



# ESDC Workplace Harassment and Violence Prevention Policy

January 2021





# Harassment and Violence Prevention Policy

ESDC

## Mission Statement

Employment and Social Development Canada (ESDC or “the Department”) is committed to a safe, healthy and respectful workplace, free from harassment and violence.

This Policy aims to prevent workplace harassment and violence from happening, to respond to situations in which harassment and violence have occurred, and to support victims of harassment and violence.

When allowed to persist, harassment and violence may have adverse effects on the mental health and engagement of employees, as well as on the quality of their work. In a complex and demanding work environment that brings together diverse people where collaboration is essential to success, misunderstandings and interpersonal conflicts are inevitable.

The organizational culture has an influence on how colleagues interact with one another and should therefore promote the awareness and practice of effective communication and interpersonal skills. The ongoing effort to demonstrate respect and civility is everyone's personal responsibility.

Occurrences of workplace harassment and violence will be resolved by means of identifying measures that can be implemented to prevent a recurrence of harassment and/or violence in the workplace.

There is no personal remedy or redress options under this Policy (refer to *Appendix B* for available recourse options). Should ESDC determine that disciplinary measures may be warranted, these will be addressed outside of this Policy.

No employee shall be penalized or reprimanded when acting in good faith while following this Policy, and any supporting procedure for addressing situations involving harassment and violence. This Policy does not prevent an employee from exercising their rights under the *Code* or any other legislation.



## Application

This Policy applies to all employees in every work location within the Department, including Service Canada, the Labour Program and all other service offerings managed by ESDC, as well as to every person granted access to the workplace. This includes the workplace, or any location or any event related to work activities, including:

- ▶ while working remotely / from home
- ▶ while on travel status;
- ▶ at a conference where attendance is sponsored by the employer;
- ▶ at employer sponsored training activities / information sessions;
- ▶ at employer sponsored events, including social events; and
- ▶ when using communication technologies where there is a connection to the workplace.

## Authorities and References

The Department is committed to providing a healthy and safe work environment, in accordance with the:

- ▶ [Canada Labour Code \(Part II – Occupational Health and Safety\)](#)
- ▶ [Workplace Harassment and Violence Prevention Regulations \(WHVPR\)](#)
- ▶ [Canada Occupational Health and Safety Regulations \(COHSR\)](#)
- ▶ [Treasury Board Directive on the Prevention and Resolution of Workplace Harassment and Violence](#)
- ▶ [Policy on Government Security](#)
- ▶ [National Joint Council \(NJC\) OHS Directive](#)
- ▶ [Canadian Human Rights Act](#)
- ▶ *Departmental Occupational Health and Safety Policy and Program*

## Definition of Harassment and Violence

The *Canada Labour Code* (the *Code*) defines harassment and violence at subsection 122(1) as: “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

Harassment can include, but is not limited to, any of the following acts or attempted acts:

- ▶ Spreading malicious rumours or gossip about an individual or a group;
- ▶ Cyber bullying (threatening, spreading rumours or talking negatively about an individual online);
- ▶ Threats made over the phone, by email, or through other medium to an employee, including from a (ex) partner or family member;
- ▶ Making offensive jokes or remarks;
- ▶ Playing unwanted or practical jokes;
- ▶ Socially excluding or isolating someone;
- ▶ Stalking or inappropriately following a person;
- ▶ Tampering with someone's work equipment or personal belongings;
- ▶ Vandalizing or hiding personal belongings or work equipment;
- ▶ Impeding a person's work in any deliberate way;
- ▶ Persistently criticizing, undermining, belittling, demeaning or ridiculing a person;
- ▶ Intruding on a person's privacy;
- ▶ Public ridicule or discipline;
- ▶ Unwelcomed physical contact;
- ▶ Sexual innuendo / insinuation;
- ▶ Unwanted and inappropriate invitations or requests, including of a sexual nature;
- ▶ Displaying offensive posters, cartoons, images or other visuals;
- ▶ Making aggressive, threatening or rude gestures;
- ▶ Misusing or abusing of one's authority, including constantly changing work guidelines, restricting information, setting impossible deadlines that lead to failure, and/or blocking applications for leave, training or promotion in an arbitrary manner;
- ▶ Engaging in any of the actions, behaviours, conduct and comments outlined above against a person because of that person's race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or any of the other prohibited grounds that are listed in the *Canadian Human Rights Act*.

## ***Harassment is Not***

Harassment is not any of the following:

- ▶ Consensual workplace banter and interactions (unless the banter includes hurtful remarks about others, especially if they pertain to any of the prohibited grounds listed above);
- ▶ Reasonable management action carried out in a fair way, such as day-to-day actions carried out by a supervisor or manager related to performance, absenteeism, assignments, discipline and even dismissal – providing it is not abusive or discriminatory;
- ▶ Every workplace disagreement. Granted, if a conflict is poorly handled or left unresolved, it can lead to harassment.

