

Part III GENERAL DUTIES

Index

Section	Title	Revision Date
E15	<u>Working alone</u>	September 2009
E19	<u>Co-ordination of work</u>	September 2009
E20	<u>Two or more employers</u>	September 2009
E21	<u>Appointment of qualified coordinator</u>	September 2009
E22 – E23	<u>Violence and Harassment Prevention</u>	January 2020
E24	<u>Violence prevention - Instruction to workers</u>	January 2020
E24.1	<u>Harassment Prevention Plan</u>	January 2020
E24.1(4) and E24.1(5)	<u>Investigating Complaints</u> For more detailed information covering the desired qualities of a harassment investigator, harassment investigation reports and other planning considerations go to <u>https://www.gov.nl.ca/dgsnl/files/Harassment-investigation-information-May-5-2021-1.pdf</u> .	September 2021
E24.2	<u>Training</u>	April 2020
	<u>OHS Requirements for Learning about Workplace Harassment Prevention</u>	April 2020

Section E15 Working alone

The purpose of this explanation is to provide information on when a worker is considered to be working alone or working in isolation. This includes criteria for determining if a worker has assistance that is readily available.

When determining compliance with this Section, serious consideration should be given to Section 22 – Violence Prevention.

Subsection E15(1) A worker is considered to be working alone or in isolation when he or she does not have assistance that is readily available in case of emergency, injury, or ill health. In order to determine if assistance is readily available, the following conditions should be considered:

- Presence of others: Are other people in the vicinity?
- Awareness: Will other persons capable of providing assistance be aware of the worker's need?
- Willingness: Is it reasonable to expect those other persons will provide assistance?
- Timeliness: Will assistance be provided within a reasonable period of time?

Relying on customers for assistance

Different circumstances may prevail that will require employers to make a reasonable assessment to determine assistance is readily available. In a retail premises, such as a convenience store, customers are not considered to meet the definition of assistance that is readily available. However, if the worker is in an area where there is a high volume of customers, such as a shopping mall or sports stadium, there may be security staff or workers of other employers available to provide assistance.

Agreements with other employers

If two or more workers of different employers are working together or in the same vicinity and each worker is capable of and willing to provide assistance in a timely manner, this can qualify as assistance that is readily available. An example of this would be a coffee or donut retailer that is situated within premises shared with a retail gas vendor.

Another example would be where a second worker is on the premises for a short period, such as to make deliveries or pickups. In this case, the worker only has assistance that is readily available for the period in which the additional worker is on the premises, and is considered to be working alone once the additional worker leaves the premises.

Employers would need to ensure that the workers of both employers are capable of, and willing to, provide assistance and that the workers are aware of the arrangement, and should put the arrangement in writing.

Communication Systems

Providing workers with electronic means of communication, such as a phone, radio, or personal alarm, does not guarantee that the condition of "assistance that is readily available" has been met.

If a worker cannot be seen or heard by persons capable of providing assistance in

a timely manner, then he or she should be regarded as working alone or in isolation.

Subsection E15(2) There are a number of ways to perform the assessment.

Depending upon the number of workers and the complexity of the potential hazards, the assessment process may be as simple as a short discussion held with workers who are given an opportunity for input or as complex as using an assessment team for the workplace or for each department. Assessment teams should include those workers and employer representatives with the knowledge and experience to provide the best input into the process. Another option is for an employer to hire a consultant to work with worker and employer representatives in conducting the assessment.

Where available, members of the health and safety committee or the worker health and safety representative or designate, as applicable, should be invited to participate. They can serve as members of the team or act in a consultative role.

Employers should review the method of assessment and redo the assessment if there is a significant change in the nature of the business or the location of the workplace or in the event of a serious incident. Again, where available, the health and safety committee or the worker health and safety representative or designate should be invited to participate in any review.

The assessment is a step-by-step process that first identifies the nature and type of hazard that could reasonably be anticipated in the workplace, followed by an assessment of the likelihood of such hazards occurring. This assessment should help the employer set priorities and identify tasks that require further analysis to ensure that effective controls can be implemented.

While the size and type of workplace and the nature of the work will dictate the complexity of the assessment, it should generally follow the process outlined below:

- Gather information on previous incidents where workers were exposed to hazards while working alone or in isolation in the workplace, generally over a period of at least a year, preferably 3 years.
- Gather information on experience in similar workplaces, including severity and frequency of any hazards that workers working alone or in isolation have been exposed to. Sources of information may include the Internet, NIOSH, industry associations, or the police.
- Determine the hazard control measures, if any, already in place at the workplace.
- Obtain staff and health and safety committee input (using questionnaires, surveys, formal and informal discussions, and interviews, as appropriate to the size of the workplace).

- Inspect the workplace for hazards.
- Analyze the information.

To determine specific situations that may expose workers to hazards, consider factors such as:

- Occupations and locations that may be at higher risk.
- Types of tasks that may place workers at higher risk. Higher risk tasks may include working with machinery, working from heights, using explosives, or other activities where serious accidents or injuries have occurred in the past.
- Types of foreseeable interactions that may place workers at higher risk. Higher risk interactions may include repossessing furniture, vehicles, etc., issuing fines or other monetary penalties directly to individuals, working with aggressive or unpredictable patients in a healthcare facility, or other interactions that may involve aggravated individuals.

