

Workplace Harassment Prevention – Compliance Game Plan



The employer's duty to prevent workplace harassment has evolved from an HR to a wider health and safety imperative. The duty began with human rights laws which ban not only harassment but all forms of discrimination. While these protections remain in effect, they cover only harassment based on race, national origin, sex, age and other personal characteristics listed in the human rights laws. In the past decade, jurisdictions have extended these protections to **all workers** by making harassment prevention a duty under OHS laws. The first generation of OHS harassment rules pretty much mirrored workplace violence requirements. But as their flaws became exposed, lawmakers began to reengineer them. The culmination of these efforts is the federal Bill C-65 rules that took effect on January 1, 2021, and which now represent the state-of-the-art for OHS harassment regulation. Here's a 12-step game plan to comply with OHS harassment rules regardless of where in Canada you operate.

Workplace Harassment vs. Workplace Violence

Before C-65: Historically, 'violence' has referred to acts and threats of physical harm while 'harassment' has been defined as including bullying, verbal abuse, gestures, displays and other forms of objectionable or unwelcome conduct that cause offence, stress, humiliation or psychological damage. These distinctions were important because workplace violence required stronger prevention measures than harassment. (Click [here](#) to see how the OHS laws of your jurisdiction define workplace harassment.)

C-65: The new approach uses the term 'violence **and** 'harassment' as a collective hazard subject to the same prevention measures. The premise is that both forms of conduct pose a threat and should thus be dealt with collectively as part of a wider effort to protect workers' psychological safety. Alberta and Yukon follow a similar approach. And Québec may do the same once it publishes its new OHS regulations.

12-Step Workplace Harassment Compliance Game Plan

No matter what part of Canada you're in, you must take 12 basic steps to prevent workplace harassment.

Step 1: Do a Workplace Harassment and Violence Hazard Assessment

Before C-65: Most jurisdictions require employers to do a hazard assessment for workplace violence but not harassment.

C-65: Federal and Yukon OHS regulations require a single, combined hazard assessment for both violence and harassment. (Alberta lists harassment as one of the things a general hazard assessment must address.)

What To Do: Continue your current workplace violence hazard assessment procedures but expand it to incorporate harassment. As before, designate a competent person who has the necessary knowledge, skills and experience to perform the assessment, in consultation with the workplace joint health and safety committee (JHSC) or health and safety representative. Base the assessment on 5 risk factors:

- The culture, conditions, activities and organizational structure of the workplace;
- Circumstances outside the workplace that could lead to harassment and violence in the workplace, such as domestic abuse or family violence;
- Reports, records and data related to harassment and violence in the workplace;
- The physical design of the workplace; and
- The current measures in place to protect workers' psychological health and safety.

One effective way to gather the information you need is to have workers fill out an anonymous survey relating their own experiences. Survey supervisors separately.

Step 2: Implement Appropriate Preventive Measures

Once the assessment is complete, you must implement preventive measures to eliminate or, if that's not reasonably practicable, minimize the harassment risks identified. Because it's a human risk factor, most of these measures will be administrative or work controls, including training and awareness and procedures for reporting, investigating and resolving harassment complaints, as we'll discuss below.

Step 3: Implement a Prevention Policy or Program

You must incorporate your basic workplace harassment controls into a prevention policy or plan (which we'll refer to as 'policy'), which can be freestanding or combined with your workplace violence prevention program. In either case, the remaining items of this Game Plan are items that your prevention policy must include.

Step 4: Adopt Statement of Commitment to Harassment-Free Workplace

Make sure your harassment prevention policy includes a written statement:

- Of workers' right to a work environment free of workplace harassment;
- Of the employer's commitment to take all reasonably practicable measures to eliminate or, if that's not possible, minimize harassment hazards; and
- Clarifying that the prevention policy isn't intended to substitute for or

eliminate any of the workers' other legal rights, which essentially means reminding 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.

Step 5: Implement Workplace Harassment Reporting Procedures

Your policy must include and clearly describe the procedures workers can use to internally report workplace harassment they experience or witness. **What To Do:** Designate a person or office where workers can report harassment along with an alternate where workers can report in case the primary designate is involved in the harassment incident. Also create a harassment incident report form allowing workers to report harassment anonymously.

Step 6: Implement Harassment Investigation Procedures

Procedures to ensure a fair, impartial and timely investigation of harassment reports is one of the most crucial elements of your prevention policy. **What To Do:** Even if you're not federally regulated, consider following the C-65 rules for investigating and resolving harassment complaints, including:

- The parties' right to resolve the matter externally, at least until the investigator submits his/her report;
- Specification of the professional credentials the investigator must have;
- The requirement that the investigator come from outside the organization or at least be perceived by both parties as being impartial;
- A description of the investigation procedures; and
- A description of the procedures for notifying the parties of the investigation results; and

Step 7: Protect Privacy of Persons Involved in Harassment Complaint

Your prevention policy should include assurances that you won't disclose the names of the persons involved or the circumstances of the harassment complaint under investigation unless disclosure is necessary to perform the investigation, implement corrective actions or otherwise permitted or required by law.

Step 8: Implement Procedures for Resolving Harassment Complaints

Make sure the prevention policy clearly describes your system for resolving privacy complaints, including an assurance to hold those found to have engaged in harassment accountable as well as a timetable and set of procedures for implementing actions that the investigator recommends to correct problems that led to the incident and ensure that it doesn't happen again.

Step 9: Describe Assistance and Support Available for Victims

Most jurisdictions require employers to provide certain kinds of help to victims of workplace violence but not harassment. The exceptions: Federal, Alberta and Yukon. **What To Do:** Even if it's not expressly required by OHS laws, it's highly advisable for all employers to provide support to harassment victims, which may include:

- Providing information about medical, psychological or other support

services available within their geographical area (required for federal employers under C-65);

- Advising victims to seek medical treatment and post-incident counselling (required in Alberta); and
- Counting time spent in referred treatment and counselling as work time (required in Alberta).

Step 10: Provide Harassment Prevention Training

You must provide for all workers and supervisors to receive training on workplace harassment. **What To Do:** Develop training in consultation with the JHSC or HSR and ensure that it covers:

- The different elements of your harassment prevention policy, including the reporting and investigation procedure;
- What is and is not harassment;
- A description of the relationship between workplace harassment and violence; and
- The prohibited grounds of discrimination under the human rights laws of your jurisdiction.

Step 11: Document Your Harassment Prevention Efforts

One of the most important but overlooked elements of harassment prevention is scrupulous recordkeeping. Records enable you to monitor the effectiveness of your prevention efforts. **What To Do:** Key records to maintain include copies of:

- Hazard assessment;
- Reports of harassment incidents;
- Investigator reports;
- Records documenting corrective actions and how incidents were resolved;
- Records of harassment training, including who received it, who delivered it, what it covered and the training date; and
- Records of prevention policy review.

Step 12: Provide for Policy Review

Be sure to review your workplace harassment and violence hazard assessment and harassment prevention policy, in consultation with the JHSC or HSR, at least 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.