



Certified to be a true copy of an Order of Her Honour the Lieutenant Governor in Council dated October 15, 2019.

Executive Council  
Prince Edward Island

EC2019-710

**OCCUPATIONAL HEALTH AND SAFETY ACT  
WORKPLACE HARASSMENT REGULATIONS**

Pursuant to section 46 of the *Occupational Health and Safety Act* R.S.P.E.I. 1988, Cap. O-1.01, Council made the following regulations:

**PART 1 - INTERPRETATION AND APPLICATION**

1. In these regulations,

(a) "Act" means the *Occupational Health and Safety Act* R.S.P.E.I. Act 1988, Cap. O-1.01;

(b) "harassment" means any inappropriate conduct, comment, display, action or gesture or any bullying that the person responsible for the conduct, comment, display, action or gesture or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety, and includes

(i) conduct that is based on any personal characteristic such as, but not limited to, race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin, gender identity or pregnancy, and

(ii) inappropriate sexual conduct that is known, or ought reasonably to be known, to the person responsible for the conduct to be unwelcome, including, but not limited to, sexual solicitations or advances, sexually suggestive remarks, jokes or gestures, circulating or sharing inappropriate images, or unwanted physical contact.

2. (1) For greater certainty, harassment as defined in clause 1(b) includes both Single and repeated occurrences

(a) repeated inappropriate conduct, comments, displays, actions or gestures or incidents of bullying that have a harmful effect on the worker's psychological or physical health or safety; and

(b) a single occurrence of inappropriate conduct, comment, display, action or gesture or bullying that has a harmful effect on the worker's psychological or physical health or safety.

(2) A reasonable action taken by an employer or supervisor relating to the management and direction of the workers or of the workplace is not workplace harassment. Exception

**PART 2 - RESPONSIBILITIES OF WORKERS AND EMPLOYERS**

3. (1) A worker shall keep the details of a harassment complaint confidential unless, and to the extent that, disclosure is necessary in order to report the incident of harassment or to cooperate in the investigation of the complaint in accordance with subsection (2). Confidentiality

(2) A worker shall cooperate in the investigation of a harassment complaint in the workplace. Worker responsibilities

4. (1) An employer shall, in consultation with the committee or representative, if any, develop and implement a written policy to prevent and investigate harassment in the workplace that includes Employer responsibilities

(a) a definition of harassment that is consistent with clause 1(b) of these regulations;

(b) a statement that every worker is entitled to work free of harassment;

(c) a commitment that the employer shall ensure, as far as is reasonably practicable, that no worker will be subjected to harassment in the workplace;

- (d) a commitment that the employer shall take corrective action respecting any person under the employer's direction who subjects a worker to harassment;
- (e) information or procedures about
  - (i) how to make a harassment complaint to the employer or supervisor,
  - (ii) how to make a harassment complaint to a person other than the employer or supervisor, if the employer or supervisor is a subject of the complaint,
  - (iii) how a harassment complaint will be investigated, and
  - (iv) how the complainant and subject of the complaint will be informed of the results of the investigation and any corrective action that has been or will be taken as a result;
- (f) a statement that the employer shall not disclose any identifying information about any person involved or the circumstances relating to the complaint to any person unless disclosure is
  - (i) necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint, or
  - (ii) permitted by law;
- (g) a statement that the employer's harassment policy is not intended to discourage, prevent, or preclude a complainant from exercising other legal rights pursuant to any other law;
- (h) a statement that the employer's harassment policy does not preclude a worker from filing a complaint under the *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12; and
- (i) a statement that the employer shall not reprimand, seek reprisal or discriminate against a worker who has made a workplace harassment complaint in good faith.

(2) In order to ensure that an investigation appropriate to the circumstances will be conducted into a complaint of harassment in the workplace, an employer may refer the investigation to an impartial person within or outside the workplace who

Referral to impartial person

- (a) is not directly involved in the incident or the complaint;
- (b) is not directly under the control of the person who is the subject of the complaint or otherwise in a conflict of interest; and
- (c) has knowledge of the workplace harassment provisions of the Act and these regulations and other applicable laws.

(3) An employer shall make a copy of the harassment policy readily available to workers.

Policy shall be made available

5. An employer who knows or ought reasonably to know that harassment in the workplace is occurring shall ensure that

Duty of employer

- (a) the source of the harassment is identified and the harassment stopped; and
- (b) reasonable steps are taken to remedy the effects of the harassment and to prevent or minimize future incidents of harassment.

**PART 3 - INVESTIGATION**

6. An employer shall ensure that an investigation appropriate to the circumstances is conducted into a complaint of harassment in the workplace.

Duty of employer - investigation

7. (1) Where an officer has reason to believe that

Officer's powers respecting workplace harassment

- (a) an employer has not established a written policy on workplace harassment that meets the requirements of section 4;
- (b) an employer has established a harassment policy that is inconsistent with the requirements of the Act or these regulations;
- (c) the employer has failed to follow the harassment policy in responding to a complaint of workplace harassment;
- (d) the employer has failed to take reasonable steps to resolve a complaint of workplace harassment; or
- (e) the employer has contravened a provision of the Act or these regulations with respect to the prevention or investigation of workplace harassment,

the officer may issue an order to the employer in accordance with section 8 of the Act.

(2) In addition to an officer's authority under the Act, the officer may issue an order requiring the employer to cause the investigation of a harassment complaint to be conducted by an impartial person possessing the knowledge, experience or other qualifications acceptable to the officer, at the employer's expense. Order for investigation by impartial person

8. At the close of an investigation referred to an impartial person by an employer pursuant to subsection 4(2), or ordered by an officer under subsection 7(2), the impartial person Recommendation by impartial person

- (a) shall make a determination as to whether workplace harassment occurred; and
- (b) may make recommendations to the employer regarding corrective action.

9. (1) After consideration of any recommendations made by the impartial person pursuant to clause 8(b), it is the employer's responsibility Determination by employer

- (a) to determine the corrective action that is required in the circumstances; and
- (b) implement that corrective action in accordance with clause 5(b).

(2) Notwithstanding subsection (1), where a determination has been made that harassment occurred in the workplace, and the employer has failed to determine the required corrective action or to take the necessary steps to implement the corrective action, an officer may order the employer to take the steps the officer considers necessary to remedy the harassment and prevent further occurrences. Authority of officer

10. These regulations come into force on July 1, 2020. Commencement

#### EXPLANATORY NOTES

SECTION 1 establishes definitions to be used in the regulations.

SECTION 2 clarifies the application of the term "harassment".

SECTION 3 requires workers to cooperate in the investigation of a complaint of workplace harassment and to keep the details of the investigation confidential.

SECTION 4 specifies the content of the written policy to prevent harassment in the workplace that an employer is required to develop and implement.

SECTION 5 establishes the duty of an employer who knows or ought reasonably to know that harassment is occurring in the workplace.

SECTION 6 requires an employer to ensure that a complaint of harassment in the workplace is investigated in a manner appropriate to the circumstances.

SECTION 7 authorizes an officer to issue an order to an employer in respect of the specified matters related to workplace harassment.

SECTION 8 requires an impartial person who has made an investigation to make a determination as to whether harassment has occurred and authorizes the person to make recommendations for corrective action to the employer.

SECTION 9 provides that it is the employer's responsibility to consider any recommendation made by the impartial person, to determine the corrective action to be taken and to implement it.

SECTION 10 provides for the commencement of the regulations.



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