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A Work Environment Free From Psychological Harassment It's everyone's business!

Psychological harassment at work

Innovative legislation

Psychological harassment in the workplace is something that the public as a whole can relate to, as every person may, in one capacity or another, be concerned by this situation and may eventually suffer the consequences.

The provisions dealing with psychological harassment found in the Act respecting labour standards enter into force on June 1, 2004. They represent innovative legislation in North America and reflect a common desire in Québec to create a work environment that is free from psychological harassment.

This guide presents the definition, rights, obligations and recourse stipulated in the Act respecting labour standards. As psychological harassment is a little known field of intervention, this guide also seeks to make readers aware of the phenomenon and its consequences. This guide is intended for employers, employees, associations and unions that want to have a better knowledge of the legislative provisions concerning psychological harassment in the workplace.

The Commission des normes du travail, through its efforts and in cooperation with its partners, would like Québec's employers and employees to assume their obligations and to exercise their rights in order to ensure that the work environment is free from psychological harassment. The Commission invites all stakeholders to combine their efforts to achieve this objective while reminding them that prevention is a key means to arrive at this goal.

What psychological harassment in the workplace is

The definition of psychological harassment adopted by the legislator in Québec is:

... any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee.

Moreover, a single serious incidence of such behaviour that has a lasting harmful effect may constitute psychological harassment. It must then be demonstrated that this behaviour affects the person's dignity or physical or psychological integrity and that it results in a harmful work environment for the employee.

The definition found in the Act respecting labour standards includes sexual harassment in the workplace as well as the harassment associated with one of the grounds found in section 10 of the Charter of Human Rights and Freedoms. These grounds are race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Note: In no way may this guide serve as support for a legal interpretation of the provisions of the Act respecting labour standards. This document is a general information guide on psychological harassment intended for the public, employers and employees.

Definition

Whom are the Act's provisions intended for?

With the exception of the employees and employers who fall under the jurisdiction of the Federal Government (being subject to the Canada Labour Code), the provisions concerning psychological harassment apply to all employees, whether unionized or non-unionized, at all levels of the organizational hierarchy, including senior managerial personnel. All undertakings of Québec, whether in the private or the public sector, are covered.

In order for psychological harassment to be established, the four elements of the definition must be present and demonstrated, i.e.:

1- A vexatious behaviour that is repeated or serious in nature

It is a behaviour that is humiliating, offensive or abusive for the person who is subjected to such behaviour, that undermines his self-esteem or that causes him torment. It is a behaviour that exceeds what a reasonable person* deems appropriate in the accomplishment of work.

Each of the words, incidences of behaviour, actions or gestures taken on their own may be harmless, insignificant, but it is everything taken together or the accumulation of these words, behaviours, actions or gestures that allows one to conclude that a harassment situation is present.

However, the repetitive nature is not an essential component of harassment. Indeed, a single serious incidence of behaviour, a word, gesture or action may also be considered psychological harassment if it produces a continuous harmful effect for the person concerned. If there is only one cause, the harmful effect must be perpetuated in time. An isolated incidence of behaviour, such as violence or aggression whose impact on the victim is perpetuated in time, may constitute psychological harassment.

2- Hostile or unwanted in nature

The incidences of behaviour, words, actions or gestures in question must be seen as hostile or unwanted. However, in some cases, such as at the time of aggression or sexual harassment, the unwanted nature does not necessarily require that the victim have clearly expressed his refusal or disapproval.

3- Effect on the person's dignity or psychological or physical integrity

Harassment has a negative impact on the person. A person who is the victim of harassment may feel diminished, degraded, denigrated, both personally and professionally. The harassment situation may also cause a deterioration in the physical health of the person who is the victim of harassment. However, there does not necessarily have to be a negative impact on the victim's health.

4- A harmful work environment

A harmful work environment is a work environment that is detrimental, that is harmful to someone, that has an adverse impact on the person who is the victim of the harassment. The work atmosphere created by the behaviour may lead to the victim's isolation in his work environment for instance.

The presumed harasser's intention does not need to be taken into consideration to conclude that there is psychological harassment. The words, gestures, actions or behaviour of the harasser do not have to be associated with a harmful intent; rather, it is the effects on the person concerned that are taken into account.