## ***Violence***


Violence can include, but is not limited to, the following acts or attempted acts:

- ▶ Verbal threats or intimidation;
- ▶ Verbal abuse, including swearing or shouting offensively at a person;
- ▶ Unwelcome contact of a sexual nature;
- ▶ Rape;
- ▶ Kicking, punching, scratching, biting, squeezing, pinching, battering, hitting or wounding a person in any way;
- ▶ Attack with any type of weapon;
- ▶ Spitting at a person;
- ▶ Homicide.

## ***Role of ESDC / Employer***

The role of ESDC in relation to harassment and violence in the workplace includes taking reasonable actions including, but not limited to:

- ▶ Promoting a safe, healthy workplace, free from harassment and violence;
- ▶ Preventing, mitigating and, where possible, eliminating harassment and violence;
- ▶ Dedicating sufficient attention, resources and time to address factors that may contribute to workplace harassment and violence, and to prevent and protect against it;
- ▶ Communicating to employees the details of this Policy, including information about factors contributing to workplace harassment and violence, and their responsibilities related to it;

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- ▶ Providing training specific to the culture, conditions and activities of the workplace as it relates to workplace harassment and violence, jointly developed by, or identified in consultation with, the Policy Health and Safety Committee (PHSC);
  - ▶ Carrying out a workplace assessment consisting of the identification of hazards and risks related to harassment and violence in the workplace jointly with the PHSC;
  - ▶ Implementing preventive measures to eliminate or minimize risks related to workplace harassment and violence, jointly with the PHSC, and assuring the continual monitoring of the effectiveness of those preventive measures;
  - ▶ Identifying the designated recipient to whom notification of a harassment or violence occurrence may be given;
  - ▶ Responding to and resolving all workplace harassment and violence occurrences without delay, including addressing issues and behaviours that may not yet meet the threshold of violence and harassment;
  - ▶ Identifying [emergency procedures](#) that must be implemented when an occurrence poses a threat or immediate danger to the health and safety of an employee, jointly with the PHSC, and reviewing these each time the procedures are applied;
  - ▶ Supporting employees affected by workplace harassment and violence;
  - ▶ Engaging the designated recipient whenever a complaint is brought to their attention;
  - ▶ Ensuring the resolution process is completed within one (1) year after the day on which a notice of an occurrence is received;
  - ▶ Sharing an investigator's report with the principal party, responding party, the Workplace Health and Safety Committee (WHSC) or Health and Safety Representative (HSR), and jointly determining with the committee or representative which of the recommendations in the report will be implemented;
  - ▶ Maintaining and protecting records relating to harassment and violence prevention and resolution of occurrences, and ensuring reporting requirements are fulfilled;
  - ▶ Reporting occurrences of harassment and violence that result in a fatality to the Minister of Labour within 24 hours of being notified of an occurrence;
  - ▶ Providing an annual report that aggregates data on all occurrences of harassment and violence to the Minister of Labour;
  - ▶ Complying with all other aspects of the Regulations and the *Code* as they relate to harassment and violence.

## Role of Employees


The role of all employees in relation to harassment and violence prevention at ESDC include, but are not limited to:

- ▶ Treating everyone at the workplace with respect and civility, and adhering to expected behaviours described in the [ESDC Code of Conduct](#);
- ▶ Participating in training as defined by the Policy;
- ▶ Reporting all occurrences of workplace harassment and violence, experienced or observed, to their supervisor or to the designated recipient;
- ▶ Reporting risk factors that may contribute to workplace harassment and violence to the employer;
- ▶ Where appropriate and safe, informing a perpetrator of harassment and/or violence that their actions are inappropriate and unwelcome;
- ▶ If implicated in the resolution process for an occurrence and where appropriate, making every reasonable effort to resolve an occurrence of harassment and/or violence through negotiated resolution;
- ▶ Cooperating in the resolution of workplace harassment and/or violence occurrences;
- ▶ Respecting the confidentiality of the information shared throughout the resolution process of an occurrence.

