November 21, 2023 |

Briefs

Submission to the WCB regarding proposed amendments to Part 4, General conditions, Sections 4.24 to 4.31.2, Harassment and Violence

A pdf of the complete submission can be found here(495 KB).

Authority

The BC Federation of Labour (“Federation,” “BCFED”) appreciates the opportunity to provide a submission on the proposed amendments to Part 4, General conditions, Sections 4.24 to 4.31.2 Harassment and Violence.

This submission was prepared in consultation with our affiliates.

The BC Federation of Labour

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The Federation is recognized by the Workers’ Compensation Board ("WCB”) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers and their

surviving dependents.

The BCFED will comment only on those sections which require further amendments.

Background

British Columbia was once on the leading edge of regulatory requirements for the prevention of workplace violence in Canada, incorporating requirements, formerly known as Protection of Workers from Violence in the Workplace, into Part 4 of the *Occupational Health and Safety Regulation* ("OSHR") in 1993, a result of the labour movement's intensive lobbying.

The BCFED and our affiliates continued lobbying the government and the WCB for improvements to the prevention of violence regulations after a number of incidents of extreme workplace violence in BC.

In 2014, Kevin Addison, a former employee of Western Forest Products sawmill and a United Steelworkers' member, fatally shot and killed two people and injured two other workers. Addison was laid off and was having financial difficulties. He, along with other union members, was in a dispute with the employer as he was not rehired when the mill reopened.

In 2012, a health care worker was brutally attacked by a psychiatric patient at the UBC hospital. The worker suffered significant psychological injuries and was able to return to work eventually in a different role.

In 2002, Tony McNaughton, a manager at Starbucks, was fatally stabbed by a man who entered the shop to confront his estranged wife. Tony intervened to help his co-worker.

Workplace violence and harassment has continued to rise at an alarming rate in British Columbia, leading to disabling physical and psychological injuries and illness, especially in occupations held by our members. The effective prevention of workplace violence and harassment has remained a key focus for the BCFED.

In 2017, the federal government conducted a country-wide survey on workplace harassment and violence. It found 60% of Canadians have experienced workplace harassment. In addition, 21% of respondents have experienced violence and 3% have dealt with sexual violence.

- Of survey respondents who experienced sexual harassment, 94% were women. It also found that Canadians with disabilities and members of a visible minority were more likely to be the targets of harassment.
- In 2020, the federal government introduced the *Workplace Harassment and Violence Prevention Regulations*.[1]

In 2017, the BCFED submitted our report to the government and the WCB proposing key regulatory amendments to the Worker Conduct and Violence in the Workplace regulation and the Bullying and Harassment Policy.

The WCB put the regulation and policy on the regulatory workplan not as a priority, but for preliminary analysis.

After urging the WCB to prioritize the review of harassment and violence, the first pre-consultation session was held in 2019.

The growing urgency to conduct the regulatory review was supported by the findings of a new report. The Canadian Labour Congress (CLC) and Western University conducted a cross-country survey on workplace harassment and violence in 2020-2021. The survey's unsettling results showed widespread harassment and violence was continuing in workplaces.

- 7 in 10 workers have experienced a form of harassment and violence at work.
- Nearly 1 in 2 workers have experienced sexual harassment and violence in the last two years.
- Women, trans, nonbinary and gender-diverse workers are experiencing higher rates of harassment and violence.
- Indigenous survey respondents experienced significantly higher rates of harassment and violence (79%) and sexual harassment and violence (47.8%).
- Workers with a disability experienced significantly higher rates of harassment and violence.[2]

Many of our affiliated unions have conducted harassment and violence surveys with their members. In 2019, the BC General Employees Union (BCGEU) held a forum with their Community Living members to discuss harassment and violence at their workplaces. Their report, *Violence is not part of the job!* detailed workers' lived experience of harassment and violence and the solutions needed to make changes.

- Almost all workers at the forum had been impacted in one way or another by workplace violence.
- At the most fundamental level, workplace violence is a direct threat to the physical health and wellbeing of community living workers.
- Violence can lead to life-altering disability, career-ending injuries and even death.
- For too many workers, workplace violence has also led to PTSD and mental health injuries.
- Some at the forum disclosed ongoing fear and anxiety following incidents of violence, and others noted high levels of stress due to unaddressed safety concerns.[3]

Given the continued frequency of incidents of workplace harassment and violence and the heavy burden it places on workers, the WCB's proposed amendments to update and strengthen the requirements for preventing harassment and violence are long overdue.

Submission

Section 4.24(1) Definitions and interpretation

In this section and sections 4.25 to 4.31.2, applicable workplace representative in relation to a workplace, means whichever of the following is applicable,

a. The joint committee;
b. The worker health and safety representative; or
c. The workers in the workplace if there is no joint committee or worker health and safety representative.

The BCFED is pleased to see the requirement to consult with workers is elevated to the first part of the regulation, supporting the joint nature of these activities, rather than just “in consultation.”

We believe the proposed amendment “applicable workplace representative” may not be necessary. The discussion paper explains the intention of this definition is to avoid repetitive listing throughout the regulation of the types of workplace representatives.

The definition “applicable partner” originates from the *Canada Labour Code Part II* workplace harassment and violence prevention regulations: SOR/2020-1.30.

> Definitions (2) In these regulations, a reference to the “applicable partner” is to be read as a reference to the policy committee or, if there is no policy committee, as a reference to the workplace committee or the health and safety representative.[4]

The BCFED, in our submission of June 2022, proposed the WCB consider the definition of applicable partner to identify the joint committee, worker representative or workers if there is no joint committee and no worker representative.

Applicable workplace partner is a new term not currently used anywhere in the OHSR and may cause confusion.

