

Workplace Harassment & Violence Prevention

Newfoundland and Labrador Occupational Health and Safety Regulation 3/19



Introduction

This webinar contains information that must be provided in harassment prevention training for employers and employees.

The ServiceNL Occupational Health and Safety Division's *Explanation Guide provides more detailed information on harassment prevention regulations and training requirements. The guide can be found here:

<https://www.gov.nl.ca/snl/files/ohs-guide-part-iii.pdf>

Please review the ServiceNL Occupational Health and Safety Division Explanation Guide and the 2020 Newfoundland and Labrador Occupational Health and Safety Act and Regulations in conjunction with this webinar.



Learning Topics

Summary of
Changes

Legislation

Definitions

Types of
Harassment

Violence Risk
Assessment

Harassment
Prevention Plan

Third Party
Investigations

Responsibilities

Training

OHS Division
Role

Other
Agencies

Resources



This is an official version.

**NEWFOUNDLAND AND LABRADOR
REGULATION 5/12**

Occupational Health and Safety Regulations, 2012
under the
Occupational Health and Safety Act
(O.C. 2012-005)

Amended by:

2018 c8
3/19

**NEWFOUNDLAND AND LABRADOR
REGULATION 5/12**

<https://assembly.nl.ca/Legislation/sr/Regulations/rc120005.htm>



What Changed?

Violence

- Definition amended

Harassment

- Definition added

Family Violence

- Specific reference to as a risk

Risk Assessment

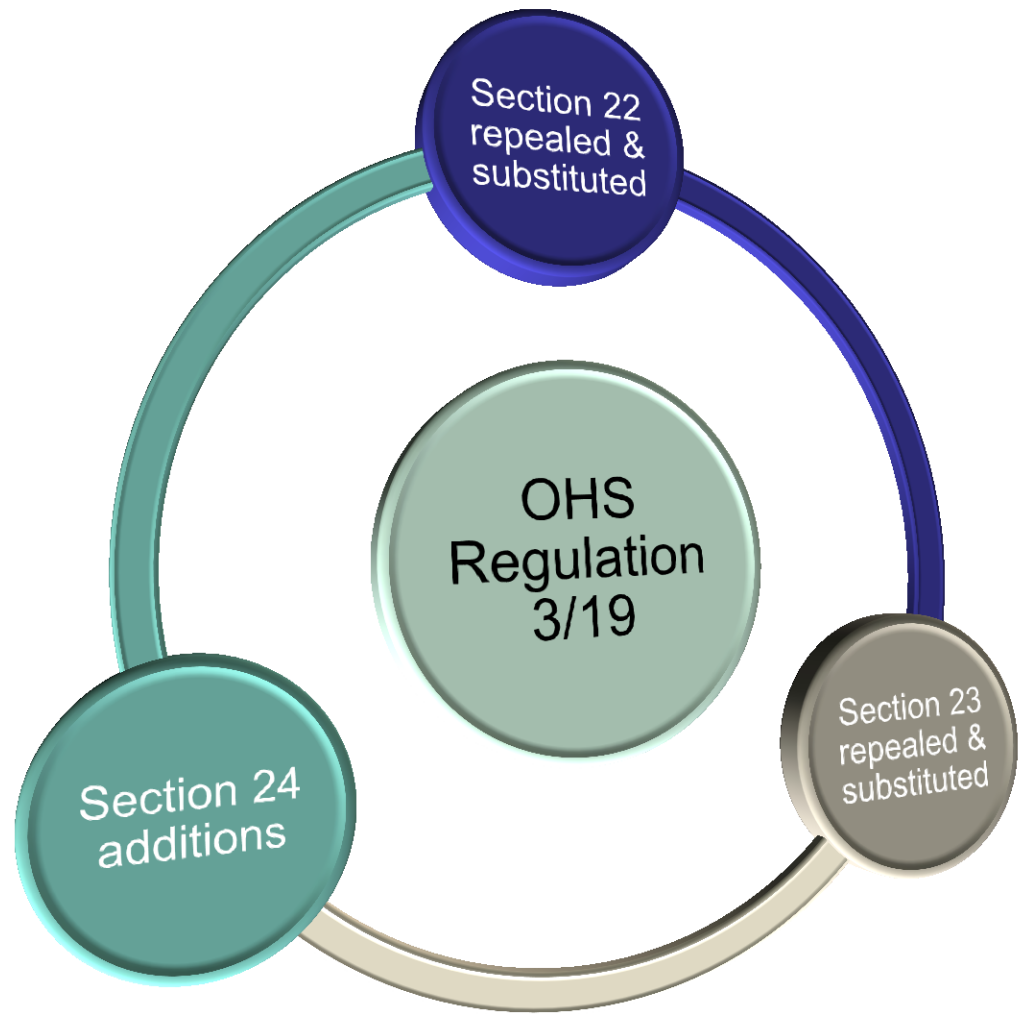
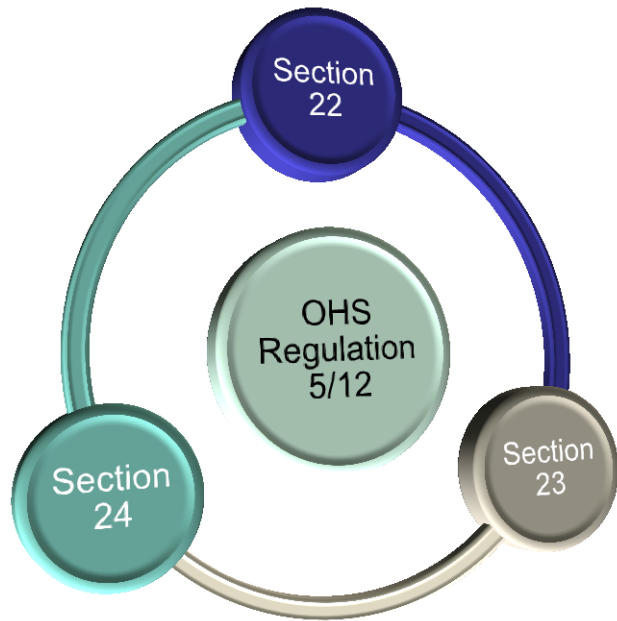
- Additional considerations

