



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-THIRD LEGISLATURE

Bill 42

**An Act to prevent and fight
psychological harassment and
sexual violence in the workplace**

Introduction

**Introduced by
Mr. Jean Boulet
Minister of Labour**

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EXPLANATORY NOTES

The purpose of this bill is to prevent and fight psychological harassment and sexual violence by providing various measures in the labour laws that mainly concern the protection of workers in their work environment and the protection of the exercise of workers' recourses to ensure that protection.

The Labour Code is amended to include mandatory training on sexual violence for arbitrators to whom grievances concerning psychological harassment are referred. The bill provides that, for any grievance, a pre-hearing conference may be held upon application by one of the parties.

The Act respecting industrial accidents and occupational diseases is amended to, in particular,

(1) add legal presumptions to facilitate proof so that an employment injury resulting from sexual violence may be recognized, to extend to two years the time limit for filing a claim with the Commission des normes, de l'équité, de la santé et de la sécurité du travail for that type of injury and to provide that, with certain exceptions, the cost of benefits due by reason of those injuries is imputed to the employers of all the units;

(2) specify the rules relating to the right of access to the worker's medical record in the possession of the Commission and create specific offences for contravening any of those rules; and

(3) raise the amount of the income replacement indemnity of trainees, of workers who are full-time students and of children considered to be workers.

The Act respecting labour standards is also amended to, among other things,

(1) specify that an employer's obligations to prevent psychological harassment apply to harassment from any person in the work environment, prescribe the minimum content of the policy to prevent and manage situations of psychological harassment that the employer must adopt and provide that the policy is part of the prevention program or action plan that the employer must apply under the Act respecting occupational health and safety;

(2) provide that no individual contract of employment, collective agreement, collective agreement decree or any other agreement relating to conditions of employment may operate to prevent an employer from taking into account a disciplinary measure previously imposed on an employee for misconduct relating to physical or psychological violence committed by the employee, including sexual violence, when imposing a disciplinary measure concerning a new case of misconduct relating to one of those forms of violence;

(3) provide that it is a prohibited practice for an employer to take reprisals against an employee or impose any other sanction on an employee on the ground that the employee has made a report to the employer concerning psychological harassment behaviour targeting another person;

(4) provide for the power of mediators to put an end to a mediation if they consider, in the circumstances, that their intervention is not useful or appropriate;

(5) specify that, in the settlement of a complaint concerning psychological harassment, the parties may agree to relieve each other from the duty of confidentiality, provided that they specify that they do so in their settlement agreement;

(6) provide that the Administrative Labour Tribunal may order the employer to pay punitive damages to an employee who has been the victim of psychological harassment, even though the employee is suffering from an employment injury resulting from that harassment; and

(7) raise the fines for offences against any provision concerning psychological harassment.

The Act respecting labour relations, vocational training and workforce management in the construction industry is amended to add conviction for sexual assault and conviction for aggravated sexual assault to the grounds for disqualification from serving as a representative in certain capacities in the construction industry.

The Act respecting occupational health and safety is amended, in particular, to introduce the definition of “sexual violence” and to give the Commission the regulatory power to determine measures to prevent or put a stop to sexual violence.

Lastly, the bill makes consequential amendments, in particular to the Act to ensure the protection of trainees in the workplace and to the Act respecting the professional status of artists in the visual arts, film, the recording arts, literature, arts and crafts and the performing arts, and provides for transitional and final measures.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting industrial accidents and occupational diseases (chapter A-3.001);
- Labour Code (chapter C-27);
- Act respecting labour standards (chapter N-1.1);
- Act to ensure the protection of trainees in the workplace (chapter P-39.3);
- Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20);
- Act respecting occupational health and safety (chapter S-2.1);
- Act respecting the professional status of artists in the visual arts, film, the recording arts, literature, arts and crafts and the performing arts (chapter S-32.1).

