Psychological Harassment And Sexual Violence In The Workplace: Provisions Effective September 28, 2024

On March 21, 2024, the National Assembly of Québec unanimously adopted the long-awaited Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace* (the "Act").

While some of its amendments took effect on March 27, 2024, when the Act received royal assent, other major changes to the *Act respecting labour standards* (the "ALS"), *Act respecting industrial accidents and occupational diseases* (the "AIAOD"), *Act respecting occupational health and safety* (the "AOHS") and the *Labour Code* (the "LC") are set to take effect on September 28, 2024.

This article briefly summarizes the Act's major legislative amendments and what they mean for employers.

Amendments regarding mandatory content in policies for the prevention and handling of psychological harassment

Since 2019, all employers are required to adopt a psychological harassment prevention and complaint processing policy and to make it available to their employees. Through an

addition to section 81.19 ALS, the Québec legislature clarifies that these policies should include, among other things:

1. 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;
2. the specific information and training programs on psychological harassment prevention that are offered to employees and to the persons designated by the employer to manage a complaint or report;
3. the recommendations on behaviour to adopt when participating in work-related social activities;
4. the procedures for making complaints or reports to the employer or providing information or documents to the employer, the person designated to manage them, as well as the information on the follow-up that must be given by the employer;
5. the measures to protect the persons concerned by a situation of psychological harassment and the persons who have cooperated in the processing of a complaint or report regarding such a situation;
6. the process for managing a situation of psychological harassment, including the process that applies to the holding of an inquiry by the employer; and
7. the measures to ensure the confidentiality of complaints, reports, information or documents received and to ensure a preservation period of at least two years for the documents made or obtained in the course of managing a situation of psychological harassment.

Many employers will need to revise their policies to conform to these new requirements.

Confidentiality of settlement agreements

The Act also introduces section 123.17 ALS, which applies to settlement agreements between parties following a complaint concerning psychological harassment. While these agreements typically contain clauses regarding the confidentiality of what was said, written, or done during the settlement process, the Act adds that the parties must continue to preserve that confidentiality.

However, the parties can henceforth agree to relieve each other from the duty of confidentiality by way of a written agreement specifying the elements to which the agreement applies and when it takes effect.

Two new presumptions of employment injury

Another significant change was the introduction of two new presumptions facilitating the recognition of an employment injury resulting from sexual violence:

- s. 28.0.1 AIAOD: A worker's injury or disease is presumed to have arisen out of or in the course of the worker's work when it results from sexual violence suffered by the worker and committed by the worker's employer, any of the employer's executive officers in the case of a legal person or any worker whose services are used by the employer.
- s. 28.0.2 AIAOD: A worker's disease arising within three months after the worker suffered sexual violence at the workplace is presumed to be an employment injury.

It is important to note that the Act initially provided for an exception to the presumption in section 28.0.1 AIAOD if the sexual violence occurred "in a strictly private context." However, during special consultations, several groups called for this exception to be withdrawn, stressing that it places the burden of proving the context of the violence on the

victim. Without the exception, the presumption is likely to apply even if the event occurs in a strictly private context.

The new presumption under section 28.0.2 AIAOD places the emphasis on where the sexual violence took place (namely, the workplace) and not on the aggressor's identity. It is thus reasonable to believe that it could potentially apply to third parties such as clients or suppliers.

Longer period to file a claim for an employment injury

The Act amends sections 270, 271, and 272 AIAOD, extending the deadline for filing a CNESST claim from six months to two years for workers who suffered an employment injury or disease resulting from sexual violence.

This aligns the time limit for filing an employment injury claim with that for submitting a psychological harassment complaint under the ALS.

Limited right of access to a worker's medical record

After September 28, 2024, it will likely be far harder for an employer to access the medical record of a worker who filed an employment injury claim, regardless of the nature of that injury—even for claims unrelated to harassment or sexual violence.

Section 38 AIAOD currently provides that an employer has a right of access to the record in the possession of CNESST with respect to an employment injury suffered by a worker while employed there (administrative file). Section 39 AIAOD, meanwhile, provides that a health professional designated by the employer has a right to access the medical record of a worker and give the employer a summary of the record and to enable it to exercise its rights. However, the Act puts

considerable limits on this right of access. The amendments to section 39 AIAOD provide that a health professional can communicate “only the information required” to the employer to give a summary of the record and an opinion to enable it to exercise its rights.

The Act also imposes a fine of up to $10,000 for any illicit access to a medical record by the employer or the designated health professional.

This is sure to have major consequences for employers handling employment injury files. We anticipate that many CNESST decisions will be contested to protect employers’ rights while they wait to be granted access at the Administrative Labour Tribunal stage.

Amendments already in effect

Though this article focuses on the main amendments that will take effect on September 28, 2024, it is worth noting that the following amendments have been in effect since March 27, 2024:

- A definition of “sexual violence” has been introduced to the AIAOD and AOHS;
- Employers are now obligated to take necessary measures to prevent or put a stop to psychological harassment from any person;
- Amnesty clauses provided for in many collective agreements no longer apply in cases of physical, psychological, or sexual violence. In other words, such a clause cannot operate to prevent an employer, where the employer imposes a disciplinary measure on an employee for misconduct relating to physical or psychological violence, including sexual violence within the meaning defined in AOHS, from taking into account a disciplinary measure that was previously imposed on the employee for misconduct relating to one of those forms of violence after a certain period (s. 97.1 ALS);

- The cost of benefits due by reason of an employment injury resulting from sexual violence suffered by the worker is imputed to the employers of all the units (s. 327 para. 4 AIAOD).

The Act is clearly ushering in a major reform of Québec labour law, and employers would do well to update their practices and conform to the new rules.

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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