



Manitoba Federation of Labour Submission to Employment and Social Development Canada, Labour Program

*Regarding the consultation document: Proposed regulatory framework:
Harrassment and Violence*

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Manitoba Federation of Labour

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The Manitoba Federation of Labour (MFL) is Manitoba's central labour body, comprised of more than 30 unions, representing some 100,000 unionized workers from the public and private sectors and building trades. While the majority of our affiliated members fall under provincial Health & Safety legislation, we also represent workers in federally-regulated workplaces. As such, we are keenly interested in Bill C-65.

The MFL is extremely active and committed to strengthening workplace health and safety: better prevention strategies, more rigorous enforcement and stronger laws and regulations. Injury and illness prevention are paramount for improving working conditions and ensuring that every worker come home safely at the end of every working day.

We are pleased that the Federal government is placing a renewed focus on preventing workplace harassment and violence, and addressing it where it does occur. As evidenced by the recent federal survey, it is clear that harassment and violence are all too pervasive in our workplaces today, and are chronically under-reported and poorly addressed.

While the federal focus appears to be primarily on sexual harassment and sexual violence – serious hazards, which disproportionately affect women workers¹, and warrant immediate attention – we would also like to see the government better define and propose responses to all forms of workplace harassment and violence to keep workers safe.

We are also concerned that Bill C-65 limits the important role of Workplace Health & Safety Committees, which should be available to workers as an avenue for reporting, if they choose, and also require sufficient information about harassment and violence in the workplace in order to be able to perform their important work of guiding prevention strategies.

We also believe that while government is moving to recognize the severe physical and psychological effects of harassment and violence in the workplace, there has been an undervaluation and understatement of the importance of recognizing and

¹ Not only is workplace sexual harassment and violence highly-gendered, but also high-intersectional: Indigenous workers, racialized workers, LGBTQ2SI workers, and disabled workers face harassment, discrimination and violence more frequently.

assessing psycho-social factors that can foster or discourage harassment and violence from occurring in the workplace.

In the present submission, we seek to respond to a number of questions raised in the Discussion Paper, and provide additional commentary and recommendations for consideration. We appreciate the opportunity to participate and share our views.

RECOMMENDATIONS:

1. Restore role for Workplace Health & Safety Committees in receiving complaints

As clearly evidenced by the federal survey, workplace harassment and violence are currently, and have long been, grossly under-reported. As such, we are strongly opposed to the federal proposal to remove an important avenue for reporting – namely, reporting to Committees. Health & Safety Committees have been the preferred route for reporting for many workers, and should remain an option for any worker who wishes to report in this way, with no risk of reprisal. We should be responding to under-reporting by expanding reporting avenues, not narrowing them. We strongly believe that narrowing options will worsen under-reporting, leaving pervasive harassment and violence unaddressed.

2. Protect and strengthen the role of Committees in making prevention recommendations

The flip side of the above issue is that it is also imperative that Health & Safety Committees be provided with sufficient information (while respecting confidentiality) to understand the scale and scope of harassment and violence place in their workplaces, in order to inform effective prevention recommendations.

Overall, we are concerned that the Federal government appears to be trying to marginalize health and safety committees in this process, rather than building on the essential role they play in improving workplace health & safety.

Federal regulations should not only ensure that Committees receive needed information to inform good recommendations, but also that employers engage Committees in recommendations that come from Competent Person investigations and the implementation of corrective measures. Moreover, regulations should ensure a robust dispute resolution process where employers and Committees disagree about if and how to implement recommendations from the Committee itself, or a Competent Investigator.

3. Require emergency protocols

While we believe that the proposed 5 day response time for employers will be adequate in many cases, we also believe that employers should be required to respond more quickly – immediately – in emergency situations. Time sensitive emergencies might include cases where there is a threat of imminent violence, when a worker’s immediate supervisor is the perpetrator of harassment or violence, or where the complainant is pregnant, to give just a few examples. We urge government to ensure that regulations require employers to develop emergency protocols to deal with situations where an immediate response is required essential.

4. Alternative reporting in small workplaces

The Federal government has recognized the inherent challenge that exists within small workplaces related to providing an avenue for reporting that doesn’t involve a worker’s direct supervisor. We are concerned, however, that simply offering small employers the ability to investigate one another could lead to conflict of interest and improper investigations. We urge the Federal government to establish a system for small employers whereby their workers have access to neutral third parties to whom complaints can be directed, and neutral outside Competent Persons can be assigned.