In addition, consider other factors such as:

- The specific workplace layout, including furniture design and placement, and the location of entrances and exits
- The location of the workplace, and the emergency response time necessary to get there in the event of an emergency
- Whether or not the worker may be attacked by an animal or encounter a poisonous material
- The climate of the work environment, including whether or not the worker may be exposed to extreme weather conditions or temperatures
- Whether or not the work is physically demanding so that the worker may be fatigued
- Age, experience, and training of the workers who may be at risk
- Type of equipment, tools and supplies available for use, including emergency communication equipment and emergency supplies such as food and drinking water and appropriate first aid equipment
- Whether or not the worker will need to carry some or all of the emergency supplies and first aid equipment with them during work activities
- Work activities which take a worker out of a safe environment, such as cleaning the area around the gas pumps at 2 a.m.
- Staff deployment and scheduling, including the extent to which persons work at night.

Subsection E15(3) Before a worker starts a work assignment with a hazard identified under Subsection 15(2), 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.

"Administrative controls" means the provision, use and scheduling of work activities and resources in the workplace, including planning, organizing, staffing and coordinating, for controlling risk.

"Engineering controls" means the physical arrangement, design or alteration of workstations, equipment, materials, production facilities or other aspects of the physical work environment, for the purpose of controlling risk.

For purposes of Subsection 15(3), 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.

The purpose of this explanation is to outline ways to conduct a risk assessment to identify hazards to workers assigned to work alone or in isolation and to describe some steps an employer may take to eliminate or minimize identified hazards.

Common situations and occupations where a worker may be working alone or in isolation and exposed to hazards include

- A worker who handles cash such as a convenience store clerk, retail outlet employee, parking attendant and taxi driver
- A worker who meets clients out of the office such as a home careworker, or a social service worker
- A worker who does hazardous work with no regular interaction with other people such as a forestry worker, equipment operator, a worker in the freezer area of a cold storage facility or a night cleaner in a plant
- A worker who is performing work activities alone that may lead to slips or falls, including the use of ladders, or stocking high shelves
- A worker who is at risk of violent attack who is isolated from other workers or public view such as a security guard, custodian, and a night shift employee in a community care or outpatient department.

The employer is expected to assess the likelihood of hazards to workers working alone or in isolation. The assessment of the hazards should be based on what reasonably could be anticipated for that workplace or work activity.

If employers identify a hazard under Subsection 15(2), the hazard should be eliminated where practicable. The following are examples of how hazards could be eliminated:

- Use video surveillance to remotely monitor an area instead of using an on-site security guard
- Install an automated payment system for services, such as parking, instead of using a cashier/attendant
- Use vending machines to dispense food or other convenience items rather than using a checkout cashier

Minimizing the risk of a hazard

If hazards cannot be eliminated, or it is not practicable to do so, employers should try to minimize the risk from the hazard occurring. The options available to achieve this result are administrative controls and engineering controls.

In selecting measures to reduce risk, preference should be given to implementing available and practicable engineering controls. These controls generally provide "passive protection" which is not dependent on a person taking a specific action. This can be particularly important in an emergency or crisis situation. However, where engineering controls are not practicable or do not reduce the risk to a level that is as low as practicable, administrative controls will need to be developed and implemented.

Some examples of engineering controls include physical arrangements in the workplace to separate the worker from the customers and public by locked doors, pay windows, barriers that are substantial enough to prevent access to the worker, or use of another type of secure enclosure.

Examples of administrative controls include the use of some or all of the following:

- Rearrange the work schedule so that more than one person is always present in the workplace
- Rearrange work schedules so that the hazardous work, such as that which presents a falling hazard, is done while more than one worker is working
- Require that the worker contact the person/company responsible for checking the well being of the worker to ensure that a person check is done before and after the expected completion time of a possibly hazardous activity
- Require mandatory on-site supervision of young workers by an adult
- Use cash handling procedures that require the use of a locked drop safe keeping only small amounts of cash accessible on the site, installing surveillance cameras, and posting signs indicating that the amount of cash on site is limited
- Use uniformed security guards
- Prohibit high-risk work activities during times when a worker is working alone
- Use a personal emergency call device that a worker may wear on a lanyard around his/her neck and use to call for help in the event of a personal security or emergency issue

Subsection E15 (4), (5), (6) & (7)

The purpose of this explanation is to elaborate on requirements of the procedures involving time intervals between checking the well-being of a worker. This section also provides information on technology available to assist in checking the well-being of a worker.

An alternative to a technology-based system may be a "person check" system. A person check system involves one or more people to check on another person that may be working alone. Such a system may be adequate provided all of the subsections for Section 15 are met.

Time intervals

Time intervals should be developed after considering the risks to which the worker is exposed. This may be done as part of the risk assessment process required under Subsection 15(2) of the Regulations. High risk activities require shorter time intervals between checks. The preferred method for checking is visual or two-way voice contact, but where such a system is not practicable, a one-way system which allows the worker to call or signal for help and which will send a call for help if the worker does not reset the device after a predetermined interval is acceptable.