The right of workers and joint committees to participate in occupational health and safety is guaranteed by the *Workers Compensation Act* (WCA), Part 2 Occupational Health and Safety.

The WCA is the superior law, and its regulatory language must clearly and unequivocally include the participation of workers.

WCA Part 2, Division 1, Section 14: Purposes for the OHS Provisions mandates the joint effort of employers and workers to ensure workplace health and safety.

Subsection 2(e) (f)

> (e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's

authority and ability to do so;

(f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes.[5]

WCA Part 2, Division 4 - General duties of employers, workers and others.

Section 21, General Duties of Employers requires the employer to consult and co-operate with the joint committee or worker representative,

"(g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer," and[6]

similarly in Section 23 2(b), Duties of supervisors,

"(b) consult and cooperate with the joint committee or worker health and safety representative for the workplace."

WCA, Part 2, Division 5, Joint Committees and Worker Representatives, Section 36 (a-j), Duties and functions of joint committee,

A joint committee has the following duties and functions in relation to its workplace:

(a) to identify situations that may be unhealthy or unsafe for workers and advise on effective systems for responding to those situations;

(b) to consider and expeditiously deal with complaints relating to the health and safety of workers;

(c) to consult with workers and the employer on issues related to occupational health and safety and occupational environment;

(d) to make recommendations to the employer and the workers for the improvement of the occupational health and safety and occupational environment of workers;

(e) to make recommendations to the employer on educational programs promoting the health and safety of workers and compliance with the OHS provisions and the regulations and to monitor their effectiveness;

(f) to advise the employer on programs and policies required under the regulations for the workplace and to monitor their effectiveness;

(g) to advise the employer on proposed changes to the workplace, including significant proposed changes to equipment and machinery, or the work processes that may affect the health or safety of workers;

(h) to ensure that accident investigations and regular inspections are carried out as required by the OHS provisions and the regulations;

(i) to participate in inspections, investigations and inquiries as provided in the OHS provisions and the regulations;

(j) to carry out any other duties and functions prescribed by regulation.[7]

The BCFED believes the OHSR provides us with an example of requirements for worker consultation which if adopted in the harassment and violence regulation will prevent reinventing the wheel.

The BCFED has frequently recommended in regulatory reviews that the WCB Policy, Regulation and Research Department adopt the worker consultation language model required in OHSR Part 4, Ergonomics Requirements, Section 4.53: Consultation.

(1) The employer must consult with the joint committee or the worker health and safety representative, as applicable, with respect to the following when they are required by the Ergonomics (MSI) Requirements:

(a) risk identification, assessment and control;

(b) the content and provision of worker education and training;

(c) the evaluation of the compliance measures taken.

(2) The employer must, when performing a risk assessment, consult with

(a) workers with signs or symptoms of MSI; and

(b) a representative sample of the workers who are required to carry out the work being assessed.[8]

Subsection 2(b) of the ergonomic regulation sets out the requirement for the employer when conducting a risk assessment to consult with a representative sample of workers. It would be appropriate to include this requirement in the harassment and violence regulation.

We believe employers, the joint committee and the worker representative must consult with a representative sample of the impacted workers. The BCFED has heard from our affiliates that their members who are doing the work are not consulted, and if they are, it is often restricted to the higher classifications. We also hear from workers who are racialized that they are can be overlooked in the consultation even though they are disproportionately impacted. (The BCFED will comment further on this issue in the discussion of Section 2.)

Involving front-line workers will ensure the risk assessment is done with a critical analysis of the workplace and conditions, to understand the perspectives of those carrying out the work, the conditions they face, the information they have or don’t have, the tools and equipment they use, the pressures they are under and the solutions they see.

The current Guideline 4.53.2 provides an explanation of “representative sample of workers.”

This provision requires the employer to consult with the affected workers when a risk assessment is being done regarding tasks or functions performed by those workers.

A "representative sample" under subsection (2)(b) means, in addition to workers with signs or symptoms, a cross section of workers, having regard to differences in age, shift schedule, gender, size (height, weight), and work location (climatic conditions can vary considerably, and

clothing or icy surfaces may result in different levels of risk for similar tasks). The size of the sample will depend on how many applicable differences there are in the group.[9]

OHSR Part 4, Working Alone or in Isolation, Section 4.21 (5)(6), sets out procedures for checking the well-being of a worker and include a requirement to consult with the joint committee in the development of procedures and time intervals. Additionally, the employer must consult with workers who are assigned to work alone or in isolation.

> (5) The procedure for checking a worker's well-being, including time intervals between the checks, must be developed in consultation with the joint committee or the worker health and safety representative, as applicable.
>
> (6) Time intervals for checking a worker's well-being must be developed in consultation with the worker assigned to work alone or in isolation.[10]

There is no need for the WCB to be reluctant to add the requirement for a broader consultation with workers who are impacted by a hazard because the requirement already exists in these examples.

The BCFED was pleased with the proposed language in Section 6.135 of the new combustible dust regulation, which is a slightly different version from the ergonomics regulation.

> Combustible Dusts – Identification, Assessment and Management Combustible dust
>
> Section 6.135
>
> (2) The employer must consult on the preparation and updating of a combustion risk assessment and a combustible dust management program, and the provision of instruction and training, required under subsection (1) (b) (ii) and (iii) with
>
> (a) the joint committee,
>
> (b) the worker health and safety representative, or

(c) if there is no joint committee or worker health and safety representative, a representative sample of the workers at the workplace.[11]

Recommendation

The BCFED strongly urges the WCB to further amend Section 4.24(1) by removing reference to "applicable workplace representative," and base the requirement for consultation with the joint health and safety committee, the worker representative, workers if there is no committee or worker representative and a representative sample of workers for the purposes of risk assessments.