*** A reasonable person is:**

a person who is well informed about all the circumstances and who were he to find himself in the same situation as that of the employee claiming to be the victim of harassment would also conclude that such behaviour is vexatious.



Psychological harassment at work

The many faces of harassment

Psychological harassment may occur at all levels of the organizational hierarchy. It may manifest itself between work colleagues; persons in a position of authority may harass their subordinates and conversely, employees may harass their superiors. The persons involved may be individuals or a group of persons. The presumed harasser may also come from outside the undertaking. In this case, it may be a customer, a user, a supplier or a visitor.

In addition to the victim and the harasser, there are witnesses. Persons who witness a psychological harassment situation play an important role in perpetuating or putting a stop to this behaviour. Indeed, they can contribute collectively to putting a stop to or perpetuating a climate of fear and silence associated with a harassment situation. The presentation of their versions of the events during interventions may make the difference between aggravating or putting a stop to the situation.

Examples

Involving two managers

Lorraine is a personnel manager in an up-and-coming undertaking employing 20 people and manufacturing polymer panels for the automobile industry. The conditions of employment have always been difficult, but the atmosphere between colleagues is good and Lorraine likes her work. Everything changes when the boss' cousin is appointed workshop director. Lorraine is then subject to excessive supervision by the new director. This supervision takes the form of work breaks clocked to the minute and constant calls to order if she dares hum or laugh a little while working. The director takes away some of her files and reports her own mistakes to the boss, attributing them to Lorraine's incompetence. When Lorraine tries to defend herself, she is assigned an office that is far away from the other offices. The director then takes steps to ensure that Lorraine is no longer informed of and cut off from the social activities of the undertaking.

Computer errors attributable to the director are blamed on Lorraine. As a result, her boss is starting to have a bad opinion of her. She feels neglected by him and has ever greater difficulty ensuring the day-to-day management of employees' files. In reaction to her deteriorating work situation and feeling crushed under the weight of the excessive supervision, she decides to leave the undertaking for fear that the situation may end up costing Lorraine her health.

Involving two colleagues

Simon is an accountant who wants to be beyond reproach in everything he does, an attitude that does not go down well with everyone. Upon taking up his new position, he is bothered when he discovers several financial irregularities involving considerable sums of money. These irregularities were committed by one of his colleagues. Afraid of being reported, this colleague begins to threaten Simon, to falsify his work in order to attempt to buy his silence, and to make others

believe that Simon is doing the same things that he has done. This colleague destroys handwritten and electronic evidence that would have allowed Simon to defend himself. The colleague then spreads a rumor that Simon suffers from psychological problems making his behaviour unpredictable. When Simon learns of this and asks the colleague to take back what he said, the colleague jokes his way out of the situation. Simon feels destabilized. He turns to another colleague, but no one wants to help him. He is isolated. He feels totally powerless. After a few weeks of absence, Simon is unable to return to work in this environment. He asks to be transferred to another establishment.

Involving a group against a person

Normand is an industrial mechanic. A few colleagues find him too conformist for their liking and enjoy misleading him about the places where he is supposed to work. Often, thanks to the silent complicity of employees in other workshops, these colleagues see to it that Normand does not appear at the right place and at the right time.

Shy by nature, Normand does not know how to react and whom to trust in the plant. His unjustified presences in departments that he was never summoned to or in meetings that he was never asked to attend, or those at which he arrives late, end up undermining his confidence. He is constantly the victim of sarcasm. His reputation for being on time, for being concentrated at work and his credibility are adversely affected.

Normand decides to relate the events to a person that he trusts. Following that person's suggestion, he meets with his employer and tells him about all these facts which, when taken together, help explain a great many things. The employer takes the situation seriously and intervenes quickly to put a stop to the harassment.

Manifestations

A few ways in which harassment is manifested

When it comes to psychological harassment, the behaviours in question are multiple, insidious and generally related to hidden aggression.