## Role of the Designated Recipient\* or the Harassment and Violence Centre of Expertise (HVCE)

For the purposes of this Policy the Director General, Workplace Management Directorate (WPMD), Human Resources Services Branch (HRSB), with the Harassment and Violence Centre of Expertise (HVCE), under delegated authority, will act as the designated recipient\*. They are referenced as the designated recipient throughout this Policy and may be contacted through the [designated recipient generic mailbox](#). Their role include:

- ▶ Addressing all harassment and violence complaints brought forward by employees and supervisors within the Department;
- ▶ Responding to all notices of an occurrence within seven (7) days of receiving the notice and initiating negotiated resolution with the principal party within forty-five (45) days after the day on which the notice of an occurrence is received;
- ▶ Conducting a review of every notice of an occurrence against the definition of harassment and violence as outlined in subsection 122(1) of the *Code* with the principal party;
- ▶ Making every reasonable effort to resolve an occurrence of harassment and/or violence for which a notice of occurrence has been provided;

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- ▶ Allowing the principal and responding parties the option of participating in conciliation, if they both agree on this mechanism and on the person to facilitate;
  - ▶ Providing notice of investigation to the principal and responding parties if an investigation is requested by the principal party;
  - ▶ In the case of an investigation, selecting a person to act as an investigator who meets the knowledge, training and experience required by the Regulations from the list of qualified investigators developed jointly by ESDC and the PHSC;
  - ▶ Ensuring that the investigator has provided a written statement indicating that they are not in a conflict of interest with respect to the occurrence;
  - ▶ Providing the investigator with all the information that is relevant to the investigation;
  - ▶ Providing monthly status updates to the principal and responding parties on the status of the resolution process.

### **Role of the Policy Health and Safety Committee**

In relation to harassment and violence prevention, the role of the Policy Health and Safety Committee (PHSC) involves working jointly with ESDC to:

- ▶ Update this Policy at least once every three (3) years or following a change to any element of the Policy;
- ▶ Carry out a workplace assessment to identify risk factors relating to workplace harassment and violence;
- ▶ Review and update the workplace assessment every three (3) years or when there is a change to the risk factors identified, or a change to the effectiveness of the preventive measures that have been developed and implemented;
- ▶ Develop a list of qualified investigators;
- ▶ Identify and/or develop appropriate training on workplace harassment and violence and review it at least once every three (3) years;
- ▶ Develop emergency procedures that must be implemented when an occurrence poses a threat or immediate danger to the health and safety of an employee.



## **Role of a Workplace Health and Safety Committee / Health and Safety Representative**

In relation to harassment and violence prevention, the role of the Workplace Health and Safety Committee (WHSC) or Health and Safety Representative (HSR) involves working jointly with ESDC to:

- ▶ Review and update the workplace assessment, and refer the results to the PHSC, when appropriate, where,
- ▶ the principal party chooses to end the resolution process, but the occurrence is not resolved; or
- ▶ the responding party is not an employee or the employer (e.g., clients, contractors, (ex) partners).
- ▶ Review all summary reports of an investigation made under this Policy and, determine which recommendations are to be implemented.

## **Factors that Contribute to Workplace Harassment and Violence**

In considering potential risk factors that contribute to harassment and violence in the workplace it is important to take into account:

- ▶ the culture, conditions, activities and organizational structure of the workplace;
- ▶ the physical design of the workplace;
- ▶ measures that are in place to protect psychological health and safety in the workplace;
- ▶ any reports, records and data that are related to harassment and violence in the workplace;
- ▶ circumstances external to the workplace, such as personal stressors or family violence that could give rise to harassment and violence in the workplace.

The following reflect potential internal and external risk factors.

### ***Work Environments***

Certain work environments and workplace physical designs can result in additional risks that may lead to harassment and violence. These may include:

- ▶ Working with the public in person, by telephone or virtually;
- ▶ Carrying out inspection and enforcement duties;
- ▶ Handling money;

- ▶ Working alone, in small numbers, or in isolated or low-traffic areas (e.g., isolated reception area, washrooms, storage areas);
- ▶ Working in community-based settings;
- ▶ Having a mobile workplace;
- ▶ Working during periods of intense organizational change (e.g., strikes, privatization, restructuring, downsizing);
- ▶ Working in a client area that is poorly designed (e.g., blocked egress, insufficient barrier, poor visibility of clients);
- ▶ Working in an overcrowded environment.

### ***Job Factors***

Aspects specific to a job, such as mental and physical demands of the job, can result in additional hazards that may lead to harassment and violence. These may include:

- ▶ Lack of control over how work is carried out;
- ▶ Excessive workload;
- ▶ Shift work;
- ▶ Unreasonable or tight deadlines leading to elevated levels of stress;
- ▶ Confusing, conflicting or unclear duties or roles;
- ▶ Ambiguous or complicated reporting structures;
- ▶ Lack of job security;
- ▶ Difficult inter-office relations with co-workers or supervisor;
- ▶ Feeling as though one is treated unfairly.

