

An Act to Prevent and Fight Psychological Harassment and Sexual Violence in the Workplace: How It Could Impact Your Business.



Bill 42, which received royal assent on March 27, 2024, introduces significant amendments for workplaces in Québec. It aims to strengthen employee protection against psychological harassment and sexual violence. Employers must comply with these changes by adapting their policies and practices, failing which they will be subject to recourse or fines. Fasken is aware of the challenges in complying with ever-changing legislation, and is positioning itself as a preferred partner for businesses that wish to be prepared for the new requirements under this Act. We are at your service to review and strengthen your internal policies, including your internal policy on psychological harassment.

What are the objectives of Bill 42?

- › Ensuring better protection for employees in their workplace;
- › Providing a framework for the recourses to ensure such protection.

Some important changes arising from Bill 42



The definition of “sexual violence” is broadened to include various inappropriate behaviours with a sexual connotation, including those affecting sexual and gender diversity.



An employment injury is presumed in cases resulting from sexual violence, with a reversed onus falling onto the employer to reverse the application of this presumption.



The terms of access to medical records are amended for employers, restricting the information they can obtain for the purposes of managing and challenging an employment injury claim.



The Tribunal may hereafter order punitive damages for psychological harassment even if an employment injury results from that harassment.



The policy must be revised and amended to reflect the new mandatory minimum content; such policy must be implemented within your business no later than September 28, 2024, and must be integrated into your prevention program no later than October 2025.



The time limit is extended to two years for filing a claim with the CNESST for injuries related to sexual violence.



The obligation to prevent psychological harassment now applies to any third party in the workplace.



Protection against retaliation for employees reporting psychological harassment behaviour.



Amnesty clauses are prohibited with respect to disciplinary measures related to violent behaviour.

Next important date:

- › **Prior to September 28, 2024:** developing a strategy for communicating medical summaries with the expert physician in the context of CNESST records of employment injuries, and updating the psychological harassment management policy, in accordance with section 81.19 of the ARLS. Train your managers and employees.

Here’s how Fasken is ready to support you in drafting and implementing policies consistent with the new legislation in effect:

- › **Audit and comprehensive analysis:** assessing your current policies and practices related to the prevention and management of psychological harassment, sexual harassment, and violence in the workplace to determine the necessary adjustments in accordance with the new legislative provisions.
- › **Tailored advice:** providing personalized and practical recommendations to ensure compliance with your policies, while respecting your corporate culture.
- › **Policy development and updates:** drafting or amending your internal documents to reflect legal requirements and best practices for the prevention of and response to inappropriate behaviours.
- › **Specialized training:** planning training sessions for your managers and employees to raise awareness of new standards and provide them with tools to intervene effectively.

Be proactive with the right advice

In a context where prevention and management of psychological harassment have become critical issues for businesses, Fasken makes available its skills to ensure rigorous and respectful treatment of these sensitive situations. Our service offering includes comprehensive support for conducting inquiries following complaints or reports of psychological harassment, as well as when the employer becomes aware of such a situation.

Key steps in situations of psychological harassment inquiries:

Step 1

- ✓ **Pre-study:** thorough analysis of the documentary evidence submitted by the complainant or collected by the employer, and strategic advising before the inquiry begins.
- ✓ **Evaluation of the complaint:** initial analysis to assess the admissibility of the complaint and plan next steps.

Step 2

- ✓ **Coordination of inquiry:** contacting the parties involved and the witnesses, if any, to ensure the logistics of the inquiry, in collaboration with unions and employer representatives, if any.
- ✓ **Preparation and conduct of interviews:** meticulously preparing for meetings, and conducting inquiry interviews with relevant parties.

Step 3

- ✓ **Analysis of data collected:** reviewing documents and statements collected during the inquiry.
- ✓ **Draft of written statements:** preparing written statements from witnesses and parties involved when deemed necessary.

Step 4

- ✓ **Inquiry Report:** developing a comprehensive inquiry report and a summary report, where required, that includes our findings and analysis in support of those findings.

Step 5

- ✓ **Results presentation:** communicating findings to employer representatives, using a transparent and professional approach. These same conclusions can also be communicated verbally to the parties involved when required by the employer.

Step 6

- ✓ **Support and recommendations:** offering continued assistance to the employer during the inquiry.
- ✓ **Post-inquiry follow-up:** supporting the implementation of recommendations.
- ✓ **Specialized training:** proposing targeted and adapted training, individually or in groups, in order to allow the employer to meet their obligations to prevent harassment, but also to better equip the employer when implementing the recommendations of the inquiry.

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