

Workplace violence and harassment consultation

What does this consultation include?

The consultation gives background information on violence and harassment in the workplace. The background information also includes concerns raised from key sectors that experience violence in their workplaces, as well as the perceived impact of violence and harassment on:

- **Employers** (increased absenteeism, lost productivity, increased assessment rates) and;
- **Employees** (emotional and physical trauma).

The consultation outlines what could be included in a proposed regulation that would be enforced through the *Occupational Health and Safety Act*. We are seeking opinions on what should and should not be included in the scope and requirements of this regulation.

We are asking stakeholders to indicate their preferences on:

- **The scope** – Who does this apply to? All industries or a selection of industries deemed to have higher risk factors?
- **The definition of violence** – Should it include only physical acts of violence or a broader definition to include verbal threats?
- **The regulatory framework** – Should it be performance-based or more prescriptive? Or a combination of the two?

Prescriptive regulation defines specific activities and how these activities are to be done. For example, what techniques or materials to use, what qualifications are required, who can provide training, how decisions are made, where the activities may occur.

Performance-based regulation puts more emphasis on specifying a desired outcome and does not restrict how compliance is to be achieved. This approach puts more responsibility on the workplace to develop programs and controls of their own.

How and when will you do a cost analysis and what will be considered?

As with all regulatory proposals, WorkSafeNB prepares a cost analysis to inform the board of directors of the potential changes to the system. Actuarial consultants will prepare a risk-based analysis to consider relevant drivers and all available data to determine what the

impact would be on the collective liability for claims for all assessed employers and for all self-insured employers, respectively.

The cost to individual employers to implement changes in response to the regulation is not part of the cost analysis. The consultation seeks open-ended commentary and for workplaces to raise cost concerns. WorkSafeNB will follow up with stakeholders who identify this concern to gain their perspective on the magnitude of costs versus benefits.

What type of awareness, education, training and tools will be developed for the planned September 1, 2018 enforcement date?

The final implementation plan depends on what form the regulation takes. Employers prefer when they have sufficient time between the proclamation of a new regulation and the in-force date. This enables material specific to the new regulation to be developed and for workplaces to ensure compliance by the in-force date.

All new occupational health and safety legislation is launched through WorkSafeNB's *Safety Excellence NB* campaigns. The goal of each new campaign is to create awareness and to help workplaces implement the new requirements before health and safety officers visit the workplace. WorkSafeNB's *Safety Excellence NB* webpages will provide information on:

- Why WorkSafeNB is concerned about the issue.
- Why employers need to address the issue in their workplace.
- What WorkSafeNB officers will look for when visiting workplaces or responding to complaints about violence.
- What publications, checklists, self-help guidance workplaces can use to prepare for an inspection.
- Answers to frequently asked questions.
- Email and telephone contacts for further information.

WorkSafeNB has begun identifying key resources and materials that will be needed and must also:

- Develop a human resource strategy based on the competencies necessary to educate and enforce the new regulation.
- Ensure prevention and compliance staff are trained on implementing and enforcing the new laws.

- Provide supporting guidelines, checklists, and publications for staff.
- Develop an education strategy on the new requirements. This can be achieved through:
 - Public workshops (before the in- force date and after)
 - Sessions at our annual health and safety conference (October 2018)
 - Online educational tools
- Develop a compliance strategy that will include targeted workplaces based on risk, allocating existing inspection resources to allow prompt response times to calls to the toll-free number.

Will there be a phased approach to compliance related to potential infrastructure changes that may be required of employers?

As with all new legislation, WorkSafeNB takes a phased approach to compliance and enforcement. Health and safety officers have discretion when issuing orders and are advised to do so where appropriate. This could include setting the date by which the employer must comply with the order(s) when doing so an officer will consider the magnitude of work needed to comply.

Any order can be appealed to the chief compliance officer within 14 days. The chief compliance officer's decision can be appealed to the Workers' Compensation Appeals Tribunal (WCAT).

How do you enforce this?

Health and safety officers may conduct regular workplace inspections and/or respond to complaints. Once at the workplace, they are required to determine whether the employer is in compliance with the regulation and if it is not, issue an order(s). Once an order is issued the officer can revisit the workplace or require the workplace to send proof of compliance by various electronic means. This can be a multi-stage process depending on the extent and nature of the orders the officer has issued.

What's the penalty for non-compliance?

Officers have the discretion to extend an order's compliance date if deemed appropriate as a first step. This decision is based mostly on the employer's rationale for an extension. Repeated non-compliance can result in a work suspension. Further non-compliance could be subject to the penalties outlined in section 47 of the *Occupational Health and Safety Act*:

FREQUENTLY ASKED QUESTIONS

47(1) Every person who violates or fails to comply with any provision of this Act or the regulations or fails to comply with an order made under this Act or the regulations, commits an offence and is liable on conviction

(a) to a fine of not more than \$250,000, or

(b) to a term of imprisonment not exceeding six months, or to both.