### ***External Factors***

External factors that can result in harassment and violence include:

- ▶ Personal life events (e.g., marriage, divorce, financial concerns);
- ▶ Domestic violence
- ▶ Domestic violence can impact all areas of a person's life, including their performance and workplace;
- ▶ Domestic violence can happen to people of all genders, racial, economic and religious backgrounds. It exists in relationships regardless of sexual orientation;
- ▶ Domestic violence can include:
  - ▶ stalking;
  - ▶ verbal abuse;
  - ▶ use of property, children, or pets to threaten and intimidate;

- ▶ physical violence, sexual, emotional, and psychological intimidation;
- ▶ use of electronic devices to harass and control (technology-facilitated abuse), or economic abuse; such as,
- ▶ withholding or stealing money; or
- ▶ stopping a partner from reporting to work.
- ▶ An aggressor's behaviour can extend into the workplace where they may use emails, phone calls, text messages, stalking or showing up in-person to question co-workers impacting employee health and safety;
- ▶ Employees are encouraged to report domestic violence so that appropriate safeguards can be implemented for their protection and the protection of other persons in the workplace likely to be affected.

## Harassment and Violence Prevention Training

ESDC will provide all employees with harassment and violence training. This will cover:

1. Elements of the Workplace Harassment and Violence Prevention Policy;
2. The relationship between workplace harassment and violence and the prohibited grounds of discrimination under the *Canadian Human Rights Act*; and
3. How to recognize, minimize and prevent workplace harassment and violence.

All existing ESDC employees will receive training within one (1) year after the legislation comes into force. All new employees will receive training within three (3) months after the day on which their employment begins. Furthermore, all employees will receive this training again at least once every three (3) years.

Refer to *Appendix A – Training Options* for a list of mandatory training on harassment and violence.

## Outline of the Resolution Process

Employees subjected to or having witnessed harassment or violence in the workplace must report the incident to their supervisor and/or to the designated recipient at [designated recipient generic mailbox](#).

Below is a summary of how a principal party or witness can submit a Notification of Occurrence form and options for the resolution process, which can include negotiated resolution, conciliation and investigation.

## ***Notice of an Occurrence***

Employees reporting an incidence of harassment or violence in the workplace will be asked to provide the following information on a Notification of Occurrence form:

- ▶ the name of the principal party and the responding party, if known;
- ▶ the date of the occurrence; and
- ▶ a detailed description of the occurrence.

If they are not able to provide this information in writing, they may provide the information verbally to their supervisor or to the designated recipient; the event elements and narrative will be transcribed onto the form for them.

Witnesses may choose to remain anonymous. However, the principal party must be identified for the resolution process to proceed. In the case of the latter, the supervisor and the WHSC or HSR will jointly review the workplace assessment and determine if any additional preventive measures are required.

When a notice of occurrence is provided and the responding party is a third party (not an employee or the employer), the complaint will not proceed under the resolution process. It will be referred to the employer and WSHC to conduct a joint review, update the workplace assessment, and consider any preventative measures that may be required.

## ***Negotiated Resolution***


Negotiated resolution is a form of informal resolution process where the principal party meets with the employer or designated recipient to discuss the occurrence, clarify the information provided in the notice of occurrence, and attempt to reach resolution.

The designated recipient must contact the principal party within seven (7) days after the day on which notice of an occurrence was provided.

During an initial discussion, the designated recipient will inform the principal party:

- ▶ that the notification of an occurrence has been received;
- ▶ the manner in which the ESDC's Workplace Harassment and Violence Prevention Policy can be accessed;
- ▶ each step of the resolution process; and
- ▶ that they may be represented during the resolution process.

The principal party and, if contacted, the responding party must make every reasonable effort to resolve an occurrence for which notice was provided.



The reasonable effort includes a review by the principal party and designated recipient to determine whether the notice of an occurrence provided under section 15(1) of the WHVP Regulations describes an action, conduct or comment that constitutes harassment and/or violence as defined in the *Canada Labour Code*.

The efforts to negotiate a resolution must begin no later than forty-five (45) days after the day on which the notice was provided.

During negotiated resolution, the responding party should only be contacted if the principal party agrees that it is appropriate. It should be noted that the resolution is often more effective when all parties are involved.

However, the responding party must be contacted if the principal party chooses to proceed with conciliation and/or an investigation.

The designated recipient can arrange for any of the following meetings:

- ▶ meetings with only the principal party and the designated recipient;
- ▶ meetings with the principal party, responding party and designated recipient; and/or
- ▶ meetings between the principal party and the designated recipient with concurrent but separate meetings between the responding party and the designated recipient.

### **Conciliation**

Conciliation is an option that allows both the principal party and responding party to work with a facilitator to help them resolve an occurrence, for which notification was provided. They can choose to engage in this process at any time during the resolution process.