Use of technology to check a worker's well being

In selecting procedures to check a worker's well-being, employers should give preference to procedures which allow for the visual confirmation of the worker's well-being. Where this is not practicable, employers may use other approaches.

For example, an employer could require workers to make phone calls at scheduled intervals to other workers at another location. Employers may also decide to use one of a number of available technologies to check the well-being of workers. The technologies available include, but are not limited to:

- **Call-in systems:** These systems are available from security service providers and only require access to a phone. Workers call into the system at scheduled intervals during their shift and enter a code to confirm their safety. In the event that a worker fails to phone in by the scheduled interval, the security provider follows a predetermined protocol to make contact with the worker. If the worker cannot be contacted, emergency assistance will be sent.
- **Externally monitored panic alarm devices:** A number of security service providers offer panic alarm devices that workers can carry with them, eliminating the need for access to a phone. As is the case with the call-in systems, panic alarm devices can be programmed to require a worker to confirm their safety at scheduled intervals. Some devices also offer a "person down" feature, which will notify the security provider when a worker does not move for a given period, as well as a panic button, which will automatically alarm the security provider of an emergency. In the event that the person down or panic alarm feature is activated, or a worker fails to confirm their safety at a scheduled interval, the security service provider will attempt to contact the worker before emergency assistance is sent. These devices are designed to be carried on the worker at all times, and can be worn around the worker's neck or on a belt. It is the employer's responsibility to ensure that workers consistently wear

the device during the required times.

- **Internally monitored panic alarm devices:** Panic alarm devices can also be purchased with a monitoring station, meaning there is no monitoring performed by a security service provider. The monitoring station can be linked to a number of different panic alarm devices, and will emit an audible signal in the event that a worker fails to confirm their safety or the person down or panic button features are activated. These systems must be monitored continuously.

Section E19 Co-ordination of work

Subsection E19(1) An “owner” is defined as a person, or group of persons, representing the entity that owns the place where work activities are being performed. Under this section, the owner is responsible to ensure that ANY person(s) at that workplace are informed of the hazards associated with that operation AND the health and safety activities that are used to control any hazards.

Subsection E19(2) A principal contractor must co-ordinate work schedules and tasks to ensure that workers are never exposed to an unsafe work environment.

Section E20 Two or more employers

Subsection E20(a) This section is applicable where at a worksite, there are at least two different employers. One of these workers must be a representative of the principal contractor for that project.

***NOTE: Under this subsection a representative may be, but is not limited to, an OHS Worker Health and Safety Representative/Designate as required under Section 25(1) of the Regulations. ***

Subsection E20(b) Each employer must notify the principal contractor of any work that may be hazardous to other employer’s.

The principal contractor must ensure compliance to the Act and Regulations, even if an employer is absent from the site. Employers must ensure that the principal contractor is aware of any conditions or activities that exist at the site in their absence. Just because an employer is not present does not mean that they cannot contribute to the overall safety of that site.

Section E21 Appointment of qualified co-ordinator

Subsection E21(a) This section places responsibility on the “principal contractor” to ensure a healthy and safe workplace. Essentially, this section supplements Section E20 based on the following condition:

- There are two or more employers with six or more workers in total.

Where that condition exists, it is the responsibility of the principal contractor to designate an individual with the responsibility of coordinating communication to ensure a healthy and safe workplace.

Subsection E21(b) Furthermore, if “that” individual is not a representative of the principal contractor; the principal contractor must designate a person to perform the duties that the principal contractor deems satisfactory to comply with this section of the Regulations.

Where Section 21(b) exists, the principal contractor must outline what the designated individual is responsible to do; otherwise nobody on the site will have any knowledge as to how communications are to be performed, when they are to be performed, what information is to be communicated, or to whom.

Violence and Harassment Prevention in the workplace

Workers in Newfoundland and Labrador have a right to a healthy and safe work environment, free from violence and harassment. Every employer has the legal obligation to ensure, as much as reasonably practicable, that workers are not exposed to violence or harassment with respect to any matter or circumstance arising out of employment.

This duty extends to:

- incidents that occur at the workplace or during work hours or when performing work related field work;
- conduct perpetrated by another employee (i.e., co-worker or supervisor) or the employer;
- conduct perpetrated by someone other than an employee, but with whom the worker is required to meet, including clients, contractors or the public; and
- incidents that occur outside of the usual workplace or after work hours that arise out of, or are connected to a worker’s employment, (e.g. work-sponsored social event, conferences).

Employers should look beyond what is legally required and take additional action to create a respectful working environment. This can include proactive training on topics

such as respectful workplaces, diversity and conflict resolution. Employers should use effective management practices to clearly define tasks, roles and workload, and promote fairness and openness in the workplace.

Employers are required to prevent violence and harassment in the workplace by first completing a [risk assessment](#) and then implementing reasonable preventive measures against violence and harassment. In addition, all employers are now required to develop a [Harassment Prevention Plan](#), to attend and provide training, and to investigate instances of harassment in the workplace, among other changes related to violence and harassment in the workplace. The following sections of the Explanation Guide serve to provide further information regarding sections 22 to 24.2 inclusive, of the Occupational Health and Safety Regulations, 2020. For further information and assistance, see the [“Workplace NL Harassment Guide”](#) at the Workplace NL website.