Harassment may be manifested in various ways, for example:

- Preventing the person from expressing himself: constantly interrupting him, preventing him from talking to others, destroying the work accomplished, depriving him of any possibility to express himself.
- Isolating the person: no longer speaking to him in public, no longer speaking to him at all, denying his presence, distancing him from others, depriving him of means of communication (telephone, computer, e-mail, etc.), preventing others from talking to him.
- Discrediting the person: spreading rumors about him, ridiculing him, humiliating him, calling into question his convictions or his private life, shouting abuse at him or sexually harassing him.
- Belittling the person: no longer assigning him any tasks to accomplish, forcing him to engage in actions that are belittling, absurd or below his skills, causing him to fail, simulating professional misconduct, denigrating him in front of others.
- Threatening, being aggressive towards the person: yelling, pushing, damaging his property.
- Destabilizing the person: making fun of his convictions, his tastes, his political choices, his weak points, making offensive allusions without ever explaining them, calling into question his judgment and decision-making abilities.



Psychological harassment at work

What psychological harassment is not

Normal exercise of the management right

The exercise by the employer or by his managers of management activities does not constitute harassment. The day-to-day management of discipline, performance at work or absenteeism, the assignment of tasks, the application of the gradation of sanctions and even dismissal constitute the legitimate exercise of the management right. These actions do not constitute psychological harassment, provided that the employer does not exercise these rights in an abusive or discriminatory manner.

Example

Maryse, a technician, is called upon to prepare standard letters, a portion of which come from other departments of her division. However, when persons are absent and are not replaced, she has a greater workload. Dissatisfied with this situation, she refuses on a few occasions to do the work that she is assigned, adopting an unpleasant behaviour on those occasions. Given her conduct, her superior imposes a one-day suspension on her. The assignment of tasks, the evaluation of the employee's conduct and the decision to impose the sanction does not constitute harassment.

Work conflicts

Work environments do not differ from other settings and conflicts may arise. In itself, a conflict does not constitute psychological harassment. Conflicts at work, if they are managed wisely, may lead to the clarification of responsibilities and the evolution of relations among staff. Conversely, if conflicts are managed poorly or left unresolved, they can give rise to psychological harassment, even circumstances involving risks.

Example

Claire and Louise have been working in the same team for several months. Recently, Claire was appointed person in charge of a project to construct a new building, but Louise refuses to accept this decision. Her behaviour towards Claire changes, and Louise lets Claire know that she should have been entrusted with this responsibility. Since then, Louise limits her collaboration in the project. Relations between Claire and Louise are tense, and there are serious communication problems. Louise no longer talks to Claire. This situation could turn into harassment if no steps are taken to resolve the conflict.

Work-related stress

Work-related stress may have other origins than psychological harassment. However, the accumulation of stress factors may constitute a circumstance involving a risk.

Example

Mike has worked as a computer analyst for more than five years in the undertaking. His director offers him the position of department head. Mike will have to manage a team, but he lacks management experience. He decides to accept the promotion. At first, everything seems to be working out fine, but Mike soon encounters difficulties and begins to have doubts about his abilities and his skills when it comes to motivating his personnel. His director meets with him regularly to take stock of the situation and to propose his assistance, if necessary. Mike is having a hard time managing the stress inherent in his new responsibilities. A few symptoms begin to appear: headaches, insomnia, and anxiety. Mike does not appreciate the frequent interventions of his director who is trying to help him assume his new responsibilities. There is no threat or humiliation in the director's behaviour. This situation must not be confused with a case of psychological harassment.

Difficult conditions of employment and professional constraints

The following do not constitute psychological harassment: difficult conditions of employment and professional constraints, organizational changes when they are justifiable from an economic or technological standpoint and when they affect the personnel in a non-arbitrary manner.

Example

Jean-Guy is over 50 years of age and works in a print shop. In recent months, his employer has begun to introduce computers to do the work more efficiently and to increase productivity. The tasks have been revised. Having demonstrated a strong resistance to change, Jean-Guy was one of the last persons to take the training. Now he has no other choice. He must perform his new tasks using a computer. This situation requires a great deal of efforts and concentration from him, but does not constitute harassment.

Obligations, responsibilities and rights of the employer

The obligation to provide a work environment that is free from psychological harassment lies with the employer. This obligation is basically an obligation of means and not one of results. The employer is not required to guarantee that no harassment situation will ever occur, but he will have to:

- take reasonable means to ensure that there is no psychological harassment and
- take the appropriate steps, and in some cases, impose the necessary sanctions to put an end to psychological harassment when he is informed of the existence of such behaviour.