Harassment Prevention Plan

- Requirement added

Harassment Training

- Requirement added



Violence



22(1) The attempted or actual exercise of physical force to cause injury to a worker and includes threatening statements or behaviour which gives a worker reason to believe that he or she is at risk of injury.

OHS Reg 3/19

WORKPLACE HARASSMENT

22(2) Inappropriate vexatious conduct or comment by a person to a worker that the person knew or ought to have known would cause the worker to be humiliated, offended or intimidated.



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Harassment – Prohibited Grounds

Harassment based on prohibited grounds includes any inappropriate conduct, comment, display, action or gesture by a person that is made on the basis of race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion; and constitutes a threat to the health or safety of the worker.

Examples of **sexual harassment** include a direct or implied threat of reprisal for refusing to comply with a sexually-oriented request; unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, attire, sex or sexual orientation; displaying pornographic or sexually explicit pictures or materials; unwelcome physical contact, invitations or requests, direct or indirect, to engage in behavior of a sexual nature; or • refusing to work with or have contact with workers because of their sex, gender or sexual orientation.



Personal Harassment

Personal harassment is sometimes referred to as bullying and includes any inappropriate conduct, comment, display, action or gesture by a person that adversely affects a worker's psychological or physical well being; the perpetrator knows or ought to reasonably know would cause the worker to be offended, humiliated or intimidated; and constitutes a threat to the health and safety of a worker.

Personal harassment typically involves repeated occurrences. A single incident may also constitute personal harassment if it is serious or severe and is shown to have a lasting harmful effect on a worker.



Examples of Harassing Behaviour

Personal Harassment includes:

- Verbal or written abuse or threats such as name calling or insulting jokes;
- Refusing to work or co-operate with others;
- Deliberate mis-gendering by referring to a person using terms or pronouns that do not align with the person's affirmed gender;
- Physical or psychological bullying such as fist shaking or yelling;
- Exclusion/isolation of individuals or withholding or giving incorrect information
- Posting/sending offensive or intimidating messages via social media or e-mail;
- Making unreasonable demands that set up an individual to fail;
- Unjustifiable interference with another's work or work sabotage;
- Spreading rumours, personal ridicule or malicious gossip;
- Displaying or circulating offensive pictures
- Interference with or vandalizing personal property;
- Taking away work or responsibility without cause;



not

HARASSMENT

22(4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is **NOT** workplace harassment

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Newfoundland
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Service NL

Family Violence



23(2) Where an employer becomes aware, or ought reasonably to be aware, that family violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.

23(3) In this section, "family violence" has the same meaning as in section 3 of the *Family Violence Protection Act*.

