls to eliminate or, if that's not practicable, minimize the risks identified. The approach is to follow the usual hierarchy of controls, starting with engineering controls, followed by administrative or work controls (which is essentially the only appropriate control for harassment) and use of PPE as a backstop and measure of last resort. Work controls must include procedures for recognizing and responding to acts of violence and calling for immediate help.

3. Implement a Prevention Policy/Program

The OHS laws require you to incorporate your basic workplace violence and harassment controls into one or more policies, programs and/or procedures. The various terms used to describe these things can get confusing:

- Prevention policy or policy statement (FED, MB, NT, NU, QC, SK**);
- Prevention plan (AB, NL**, NS*);
- Prevention policy + procedures (BC,* NL*, PEI, YK);
- Prevention policy + program (ON);
- Prevention policy + plan: SK*;
- Code of practice (NB).

Notes:

* Pertains to workplace violence only

** Pertains to workplace harassment only

But once you boil it down, the things you're supposed to do to prevent harassment and violence are pretty much the same, regardless of what the package is actually called. We'll list these things as we continue our checklist.

4. Guard Against Workplace Domestic Violence

Six jurisdictions' FED, AB, NB, NL, ON, YK' require employers to protect workers that are at risk of being subjected to domestic violence in the workplace if they are or reasonably should be aware of the danger, such as where a supervisor knows that a worker is married to a dangerous spouse with a history of violence. In 4 other jurisdictions' NT, NU, PEI, SK' the regulations don't specifically mention domestic violence but define 'violence' broadly enough to include acts of domestic violence occurring at the workplace.

5. Make the Right Commitment Statements

The workplace violence and harassment prevention policy/plan/program (which we'll refer to as 'policy' for simplicity's sake) must be in writing in either one or separate documents. Exception: Under federal rules, there must be a single, combined harassment and violence policy. In either case, the policy must make certain basic points about workplace violence and harassment, including a statement:

- Of the worker's right to a work environment free of workplace violence and harassment;
- Of the employer's commitment to take all practicable measures to eliminate or, if that's not possible, minimize harassment and violence hazards; and
- Clarifying that the prevention policy isn't intended to substitute for or eliminate any of a worker's other legal rights, which is essentially a code word for telling workers that they can still file complaints if they suffer discrimination or harassment on the basis of race, religion, age, sex, family status, disability or other grounds protected by the jurisdiction's human rights laws.

6. Establish Procedures for Workers to Report Harassment and Violence

You must implement and the policy must describe procedures workers can use to internally report workplace violence or harassment they experience or witness. Originally, the OHS laws required the employer to designate a supervisor or other representative to receive those reports. But in recognition of how this has been chilling reporting, especially of harassment, 5 jurisdictions' FED, NL, ON, PEI, YK' now require employers to establish third party alternatives for workers in case the employer is involved in the alleged harassment.

7. Establish and Implement Clear Investigation Procedures

Most jurisdictions require employers to do an appropriate investigation of workplace harassment and violence complaints or incidents. The federal C-65 rules establish an elaborate new system for resolving these so-called occurrences, including the right of the parties to resolve the matter externally via conciliation unless and until the investigator, who must come from outside the company, submits his/her report. Make sure the policy describes the investigation procedures and the means of notifying the parties of the investigation results and any corrective actions taken in response.

8. Make Privacy Assurances

The policy must typically state that the employer won't disclose the names of the persons involved and the circumstances of the matter being investigated unless disclosure is required to perform the investigation or implement corrective actions or otherwise allowed by law.

9. Establish and Implement Clear Response Procedures

Your policy should indicate how you'll respond to acts of violence and harassment that occur in your workplace, including a promise to hold wrongdoers accountable and implement appropriate corrective measures to fix the problems the investigation identifies and prevent a recurrence.

10. Describe Assistance and Support Available

Many jurisdictions require employers to provide certain kinds of help to victims of violence (and harassment under FED, AB and YK law), which must be described in the policy:

- Provide victims information about medical, psychological or other support services available within their geographical area: FED;
- Advise victims to seek medical treatment and post-incident counselling: AB, BC*, MB*, NL*, NT*, NU*, PEI*, SK*;
- Count time spent in referred treatment and counselling as work time: AB, SK*;
- Establish procedure to obtain assistance for victim: YK*.

Notes:

* Pertains to workplace violence victims only

11. Provide Appropriate Information to Workers at Risk of Violence

The policy should say that you'll provide workers who are exposed to risks of workplace violence information about the extent and nature of the risk and how they can guard against it. Nine jurisdictions' BC, MB, NL, NS, NT, NU, ON, PEI, SK' specifically require employers to notify workers about persons with a history of violence that they're likely to encounter at work, provided that the disclosure is limited to the minimum amount of information necessary to put the worker on notice of the danger:

- **OK:** Co-worker John Doe has a history of violent behaviour;
- **Not OK:** Co-worker John Doe has a psychiatric condition that makes him prone to commit violence.

12. Provide Appropriate Training

You must provide, and the policy must describe the workplace violence and harassment training you provide. The former should include training about how to recognize and respond to violence and call for immediate help if it occurs. Unlike violence training, which you may have to provide only to workers your assessment determines are exposed to workplace violence, workplace harassment training should be provided to everyone at your company. Be sure to maintain records of the training you provide.

13. Properly Report Workplace Violence Fatalities, Injuries and Incidents

Keep in mind that incidents of workplace violence are subject to normal OHS and workers' comp injury reporting requirements. C-65 also requires federally-regulated employers to provide a new kind of report when workplace violence fatalities occur. Two jurisdictions also require annual reports:

- Under federal law, employers must submit an annual report to the MOL by March 1 of each year listing information about the number, nature and outcomes of harassment and violence occurrences in the workplace during the preceding year; and
- Manitoba requires employers to provide annual workplace violence (but not harassment) reports containing similar information to the JHSC or safety representative.

14. Review Your Hazard Assessment and Prevention Policy

Last but not least, the employer must review the hazard assessment and prevention policy at regular intervals 'generally every 3 years' and as needed in response to incidents, new hazards or changes in conditions that the previous hazard assessment and policy didn't account for.