The Regulations are clear that this method of resolution can only proceed if both the principal party and responding party mutually agree to engage in the process, and on who will facilitate. The intent is to allow for flexibility in who may be identified as a facilitator and of the process to be used. This could be an ESDC internal resource, such as the Office of Informal Conflict Management (OICM) or, alternately, a manager, a colleague or an elder, just to name a few.

Furthermore, conciliation can only proceed if an investigator has not provided their final investigation report under subsection 30(1) of the WHVP Regulations.

Both the principal party and responding party are required to inform the designated recipient of their desire to participate in conciliation. The designated recipient will then facilitate discussions for the selection of a conciliator (generally from the Office of Informal Conflict Management) and will coordinate a time for all parties to meet.

If conciliation cannot proceed or if it is unsuccessful, and the principal party may choose to proceed with the next steps of the resolution process, and the notification of occurrence will be investigated.

### ***Investigation***

After all reasonable efforts to resolve the occurrence have been made and the principal party wishes to proceed with an investigation then the designated recipient must be advised. The designated recipient will provide the principal party and responding party with notice that an investigation will be carried out and that an investigator has been selected from the list developed jointly with the PHSC.

The selected investigator will investigate the occurrence and provide to ESDC a report outlining a general description of the occurrence, their conclusion and their recommendations to eliminate or minimize the risk and likelihood of a similar event from occurring. ESDC will then provide a copy of this report to the principal party, the responding party and the WHSC or HSR. The report will not reveal, directly or indirectly, the identity of the persons who were involved in the occurrence or in the resolution process for the occurrence.

ESDC and the WHSC or HSR will meet to determine which of the recommendations in the investigator's report are to be implemented and then will apply those recommendations within one (1) year from the date of receipt of the notice of occurrence.

If ESDC and the WHSC or HSR cannot agree on which recommendations should be implemented, as set out in the investigator's report, then ESDC's decision will prevail as to the appropriate recommendations in that instance. However, the employer must document the decision and the reasons for the decision as per paragraph 35(1)(d) of the Regulations, and keep a record for ten (10) years as per subsection 35(2) of the Regulations.

In some circumstances, the findings in an investigator's report may be taken into consideration as part of an administrative investigation. If a delegated authority in ESDC is granted the mandate to conduct a separate administrative investigation, then the Human Resources Services Branch (HRSB) will coordinate.

### ***Representation***

The principal and/or responding party(ies) can select any person of their choosing, including a bargaining agent representative, friend, colleague or partner to accompany them at any time during the resolution process. The representative's role can include providing advice and guidance to the principal or responding party, on any matters they feel are relevant, or to accompany them to provide moral support. The participation of the principal party and responding party is key to resolving incidents of workplace harassment and violence and they are expected to speak on their own behalf in matters related to the occurrence.

A party's representative should only speak on behalf of the person they represent on matters related to the administration of the resolution process, such as meeting scheduling or status updates.

This individual must not be in a conflict of interest with respect to the notice of an occurrence and must respect the confidentiality of information shared throughout the resolution process.

### **Protection Against Reprisal**

Retaliation against parties involved in an occurrence, including any witnesses, will not be tolerated and could result in disciplinary measures. If the principal party or responding party experiences any retaliatory action or threat of retaliatory action, the supervisor and/or designated recipient must be informed immediately.

### **Workplace Assessment**

The designated recipient and the WHSC or HSR will conduct a joint review and, if necessary, update the workplace assessment when an employee submits a notice of occurrence and the resolution process cannot proceed for any of the following reasons:

1. the principal party chooses to end the resolution process at any point but the occurrence is not resolved; or
2. the responding party is not an employee or the employer (i.e., the responding party is a member of the public, a client, a (ex) partner or family member).

The purpose of the review and update of the workplace assessment is to:

- ▶ determine what happened, taking into account the circumstances of the occurrence;
- ▶ determine whether all risk factors have been appropriately identified; and
- ▶ develop new preventive measures, if needed, to mitigate the risk or likelihood of a similar event from occurring.

### **Support Measures**

ESDC offers support and assistance to all employees affected by an occurrence of workplace harassment and/or violence through the confidential [Employee Assistance Program](#).

For support and resources related to domestic violence:

- ▶ Access Shelter Safe, which helps women and their children seeking safety from violence and abuse by connecting them with the nearest shelter;
- ▶ Visit the Public Health Agency of Canada website to learn more about:
  - ▶ [Stopping family violence](#) and find support and services in your area
  - ▶ [For help dealing with family violence](#)
  - ▶ [Promoting safe relationships](#)
  - ▶ [What provinces and territories are doing](#)

## Emergency Procedures

Employees who are a victim of, or who witness an occurrence of harassment or violence in the workplace that poses an immediate threat to an individual's health and safety should contact 911 emergency services without delay. They should also inform their supervisor or another manager in the line of authority who can notify or consult [Security](#) and other [internal specialists](#), as required. If employees need personal support following the incident, they can contact the [Employee Assistance Program](#).