Interpretation

Subsection E22(1)

This section defines “violence” in the workplace as being “perpetrated by any person, to a worker in a workplace or during undertaking work on behalf of an employer”. The definition in this section of the Occupational Health and Safety Regulations is the “attempted or actual exercise of physical force to cause injury to a worker including threatening statements or behaviour which gives a worker reason to believe that he or she is at risk of injury.”

In the context of the Occupational Health and Safety Regulations, “bullying” is considered to be a form of [personal harassment](#) (see Subsection E22(2)).

Subsection E22(2) Types of Harassment

“Workplace harassment” is defined as “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”. There are two types of harassment; **harassment based on prohibited grounds**; and **personal harassment**. Neither form of harassment is acceptable in any workplace and all forms of harassment pose a threat to the health and safety of a worker.

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, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin.

This type of harassment is also prohibited under the *Human Rights Act*. The Occupational Health and Safety Regulations require employers to make it clear to workers that the employer's [Harassment Prevention Plan](#) is not intended to discourage a worker from exercising his or her rights under the *Human Rights Act*, the *Criminal Code* (Canada) or any other law of the province or of Canada.

Harassment based on prohibited grounds also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Sexual harassment may 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;
- unwelcome 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 includes any inappropriate conduct, comment, display, action or gesture by a person that the perpetrator knows or ought to reasonably know would cause the worker to be offended, humiliated or intimidated.

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. Personal harassment is sometimes referred to as "bullying".

Personal harassment may include:

- verbal or written abuse or threats;
- insulting, derogatory or degrading comments, jokes or gestures;
- personal ridicule or malicious gossip;
- unjustifiable interference with another's work or work sabotage;
- refusing to work or co-operate with others; or
- interference with or vandalizing personal property.

Subsection E22(4) What does NOT constitute harassment?

Day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of dress codes aimed at addressing safety considerations or to ensure adherence to business/professional attire norms and disciplinary action will not be considered to

be harassment even if they sometimes involve unpleasant consequences. Managerial actions must be carried out in a manner that is reasonable and not abusive.

Other situations that do not constitute harassment include:

- physical contact necessary for the performance of the work using accepted industry standards;
- conduct which all parties agree is inoffensive or welcome; or
- disagreements in the workplace that are not based on one of the prohibited grounds as described in section [E22\(2\) Explanation guide](#).

Subsections E22.1(1) Risk Assessment

The violence sections of the Regulations require all employers to conduct a risk assessment at their workplaces. The aim is to identify the likelihood of, and possible contributors to violence in their workplace, thereby making it possible to also identify ways to prevent it.

All of the possible risks of violence should be documented in the risk assessment, and the document should be dated and updated routinely or as required. See Workplace NL's publication, "[Workplace Violence, Risk Assessment Process](#)" for assistance with the risk assessment. The employer's risk assessment document should be kept together with other Occupational Health and Safety (OHS) or Occupational Health and Safety Program (OHSP) related documents. The effectiveness of the assessment is significantly enhanced when the Occupational Health and Safety Committee (OHSC), OHS Representative or Designate are included in its development

Sections 22.1(1)(a) through 22.1(1)(e) of the Regulations require that five considerations (at a minimum) be included in the risk assessment. Those are:

- a) Previous experience in the workplace;
- b) Occupational experiences in other similar workplaces;
- c) The location and circumstances in which work may take place;
- d) Workplace characteristics including demographics, culture and the presence of new workers; and
- e) Issues raised by the Occupational Health and Safety Committee (OHSC), the worker health and safety Representative or the Health and Safety Designate.

The risk assessment may help employers to identify risks of harassment in their workplaces as well as violence. For instance considering the workplace characteristics such as outlined in (d) above, helps to identify possible triggers for both types of harassment, and to identify possible means of preventing the harassment from taking place. Regardless of whether any harassment risks are identified in this assessment, all employers are required to develop and implement a [Harassment Prevention Plan](#) (see E24.1)

Once the risks are identified and documented, then possible means of addressing each of the risks need to be identified. These are referred to as “preventive measures” or “controls” and they should be documented in the same risk assessment document.

Some of these might already be in place, and others may need to be established. For the required controls that are not in place already the risk assessment document should clearly show who is responsible for ensuring the controls are put in place, and by what date. The document must then be revisited to follow up on the outstanding actions and to ensure that all risks have been appropriately addressed. Employers should be prepared to show OHS Officers who are performing an inspection how the input from these groups has been gathered and included in the risk assessment.

Subsection E22.1(2) Confidentiality

If during the course of performing a violence risk assessment, an employer learns about or considers experiences of employees in the workplace, any personal information must be kept confidential. It shall not be disclosed or included explicitly in the documented risk assessment and shall only be disclosed for purposes of investigation or where required by law.