OHS Reg 3/19

Violence Risk Assessment



22.1 (1) An employer shall conduct a risk assessment which shall include consideration of:

22.1(1)(a)
previous
experience in
the workplace

22.1(1)(b)
occupational
experience in
similar
workplaces

RISK
ASSESSMENT

22.1(1)(c)
location and
circumstances
in which work
may take
place

OHS Reg 3/19

Violence Risk Assessment

22.1 (1) An employer shall conduct a risk assessment which shall include consideration of:



22.1(1)(d) workplace characteristics including demographics, culture and the presence of new workers; and

22.1(1)(e) issues raised by the occupational health and safety committee, the worker health and safety representative or the workplace health and safety designate.

OHS Reg 3/19



Confidentiality



22.1(2) Where an employer obtains personal information in the course of conducting a risk assessment under this section, the employer shall **keep the personal information confidential** and shall not disclose the personal information except for the purpose of an investigation or where required by law.

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Violence Prevention

23(1) Where a risk of injury to workers from violence is identified by an assessment performed under section 22.1 the employer shall:

(a) establish procedures, policies and work environment arrangements to eliminate the risk to workers from violence; and

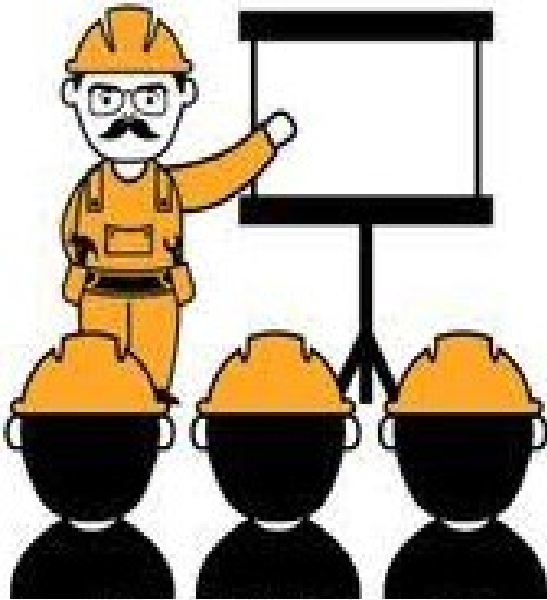
(b) where elimination of the risk to workers is not possible, establish procedures, policies and work environment arrangements to minimize the risk to workers.



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Instruction to Workers



24(1) An employer shall inform workers who may be exposed to the risk of violence of the nature of the risk and the precautions that may be taken.

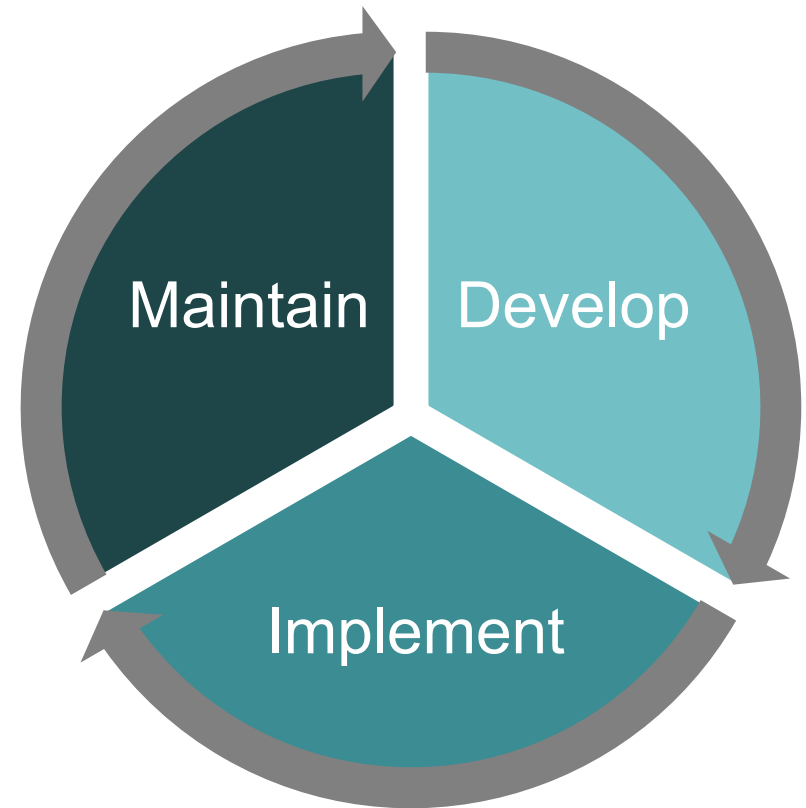
24(2) The duty to inform workers in subsection (1) includes a duty to provide information related to the risk of violence from persons who have a history of violent behaviour and whom workers are likely to encounter in the course of their work.