We recommend the WCB use the model language from the ergonomics regulation.

Section 4.24 (1) Definition of harassment and violence

Harassment and violence means subject to Subsections (2) and (3) one or more actions taken by a person,

a. that are worked-related or that occur at a workplace, and
b. that can reasonably be expected

i. to be intimidating, humiliating or otherwise offensive to a worker, or

(ii) to cause physical or psychological harm to a worker.

The definition of action has been removed from this version of the proposed amendments but remains in the proposed regulation amendments.

The BCFED has previously recommended "action" be replaced with "act." For example, one might say "an act of violence" but we wouldn't say and "action of violence." The phrase "act of violence" is commonly used and understood.

We also recommended the definition be expanded to include "conduct" which has different connotations to "act" or "action." "Conduct" is used in the *Canada Labour Code Part II* and is included in the title of the current Workplace Conduct regulation that governs the workplace conduct by

workers of the same employer.

We also agree with the inclusion of “comment” in the federal definition,

> “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.*[12]*

Recommendation

The proposed amendments be further amended to include “act,” “conduct” and “comment” to better describe the range of harassment and violence behaviors.

We are disappointed the definition does not include sexual harassment. Sexual harassment includes a continuum of behaviours that can be repeated, unwelcome, unreciprocated acts of a sexual nature and include physical, verbal, written, gestures and coercive behaviour. The federal definition above includes “any action, conduct or comment, including of a sexual nature.”

Recommendation

Section 4.24 (1): Amend the proposed definition of “harassment and violence” to include “sexual harassment.” The frequency of sexual harassment in the workplace necessitates a clear requirement in the regulation.

The BCFED recommends the WCB renumber Section 4.24 (1) to provide clarity.

The BCFED is pleased the WCB has referred to both work-related and workplace in the definition in Subsection (a). Both terms are defined in the WCA.

“Workplace” means any place where a worker is or is likely to be engaged in any work and includes any vessel, vehicle or mobile equipment used by a worker in work.

“Work-related” means arising from in connection with work activities.

An example of a work-related incident means a worker may be harassed in the workplace and when the source is blocked at that level, they seek to find the worker at their home or other external locations to continue the harassment.

(b) “Can reasonably be expected.”

The BCFED has previously disagreed with this definition, and we are disappointed to see it continues to be proposed. It leaves too much up to interpretation and could lead to consideration of the “intention” of the person engaging in harassment and violence.

Whose reasonableness is doing the measuring? And how is reasonableness applied?

Recommendation

The BCFED prefers the more explicit language of the International Labour Organization (ILO) Convention 190, to replace “reasonably expected” with “that aim at, result in, or likely to result in.”

> “The term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.”[13]

Control

Control was included in the Section 4.24 amendments of 2021 and was defined as, “in relation to a risk assessment of harassment and violence, means to eliminate the risk or, if elimination is not practicable, to minimize the risk to the lowest level practicable.”

Notably missing in these amendments is a specific section on controls and any mention of the hierarchy of controls. The hierarchy is a fundamental principle of occupational health and safety and provides steps to follow to minimize risk if it cannot be eliminated. Reference to the requirement for employers to eliminate or minimize the risk of harassment and violence are found scattered throughout the proposed amendments in Sections 4.25 (1), 4.26 (2)(a), 4.26 (5)(b), 4.28 (2)(b) and

4.29 (1)(b).

But the how to apply the hierarchy is missing, and there is no mention of the other control options in the hierarchy, engineering, substitution, administrative and personal protective equipment.

This is an opportunity to be clear, as written in many other regulations such as ergonomics and working alone, about the employer's responsibility to work with the hierarchy to eliminate or control harassment and violence.

And there are examples of regulations in the OHSR where employers must adhere to the hierarchy of controls, for example, Working Alone or in Isolation Sections 4.20.1-4.22.

And we note the hierarchy of controls is placed at the beginning of the regulation elevating the importance of this principle.

> 4.20.2 Hazard identification, elimination and control
>
> (1) Before a worker is assigned to work alone or in isolation, the employer must identify any hazards to that worker.
>
> (2) Before a worker starts a work assignment with a hazard identified under subsection (1), the employer must take measures
>
> > (a) to eliminate the hazard, and
> >
> > (b) if it is not practicable to eliminate the hazard, to minimize the risk from the hazard.
>
> (3) For purposes of subsection (2) (b), the employer must minimize the risk from the hazard to the lowest level practicable using engineering controls, administrative controls or a combination of engineering and administrative controls.*[14]*

Recommendation

The BCFED recommends a further amendment to Section 4.24 adding Subsection (4) titled Control to include the Hierarchy of Controls. This will give clear direction to employers and workers on how to

apply the principles of mitigating the hazard and will be consistent with the ergonomics regulation and the working alone regulation.

Section 4.24 (2)

This section explicitly mandates that harassment and violence includes harassment and violence that targets or is based on the protected grounds of the *BC Human Rights Code* (“Code”).

The BCFED is strongly supportive of the new section. We have urged the WCB in the pre-consultation sessions and in previous submissions to include specific protections and support for workers statistically most vulnerable to harassment and violence.

Statistics Canada, the Government of Canada survey and the Canadian Labour Congress’ research all support the fact that sexual harassment and violence is rampant in our workplaces.

Those more likely to experience toxic work environments and sexual harassment are Indigenous peoples, members of the 2SLGBTQIA+ community, Indigenous, Black and racialized communities and women, according to the study.

Recent studies on the burden of racial trauma on Indigenous, Black and racialized communities reveal the reality that workers who are racialized experience disproportionate psychosocial workplace hazards, such as systemic racism, which contribute to incidents of harassment and violence.[15]

Section 4.24(2) means employers must eliminate discriminatory behaviour and systems and will be subject to WCB inspections and enforcement. If these changes are implemented, workers who are Indigenous, Black and racialized will have improved protection against workplace harassment and violence.