All employees are required to be familiar with the following emergency procedures:

[http://iservice.prv/eng/is/security/emergency\\_continuity/index.shtml](http://iservice.prv/eng/is/security/emergency_continuity/index.shtml)

## Privacy Protection

ESDC is committed to the protection of the privacy of the persons involved in an occurrence. As such, the PHSC and the WHSC or HSR are not permitted any involvement in the resolution process of an occurrence, as per the *Canada Labour Code*, Part II. Furthermore, an investigator shall not be permitted to disclose in any report they produce and distribute, the identity of any of the persons involved in an occurrence or the resolution process for an occurrence (this includes the principal party, responding party, witnesses and any other individuals interviewed by the investigator).

To encourage those who are victims or witnesses of workplace harassment and violence to come forward, complaints relating to harassment and violence will be handled with the utmost sensitivity and discretion. Trust and safety in and throughout the process are paramount.

## Recourse Avenues

The principal party will be advised by the designated recipient of the multiple avenues of recourse available to them for their occurrence. These avenues may include information on filing a grievance with the Bargaining Agent (if applicable), or on pursuing recourse under the *Public Servants Disclosure Protection Act*, the *Criminal Code* and/or the *Canadian Human Rights Act* with the Canadian Human Rights Commission.

Refer to *Appendix B – Recourse Options*.

## Frivolous or Vexatious Complaints

No employee will be subject to discipline or be penalized as a result of reporting an incident of workplace violence or harassment in good faith. However, willfully making false or vexatious allegations or retaliating against an employee for reporting an incident of workplace violence or harassment will not be tolerated.



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The Workplace Violence and Harassment Prevention Policy and the corresponding investigative process are not punitive in nature, and as such, will not directly result in disciplinary action.

Should ESDC determine that disciplinary measures are warranted, the measures will be addressed outside of this Policy.

## Complaints Related to Employer Non-Compliance with the Code or Regulations

### Internal Complaint Resolution Process (ICRP)

In accordance with section 127.1 of the *Canada Labour Code*, Part II, if an employee believes that the employer has contravened the legal dispositions of the *Code* as it relates to an occurrence of harassment and/or violence, the employee must make a complaint to their supervisor or the designated recipient. The parties must try to resolve the complaint among themselves, as soon as possible.

If the matter is unresolved, the complaint may be referred to the Labour Program directly as per subsection 127.1(3) and paragraph 127.1(8)(d) of the *Code*. However, the Labour Program's role is not to make a determination as to whether the occurrence is founded. The Labour Program's role is to ensure the workplace parties comply with the requirements of the resolution process outlined in the Regulations.

### Refusal to Work

In accordance with section 128 of the *Canada Labour Code*, Part II, an employee has the right to refuse dangerous work due to a workplace harassment and/or violence hazard that they consider an immediate danger to their life or health. The WHSC or HSR is prohibited from participating in an investigation related to a notice of occurrence of workplace harassment and violence. Nevertheless, they may participate in investigations related to work refusals involving workplace harassment and violence under sections 128 and 129 of the *Code*.

### Definitions

The following definitions apply to this Policy:

**conciliation** is a process where the principal and responding parties mutually agree to have a third person facilitate a resolution to their complaint with them. Under the Regulations, conciliation is intended to be a flexible, non-binding option for mutually resolving the complaint, as opposed to the more formal alternate dispute resolution process, which is used in labour relations management of disputes.

**conflict of interest** means a situation in which the public servant has a private interest that could improperly influence the performance of his or her official duties and responsibilities or in which the public servant uses his or her office for personal gain.

**delegated authority** means anyone with managerial and financial responsibilities with level 4, or higher, delegated authority in accordance with the ESDC's Table of Human Resource Authorities.

**\*designated recipient** means the individual or work unit, which has been designated and delegated authority by ESDC, to whom a notice of occurrence may be submitted. For the purpose of this Policy, authority is delegated to the Director General, Workplace Management Directorate, Human Resources Services Branch and to the Harassment and Violence Centre of Expertise (HVCE) to act as the designated recipient, and are referenced as such throughout the Policy.

**frivolous complaint** means lacking a legal basis or legal merit; a matter which has little prospect of success; not serious, not reasonable or purposeful.

**occurrence** means an occurrence of harassment and/or violence in the workplace.

**principal party** means an employee or employer who is the object of an occurrence.

**responding party** means the person who is alleged to have been responsible for the occurrence in a notice of occurrence provided under subsection 15(1).

**supervisor** refers to individuals who have one or more employees under their supervision and who are responsible for assigning work, hiring and approving leaves, etc. (e.g., directors, managers, team leaders).