5. Shorter timelines for employer updates / consequences for missed timelines

The federal proposal requires employers to provide monthly updates to complainants, which is a long time to wait – we encourage the adoption of a two week reporting standard in order to improve transparency and accountability for complainants, to limit long, drawn-out processes, which can be additionally victimizing for complainants to endure.

We also believe that regulations should require employers to explain any delays in writing, and that there be a process for rejecting unnecessary delays and penalizing non-compliant employers. And, needless to say, regulations should make it clear that financial considerations are not an acceptable reason for delaying investigations or implementing recommended corrective measure.

6. Proper addressment of third party violence

Bill C-65, as currently drafted, does not adequately address third party harassment and violence – that is, harassment and violence perpetrated by individuals outside the workforce. We urge the Federal government to engage with workers and their unions to better understand and address issues related to, for example, airline and call centre workers who face frequent harassment and abuse from customers, and whose employers commonly seek to limit their right to remove themselves from unsafe working conditions.

7. Domestic Violence

We are pleased that the Federal government is moving to recognize domestic / family violence as an issue affecting workplace health and safety – this is a very positive development, as the labour movement has long been making the case that workers cannot be safe at work, if they're not safe at home. Requiring employers to specifically address family violence in their harassment and violence prevention policies is an important step forward. We urge, however, that Bill C-65 be amended to empower health and safety committees and women's advocates to be able to help victims of family violence to carryout risk assessments and develop safety

plans; workers should be able to report to and seek support from health and safety committees and/or women's advocates if they so choose.

8. Hiring and retaining trained Health & Safety Officers / special attention needed on First Nations reserves

There is already a major lack of Health & Safety Officers (HSOs) within the federal sector. The additional demands of Bill C-65 further underscore the need to hire and retain more trained HSOs to deal with harassment and violence issues.

We also share the concern of the Public Service Alliance of Canada and other unions that workplaces on First Nations reserves are not currently inspected on any kind of regular basis. Developing appropriate relationships with First Nations to ensure regular inspections should be a priority.

HSOs, as well as members of Health & Safety Committees, should also be afforded additional, robust training related specifically to Bill C-65.

9. Need for remedy / redress through alternative mechanisms (grievances, *Human Rights Act*)

We are disappointed that Bill C-65 does not include processes for remedies for victims of workplace harassment and violence, despite overwhelming evidence that victims are commonly denied justice. Among other remedies that should be considered, workers who exhaust sick time and / or vacation time due to their experience of harassment or violence at work should be entitled to reinstatement of these leaves.

We also urge the Federal government to amend Bill C-65 to make it crystal clear that workers have the right to choose for themselves which avenue or avenues they wish to pursue for redress, including filing grievances or taking action under The Canadian Human Rights Act. This is especially important given Bill C-65's failure to include remedies for victims.

Moreover, we urge the Federal government to consult with labour and employers about creating an appeal mechanism whereby a complainant may request review of a Competent Person's report by a higher body.

10. Mandatory training for supervisors

Regulations should be explicit and detailed about the need for all supervisors to be trained to understand rules and processes related to harassment and violence, including, but not limited to: the definition of harassment and violence; how to recognize and prevent harassment and violence; procedures under a workplace's harassment and violence prevention policy; the role of health and safety committees; the role of unions; how to handle complaints; employer responsibilities; and emergency protocols.

11. Psycho-social factors

Regulations should require employers to assess the well-established psycho-social factors in a workplace that directly influence the risks of harassment and violence. Proper assessment of risk factors in advance can prevent harassment and violence before they occur. Health & Safety Committees should be heavily involved in this process, as they have developed strong expertise in this area.

12. Protection from discriminatory action / reverse onus on reprisal

Complainants need to be assured that they will not be subjected to discriminatory / retaliatory action by supervisors / employers as a result of making a complaint of harassment and / or violence. This protection must be absolute, and apply no matter which avenue a worker chooses to make a complaint (including if they choose to report to their health and safety committee). It is well-established that fear of reprisal has been and continues to be a major barrier to reporting. Moreover, as a strong discouragement, there should be a standard of reverse onus applied to supervisors / employers who retaliate against workers for reporting workplace harassment or violence.

In conclusion, we would like to reiterate the importance of making progress on the important issue of harassment and violence in the workplace. We caution that in marginalizing the role of Health & Safety Committees, the federal government is moving backward, not forward. Workers should be afforded all possible avenues for reporting, and Committees require information (while respecting confidentiality) about incidence of harassment and violence in the workplace – at least at a general level – in order to inform their prevention work.

We appreciate the opportunity to share our views. We trust that the federal government will be using the traditional tri-partite process for developing regulations associated with Bill C-65 in order to hear directly from labour and employers.