Bill 42

AN ACT TO PREVENT AND FIGHT PSYCHOLOGICAL HARASSMENT AND SEXUAL VIOLENCE IN THE WORKPLACE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

LABOUR CODE

1. The Labour Code (chapter C-27) is amended by inserting the following section after section 100:

“**100.0.0.1.** An arbitrator who proceeds with the arbitration of a grievance concerning psychological harassment within the meaning of the Act respecting labour standards (chapter N-1.1) must have received training on sexual violence according to the conditions determined by the Minister.”

2. Section 100.2 of the Code is amended by inserting “, *ex officio* or upon application by one of the parties,” after “the arbitrator may also” in the third paragraph.

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

3. Section 2 of the Act respecting industrial accidents and occupational diseases (chapter A-3.001) is amended by inserting the following definition in alphabetical order:

““**sexual violence**” means sexual violence within the meaning of the Act respecting occupational health and safety;”.

4. The Act is amended by inserting the following sections after section 28:

“**28.0.1.** A worker’s injury or disease is presumed to have arisen out of or in the course of the worker’s work when it results from sexual violence suffered by the worker and committed by the worker’s employer, any of the employer’s executive officers in the case of a legal person or any worker whose services are used by the employer for the purposes of the same establishment, unless the violence arises in a strictly private context.

“**28.0.2.** A worker’s disease arising within three months after the worker suffered sexual violence at the workplace is presumed to be an employment injury.”

5. Section 38 of the Act, amended by section 12 of chapter 27 of the statutes of 2021, is again amended, in the fifth paragraph,

(1) by replacing “only the health professional designated by the employer has a right of access free of charge,” by “the employer does not have a right of access”;

(2) by inserting “; only the health professional designated by the employer has a right of access, free of charge” at the end.

6. Section 38.1 of the Act is amended by replacing “or the person authorized by him” by “, the person authorized by him or the health professional designated by him”.

7. Section 39 of the Act, amended by section 13 of chapter 27 of the statutes of 2021, is again amended

(1) by replacing “he may on that occasion give the employer” in the first paragraph by “he may on that occasion communicate to the employer only the information required to give the employer”;

(2) by replacing “No person to whom the health professional reports may use” in the second paragraph by “The employer or the person, authorized by the employer, to whom the health professional reports may not use”.

8. Section 80 of the Act is amended

(1) by replacing “\$50 per week” in subparagraph 1 of the first paragraph by “computed, per week, by multiplying by 17 the general rate of the minimum wage prescribed in section 3 of the Regulation respecting labour standards (chapter N-1.1, r. 3)”;

(2) by replacing “and in this case section 65 does not apply in respect of the minimum employment income” in the second paragraph by “or that he would have earned a higher gross annual employment income considering his contract of employment entered into before his employment injury, and in those cases section 65 does not apply in respect of the minimum employment income”.

9. Section 270 of the Act is amended by adding the following sentence at the end of the first paragraph: “However, a worker’s claim for an employment injury resulting from sexual violence suffered by the worker shall be filed within two years after the injury.”

10. Section 271 of the Act is amended by adding the following sentence at the end: “However, a claim for an employment injury resulting from sexual violence suffered by the worker shall be filed within two years after the injury.”

11. Section 272 of the Act is amended by adding the following sentence at the end of the first paragraph: “However, a worker’s claim for an occupational disease resulting from sexual violence suffered by the worker shall be filed within two years after the worker is made aware that he has such a disease.”

12. Section 327 of the Act is amended

(1) by adding the following subparagraph at the end of the first paragraph:

“(4) benefits due by reason of an employment injury resulting from sexual violence suffered by the worker.”;

(2) in the second paragraph,

(a) by replacing “and 2” by “, 2 and 4”;

(b) by inserting “or if the employment injury results from sexual violence suffered by the worker” at the end;

(3) by adding the following paragraph at the end:

“Subparagraph 4 of the first paragraph does not apply if the sexual violence was committed by the worker’s employer, an executive officer of the employer in the case of a legal person or a representative of the employer in his relations with his workers.”

13. Section 328 of the Act is amended by inserting the following paragraph after the third paragraph:

“In the case of an occupational disease resulting from sexual violence suffered by the worker, the second paragraph applies only to employers to whom subparagraph 4 of the first paragraph of section 327 does not apply.”