Recommendation

The BCFED recommends further amending Section 4.24(2) by removing the words “that targets or is based on” and replace with the “harassment and violence that is directed at persons because of their Indigenous identity….”

Recommendation

Domestic violence is included in Section 4.27 (2)(v) Risk Assessments as an example of circumstances outside of the workplace that could give rise to harassment and violence at the workplace and should be considered in a risk assessment. Domestic violence is now more commonly called family violence as described by the government of Canada.

Family violence is when someone uses abusive behaviour to control and/or harm a member of their family, or someone with whom they have an intimate relationship.[16]

Family violence is currently in the violence policy but has a different definition. “A threat against a worker's family that is a result of the worker's employment is considered a threat against the worker for the purpose of Section 4.27.”[17]

The BCFED recommends further amending Section 4.24 (1) to add family violence in place of domestic violence and provide a clear definition.

The BCFED believes the policy definition of “family violence” should be added to the regulatory amendments.

Section 4.24(3) Exclusion of reasonable management action

The BCFED is curious to know the rationale for first proposing exclusion of reasonable management action in the 2021 amendments and including it in the current proposals. It is not in the current workplace conduct or violence prevention regulations.

This is an anomaly in the OHSR, but there is similar language in the WCA, Section 135, Mental Disorders.

> The mental disorder is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.[18]

The BCFED does not support this addition to the definition. Virtually everything in the workplace is controlled at some level by the employer. It is not necessary to explicitly mention in the regulation.

The exclusion is too broad and there is no requirement for the employer's action be bona fide or made in good faith. It will have a chilling effect on workers reporting incidents of harassment and violence. There is a potential for employers to quickly dismiss unreasonable management action.

Recommendation

The BCFED strongly urges the WCB to remove Section 4.24(3). Guidance could be added to the guidelines with a focus on "unacceptable" acts rather than "reasonable action."

Section 4.25 General duty of the employer respecting harassment and violence

This is a new section and as explained in the WCB notes, the intent is to require the employer to eliminate or minimize the risks of harassment and violence hazards like other workplace hazards. Our previous concerns regarding the hierarchy of controls would apply in Section 4.25(1).

> *One worker shared painful memories of an unprovoked assault by a client that left the worker with significant injuries, including a dislocated jaw. The worker, who was young and newly hired at the time, was pressured by management to return to work with the same client in less than a week.*
>
> BCGEU Community Social Service Worker

We are pleased the WCB's intent is to ensure that harassment and violence hazards should be mitigated like other workplace hazards. In our experience, harassment and violence hazards are often treated differently. Perhaps because we are dealing with people's behaviours and not with widgets.

The inset is a shocking but all too familiar example of an employer who did not assess the risk, investigate and implement control measures.

Section 4.26 (1-6) Harassment and violence prevention program

This is a new section and requires the employer to have a harassment and violence prevention program. It lays out the minimum components of the program.

> *“What we got was:" because I said so" or " trust me."*
>
> *We no longer have that blind faith. In fact, one of the workers said to me " I no longer trust them to keep me safe- I will do what I need to for me, because no one has my back. She told me her attitude changed after describing what in any other industry would be a sexual assault but when she reported was laughed at and told "oh yeah, he does that a lot."*
>
> UFCW 1518 Community Social Service Worker

The WCB explains in the notes the intended purpose of the section is to broaden the current requirement for a prevention program from current language that is limited to those workplaces where a risk of injury to workers from harassment and violence may be present. The intention of this section is to ensure that all employers develop and maintain a prevention program because harassment and violence is present at all workplaces.

We thank the WCB for this explanation and could not agree more.

Section 4.26(3) sets the requirements for the employer conducting an annual review or whenever there is a significant change in the factors in the risk assessment required in Section 4.27.

a. carry out a review of the harassment and violence prevention program and make any changes the employer considers necessary.

There is no requirement in Subsection (3) for the employer to consult with the committee on the prevention program review. Changes are those the employer considers necessary.

Section 4.28(4) requires the employer to consult with the applicable workplace partner when developing, reviewing and, if applicable, updating the harassment and violence program.

Curiously, the employer is required to consult on developing and reviewing the violence prevention program but only if applicable for updating the program.

And yet, the explanatory notes state the employer must develop, review and update the harassment and violence prevention program in consultation with the applicable workplace partner. There appears to be a disconnect and there is no explanation in the explanatory notes.

Recommendation

The BCFED strongly disagrees with the exclusion of worker consultation and recommends the WCB further amend Sections 4.26 (3) and (4) to clarify and ensure worker involvement in all aspects of the prevention program.

As we have previously recommended in our submission, there are specific sections where the employer must consult with the joint OHS committee, worker representative or with workers if there is no committee or worker representative.

Sections 4.26 (3)(b) and (5) require the employer to inform affected workers of changes to the program and to make an up-to-date copy of the components of the harassment and violence prevention program readily available to affected workers.

Why not all workers at the workplace? The WCB has provided no explanation for providing this information to affected workers only.

The WCB has said in their notes the purpose of a prevention control plan is to ensure that all workplaces have a prevention program because “virtually” all workplaces have harassment and violence risks. Surely it follows that all workers are at risk and have the right to know the changes to

and the components of the violence and harassment prevention program.

Recommendation

The BCFED recommends Sections 4.26 (3)(b) and (4) be amended to remove “affected workers” and replace with “all workers, supervisors and managers.”