Subsections E23(1) and E23(2) Violence Prevention

Some of the preventive measures or controls identified by the employer in the risk assessment, as being necessary to prevent or minimize the risk of violence in the workplace, will consist of policies, procedures and work environment arrangements. This section requires employers to establish the preventive measures and controls as identified in the risk assessment. It is recommended to develop a documented plan for implementing control measures including the name(s) of those tasked with completing the work for each item, and the target completion dates of each task.

Subsection E23(3) Family Violence

The term “Family Violence” has the same meaning in the OHS Regulations as it has in section 3 of the *Family Violence Protection Act*. The definition of Family Violence in the *Family Violence Protection Act* is one or more of the following acts or omissions:

- An assault that consists of the intentional application of force that a person to fear for his or her safety but does not include an act committed in self-defense;
- An intentional, reckless or threatened act or omission that causes bodily harm or damage to property or causes a reasonable fear of same;
- Forcible physical confinement without lawful authority;
- Sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation;
- Conduct that causes the applicant to reasonably fear for his or her safety,

including following, contacting, communicating with, observing or recording a person.

Employers are required to take every precaution reasonable in the circumstances, for the protection of workers once there is awareness (or ought to be awareness) that family violence could likely expose a worker to physical injury in the workplace.

Examples of possible means to prevent the effects of family violence in a workplace include:

- Contacting and working with a police agency to help to develop an appropriate plan of action;
- Communicating with the worker in question to find out what they need;
- Communicating with other workers in the workplace regarding what to do if they witness violence or believe it is likely to occur;
- Ensuring that workers are not working alone wherever possible; and
- A review and enhancement of working alone procedures where working alone is required, and a strictly implemented and enforced adherence to them.

Subsection E24 Instruction to workers

This section of the Regulations requires employers to inform any workers who might be exposed to a risk of violence in the workplace of the nature of the risk and of the precautions that must be taken. This information must include any information of which the employer is aware, regarding 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. (Information would be based on the results of the 'risk assessment' required under [Section 22\(2\)](#) of the Regulations, as well as the controls that must be implemented under [Section 23](#)).

Informing workers can take place in staff meetings, tool box safety talks, Occupational Health and Safety Committee meetings, and any other types of communication used at a workplace or a combination thereof. Documenting that this communication has taken place is helpful for keeping track of what information has been disseminated, when and in what manner.

Subsection E24.1 Harassment Prevention Plan

This Section of the Occupational Health and Safety (OHS) Regulations requires all provincially regulated employers in Newfoundland and Labrador to develop and implement a written Harassment Prevention Plan. This plan will be required to be developed in consultation with the OHS Committee, the OHS Representative or Designate.

The Harassment Prevention Plan will be required to include statements on commitment, obligations and responsibilities of employers, supervisors and

workers. Procedures for reporting incidents of harassment, for responding to the complaints and for notification of results of investigations are also required in the plan. A Harassment Prevention Plan may be referred to in an organization by another name (e.g. Respectful Workplace Program). Regardless of the title of the document, if it is deemed by the organization to be the Harassment Prevention Plan, it must include all elements of a Harassment Prevention Plan as prescribed in the OHS Regulations.

Employers will also be required to develop procedures for accessing an external third party for instances where an employer or supervisor is the alleged harasser. The procedures will be required to be readily available to all staff so that, in cases where these circumstances exist, the complainant is aware of, and can follow, the process. An external provider is considered to be someone who is not a direct report for an employee (e.g. supervisor, manager, lead hand). It is a person or organization that is removed from the work or business unit such that an impartial response to the report can take place. In some organizations this may be a person internal to the organization but who is, owing to the size of the organization, outside of many work units (e.g. Human Resources in a very large, multi-location retailer). Where this is not possible due to the division of work or the size of an organization, the party may be truly external to the immediate organization, e.g. the company's legal firm, an HR firm, a professional association, a company that specializes in receiving and dealing with harassment reports or other.

Subsection E24.1(4) and E24.1(5) Investigating complaints

Employers are required to investigate complaints of harassment. An employer may choose to hire a service to perform investigations, or they may complete them internally. Investigation procedures should follow industry best practices. Where the OHS Division considers it necessary, an Officer may be required to order that an impartial third party investigate a complaint of workplace harassment. This decision may be based on a number of circumstances, including (but not limited to) the quality of the investigation already performed by an employer or their representative at a workplace. For example, the investigation may be found to be lacking or not to sufficiently address the complaint. The cost of the third party investigation will be the responsibility of the employer.

Subsection E24.2 Training

The Occupational Health and Safety (OHS) Regulations require that employers participate in training relating to harassment prevention, and that employers subsequently provide training to employees in that regard, including the provision of information about the employer's Harassment Prevention Plan.

Training for employers and employees can be received from a variety of

sources. Some organizations have in-house expertise on harassment which can be used to provide information to staff in an appropriate manner. Some organizations may need to have some of their management team members or the owners attend outside training to obtain the information needed.

The training can come in a variety of formats, (e.g. webinars, seminars, external training providers etc). Regardless of the format, the training for both employers and employees will qualify for compliance with this section of the regulations provided that it covers the basic required training points as outlined in [“OHS Requirements for Learning About Workplace Harassment Prevention”](#).