14. Section 443 of the Act is amended

(1) by inserting “or, in the case of a worker’s claim for an employment injury resulting from sexual violence, within two years,” after “months” in the first paragraph;

(2) by inserting “or, in the case of a worker’s claim for an employment injury resulting from sexual violence, not later than two years,” after “months” in the second paragraph.

15. Section 452 of the Act is amended by inserting “or, in the case of a worker’s claim for an employment injury resulting from sexual violence, within two years,” after “months” in the first paragraph.

16. The Act is amended by inserting the following section after section 458:

“458.1. The following are guilty of an offence and are liable to a fine of not less than \$1,000 nor more than \$5,000 in the case of a natural person and to a fine of not less than \$2,000 nor more than \$10,000 in all other cases:

(1) an employer who attempts to obtain or obtains, in any manner, the medical record to which he does not have a right of access under section 38;

(2) an employer, or a person authorized by him, who contravenes section 38.1 or the second paragraph of section 39; and

(3) a health professional who contravenes section 38.1 or the first paragraph of section 39.”

ACT RESPECTING LABOUR STANDARDS

17. Section 3.1 of the Act respecting labour standards (chapter N-1.1) is amended by inserting “section 97.1 of Chapter IV.1,” after “of Chapter IV,” in the first paragraph.

18. Section 81.19 of the Act is amended

(1) in the second paragraph,

(a) by inserting “from any person” after “to prevent psychological harassment”;

(b) by replacing “a psychological harassment prevention and complaint processing policy that includes, in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature” by “a policy to prevent and manage situations of psychological harassment”;

(2) by adding the following paragraphs at the end:

“The policy must set out, in particular,

(1) the methods and techniques used to identify, control and eliminate the risks of psychological harassment, including a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature;

(2) the specific information and training programs on psychological harassment prevention that are offered to employees;

(3) the recommendations on behaviour to adopt when participating in work-related social activities;

(4) the procedures for making complaints or reports to the employer or providing information or documents to the employer as well as the information on the follow-up that must be given by the employer;

(5) the measures to protect the persons concerned by a situation of psychological harassment and the persons who have cooperated in the processing of a complaint or report regarding such a situation;

(6) the process for managing a situation of psychological harassment, including the process that applies to the holding of an inquiry by the employer; and

(7) the measures to ensure the confidentiality of complaints, reports, information or documents received and to ensure a preservation period of at least two years for the documents made or obtained in the course of managing a situation of psychological harassment.

The policy is an integral part of the prevention program or action plan, as the case may be, referred to in section 59, 61.2 or 199 of the Act respecting occupational health and safety (chapter S-2.1).”

19. Section 81.20 of the Act is amended

(1) in the first paragraph,

(a) by striking out “123.7.”;

(b) by adding the following sentence at the end: “The time limit referred to in section 123.7 applies to the recourses and the parties are required to indicate the time limit in the collective agreement.”;

(2) by replacing “are” in the third paragraph by “, including the provisions of section 123.7, are”.

20. The Act is amended by adding the following chapter after section 97:

“CHAPTER IV.1

**“SPECIAL PROVISION APPLICABLE TO VIOLENCE IN
THE WORK ENVIRONMENT**

“97.1. To ensure the protection of every person in the work environment, no provision in an agreement or decree may operate to prevent an employer, where the employer imposes a disciplinary measure on an employee for misconduct relating to physical or psychological violence, including sexual violence within the meaning of section 1 of the Act respecting occupational health and safety (chapter S-2.1), from taking into account a disciplinary measure that was previously imposed on the employee for misconduct relating to one of those forms of violence.”

21. Section 122 of the Act is amended by inserting the following subparagraph after subparagraph 2 of the first paragraph:

“(2.1) on the ground that the employee has made a report to the employer or his agent concerning psychological harassment behaviour targeting another person or has cooperated in the processing of a report or complaint regarding such behaviour;”.

22. Section 123.3 of the Act is amended by inserting the following paragraph after the second paragraph:

“The person appointed under the first paragraph may put an end to the mediation if he considers in the circumstances that his intervention is not useful or appropriate; in such a case, the person shall notify the parties in writing.”