OHS Reg 5/12 and 3/19

Harassment Prevention Plan

22(3) ...a plan that is developed, implemented and maintained by an employer in accordance with section 24.1

Plan element requirements are outlined in section 24.1(2)



Harassment Prevention Plan

24.1(1) An employer shall develop, implement and maintain a written harassment prevention plan in consultation with the occupational health and safety committee, the worker health and safety representative or the workplace health and safety designate



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Harassment Prevention Plan Elements

24.1(2) A harassment prevention plan shall

- (a) include a statement that every worker is entitled to employment free from workplace harassment



“Workers are entitled to work free of harassment at Company Name”

Harassment Prevention Plan Elements

24.1(2) A harassment prevention plan shall

(b) include a statement that the employer is committed to eliminating, where possible, or otherwise, minimizing the hazard of workplace harassment

(j) include a statement that the employer shall protect workers from retaliation and provide support to workers when workplace harassment occurs.



“Management at Company Name” is committed to providing a safe, respectful and harassment free work environment for all staff and customers.”

Harassment Prevention Plan Elements



24.1(2) A harassment prevention plan shall

- (c) include a statement of the worker's obligation to take reasonable care to
 - (i) not engage in bullying or workplace harassment,
 - (ii) report observations or experiences of bullying and workplace harassment, and
 - (iii) comply with the harassment prevention plan

Harassment Prevention Plan Elements

OBLIGATION

24.1(2) A harassment prevention plan shall
(d) include a statement of a supervisor's obligation to ensure the health and safety of workers, including the supervisor's obligation to apply and comply with the harassment prevention plan;



Harassment Prevention Plan Elements

24.1(2) A harassment prevention plan shall

(e) set out the procedures for workers to report instances of harassment to an employer or supervisor or where the employer or supervisor is the alleged harasser, the procedures to report harassment to an external third party;

(f) set out the procedures to be followed after a complaint of workplace harassment is received and the manner in which a complaint is investigated;

(h) set out the procedures regarding notification of results of investigations and any actions to be taken as a result of an investigation;

Procedures

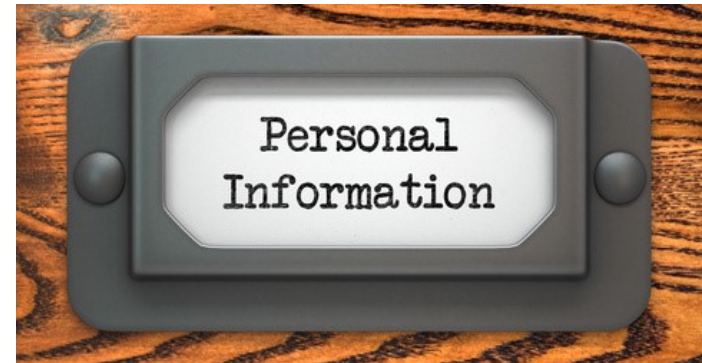


Harassment Prevention Plan Elements

24.1(2) A harassment prevention plan shall

(g) include a statement that any information obtained relating to workplace harassment, including personal information, will not be disclosed unless it is necessary for the purpose of an investigation, corrective action relating to the complaint or where required by law

“information relating to an identifiable person”



Harassment Prevention Plan Elements

24.1(2) A harassment prevention plan shall

(i) include a statement that the harassment prevention plan is not intended to discourage a worker from exercising his or her rights under the *Human Rights Act, 2010*, the *Criminal Code (Canada)* or any other law of the province or of Canada



HUMAN RIGHTS COMMISSION
Newfoundland and Labrador



“This plan is not intended to discourage a worker from exercising his or her rights under the Human Rights Act, 2010, the Criminal Code (Canada) or any other law of the province or of Canada.”



Harassment Prevention Plan

24.1(3) The harassment prevention plan shall be

- (a) accessible to all workers in the workplace; and
- (b) reviewed as necessary but at least annually.

(4) An employer shall investigate complaints of workplace harassment.

(5) An officer may, where he or she considers it necessary, order that an impartial third party investigate a complaint of workplace harassment.

(6) Any expenses relating to an investigation referred to in subsection 5 shall be the responsibility of the employer.