Section 4.27 Risk Assessments

Section 4.27(2)

The proposed section requires a qualified person to conduct a risk assessment. A qualified person was not mentioned in the 2022 proposed amendment. The 2022 version of Section 4.25(4) required that a risk assessment must be carried out and documented in consultation with the joint committee, the worker representative or the workers at the workplace if there is no committee.

The change from worker involvement in the fundamental process of risk assessment to a qualified person is beyond the pale. And there is no requirement for the qualified person to consult with the joint committee, worker representative or workers in smaller workplaces.

The WCB provides no explanation or rationale in the explanatory notes for this change.

We have already recommended in our submission regarding the required involvement of the committee, worker representative in specific sections including Section 4.27 risk assessment.

Recommendation

The BCFED strongly believes the joint committee, worker representative or workers, if there is no committee or worker representative, must be involved in the risk assessment.

We disagree in the strongest terms with the change in Section 4.27(2) and recommend the requirement for a qualified person be removed.

Section 4.24(1) prescribing the involvement of the joint committee, worker representative or workers if there is no committee is intended to apply to these sections, 4.25-4.31.2 of the harassment and

violence regulation.

Section 4.27(2)(b) (i-vi)

This section includes the factors that need to be considered in a risk assessment.

Recommendations

The BCFED recommends the following amendments. Many of these are from the current policy on harassment and violence and should be maintained in the proposed amendments.[19]

1. Subsection 2(b)(i) add physical design, including the type of equipment, tools, utensils, that are used or available for use. (current policy)
2. Subsection 2(b)(ii) add the culture, organizational structure, work organization, design and management.
3. Subsection 2(b)(iii) remove “history” and add “previous experience” of harassment and violence, including the number, locations, nature, severity, timing and frequency of incidents and near misses.
4. Subsection 2(b)(v) remove “outside” and add “external” as external incidents are included in the proposed definitions.

Remove “domestic violence” and add the more commonly used terms “family or relationship violence” that may give rise to harassment and violence at the workplace.

5. Add a new section, *The measures that are in place to control work-related harassment and violence.*
6. Add new section, *Communication methods by which, for example, information about risks, incidents or threats of violence or requests for assistance may be sent.*
7. Add new section, *Existence of clearly marked exit signs and emergency procedures.*
8. Add new section, *Staff deployment and scheduling, including the extent to which persons who work at night or work alone, are checked when working alone and the availability of backup assistance.*

Section 4.27 (3) (a) (b)

Recommendation

The BCFED recommends adding Subsection (c) requiring a copy of the record be made readily available to workers and to supervisors. Workers have a right to know this information.

Section 4.28 Policies and procedures

The proposed section requires the employer to have written policies and procedures.

Recommendations

The BCFED recommends further amending Section 4.28(2) to add the requirements that are found in the current policy,[20] the current regulation and the federal legislation.[21]

a. No change.
b. Description of the measures in place to control the identified risk factors.
c. The nature and extent of the identified risk factors that contribute to work-related harassment and violence. (policy and federal regulation)
d. The role and responsibilities of managers, supervisors and workers. (federal regulation)
e. The procedures for responding to incidents of violence, including how to call for assistance. (current regulation)
f. Emergency procedures for responding to harassment and violence that may pose an immediate danger to a worker or workers.
g. The procedures for reporting harassment and violence.
h. The procedures for the employer's response to an incident of harassment and violence.
i. The post-incident response procedures for a manager or supervisor including,
    a. When to advise a worker to consult a physician; (in current regulation)
    b. When to refer a worker to critical incident or trauma counselling, or other support measures available; and
    c. When to arrange for critical incident or trauma counselling at the workplace.

j. Procedures for carrying out investigations under Sections 4.30.1 and 4.30.2.
k. A description of how the employer will protect the privacy of those involved in an occurrence or in the resolution process under these regulations. (federal regulations)
l. A description of the harassment and violence training provided to workers, supervisors and managers. (federal regulations)
m. A description of any recourse, in addition to any under the WCA or these regulations that may be available to persons who are involved in an incident. (federal regulations)

Subsection (i) (b and c) and the requirement to provide and arrange critical incident and trauma counselling is a fundamental provision. A traumatic event will have an impact on all workers at the workplace even though they may not have been directly involved or they were not at work at the time of the incident. Critical incident debriefing is an opportunity for sharing accurate information about the incident and for workers to reflect on their own reactions.

The requirement for critical incident debriefing and trauma counseling has been in the BCGEU/government of BC collective agreement for many years.

> "(f) Immediate critical incident stress debriefing and post traumatic counselling shall be made available for employees who have suffered as a result of violence."[22]

Further amend to add Subsection (4):

> (4) An employer must make copies of the policies and procedures required under this section readily available to workers and supervisors.

Section 4.29 Duty to provide information before assigning a worker to carry out work

This section sets out the employer's requirements to inform the worker of any risk of harassment and violence before they are assigned to work.

The BCFED strongly supports Section 4.29 as it fulfills the employer's duty to inform and the workers' right to know about the hazards and control measures and how to implement them when needed.

Subsection(1)(a) requires the employer to inform the worker of the risks of harassment and violence that relate to the worker with enough detail to allow the worker to understand the nature and extent of the risk.

We are concerned with the words “enough detail” which is vague and open to interpretation as to how much is enough and who determines what is enough.

Recommendation

Further amend this section to read “risks of harassment and violence that relate to the worker with enough detail to allow them to clearly understand the nature and extent of these potential dangers.”

This wording puts the onus on the employer to check with the worker to see if they have clearly understood the risks and the dangers.

Subsection (1)(b) requires the employer to inform the worker about measures that have been taken to eliminate or minimize the risks referred to in paragraph (a).

Recommendation

Further amend this section to use the terms “control” measures as previously recommended on page 13 and remove the word “paragraph” and replace with “subsection” which is more commonly used throughout the amended regulation.