Management practices that promote a harmonious work environment are not enough to meet the obligation that the employer has. He must take actions to prevent* psychological harassment situations. He must also provide a known and effective internal mechanism making it possible, among other things, to be informed of the existence of these situations, to deal objectively and diligently with the cases of harassment, and to take the appropriate steps to put an end to them. Not being aware of a harassment situation does not in itself relieve the employer of his responsibility.

The employer could be held responsible for harassment committed by him or by his employees in the performance of their duties and in every place where they may be called upon to work. He is also required to intervene when the persons responsible for the harassment are third parties (customer, user, supplier, visitor).

The employer is entitled to ask his employees to adopt a behaviour that is free from harassment with respect to not only their colleagues and their superiors but also third parties with which the undertaking and the employees do business in the course of their work.

Responsibilities of employees

In the workplace, the prevention of harassment is everyone's business: employers, senior managerial personnel, employees, unions. The employee must not only avoid harassing others, he must also actively contribute to preserving a workplace that is free from harassment.

* See the *Prevention guide for employers*, published by the Commission des normes du travail.

Psychological harassment at work

Recourse stipulated in the Act respecting labour standards

When a psychological harassment situation occurs, the Commission des normes du travail invites the worker to turn, wherever possible, to the resource persons identified by his employer and the mechanisms in place in his organization. If a psychological harassment situation cannot be resolved in the undertaking, the Act respecting labour standards provides for a recourse for the employee. Vigilance is in order as the Act sets a 90-day deadline to be able to exercise this recourse.

1. Recourse for non-unionized employees and senior managerial staff

Non-unionized employees, managers and senior managers subject to the Act respecting labour standards who believe that they are victims of psychological harassment can submit a written complaint to the Commission des normes du travail. They can also ask a non-profit organization that defends employees' rights to submit the complaint on their behalf, provided that they give this organization their written consent.

The deadline for filing a complaint has been set at 90 days following the last manifestation of harassment. This is the last incidence of behaviour on which the employee is basing his complaint.

Upon receipt of the complaint, the Commission des normes du travail makes sure that it is admissible before beginning the investigation. For this purpose, the Commission des normes du travail checks if the worker is an employee within the meaning of the Act respecting labour standards, if the employee is already covered by a collective agreement, if the undertaking for which he works is under provincial jurisdiction and if the last manifestation of the harassment behaviour falls within the 90-day deadline.

Following these verifications, if the Commission des normes du travail deems the complaint inadmissible, it transmits its decision to the complainant. The latter may submit a written request, in the 30 days following the receipt of the decision of the Commission des normes du travail, for an administrative review thereof.

Investigation by the Commission des normes du travail

After accepting the complaint, the Commission des normes du travail promptly investigates to see if there is indeed psychological harassment and if the employer has taken reasonable steps to put a stop to such behaviour.

The investigator from the Commission des normes du travail interviews the complainant, the employer, witnesses and the presumed harasser(s) to collect the necessary information. He also analyzes the factual elements to check the validity of the complaint. He checks the measures implemented by the organization to combat psychological harassment and the means taken to put a stop to it.

Powers of the investigator

The investigator mandated by the Commission des normes du travail has the powers of a member of a commission of inquiry, i.e. he may require from any person concerned the evidence necessary for the investigation, which includes the power to summon the person to appear before him. The investigator may go to the undertaking to inspect any relevant article, require information or documents that are useful for the conduct of his investigation, and may also meet with witnesses and all persons that he deems necessary.

Mediation service

With the consent of the employer and the complainant, mediation may be undertaken at any time during the investigation with the help of a mediator appointed by the Minister of Labour.

The mediation meeting is a conflict resolution method that brings together opposing parties to engage in a dialogue so that together, they can attempt to find a satisfactory solution. Mediation is confidential and is based on the intervention of an impartial third party, namely the mediator. The mediator does not impose his point of view or that of one person on the other. He helps the parties to formulate their expectations in order to arrive at solutions and an agreement that is freely consented to.

If the employee so requests, the Commission des normes du travail can assist him and advise him during mediation. A lawyer from the Commission will act in this capacity.

