

Minister of Employment,
Workforce Development
and Labour



Ministre de l'Emploi,
du Développement de la main-d'œuvre
et du Travail

Ottawa, Canada K1A 0J9

Mr. Bryan May, M.P.
Chair
Standing Committee on Human Resources, Skills and Social Development
and the Status of Persons with Disabilities
House of Commons
Ottawa ON K1A 0A6

Dear Mr. May:

I am writing regarding the Committee's proposals to further strengthen Bill C-65, An Act to amend the *Canada Labour Code* (harassment and violence), the *Parliamentary Employment and Staff Relations Act* and the *Budget Implementation Act, 2017, No. 1*. I would like to take this opportunity to thank the members of the Committee for the time and effort they have put into reviewing Bill C-65 to ensure it will effectively address harassment and violence, including sexual harassment and sexual violence, in federally regulated workplaces. Members of the Committee and witnesses have raised a number of important issues during the Committee hearings. I would like to outline how some of these issues will be dealt with in the regulations.

The framework introduced through Bill C-65 marks an important step towards making workplaces in federally regulated industries, and Parliament Hill, free from harassment and sexual violence. The Government of Canada has indicated its intent to bring Bill C-65 into force in the fall of 2019, subject to parliamentary approval and Royal Assent. To support the implementation of Bill C-65, we have started consultations. These will allow us to identify the specific requirements that employers and employees will need to follow in order to prevent incidents of harassment and violence in the workplace and protect employees against them, and to respond appropriately and offer support to victims when incidents do occur.

In accordance with the *Cabinet Directive on Regulatory Management*, our government will apply a Small Business Lens to the entire regulatory development process, and will undertake an analysis of the impact that the proposal will have on small businesses, with a view to reducing regulatory costs.

The current legal framework for dealing with violence in federally regulated workplaces is set out in Part II (Occupational Health and Safety) of the *Canada Labour Code*. Part II of the Code gives authority to the *Canada Occupational Health and Safety Regulations*. Part XX of the Regulations further addresses violence prevention in the workplace.

To implement Bill C-65, amendments will be made to Part XX of the Regulations to address the continuum of inappropriate behaviours that fall under the umbrella term of harassment, such as bullying, sexual harassment and threats of physical violence, in addition to the forms of violence that are currently covered.

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In keeping with the three pillars of the proposed legislation, there are three main areas of regulation: those that will help prevent harassment and violence from occurring; those that will help employers respond effectively to incidents when they do occur; and those that support victims, survivors and employers in the process. The following paragraphs describe, in broad terms, how the Government plans to amend the Regulations. Issues that we plan to consult on during the regulatory consultation process are also described below, as well as responses to the feedback we have received to date from the Committee.

Prevent

The first pillar of the new framework is focused on prevention. The Government of Canada believes that prevention will have the greatest overall impact on reducing incidents of harassment and violence in the workplace. That is why we are proposing regulations that would ensure that workplaces are equipped with clear and meaningful prevention policies that effectively address all forms of violence and harassment, including sexual harassment and psychological violence. The new regulations would enhance the role of workplace committees in prevention initiatives and require employers, employees and members of workplace committees to undergo training on harassment and violence prevention policies.

The enhanced role of workplace committees will include co-developing the prevention policy and its mandatory elements, identifying a roster of competent persons, and assisting in implementing the competent person's recommendations and in reporting incidents. In addition, they will provide support, as requested, to employees.

During the regulatory development process, we will be consulting with employers, unions, stakeholders and the public on the regulations the Government plans to amend, including:

- Identifying the essential elements of a workplace harassment and violence prevention policy, such as:
 - a clear outline of options/steps of the workplace resolution process, including what to do when the employer is the aggressor;
 - how to submit a complaint, including what to do when the employer is the aggressor;
 - process to follow if the employee is reluctant to file with a supervisor;
 - describing what constitutes reasonable grounds for a complaint, including how performance reviews and other necessary management procedures should be considered;
 - support offered to those who experience incidents;
 - harassment and violence awareness raising; and
 - internal reporting to ensure accurate data collection.

- Harassment and violence prevention training, including mandatory training of certain workers.
- Whether or not to address family violence in workplace harassment and violence prevention policies.
- Circumstances in which to allow exemptions for employers not to set up a workplace committee because the employer has an alternative that meets or exceeds requirements.

The following expands on items in the list above that relate directly to the Committee's feedback:

- The proposed regulations will require employers to outline, in their prevention policy, an alternative solution for submitting complaints to another neutral third party, in the event the employee is reluctant to file the complaint with their immediate supervisor.
- The new regime aims to create a safer space where all employees feel empowered to speak up when they believe harassment or violence has taken place. Clarifying what constitutes a complaint in the workplace harassment and violence prevention policy will help ensure that both employers and employees understand what is acceptable and what is not. It is generally accepted that incidents in which the individual knew, or reasonably ought to have known, that their behaviour would cause offence or harm to others, are unacceptable. In order to differentiate between reasonable and unreasonable grounds for complaints, employers may be required to outline situations demonstrating unacceptable behavior.
- Consultations on the regulatory amendments will also explore mandatory and regular training on harassment and violence for all employees, including employers and supervisors. Topics to be covered in the training could include: what constitutes harassment and violence; outlining the resolution process and how to submit a complaint; and providing support to those who experience harassment and violence.