Both proposed amendments will provide consistency and clarity for workers, employers and prevention officers.

Section 4.30.1 Investigation of harassment and violence

Section 4.30.1(1) applies if the report of harassment and violence is internal and is not an accident or incident within the meaning of WCA, Division 10, Investigations, Section 69(1) and the subject and the source agree that the provisions of this section are to be applied.

In Subsection (2), the employer ensures that a qualified person other than the subject or the source investigates the harassment and violence.

Subsections (4)(b)(i) and (ii) propose the qualified person can determine the provisions of the section no longer apply if there is no reasonable prospect of achieving resolution and if the process may be causing harm or distress of the subject or the source.

The federal regulation requires the selection of an investigator to conduct the investigation and has language on how the investigator is selected and the required qualifications.

The BCFED strongly believes this is a gap in the amendments and the WCB should include language of the federal requirements for the investigator.

For the purposes of the OHSR, a qualified person is defined as *"qualified"* means being knowledgeable of the work, the hazards involved and the means to control the hazards, by reason of education, training, experience or a combination thereof."[23]

The BCFED has previously supported the need for a more prescriptive definition of "qualified" that would leave less room for interpretation and ambiguity.

The federal regulation provides clearer requirements for choosing the investigator and for determining qualifications.

We cannot emphasize enough the importance of properly qualified investigators. Often human resources staff or external lawyers are tasked with conducting harassment and violence investigations, and they may not be qualified and represent the employer.

Mutually-agreed-to investigators chosen by the employer and the joint committee, worker representative or workers in smaller workplaces is pivotal to improving the investigation process.

And we have recommended this joint participation in Section 4.24 on page 6 of the submission.

For the purposes of the proposed amendments to the harassment and violence regulation, we believe there is a need for the prescriptive federal language to ensure consistency and accuracy in the requirements for choosing the investigator and for the qualifications.

Recommendations

The BCFED recommends further amending to delete “qualified person” and replace with “investigator” and to add new renumbered sections on selection of investigator, investigator qualifications and statement of qualifications. These sections are based on the federal harassment and violence regulation with some modifications.

> Selection of investigator
>
> 1. Subject to Subsection (2), an employer or designated recipient must select one of the following persons to act as the investigator:
>
> (a) in the case where the employer and the applicable partner have jointly developed or identified a list of persons who may act as an investigator, a person from that list; and
>
> (b) in any other case,
>
> > (i) a person that is agreed to by the employer or designated recipient, the principal party and the responding party, or
> >
> > (ii) if there is no agreement within 60 days after the day on which the notice is provided under Section 4.30, a person from among those whom the Canadian Centre for Occupational Health and Safety identifies as having the knowledge, training and experience referred to in subsection (?).

Recommendation

> The BCFED recommends the WCB consider maintaining a list of persons they identify as having the knowledge, training and experience as required by the regulation. This should be done in consultation with the stakeholders.

2. An employer may select a person to act as the investigator only if the person

(a) possesses the knowledge, training and experience referred to in subsection (?); and

(b) provides the employer or designated recipient, principal party and responding party with a written statement indicating that the person is not in a conflict of interest in respect of the occurrence.

Investigator's qualifications

3. (1) For the purposes of these regulations, an investigator must

(a) be trained in investigative techniques;

(b) have knowledge, training and experience that are relevant to harassment and violence in the workplace; and

(c) have knowledge of the Act, the *Canadian Human Rights Act, Human Rights Code of British Columbia* and any other legislation that is relevant to harassment and violence in the workplace.

(d) have knowledge, training and experience on trauma-informed approaches to investigations and corrective actions.

Statement of qualifications

4. A person or party referred to in subparagraph (?) who proposes that a person act as the investigator must provide the other persons and parties referred to in that subparagraph with the following information about the proposed investigator:

(a) their name;

(b) if they are an employee of the employer, their job title and the name of their immediate supervisor;

(c) a description of their knowledge, training and experience demonstrating that they meet the requirements of Subsection (2); and

(d) a description of any experience that they have which is relevant to the nature of the occurrence that is to be investigated.[24]

Section 4.30.2 Investigation of harassment and violence

Section 4.30.2(3) requires the employer to ensure a qualified person investigates the incident of harassment and violence.

Our recommendations in Section 4.30.1 pertaining to the investigator would apply to this section.

Section 4.31 Multiple employer workplaces

This section sets out the requirements for an employer required to investigate under Section 4.30.2 that involves another employer, or a supervisor or workers of another employer. The employer must inform the prime contractor for the workplace of the harassment and violence, the findings and recommendations of the report under Section 4.30.2(3)(b) and any corrective action taken.

Recommendation

The BCFED recommends further amending to add Subsection (4).

(4) An employer must establish and maintain a system or process to share the information identified under Section 4.31(2) (a)(b)(c) with the other employers at the workplace that have workers that are likely to encounter the source in the course of work.

Section 4.31.1 Training

This section sets the requirements for the employer to ensure each supervisor and worker receives training on harassment and violence at the workplace.

Recommendation

The BCFED recommends a further amendment to name Section 4.31.1 “Education and Training.”

Education and training have different goals and the BCFED believes both are applicable to learning about harassment and violence.

Education

The primary goal of education is to impart knowledge, foster critical thinking and promote a broad understanding of various subjects. It often involves a theoretical and conceptual approach to learning.