Transfer of the complaint to the Commission des relations du travail

Founded complaint

If the Commission des normes du travail deems that the complaint is founded and if the parties have not agreed to a settlement, the Commission des normes du travail transfers the complaint to the Commission des relations du travail. The Commission des relations du travail, an administrative tribunal, decides if there was psychological harassment and if the employer failed to meet his obligations. If so, the Commission determines in particular the appropriate remedial measures. (For more clarifications, refer to the box entitled Powers of the Commission des relations du travail.)

The Commission des relations du travail may, if the parties consent thereto, undertake conciliation to attempt to arrive at an agreement. In this case, the conciliation process is the same as the mediation process.

The Commission des normes du travail may assist and advise the employee during conciliation and may represent him at the meeting before the Commission des relations du travail. It is the lawyers of the Commission des normes du travail who have this mandate.

Unfounded complaint

If the Commission des normes du travail deems the complaint to be unfounded, it sends its motivated decision to the complainant. The latter may then submit a written request, in the 30 days following the receipt of the decision of the Commission des normes du travail, for an administrative review of the decision.

Even if the Commission des normes du travail deems that the complaint is unfounded, the employee may ask to be heard by the Commission des relations du travail. He must then send the Commission des normes du travail, in the 30 days following the decision, a written request to transfer his complaint. In this case, the Commission des normes du travail does not represent the employee before the Commission des relations du travail.

Burden of proof before the Commission des relations du travail

During the hearing before the Commission des relations du travail, it must be shown that the employee was indeed the victim of psychological harassment. In the case where the complaint is deemed founded by the Commission des normes du travail, it is one of the Commission's lawyers who assumes the employee's defence. As for the employer, he must show that he took reasonable steps to prevent psychological harassment and to put a stop to it.

Powers of the Commission des relations du travail

If the Commission des relations du travail concludes that the complainant was the victim of psychological harassment and that the employer failed to meet his obligations, it can render any fair and reasonable decision, notably:

1. order the employer to reinstate the employee in his job;
2. order the employer to pay the employee an indemnity corresponding to the lost wages, if any;
3. order the employer to take reasonable steps to put a stop to the harassment;
4. order the employer to pay the employee punitive and moral damages;
5. order the employer to pay the employee an indemnity for loss of employment;
6. order the employer to fund the psychological support required by the employee, for a reasonable period that the Commission shall determine;
7. order changes to the employee's disciplinary record.

It is possible that an employee may have submitted a claim to the Commission de la santé et de la sécurité du travail or exercised a recourse to determine whether the harassment of which he is the victim may constitute an employment injury. In such cases, or when the Commission des relations du travail deems it likely that the psychological harassment resulted in an employment injury, it will suspend its decision on the following points:

- the indemnity related to lost wages;
- punitive and moral damages;
- the funding of the psychological support required by the employee.

This triple exception only applies to the period during which the employee is the victim of an employment injury. Consequently, the provisions of the Act respecting labour standards do not encroach on the jurisdictions of the Commission de la santé et de la sécurité du travail. The effect of this is to prevent the accumulation of indemnities linked to these various recourses.

Psychological harassment at work

Protection of employees against a prohibited practice

The employee may feel vulnerable and fear reprisals from his employer if he asks him to intervene in a psychological harassment situation. The Act respecting labour standards also protects the employee against reprisals, discriminatory measures, a transfer, a suspension, dismissal or any other sanction that the employer, or one of his representatives, could impose on the employee. For example:

- following a request to have a work environment free from psychological harassment and to take the necessary steps to put a stop to such harassment;
- for having provided information to the Commission des normes du travail or one of its representatives;
- for having been called upon to testify in a proceeding related to psychological harassment;
- by reason of an investigation conducted by the Commission des normes du travail in the establishment of the employee's employer.

An employee who believes that he was the victim of a sanction for one of the aforementioned reasons can file a complaint for a prohibited practice with the Commission des normes du travail.

2. Recourse provided for unionized employees

The provisions of the Act respecting labour standards in matters related to psychological harassment are deemed to form an integral part of every collective agreement. A unionized employee who has a recourse under his collective agreement, such as a grievance, will have to use the procedure that is provided. It is the arbitrator on grievances who will decide whether or not there was harassment and if the employer met his obligations.