23. Section 123.10 of the Act is amended by replacing “The third paragraph of section 123.3 applies” in the second paragraph by “The third and fourth paragraphs of section 123.3 apply”.

24. Section 123.15 of the Act is amended

(1) by striking out “punitive and” in paragraph 4;

(2) by inserting the following paragraph after paragraph 4:

“(4.1) ordering the employer to pay punitive damages to the employee;”.

25. The Act is amended by inserting the following section after section 123.16:

“123.17. Where a settlement is reached following a complaint concerning psychological harassment, the parties concerned by the complaint undertake to preserve the confidentiality of anything said, written or done during the settlement process. The parties may, however, agree to relieve each other from the duty of confidentiality, in which case they must specify that they do so in their settlement agreement and indicate in the agreement when it takes effect.”

26. Section 125 of the Act is amended by replacing “The second and third” in the first paragraph by “The second, third and fourth”.

27. Section 140 of the Act is amended by inserting “81.19, 81.20,” after “sections” in paragraph 6.

28. Section 140.1 of the Act is amended by inserting “81.19, 81.20,” after “sections”.

ACT TO ENSURE THE PROTECTION OF TRAINEES IN
THE WORKPLACE

29. Section 19 of the Act to ensure the protection of trainees in the workplace (chapter P-39.3) is amended

(1) by inserting “from any person” after “to prevent psychological harassment” in the second paragraph;

(2) by replacing “the psychological harassment prevention and complaint processing policy” in the third paragraph by “the policy to prevent and manage situations of psychological harassment”.

30. Section 20 of the Act is amended by inserting “2.1,” after “in subparagraphs” in subparagraph 5 of the first paragraph.

31. Section 22 of the Act is amended by inserting the following paragraph after the second paragraph:

“The person appointed under the first paragraph may put an end to the mediation if they consider in the circumstances that their intervention is not useful or appropriate; in such a case, they notify the parties in writing.”

ACT RESPECTING LABOUR RELATIONS, VOCATIONAL
TRAINING AND WORKFORCE MANAGEMENT IN
THE CONSTRUCTION INDUSTRY

32. Section 26 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) is amended

(1) in subsection 1,

(a) by inserting “sexual assault,” after “common assault,” in the first paragraph;

(b) by inserting “or a record suspension” after “a pardon” in the second paragraph;

(2) in subsection 2,

(a) by inserting “Except where the person convicted is granted a pardon or a record suspension under the Criminal Records Act,” at the beginning;

(b) by replacing “or aggravated assault,” by “, aggravated assault or aggravated sexual assault,”.

ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY

33. Section 1 of the Act respecting occupational health and safety (chapter S-2.1), amended by section 122 of chapter 27 of the statutes of 2021, is again amended by inserting the following definition in alphabetical order:

““**sexual violence**” means any form of violence targeting sexuality or any other misconduct, including unwanted gestures, practices, comments, behaviours or attitudes with sexual connotations, whether they occur once or repeatedly, including violence relating to sexual and gender diversity;”.

34. Section 51 of the Act, amended by section 139 of chapter 27 of the statutes of 2021, is again amended by inserting “and take any other measure that may be determined by regulation to prevent or put a stop to sexual violence” at the end of subparagraph 16 of the first paragraph.

35. Section 59 of the Act, amended by section 144 of chapter 27 of the statutes of 2021 and section 7 of chapter 11 of the statutes of 2023, is again amended

(1) by adding the following subparagraph at the end of the second paragraph:

“(9) the policy to prevent and manage situations of psychological harassment referred to in section 81.19 of the Act respecting labour standards.”;

(2) by inserting the following paragraph after the second paragraph:

“For the purposes of subparagraph 1 of the second paragraph, psychosocial risks include risks related to sexual violence.”