The training will be expected to include some basic components related to harassment and how to prevent it and deal with it in the workplace. Examples of some of the basic components include clearly defining possible types of harassment in the workplace, clearly outlining the effects of harassment and how to identify it, identifying the elements of an effective investigation procedure, reviewing the need for confidentiality and reviewing the basic requirements of a Harassment Prevention Plan.

In addition to the basic points outlined above that all employers must be aware of, all employers and their employees will be required to be trained in their own Harassment Prevention Plan, its function in the workplace and how to access it. In addition they will all be required to understand that they have a responsibility to:

- refrain from harassment and bullying behaviour; and
- report any observed harassment and bullying behaviour, and how to make the report.

OHS Officers will be asking for verification of participation in the training as one of the means for complying with this section.

Training to employees will be expected to include some **in-person (or interactive electronic)** contact where discussion can be held to pose and answer questions pertaining to the information.

Providing staff with a copy of the harassment prevention plan and asking them to sign a form stating that they’ve read it is not considered to be “training” and will not be acceptable for the purposes of compliance with this Regulation.

OHS Requirements for Learning About Workplace Harassment Prevention

The Newfoundland and Labrador Occupational Health and Safety (OHS) Act, s.24.2(1) and 24.2(2) require that employers participate in training relating to harassment prevention, and that employers provide training for employees about harassment prevention and the Harassment Prevention Plan. This document contains information that must be provided in harassment prevention training, in order to satisfy the legislative requirements.

This information is intended to be read in conjunction with Service NL OHS Division's Explanation Guide and the 2020 Newfoundland and Labrador OHS [Act](#) and [Regulations](#).

Basic harassment prevention training should include:

- [Provide a definition of harassment](#)
- [Explain what constitutes harassment](#)
 - Harassment based on prohibited grounds
 - Sexual harassment
 - Personal harassment
- [What is criminal harassment](#)
- [Define “ought reasonably”](#)
- [Explain what is not considered to be harassment](#)
- [Define workplace violence and family violence](#)
- [Review the need to model appropriate behaviour](#)
 - Traits of respectful and professional behaviour
 - Examples of unacceptable behaviours
- [Provide overview of related legislation](#)
- [Explain the role of OHS Officers](#)
- [Review the employer’s responsibility to provide a healthy and safe workplace](#)
- [Developing a Harassment Prevention Plan](#)
 - Review the requirements of a harassment prevention plan
 - Review employer’s responsibilities
 - Harassment prevention
 - The resolution process
 - Providing access to external third parties
 - Providing access to training
 - Maintaining confidentiality
 - Review supervisor and worker responsibilities
 - Apply, and comply with, the harassment prevention plan
 - Set expectations for workers who witness harassment
- [Provide resources](#)

Provide a definition of harassment

All training should include the definition of harassment as found in the Newfoundland and Labrador OHS Regulations Section 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.”

“Vexatious” is defined as causing or tending to cause annoyance, frustration or worry. Synonyms include vexing, annoying, irritating, irksome, displeasing and infuriating.

Explain what constitutes harassment

Provide an outline of the types of harassment including:

- Harassment based on prohibited grounds.
- Sexual harassment (a form of harassment based on prohibited grounds).
- Personal harassment (bullying).

Harassment based on prohibited grounds

This includes any inappropriate conduct, comment, display, action or gesture by a person that is made on the basis of race, color, 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. This type of harassment is also prohibited under the Human Rights Act.

Sexual harassment

Harassment based on prohibited grounds also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Personal harassment

This is also referred to as “bullying.” It includes any inappropriate conduct, comment, display, action or gesture by a person that adversely affects a worker’s psychological or physical wellbeing; 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.

What is Criminal Harassment

Harassment also includes criminal harassment, commonly known as “stalking”. Section 264 of the Criminal Code makes it a crime. Police should be called to investigate sexual and physical assaults, criminal harassment, uttering threats or damaging another person’s property as these actions are criminal acts that are to be investigated as criminal matters.

Criminal Harassment (stalking) is defined as harassing behaviour including repeatedly following, communicating with or watching over one’s dwelling home.

Define “ought reasonably”

The phrase “ought reasonably” encompasses both a subjective and objective element. The phrase can be best explained by considering that even if a person is not aware that his/her behaviour is unwelcome (subjective), if a reasonable person in the same situation would have known that the behaviour was unwelcome, then that person “ought reasonably to have known” that his/her behavior was unwelcome.

The employer’s 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.

Explain what is not considered to be harassment

Review the types of actions that do not constitute harassment.

Reasonable actions taken by an employer or supervisor while managing and directing workers are not considered harassment. This includes work assignments, scheduling, job assessment and evaluating work performance, inspecting workplaces, implementation of dress codes aimed at addressing safety considerations or to ensure adherence to business/professional attire norms, implementing health and safety measures and taking disciplinary action such as dismissing,

suspending, demoting, or reprimanding with just cause. Done reasonably and fairly, these actions should not be considered workplace harassment.

Differences of opinion or minor disagreements between co-workers are also not generally considered to be workplace harassment, but can turn into harassment if not resolved. Difficult conditions of employment such as professional practice limitations, organizational changes or financial restrictions are also not considered harassment. Work related stress on its own does not constitute harassment. Managerial actions must be carried out in a manner that is reasonable and not abusive.

