



# GUIDE FOR EMPLOYEES



Preventing Workplace Harassment & Violence: Toolkit for Trucking & Logistics Employees

A GUIDE FOR FEDERALLY REGULATED WORKPLACES

## Understanding the Workplace Harassment & Violence Prevention Regulations



***Disclaimer:** This guide aims to provide an overview of the changes Bill C-65 makes to existing law. This guide does not constitute legal advice.*



The federal government has introduced *Bill C-65* to simplify how harassment and violence in the workplace are handled. *Bill C-65* and its Regulations came into force on January 1, 2021, so it is important for employees to understand how they will be affected.

### HOW WILL THIS IMPACT YOU?

The Bill requires your employer to provide employees with new harassment and violence training, to continue to assist former employees with issues of harassment, and to restructure their internal process for filing complaints. These changes aim to make your workplace safer, by making it easier to prevent and report workplace harassment.



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### HOW TO FILE A COMPLAINT ABOUT HARASSMENT:

#### 1 - Understand what is and is NOT appropriate in the workplace

**Bill C-65** creates the following definition for harassment and violence under **Section 122(1)** of the **Canada Labour Code**:

*“any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.”*

#### HARASSMENT

Rude, degrading or offensive remarks; Sexist, racist or offensive emails or pictures; Repeatedly singling out an employee; Practical jokes that embarrass or insult another  
Offensive gestures; Patronizing or condescending behaviour; Abuse of authority; Vandalism of personal property; Physical or sexual assault; Threats or intimidation; Unwanted sexual behaviours; or Cyber bullying/harassment online.

#### SEXUAL HARASSMENT

Unnecessary physical contact, such as inappropriate touching; Unwarranted sexual advances/flirting; Displaying pornography or sexual images; Offensive sexual jokes; or Vulgar language relating to sexuality, sexual orientation or gender

#### VIOLENCE

Violence in the Bill includes the exercise of force against an employee that could cause physical or psychological injury.

#### WHAT IS NOT INCLUDED?

Disagreements, Constructive criticism, Legitimate exercise of management authority or responsibility such as: progressive discipline OR following up on work; Work related stress; or Requiring performance to job standards.

Typically, harassment and/or violence involves a series of events. Repeated unwarranted behaviours that include any of the aforementioned criteria may be considered harassment, but a single incident may constitute harassment if it is significant enough to seriously offend or cause serious injury.



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### 2 - Find out if you are covered

To be protected by the new legislation, first, the behaviour you want to report must have happened in the workplace. “Workplace” has a fairly broad definition, and can mean at a job site, a work event, or even on the road. Second, you must be an **employee** or **dependent contractor**. **The differences between who is and isn’t covered is outlined below:**

#### EMPLOYEES

##### EMPLOYEE

Any person employed by an employer (including dependent contractors) but does not include a person who performs management functions.

Whether or not a person is a manager will depend on the structure of the business and the duties they perform, not just their formal title.

#### CONTRACTORS

The *Canadian Labour Code* defines a contractor as: the owner, purchaser, or lessee of a vehicle that is used for hauling merchandise or goods, who has entered a contract that requires them to provide and operate their own vehicle for the purposes of hauling. They will make a profit from the difference between what it costs for them to fulfil the contract (operate the vehicle, make the delivery, etc.) and what they were paid to fulfil the contract.

**NOTE:** *It does not matter, in and of itself, if an employer and worker signed an agreement that states the worker is a contractor. What defines a worker’s status as either employee or contractor is the way the employment relationship works in practice.*

**There are a number of factors that determine if a worker is an employee or a contractor:**

- 1) **Control** – An employee will have less control over their workload, salary, hours, duties, and the profitability of the business itself than a contractor. A contractor may be responsible for finding their own work, and will assume risk for their businesses profitability.
- 2) **Equipment** – An employee will generally rely on the employer to provide these, while a contractor will provide their own tools and equipment. Contractors also incur the loss of replacing or repairing their tools and vehicle.
- 3) **Hiring** – Employees generally cannot hire people to assist them with their job, while contractors can.
- 4) **Financial Risk** – Contractors shoulder a bigger risk by taking on contracts, because (as outlined above) they’re responsible for running their own business. They take on the risk of losing money due to large operating costs, bad contracts, etc.



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### DEPENDENT CONTRACTOR

Dependent contractors **are** protected under the new legislation. They exist in a sort of middle category between employee and independent contractor. As the name suggests, the defining traits of a working relationship that make a worker a *dependent* rather than *independent* contractor are their exclusivity in working for the employer rather than numerous clients, and their overall financial dependency on the employer.

In practice, “dependency” means that the employer must provide “substantially more than the majority” of the contractor’s income. Therefore, if the contractor relies on an employer for more than 50% or more of their income, they’re likely to be found economically dependent on the employer.