36. Section 61.2 of the Act, enacted by section 147 of chapter 27 of the statutes of 2021 and amended by section 8 of chapter 11 of the statutes of 2023, is again amended

(1) by adding the following subparagraph at the end of the second paragraph:

“(6) the policy to prevent and manage situations of psychological harassment referred to in section 81.19 of the Act respecting labour standards.”;

(2) by inserting the following paragraph after the second paragraph:

“For the purposes of subparagraph 1 of the second paragraph, psychosocial risks include risks related to sexual violence.”

37. Section 199 of the Act, amended by section 217 of chapter 27 of the statutes of 2021, is again amended by replacing “subparagraph 8” by “subparagraphs 8 and 9”.

38. Section 223 of the Act, amended by section 232 of chapter 27 of the statutes of 2021, is again amended by inserting the following subparagraph after subparagraph 9 of the first paragraph:

“(9.1) determining measures to prevent or put a stop to sexual violence that must be taken by an employer or principal contractor in accordance with subparagraph 16 of the first paragraph of section 51;”.

ACT RESPECTING THE PROFESSIONAL STATUS OF ARTISTS IN THE VISUAL ARTS, FILM, THE RECORDING ARTS, LITERATURE, ARTS AND CRAFTS AND THE PERFORMING ARTS

39. Section 43 of the Act respecting the professional status of artists in the visual arts, film, the recording arts, literature, arts and crafts and the performing arts (chapter S-32.1) is amended, in the second paragraph,

(1) by inserting “from any person” after “to prevent psychological harassment”;

(2) by replacing “a psychological harassment prevention and complaint processing policy that includes, in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature” by “a policy to prevent and manage situations of psychological harassment in accordance with section 81.19 of the Act respecting labour standards (chapter N-1.1)”.

40. Section 45 of the Act is amended, in the first paragraph,

(1) by striking out “, 63.3”;

(2) by adding the following sentence at the end: “The time limit referred to in section 63.3 applies to the recourses and the parties are required to indicate the time limit in the group agreement.”

41. Section 63.3 of the Act is amended, in the second paragraph,

(1) by striking out “punitive and” in subparagraph 4;

(2) by inserting the following subparagraph after subparagraph 4:

“(4.1) ordering the producer to pay punitive damages to the artist;”.

TRANSITIONAL AND FINAL PROVISIONS

42. An arbitrator to whom a grievance concerning a psychological harassment complaint is referred before (*insert the date that is one year after the date of assent to this Act*) is not required to have received the training required under section 1 to proceed with the arbitration of the grievance.

43. Section 81.20 of the Act respecting labour standards (chapter N-1.1), as it read on (*insert the date that precedes the date of coming into force of section 19*), continues to apply with respect to the collective agreements in force on (*insert the date of assent to this Act*) that do not indicate the time limit referred to in section 123.7 of that Act until the date of their renewal.

The same applies to the first paragraph of section 45 of the Act respecting the professional status of artists in the visual arts, film, the recording arts, literature, arts and crafts and the performing arts (chapter S-32.1) with respect to the group agreements that do not indicate the time limit referred to in the first paragraph of section 63.3 of that Act.

44. The Minister must, in collaboration with the Commission des normes, de l'équité, de la santé et de la sécurité du travail, not later than (*insert the date that is five years after the date of assent to this Act*), report to the Government on the carrying out of this Act and the advisability of maintaining or amending its provisions.

The report is tabled in the National Assembly within 30 days or, if the Assembly is not sitting, within 30 days of resumption.

45. This Act comes into force on (*insert the date of assent to this Act*), except

(1) sections 4 to 11 and 14 to 16, subparagraph *b* of subparagraph 1 and, except insofar as it concerns adding the last paragraph of section 81.19 of the Act respecting labour standards, paragraph 2 of section 18, sections 22, 23, 25 and 26, paragraph 2 of section 29, section 31 and paragraph 2 of section 39, which come into force on (*insert the date that is six months after the date of assent to this Act*);

(2) paragraph 2 of section 18, insofar as it concerns adding the last paragraph of section 81.19 of the Act respecting labour standards, and sections 35 to 37, which come into force on the same date as paragraph 2 of section 144 and section 147 of the Act to modernize the occupational health and safety regime (2021, chapter 27).