Actions are not considered harassment if they arise out of a relationship of mutual consent. Respectful workplace banter, interactions and behaviors that are considered the norm, such as respectful compliments on someone's outfit, would not constitute harassment unless there is a power imbalance.

Other situations not considered to be harassment include:

- Physical contact necessary for the performance of the work using accepted industry standards.
- Conduct which all parties agree is inoffensive or welcome.
- Disagreements in the workplace that are not based on one of the prohibited grounds.

Define workplace violence and family violence

Training must clearly show the difference between workplace violence, personal harassment, [family violence](#) and sexual harassment.

All training should include the definition of violence as found in the Newfoundland and Labrador OHS Regulations Section 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."

All training should include the definition of family violence as found in the Newfoundland and Labrador OHS Regulations Section 23(3). "The definition of family violence as found in the Newfoundland and Labrador OHS Regulations Section 23(3) will have the same meaning in the OHS Regulations, as it has in Section 3 of the Family Violence Protection Act."

Review the need to model appropriate behaviour

Traits of respectful and professional behaviour

Training should touch on the role of the employer and supervisors to model respectful and professional behaviour at the workplace.

Employers should use effective management practices to clearly define tasks, roles and workload, and promote fairness and openness in the workplace. This will also lend itself to avoiding harassment complaints being made where regular managerial tasks are being undertaken.

Employers could look beyond what is legally required and take additional action to create a respectful working environment. This can include proactive training on topics such as respectful workplaces, diversity and conflict resolution. Employers could also consider implementing CSA Standard CSA-Z1003 - Psychological Health and Safety in the Workplace.

Examples of unacceptable behaviours

Training should include examples of unacceptable workplace behaviours. This could be achieved using case studies and group discussion.

Possible unacceptable behaviours:

- **Emotional, psychological or physical violence or abuse.**
- **Occupational violence.**
- **Coercion, harassment and/or discrimination.**
- **Aggressive/abusive behaviour.**
- **Unreasonable demands and undue persistence.**
- **Disruptive behaviour.**

Provide overview of related legislation

Training should include a basic overview of the Newfoundland and Labrador OHS Act and Regulations as they relate to harassment and violence.

An overview can include (but not be limited to) the following points:

- OHS Act and Regulations are enforced by the OHS Division of Service NL.
- Officers may visit any provincially regulated workplace at any time without notice to perform an inspection.
- Officers will require production of documents and to speak to employees individually.
- As of January 2020, the Regulations have been amended to include harassment prevention and to broaden the definition of violence in the workplace.

Explain role of OHS Officers

Include a review of the role of Service NL OHS Officers in the enforcement of the Newfoundland and Labrador OHS Act and Regulations, specifically with regards to harassment and violence prevention.

OHS Officers assess the employer's compliance with workplace violence and harassment regulations during inspections and respond to complaints in relation to harassment. They enforce legislative requirements where contraventions to the OHS legislation are identified.

An OHS Officer will also follow up with an employer to ensure the employer is compliant with the legislation. The employer is required to investigate allegations of harassment however, an OHS Officer may order a third party investigation. Typically, OHS Officers will not investigate the allegation of harassment itself, as that is the responsibility of the employer.

Review the employer's responsibility to provide a healthy and safe workplace

Training should touch on the "employer's general duty" (Section 4 of the OHS Act) to ensure, where it is reasonably practicable, the health, safety and welfare of his or her workers. Other specific duties are listed in the Act as well. A copy of the Newfoundland and Labrador OHS Act and Regulations is required to be accessible at the workplace. Employers should already be familiar with the general and specific duties of employers, supervisors and workers according to the Act and Regulations.

Developing a harassment prevention plan

Review the requirements of a harassment prevention plan

Employer training which is required by s.24.2(1) of the Newfoundland and Labrador OHS Regulations focuses on information "regarding harassment prevention". The employer would also benefit by learning about the requirements of a harassment prevention plan, since the Newfoundland and Labrador OHS Regulations, s.24.1, states that an employer shall develop, implement and maintain a written harassment prevention plan in consultation with the OHS committee, worker representative or workplace health and safety designate.

To aid employers in meeting the requirements of the Newfoundland and Labrador OHS Regulations s.24.1(2) (elements of a harassment prevention plan), participants should be provided with information on the elements that are required by that section.

Those include:

- statements on commitment,
- obligations and responsibilities of employers, supervisors and workers
- procedures for reporting incidents of harassment, responding to complaints and providing notification of investigation results,
- procedures for accessing an external third party for instances where an employer or supervisor is the alleged harasser.

Employers must provide training to employees such that they will be informed about the location and contents of the harassment prevention plan and what to expect.

Review employer responsibility

Harassment prevention

As much as is reasonably practicable, employers have the legal obligation to ensure that workers are not exposed to harassment with respect to any matter or circumstance arising out of employment.