**vexatious complaint** means instituted maliciously or on the basis of improper motives.

**witness** means a person who witnessed an occurrence of harassment and violence or is informed of an occurrence by the principal party or responding party.

**workplace** means any place where an employee is engaged in work for the employee's employer as per subsection 122(1) of Code.

**workplace assessment** refers to the identification of risk factors, internal and external to the workplace, that contribute to harassment and violence, and to the development and implementation of preventive measures.

### Effective and Review Date

Version 1.0 of the Workplace Harassment and Violence Prevention Policy takes effect on January 1, 2021 and replaces the previous Workplace Violence Prevention Policy. It will be reviewed every three (3) years, or as required, to ensure consistency in changes to the related legislation, regulations and directives. The next scheduled review will be in 2024.

| Version | Date         | Made By        | Description             |
|---------|--------------|----------------|-------------------------|
| 1.0     | January 2021 | Sandra Varchol | 1 <sup>st</sup> version |

## Appendix A - ESDC Workplace Harassment and Violence Prevention Training Options

### Mandatory Training to Meet Legislative Requirements

| COURSE TITLE   | EMPLOYEES | MANAGERS / HEALTH AND SAFETY COMMITTEES & REPS | DESIGNATED RECIPIENT |
|--|-----------|--|----------------------|
| <a href="#">(W101) Harassment and Violence Prevention for Employees</a><br><i>Understand harassment and violence so you can learn how to minimize and prevent it. Includes case studies on how to recognize and address harassment and violence.</i>   | Mandatory | Mandatory                                      | Mandatory            |
| <a href="#">(W102) Harassment and Violence Prevention for Managers and Committees /Representatives</a><br><i>Understand the responsibilities and duties of managers and OHS committees and representatives in preventing harassment and violence at ESDC. Includes case studies on how to recognize and address harassment and violence.</i> |           | Mandatory                                      | Mandatory            |
| <a href="#">(W103) Harassment and Violence Prevention for Designated Recipients and Employers</a><br><i>Understand workplace harassment and violence and expand on the specific duties required of the designated recipients and employers. Includes case studies on how to recognize and address harassment and violence.</i>               |           |  | Mandatory            |
| <b>ESDC Workplace Harassment and Violence Prevention Policy</b>  | Mandatory |  |                      |
| <b>ESDC Harassment and Violence Notification of Occurrence Resolution Process</b>  | Mandatory |  |                      |
| <b>Timelines to complete mandatory training:</b> <ul style="list-style-type: none"> <li>• Employees and managers: <b>before January 1, 2022</b></li> <li>• Employees and managers who joined the department after January 1, 2021: <b>within three (3) months of their start date</b></li> </ul>   |           |  |                      |

## Supplemental learning

- **Office of Values and Ethics (OVE)**  
[Civility and a healthy, respectful workplace](#)  
*Course offered upon request. Contact an OVE advisor for more information.*
- **Harassment and Violence Centre of Expertise (HVCE)**  
*Tools and resources to support employees in the resolution of harassment and violence-related problems.*  
[Harassment Prevention and Resolution](#)  
*Tools and resources offered online (under development)*
- **Office of Informal Conflict Management (OICM)**  
*Workshops and supports to prevent, manage and resolve workplace conflicts.*  
[OICM Workshops](#)  
[On demand](#)
- **Occupational Health and Safety (OHS)**  
*OHS training and awareness activities designed to promote a healthy and safe workplace.*  
[Health and Safety](#)  
*Tools and resources offered online*
- **Canada School of Public Service (CSPS)**  
*A variety of courses addressing themes relevant to harassment and violence in the workplace.*  
[Learning Catalogue](#)  
*CSPS self-directed courses offered online*
- **Joint Learning Program (JLP)**  
[JLP Workshops](#)  
  
[Respecting Differences / Anti-Discrimination](#)  
[Preventing Harassment and Violence in the Workplace](#)  
[Mental Health in the Workplace](#)

## Appendix B - Recourse Options and Outcomes Summary


ESDC is committed to addressing workplace harassment and violence occurrences promptly, with sensitivity, fairness and an emphasis on informal, early resolution. Early intervention is key to achieving satisfactory outcomes. The principal party, and responding party if contacted, must make every reasonable effort to resolve an occurrence. If resolution is not achieved, the principal party may choose to proceed with recourse options including conciliation and/or investigation under the Regulations. Employees can also choose to pursue resolution through other avenues concurrently. The following reflects available recourse options to address allegations of workplace harassment and violence and the possible outcomes for each process.