Training

Training, however, is more focused on developing specific skills or competencies needed for a particular job or task. It tends to be practical and skill-oriented, aiming to enhance job performance. [25]

For example, from the Ergonomic Regulation,

4.51 Education and training

> (1) The employer must ensure that a worker who may be exposed to a risk of MSI is educated in risk identification related to the work, including the recognition of early signs and symptoms of MSIs and their potential health effects.
>
> (2) The employer must ensure that a worker to be assigned to work which requires specific measures to control the risk of MSI is trained in the use of those measures, including, where applicable, work procedures, mechanical aids and personal protective equipment. [26]

The BCFED strongly believes the training and education for workers, supervisors and managers, must be more comprehensive than the proposed amendments.

Recommendations

The BCFED therefore recommends further amendments and renumbering.

(ii) how to recognize harassment and violence, including

(a)

1. Gender-based harassment and violence including sexual harassment and sexual assault.
2. Family and relationship violence.
3. Harassment and violence based on the prohibited grounds in the Code as per Section 4.24(2).

(b) The attitudes and beliefs in the workplace and society that contribute to harassment and violence and the equity and inclusion strategies that address them, without limitation.

1. Indigenous cultural safety.
2. Anti-racism, sexism and misogyny, gender diversity and inclusion, 2SLGBTQIA+ inclusion, accessibility, diverse faiths, trauma, substance use and addiction.
3. Power and privilege, prejudice, stereotypes, unconscious biases and discrimination.
4. Intersectionality.
5. Microaggressions.

Amend Subsection (iv), add “the nature and extent” of the risks.

Add new Subsection (vi), *The additional psychosocial hazards that contribute to harassment and violence, including without limitation, work organization, design and management.*

Conclusion

We thank the WCB for the opportunity to participate in this consultation. And we strongly urge you to consider implementing our recommendations.

We also encourage the WCB to implement an effective implementation strategy ensuring that all workers and employers are properly informed and supported to effectively practice these new requirements.

The implementation strategy must be designed to consider the diversity of workplaces and workers to which these regulation amendments are applicable.

We therefore urge the WCB Board of Directors to provide the necessary resources to ensure effective implementation, ongoing inspections and enforcement.

Summary of recommendations

Section 4.24 (1)

1. The BCFED strongly urges the WCB to further amend Section 4.24(1) by removing reference to “applicable workplace representative,” and base the requirement for consultation with the joint health and safety committee, the worker representative, workers if there is no committee or worker representative and a representative sample of workers for the purposes of risk assessments.

We recommend the WCB use the model language from the ergonomics regulation.

2. The proposed amendments be further amended to include “act,” “conduct” and “comment” to better describe the range of harassment and violence behaviors.
3. Section 4.24 (1): Amend the proposed definition of “harassment and violence” to include “sexual harassment.” The frequency of sexual harassment in the workplace necessitates a clear requirement in the regulation.

The BCFED recommends the WCB renumber Section 4.24 (1) to provide clarity.

4. The BCFED prefers the more explicit language of the International Labour Organization (ILO) Convention 190, to replace “reasonably expected” with “that aim at, result in, or likely to result in.”
5. The BCFED recommends a further amendment to Section 4.24 adding Subsection (4) titled Control to include the Hierarchy of Controls. This will give clear direction to employers and workers on how to apply the principles of mitigating the hazard and will be consistent with the

ergonomics regulation and the working alone regulation.

Section 4.24 (2)

6. The BCFED recommends further amending Section 4.24(2) by removing the words “that targets or is based on” and replace with the “harassment and violence that is directed at persons because of their Indigenous identity….”
7. The BCFED recommends further amending Section 4.24 (1) to add family violence in place of domestic violence and provide a clear definition.

The BCFED believes the policy definition of “family violence” should be added to the regulatory amendments.

Section 4.24(3) Exclusion of reasonable management action

8. The BCFED strongly urges the WCB to remove Section 4.24(3). Guidance could be added to the guidelines with a focus on “unacceptable” acts rather than “reasonable action.”

Section 4.26 (1-6) Harassment and violence prevention program

9. The BCFED strongly disagrees with the exclusion of worker consultation and recommends the WCB further amend Sections 4.26 (3) and (4) to clarify and ensure worker involvement in all aspects of the prevention program.
10. The BCFED recommends Sections 4.26 (3)(b) and (4) be amended to remove “affected workers” and replace with “all workers, supervisors and managers.”

Section 4.27 Risk Assessments

Section 4.27(2)

11. The BCFED strongly believes the joint committee, worker representative or workers, if there is no committee or worker representative, must be involved in the risk assessment.

We disagree in the strongest terms with the change in Section 4.27(2) and recommend the requirement for a qualified person be removed.

Section 4.27(2)(b) (i-vi)

12. The BCFED recommends the following amendments. Many of these are from the current policy on harassment and violence and should be maintained in the proposed amendments.[27]

1. Subsection 2(b)(i) add physical design, including the type of equipment, tools, utensils, that are used or available for use. (current policy)
2. Subsection 2(b)(ii) add the culture, organizational structure, work organization, design and management.
3. Subsection 2(b)(iii) remove “history” and add “previous experience” of harassment and violence, including the number, locations, nature, severity, timing and frequency of incidents and near misses.
4. Subsection 2(b)(v) remove “outside” and add “external” as external incidents are included in the proposed definitions.

Remove “domestic violence” and add the more commonly used terms “family or relationship violence” that may give rise to harassment and violence at the workplace.

5. Add a new section, *The measures that are in place to control work-related harassment and violence.*
6. Add new section, *Communication methods by which, for example, information about risks, incidents or threats of violence or requests for assistance may be sent.*
7. Add new section, *Existence of clearly marked exit signs and emergency procedures.*
8. Add new section, *Staff deployment and scheduling, including the extent to which persons who work at night or work alone, are checked when working alone and the availability of backup assistance.*

Section 4.27 (3) (a) (b)

13. The BCFED recommends adding Subsection (c) requiring a copy of the record be made readily available to workers and to supervisors. Workers have a right to know this information.