This duty extends to:

- Incidents that occur at the workplace or during work hours.
- Conduct perpetrated by another employee (i.e., co-worker or supervisor) or the employer.
- Conduct perpetrated by someone other than an employee, but with whom the worker is required to meet, including clients, contractors or the public.
- Incidents that occur outside of the usual workplace or after work hours that arise out of, or are connected to, a worker's employment such as a work-sponsored social event or conference.

Employer responsibilities include:

- Conduct a risk assessment.
- Establish procedures, policies and work arrangements to eliminate the risk to workers from violence.
- Develop, implement and maintain a harassment prevention plan.
- Maintain confidentiality.
- Set out the procedures for workers to report instances of harassment, including the procedure to report instances where the employer or the supervisor is the alleged harasser (to an external party).
- Participate in training relating to harassment prevention.
- Provide training to employees regarding harassment prevention and the employer's harassment prevention plan.
- Set out the procedures to be followed after a complaint of workplace harassment is received.
- Set out the manner in which a complaint is investigated.
- Set out the procedures regarding notification of results of investigations and any actions to be taken as a result of an investigation.
- Protect workers from retaliation and provide support to workers when workplace harassment occurs.
- Make the harassment prevention plan accessible to all workers in the workplace.
- Review the harassment prevention plan as necessary but at least annually
- Investigate complaints of workplace harassment.
- Pay for any expenses relating to an investigation by an impartial third party if ordered by an OHS Officer.

A complaint can be made against an employer, supervisor or worker for violation of OHS legislation. The intent of the new provisions is for the employer to deal with the incident internally.

The resolution process

Training should include an overview of the basic principles of acceptable resolution processes according to industry best practice. Employers are responsible for implementing acceptable resolution processes or having access to assistance to develop these, where an allegation has taken place at their work place and has been investigated.

Providing access to external third parties

Employers are required to develop procedures for accessing an external third party for instances where an employer or supervisor is the alleged harasser. These procedures must be included in the employer's harassment prevention plan and be readily available to all staff so that, in cases where these circumstances exist, the complainant is aware of, and can follow, the process.

An external provider should be someone who is not a direct report for an employee (e.g. supervisor, manager, lead hand). The person or organization should be removed from the work or business unit so that an impartial response to the report can take place.

In some organizations, this may be a person internal to the organization, but who, due to the size of the organization, is outside of many work units (e.g. Human Resources in a large, multi-location retailer). Where this is not possible due to the division of work or the size of an organization, the party may be truly external to the immediate organization. Some examples of types of organizations include (but are not limited to) a legal firm, a human resources firm, a professional association or a company that specializes in receiving and dealing with harassment reports.

Providing access to training

Section 24.2(2) of the Newfoundland and Labrador OHS Regulations requires all employees to be trained on the topic of harassment prevention in the workplace. This training should include coverage of the same basic information provided to employer representatives (as per Section 24.2(1)). In addition, training should include information about the employer's own harassment prevention plan.

Employees should:

- Be able to locate the plan at any time.
- Understand what information it includes and how it pertains to them as an employee.
- Know who is responsible for the plan's maintenance and how it will be implemented (especially where there are multi-employer work sites).
- Know what the role of the union will be (where applicable).
- Know what kind of support to expect for any worker (including management) in the organization both during and after an investigation into an allegation.
- Know how to make a harassment complaint (to whom, using what method), and what to expect once a complaint has been submitted.
- Know how to report harassment and bullying should they witness it at the worksite, and what to expect once a report has been submitted.
- Be provided with information on their own legal obligations in the workplace where harassment prevention is concerned.

Maintaining confidentiality

Employers must address how they will maintain the confidentiality of all parties involved. This includes stating in their harassment prevention plan 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. It must also state the employer's responsibility to protect the confidentiality of information obtained in the course of conducting a risk assessment or investigation.

Personal information is defined as information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Review supervisor and worker responsibilities

Apply the harassment prevention plan, and comply with it

Supervisors should be made aware of the important role they play in OHS, including the prevention of harassment in the workplace. To successfully implement a harassment prevention plan, supervisors must set an example with their own behavior and address poor behaviour in others in a timely and respectful manner.

All workers (including supervisors) must:

- Take reasonable care not to engage in bullying or workplace harassment.
- Report observations or experiences of bullying and workplace harassment.
- Comply with the harassment prevention plan.
- Participate in harassment prevention training.

Set expectations for workers who witness harassment

As per the Newfoundland and Labrador OHS Regulations Section 24.1(2)(c)(ii), workers are required to report observations or experiences of bullying and workplace harassment. A reporting procedure shall be included in the employer's harassment prevention plan.

Provide resources

Training should provide resources in harassment prevention where possible.

Examples of topics for resources:

- How to complete a [risk assessment](#).
- How to develop a [harassment prevention plan](#).
- How to develop strategies for restoration of the workplace post-harassment investigation.

- Worker/Supervisor/Employer (individual) support after an incident and after/during an investigation.
- Applicable websites/organizations.
- NL OHS [Act and Regulations](#).
- NL OHS [Explanation Guide](#).
- Helpline contact information.
- Mental health.
- Employee assistance program.

If you need more information on how to develop a Harassment Prevention Plan, please contact WorkplaceNL at 1.800.563.9000 or info@workplaceni.ca.