Third Party Investigations



24.1(5) An officer may, where he or she considers it necessary, order that an impartial third party investigate a claim of workplace harassment

24.1(6) Any expense relating to an investigation referred to in subsection (6) shall be the responsibility of the employer

OHS Reg 3/19

Employer Responsibilities



- Conduct a risk assessment
- Establish procedures, policies and work arrangements
- Harassment prevention plan (develop, implement, maintain)
- Maintain confidentiality
- Set out reporting, investigation and notification procedures
- Provide training
- Investigate
- Protect workers

Supervisor Responsibilities

- Ensure H&S of workers
- Apply and comply with the harassment prevention plan
- Participate in training regarding harassment prevention and the harassment prevention plan



Worker Responsibilities



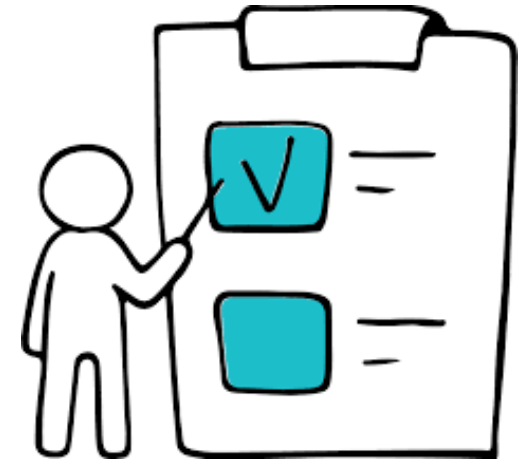
- Not engage in bullying or workplace harassment
- Report bullying and workplace harassment
- Comply with the harassment prevention plan
- Participate in training



Training Requirements (Employer)

24.2 (1) An employer shall participate in training relating to harassment prevention.

(2) An employer shall provide training to employees regarding harassment prevention and the harassment prevention plan.



NOTE: This is not WorkplaceNL prescribed training

OHS Reg 3/19

Employer Harassment Prevention Plan

Employees need to know:

- Where it can be found
- What is in the employer's harassment prevention plan
- How it affects to them
- Who is in charge of keeping it current
- How it will be implemented on worksites with multiple employers
- Role of a union (where applicable)
- Worker/Supervisor/Employer support after an incident and after/during an investigation
- How to submit a complaint
- How to report harassment if they witness it
- Their own legal obligations in the workplace



The Occupational Health & Safety Officer



**Employer
compliance with
the regulations**

**Allegations of
harassment**

OHS Reg 3/19

Other Agencies



HUMAN RIGHTS COMMISSION

Newfoundland and Labrador

HRC investigate allegations of harassment based on the prohibited grounds as defined under the Human Rights Act

Police investigate criminal acts

- Criminal harassment – stalking
 - Section 264 Criminal Code makes it a crime.
- Sexual and physical assaults
- Uttering threats
- Damaging another person's property.



WorkplaceNL

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Risk Assessment Resource

Four step process of a violence risk assessment

Includes samples of

- Employee survey
- Work environment questionnaire
- Workplace violence policy
- Risk assessment tool
- Violent incident report form

WORKPLACE VIOLENCE
Risk Assessment Process



Reach out. Take action against violence.

WorkplaceNL
Health | Safety | Compensation



**Newfoundland
Labrador**
Service NL

Harassment Prevention Resource



WorkplaceNL Harassment Prevention Guide

WorkplaceNL
Health | Safety | Compensation

Develop, implement and maintain your Harassment Prevention Plan

Includes samples of

- Harassment complaint form
- Guidelines for investigations
- Sample plan
- Fact sheets



Resources

Newfoundland and Labrador Occupational Health and Safety Regulations
<https://assembly.nl.ca/Legislation/sr/Regulations/rc120005.htm>

ServiceNL Occupational Health and Safety Division Explanation Guide
<https://www.gov.nl.ca/snl/ohs/guide/>

WorkplaceNL Risk Assessment Resource
<https://workplaceni.ca/site/uploads/2019/06/workplace-violence-risks-20190412.pdf>

WorkplaceNL Harassment Prevention Guide
<https://workplaceni.ca/site/uploads/2019/10/20191028-Harassment-Guide.pdf>

Family Violence Protection Act
<https://www.assembly.nl.ca/legislation/sr/statutes/f03-1.htm>





Occupational Health and Safety – ServiceNL

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Grand Falls / Windsor

Cromer Avenue

phone 709.292.4351 fax 709.292.4365

Wabush / Labrador City

Whiteway Drive

phone 709.282.3679 fax 709.282.2688

www.gov.nl.ca/gs/ohs

Serious Workplace Accident Reports

Telephone: 709.729.4444

(24 Hours – serious accidents only)

St. John's

28 Pippy Place

phone 709.729.2706 fax 709.729.3445

St. John's

Executive Office - Confederation Building

Phone 709.729.5548 fax 709.729.4151

www.gov.nl.ca/snl



WorkplaceNL

Health | Safety | Compensation

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