The deadline for filing a complaint has been set at 90 days from the last manifestation of harassment. In some collective agreements, the deadline could be longer. It is the last incidence of behaviour on which the employee is basing his complaint.

At all times, prior to the taking of the case under advisement by the arbitrator on grievances, the parties to the collective agreement may jointly ask the Minister of Labour to appoint a mediator.

Should the parties fail to arrive at an agreement and should the arbitrator on grievances come to the conclusion that the employee was the victim of psychological harassment and that the employer failed to meet his obligations, the arbitrator on grievances can make any fair and reasonable decision by taking into account all the circumstances of the case. In this respect, the latter has the same powers as those conferred on the Commission des relations du travail.

3. Recourse for government employees not governed by a collective agreement and for the members and heads of agencies

The employees, regardless of their level in the hierarchy, the members and heads of agencies, must exercise their recourse before the Commission de la fonction publique which also has the same powers as the Commission des relations du travail in this field.



Consequences of psychological harassment

The consequences of psychological harassment are numerous for, unless they are the result of a serious event, they develop gradually, without being initially related to a precise event. They are often denied in the workplace. These consequences are felt not only by the victim, but also by the employees who are witnesses to the harassment, the persons accused of harassment, their family circle, the organization itself.

The persons involved – victims, witnesses and harassers – experience various emotions or feelings: shame, anger, denial, sadness, fear, etc. Without an appropriate intervention, the situation may lead to major consequences and have repercussions, such as:

- deterioration in the person's physical or psychological health (anxiety disorders, adaptation problems, depression, state of post-traumatic stress, suicide);
- drug addiction and alcoholism problems;
- professional difficulties, even a job loss;
- major financial losses;
- family and conjugal problems;
- absences from work, invalidity.

For the undertaking, the consequences can be just as detrimental. As in the case of personal impacts, the repercussions develop gradually. They are not limited to the victims, but extend to their family and the witnesses. First, one notes:

- a drop in productivity;
- a loss of interest in and commitment to work;
- a reduction in the quality of services;
- an increase in the risk of errors.

The more serious the situation or the longer it lasts, the more it can have consequences associated with other aspects of the organization of work, such as for example:

- a loss of confidence in the employer;
- damages to the reputation of the undertaking;
- an increase in absenteeism, a high staff turnover rate, recruitment difficulties;
- greater risks of vandalism and damage to property as well as of physical violence at work;
- and finally, legal costs, group insurance premium hikes and the payment of financial compensation.

These detrimental consequences risk being long-lasting; they often do not stop when the psychological harassment situation ends, but only when a healthy work climate is re-established in the undertaking.

The new provisions of the Act respecting labour standards are the reflection of a common desire in Québec to create a work environment free from psychological harassment and to limit the consequences of such harassment. Taking steps and action to correct at the source circumstances that may lead to harassment and intervening effectively will result in benefits for all concerned.



To help you determine if a specific type of behaviour constitutes psychological harassment, ask yourself the following questions, among others:

- Would a reasonable person consider this behaviour offensive?
- Does it involve several incidents or one serious incidence of this behaviour?
- Are the incidences of behaviour, words, actions or gestures in question hostile or unwanted?
- Does the behaviour undermine self-esteem, belittle or cause humiliation?
- If it is only one serious incidence of this behaviour, does it have a harmful effect that continues over time?
- Does the conduct make the work environment harmful?

Before reaching a conclusion, it is preferable to discuss the situation and to consult persons that you trust.

The Commission des normes du travail offers you tools and publications on psychological harassment in the workplace, including prevention guides for employers. To obtain them, contact customer services at the Commission des normes du travail.

Customer services

Montréal area

(514) 873-7061

Elsewhere in Québec, dial toll free

1 800 265-1414

You can also consult the section of the web site dealing with psychological harassment at the following address:

www.cnt.gouv.qc.ca



**Commission
des normes
du travail**

Québec



Copie française disponible sur demande.

The material found in this document is for information purposes only. For more details, please refer to the Act respecting labour standards and the regulations, or call customer services.

In this document, the masculine gender designates both women and men. No discrimination is intended.

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