|                   |                              | Workplace harassment and violence complaint under the <i>Canada Labour Code Part II</i>  | Discrimination complaint under the <i>Canada Human Rights Act (CHRA)</i>  | Harassment and discrimination grievances under the applicable Collective Agreement  | Disclosure of wrongdoing in the workplace under the <i>Public Servants Disclosure Protection Act</i>  |
|-------------------|------------------------------|--|---|---|---|
| <b>Definition</b> | <b>Nature of allegations</b> | <b>Harassment and violence:</b> means 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. | <b>Discrimination:</b> an action or a decision that results in the unfair or negative treatment of person or group because of their race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and a conviction for which you have been granted a pardon. | <b>Grievance:</b> With some exceptions, an employee can file a grievance as it relates to their terms and conditions of employment including a grievance alleging violation of the “no discrimination” clause in the applicable collective agreement. | <b>Wrongdoing:</b> relates to serious violations that go against the public interest, such as: violating any Act of Parliament or any Act of the legislatures of the provinces, misusing public funds or public assets; gross mismanagement in the public sector; doing something or failing to do something that creates a substantial and specific danger to the health, safety or life of persons or to the environment, seriously breaching the <i>Values and Ethics Code</i> or your organization’s code of conduct or knowingly directing or counselling a person to commit a wrongdoing set out above. |



|                              |  |  |   |   |  |
|------------------------------|--|--|---|---|--|
| <b>Investigation Process</b> | <b>Timelines to file the complaint</b> | No prescribed timelines.   | One (1) year.   | Twenty-five (25) days following the last event that gave rise to the grievance.                                 | No prescribed timelines.   |
|                              | <b>Participation requirements</b>      | Employees must co-operate in the resolution of an occurrence. An anonymous complaint can be submitted but the occurrence cannot proceed to an investigation.   | Parties and witnesses expected to participate and could be compelled if the case is referred to the Canadian Human Rights Tribunal. | Complainant, Respondent and Witnesses may be compelled to testify if the grievance is referred to adjudication. | The employee preferably provides their disclosure of wrongdoing in writing which includes the date and description of the alleged wrongdoing. Your identity and other information regarding a disclosure will be protected to the extent possible and subject to other Acts of Parliament and principles of procedural fairness and natural justice. |
|                              | <b>Investigator requirements</b>       | Must be selected from the qualified list of investigators, which is jointly developed, by the employer and PHSC. Qualifications include knowledge and training related to workplace harassment and violence, investigation techniques and the <i>CLC</i> and <i>CHRA</i> . | Canadian Human Rights Commission (CHRC) determines requirements.  | No requirements. Could be investigated by management, HR, or a third party.                                     | A neutral and professional investigator may be called upon. Cases concerning criminal activity will be referred to the appropriate law enforcement authority.  |
|                              | <b>Parties privy to the report</b>     | Employer, principal party,   | Complainant, Respondent, Deputy   | Labour Relations, Grievance Step Officer, and   | Deputy Minister, Senior Disclosure Officer, and other parties as determined by the   |

|                                |                                   |  |  |  |  |
|--------------------------------|-----------------------------------|--|--|--|--|
|                                |                                   | responding party, designated recipient and workplace health and safety committee receive final report. Reports contain no identifying information, including the names of any parties. | Minister, Corporate Labour Relations.  | other parties as determined on a case-by-case basis.   | Senior Disclosure Officer on a case-by-case basis.   |
| <b>Resolution / Conclusion</b> | <b>Outcome</b>                    | Recommendation on preventive / corrective measures to eliminate or mitigate the risk of a similar occurrence in the future.  | Where discrimination may exist, the CHRC investigator could recommend referral to Canadian Human Rights Tribunal (CHRT).                           | Grievance allowed, partially allowed, or denied and potential for corrective measures to be implemented. | If wrongdoing is found, the appropriate corrective and/or administrative measures are implemented and information on the wrongdoing is made available to the public. If no wrongdoing is found, the Senior Disclosure Office may take control measures to prevent or avoid future wrongdoing, and may address any other concerns uncovered by the investigation. |
|                                | <b>Personal remedy available.</b> | No   | No CHRT could award damages. Up to 20k for pain and suffering, up to 20k for willful and reckless discrimination and other discretionary remedies. | No. Unless settlement negotiated in response to grievance.   | No   |



|  |  |   |            |            |   |
|--|--|---|------------|------------|---|
|  | <p><b>Can the process be used as a basis for discipline?</b></p> | <p>No. A separate administrative investigation would need to be conducted. (e.g., fault finding distinct from health and safety framework).</p> | <p>Yes</p> | <p>Yes</p> | <p>If wrongdoing is found, the appropriate corrective and/or administrative measures recommended by the Senior Disclosure Officer are implemented by management. Management may decide to conduct a separate investigation or fact-finding exercise to determine appropriate disciplinary measures.</p> |
|--|--|---|------------|------------|---|