Section 4.28 Policies and procedures

14. The BCFED recommends further amending Section 4.28(2) to add the requirements that are found in the current policy,[28] the current regulation and the federal legislation.[29]

a. No change.
b. Description of the measures in place to control the identified risk factors.
c. The nature and extent of the identified risk factors that contribute to work-related harassment and violence. (policy and federal regulation)
d. The role and responsibilities of managers, supervisors and workers. (federal regulation)
e. The procedures for responding to incidents of violence, including how to call for assistance. (current regulation)
f. Emergency procedures for responding to harassment and violence that may pose an immediate danger to a worker or workers.
g. The procedures for reporting harassment and violence.
h. The procedures for the employer's response to an incident of harassment and violence.
i. The post-incident response procedures for a manager or supervisor including,
    a. When to advise a worker to consult a physician; (in current regulation)
    b. When to refer a worker to critical incident or trauma counselling, or other support measures available; and
    c. When to arrange for critical incident or trauma counselling at the workplace.
j. Procedures for carrying out investigations under Sections 4.30.1 and 4.30.2.
k. A description of how the employer will protect the privacy of those involved in an occurrence or in the resolution process under these regulations. (federal regulations)
l. A description of the harassment and violence training provided to workers, supervisors and managers. (federal regulations)

m. A description of any recourse, in addition to any under the WCA or these regulations that may be available to persons who are involved in an incident. (federal regulations)

Further amend to add Subsection (4):

(4) An employer must make copies of the policies and procedures required under this section readily available to workers and supervisors.

Section 4.29 Duty to provide information before assigning a worker to carry out work

15. Further amend this section to read “risks of harassment and violence that relate to the worker with enough detail to allow them to clearly understand the nature and extent of these potential dangers.”
16. Further amend this section to use the terms “control” measures as previously recommended on page 13 and remove the word “paragraph” and replace with “subsection” which is more commonly used throughout the amended regulation.

Both proposed amendments will provide consistency and clarity for workers, employers and prevention officers.

Section 4.30.1 Investigation of harassment and violence

17. The BCFED recommends further amending to delete “qualified person” and replace with “investigator” and to add new renumbered sections on selection of investigator, investigator qualifications and statement of qualifications. These sections are based on the federal harassment and violence regulation with some modifications.

Selection of investigator

1. Subject to Subsection (2), an employer or designated recipient must select one of the following persons to act as the investigator:

(a) in the case where the employer and the applicable partner have jointly developed or identified a list of persons who may act as an investigator, a person from that list; and

(b) in any other case,

(i) a person that is agreed to by the employer or designated recipient, the principal party and the responding party, or

(ii) if there is no agreement within 60 days after the day on which the notice is provided under Section 4.30, a person from among those whom the Canadian Centre for Occupational Health and Safety identifies as having the knowledge, training and experience referred to in subsection (?).

18. The BCFED recommends the WCB consider maintaining a list of persons they identify as having the knowledge, training and experience as required by the regulation. This should be done in consultation with the stakeholders.

2. An employer may select a person to act as the investigator only if the person

(a) possesses the knowledge, training and experience referred to in subsection (?); and

(b) provides the employer or designated recipient, principal party and responding party with a written statement indicating that the person is not in a conflict of interest in respect of the occurrence.

Investigator's qualifications

3. (1) For the purposes of these regulations, an investigator must

(a) be trained in investigative techniques;

(b) have knowledge, training and experience that are relevant to harassment and violence in the workplace; and

(c) have knowledge of the Act, the *Canadian Human Rights Act*, *Human Rights Code of British Columbia* and any other legislation that is relevant to harassment and violence in the workplace.

(d) have knowledge, training and experience on trauma-informed approaches to investigations and corrective actions.

Statement of qualifications

4. A person or party referred to in subparagraph (?) who proposes that a person act as the investigator must provide the other persons and parties referred to in that subparagraph with the following information about the proposed investigator:

(a) their name;

(b) if they are an employee of the employer, their job title and the name of their immediate supervisor;

(c) a description of their knowledge, training and experience demonstrating that they meet the requirements of Subsection (2); and

(d) a description of any experience that they have which is relevant to the nature of the occurrence that is to be investigated.[30]

Section 4.31 Multiple employer workplaces

19. The BCFED recommends further amending to add Subsection (4).

(4) An employer must establish and maintain a system or process to share the information identified under Section 4.31(2) (a)(b)(c) with the other employers at the workplace that have workers that are likely to encounter the source in the course of work.

Section 4.31.1 Training

20. The BCFED recommends a further amendment to name Section 4.31.1 “Education and Training.”

21. The BCFED therefore recommends further amendments and renumbering.

(ii) how to recognize harassment and violence, including

(a)

1. Gender-based harassment and violence including sexual harassment and sexual assault.
2. Family and relationship violence.
3. Harassment and violence based on the prohibited grounds in the Code as per Section 4.24(2).

(b) The attitudes and beliefs in the workplace and society that contribute to harassment and violence and the equity and inclusion strategies that address them, without limitation.

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2. Anti-racism, sexism and misogyny, gender diversity and inclusion, 2SLGBTQIA+ inclusion, accessibility, diverse faiths, trauma, substance use and addiction.
3. Power and privilege, prejudice, stereotypes, unconscious biases and discrimination.
4. Intersectionality.
5. Microaggressions.

Amend Subsection (iv), add “the nature and extent” of the risks.

Add new Subsection (vi), *The additional psychosocial hazards that contribute to harassment and violence, including without limitation, work organization, design and management.*

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[2] https://canadianlabour.ca/national-survey-reports-widespread-harassment-and-violence-in-workplaces/

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