### INDEPENDENT CONTRACTOR

Independent contractors are **not** protected under the new legislation. They meet the definition of a contractor as listed above, but are not economically dependent on the employer. They will likely perform a number of contracts with different clients, and will not rely on any one client for more than 50% of their income.

Owner Operators and Personal Services Business drivers may or may not be considered employees or dependent contractors, depending on factors of the working relationship, described above.

### 3 - Pay attention to the timelines

If you have left the job where you experienced the harassment or violence in question, you can still report the incident to your former employer within **3 months** of leaving your job. You can also apply to extend this deadline by contacting the Minister of Labour’s office, and the Minister will then have the power to investigate the conduct after the 3-month window. After you have reported the conduct, your employer has around 1 year to resolve the issue.

### 4 - Locate the designated person in your workplace

Your employer will appoint a specific person within your workplace that will be responsible for receiving all complaints. They are known as the designated recipient. The goal is to make employees feel safer by making sure that there are neutral people available to handle harassment issues and ensure that privacy of all parties is maintained throughout the process. This is so employees can report their concerns without fear of “payback” from their supervisor, or judgement from their co-workers. If you feel comfortable with your supervisor, you are still allowed to report to them directly, but it is not required.

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## 5 - Form your complaint

When you make your complaint to the designated person, you can either explain the issue in your own words (a verbal complaint) or provide them with a written statement. The complaint should include information about who was involved, a detailed description of what occurred, and when the harassment or offensive behaviour happened.

The employer or designated recipient must confirm they have received your complaint within 7 days of receiving it. Note that your employer or designated recipient should only contact the source of harassment or violence if you agree that it is appropriate. However, the source of harassment or violence must be contacted if you choose to proceed with conciliation and/or an investigation.

## 6 - After you have reported - what to expect

Before seeking assistance outside your workplace, you and your employer will have to try and resolve the issue together. In practice, this means that you will make your complaint as described in steps 4 and 5, and then your employer has 1 year after the day on which you reported the harassment to **complete** the resolution process. Under the Regulations, you can expect the resolution process to begin with 45 days of your complaint being made.

The parties involved can engage in a negotiated resolution or “conciliation” which is like a mediation where a neutral third-party attempts to assist in facilitating a resolution. If a complaint is not resolved through conciliation or negotiated resolution, an investigation of the issue must be carried out if the person who has made the complaint requests it. This investigation should result in a report and recommendations for how to proceed. If no resolution has occurred by the 1-year mark following when the complaint was made, **then** you or your employer may apply to the Minister for help. The Minister may then decide to investigate the complaint.

## WORKPLACE HARASSMENT & VIOLENCE PREVENTION POLICY

In addition to training, your employer must create a “workplace harassment and violence prevention policy”. The policy must be reviewed and updated every three years, or following any change to any element of the policy.

The policy must be made available to all employees, and must include the following:

- The employer’s mission statement regarding the prevention of harassment and violence in the workplace;
- Descriptions of the roles of the employer, designated recipient, employee, policy committee, work place committee and health and safety representative in relation to harassment and violence in the workplace;
- A description of the risk factors that contribute to workplace harassment and violence;

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- A summary of the training that will be provided;
- A summary of the resolution process;
- The reasons why a review of the workplace assessment will take place;
- A summary of emergency procedures;
- A description of how the employer will protect employees' privacy;
- A description of additional recourse available to those involved in harassment or violence in the workplace;
- A description of support measures available to employees; and
- The name of the designated person to receive complaints (including complaints related to your employer not complying with the *Canada Labour Code*).

### What if I need more info?

- Under *Bill C-65*, employers are required to train and inform employees, supervisors and managers about their rights and responsibilities relating to workplace harassment and violence.
- Employees must receive training within 3 months of beginning their employment, and at least once every 3 years after that.
- Employers are also required to make a copy of the relevant *Canada Labour Code* regulations and their workplace harassment and violence prevention policy available to employees.
- *Bill C-65* and the *Canada Labour Code* are both available online.

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## What is expected of me?

## Employees will have a duty to:

- Assist in health and safety matters while at work and comply with health and safety procedures and instructions.
- Report all accidents, injuries, and anything that endangers health and safety including violence or harassment witnessed.
- Avoid contributing to harassment and violence in the workplace.

## How else can I help?

- Employers are required to designate a person to whom complaints will be directed regarding harassment and violence, and this person should be identified in the employer's workplace violence and prevention policies.
- This person must have experience dealing with harassment or violence and have knowledge of the *Canadian Labour Code* and the *Canadian Human Rights Act*.
- If you qualify, you may be chosen as this designated person.