Respond

The second pillar of the new framework is focused on responding appropriately to incidents of harassment and violence in the workplace. This requires an extensive overhaul of the current framework to develop an adequate resolution process to help create a culture where employees feel empowered to come forward with complaints and concerns of harassment and violence.

We will be consulting on the following items that the Government plans to amend related to employers' obligation to adequately respond to occurrences of harassment and violence. Further information is provided on the items that were raised during the Committee hearings.

- An updated resolution process:
 - time frames (see below)
 - protection against reprisal
 - confidentiality
 - options for resolution including informal processes, mediation, and competent person
 - alternative process in the event the alleged aggressor is the employer
 - outlining emergency response procedures
- Qualifications of a competent person, including impartiality;
- Appropriate disciplinary action by the employer towards an offending employee;
- Ability for former employees to bring forward a complaint;
- Annual reporting to the Labour Program, including what specific data points will be reported;
- Role of the workplace committee; and
- Employer obligations to implement recommendations following an investigation.

Time frames

As mentioned above, the amended regulations will include specific time frames. Examples of time frames to be discussed include, but are not limited to:

- Within five days of being made aware of the incident, the employer must consult with the complainant to begin drafting an investigation plan; and
- A mutually agreed upon investigation plan should be completed within 30 days of the complaint being received.

Competent Person

The regulations will be building on the current process under occupational health and safety regarding the identification of an impartial competent person, and will require that employers and employees mutually agree upon the competent person. The regulations will also outline the education and training that must be met in order for an individual to be deemed “competent”. The Labour Program will provide employers with a list of pre-assessed competent individuals.

Annual Reporting

Currently, employers must report all hazardous occurrences to the Labour Program. This reporting tool will be amended. Employers will need to provide additional information, which will include reports on workplace harassment and violence occurrences and whether they were resolved informally, or investigated either internally, by a mediator or a competent person. The annual reporting will include the nature of the incident, recommended corrective measures and evidence of implementation as well as any disciplinary actions taken, but will not include personal identifiers in order to protect privacy.

Confidentiality

The proposed legislation prioritizes the privacy and confidentiality of all parties involved in the investigation. Therefore, workplace committees will no longer participate directly in specific investigations into complaints of harassment and violence. That said, workplace committees will remain a critical part of harassment and violence prevention and will continue to be involved in policy development, training, and ensuring that corrective actions are taken.

Under the existing regulations, workplace committees receive copies of the competent persons' report. The amended regulations will stipulate that the complainant and the alleged perpetrator will both receive copies of the competent persons' report; however, to respect the rights and privacy of witnesses and all parties, the regulations will be amended to stipulate that the report should be redacted before distribution to the workplace committee.

Implementing Recommendations

Presently in the regulations, employers are required to take steps to assess risks and implement controls to help reduce occurrences of violence in the workplace. The amended regulations will strengthen this section, including explicitly requiring the employer to implement all recommendations made as a result of an investigation, unless it is not reasonably practicable to do so. For an action to be considered reasonably practicable, the required effort, time and cost must not significantly outweigh the benefits of the action and will depend on the specific circumstances of the workplace.

Support

The third pillar of the new framework highlights the importance of providing support to victims, survivors and employers. As part of Budget 2018, the Government of Canada has committed \$34.9 million over five years, including funds for other means beyond legislation and regulations, such as additional Labour Program investigators, an outreach hub and 1-800 call support line, educational materials as well as tools and resources for employers and employees.

To develop the regulations with regard to support, we will consult to amend the regulations on the following:

- Employer obligation to provide support to employees who have experienced harassment and violence in the workplace.
- The role of workplace committees to support employees.

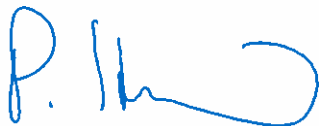
Employers are obligated under the legislation and regulations to provide support to employees who have experienced violence in the workplace. As part of the amended regulations, employers, unions, stakeholders and the public will be consulted on ways in which they can provide support to employees who have been subject to harassment and violence in the workplace.

The current regulations outline the key role of workplace committees to deal with matters raised by employees. The regulatory consultations will provide the opportunity for input and discussion on workplace committees' roles with respect to furthering support measures when harassment and violence occur in the workplace.

Additionally, the legislation will continue to prohibit the employer from retaliating against an employee who comes forward to complain or testify in any proceeding regarding a contravention against the health and safety of employees, including occurrences of harassment and violence. The employer may not dismiss, suspend, lay off or demote an employee, or impose any penalties or disciplinary action against an employee under these circumstances. As with any other contravention of the legislation, employees can submit a complaint to the Labour Program in the event the employer has not complied with their obligation to protect the health and safety of their employees.

The regulations will be robust and will address many of the issues raised by the Committee. As indicated during Committee hearings, we are committed to a tripartite consultation process in which the Government will engage employer and employee groups to inform the drafting of the regulations. I look forward to working together to ensure that Bill C-65, its associated regulations, and the funding provided through Budget 2018, effectively address workplace harassment and violence in federally regulated workplaces.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'P. Hajdu', with a stylized flourish at the end.

The Honourable Patty Hajdu, P.C., M.P.
Minister of Employment, Workforce Development and Labour