

# ***Work Place Harassment and Violence Prevention Regulations***

*Canada Labour Code - Part II*

Revised January, 2022

# Information:

Please be advised this is an awareness information session, and is not representative as training under the requirements of the Canada Labour Code, Part II and Canadian Occupational Health and Safety Regulations.



# Summary

- *Canada Labour Code - Part II, and the Work Place Harassment and Violence Prevention Regulations (the Regulations)*
- Employer Obligations - General
  - Work Place Assessments
  - Prevention Policy
  - Training
  - Reporting
- Employer Obligations - Resolution Process
  - Receipt of Notice of an Occurrence
  - Selection of an Investigator
  - Investigation
- Transitional Provisions
- Additional Resources



# Revisions to the *Canada Labour Code*, Part II (Bill C-65)

## New Definition – Subsection 122(1)

- *Harassment and violence* means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.

## Revised Purpose – Section 122.1 (new text in bold)

- The purpose of this Part is to prevent accidents, **occurrences of harassment and violence and physical or psychological injuries and illnesses** arising out of, linked with or occurring in the course of employment to which this Part applies.



# Revisions to the *Canada Labour Code*, Part II (Bill C-65)

## Revised Employer Duties (new text in bold)

- 125(1)(c) **except as provided for in the regulations**, investigate, record and report, **in accordance with the regulations**, all accidents, **occurrences of harassment and violence**, occupational illnesses and other hazardous occurrences known to the employer.
  
- 125(1)(z.16) take the prescribed **measures** to prevent and protect against **harassment and violence** in the work place, **respond to occurrences of harassment and violence in the work place and offer support to employees affected by harassment and violence in the work place**.
  
- 127.1(3) The employee or the supervisor may refer an unresolved complaint, **other than a complaint relating to an occurrence of harassment and violence**, to a chairperson of the work place committee or to the health and safety representative to be investigated jointly:
  - (a) by an employee member and an employer member of the work place committee; or,
  - (b) by the health and safety representative and a person designated by the employer.



# Revisions to the *Canada Labour Code*, Part II (Bill C-65)

## New Code Provisions

- 125(1)(z.161-163) - Employers shall ensure training is provided regarding harassment and violence.
- 125(4) & 127.1(12) - Former employees may provide a notice of occurrence within 3 months of ceasing employment.
- 125(5) & 127.1(13) - Former employees may request an extension to the 3 months to provide a notice of occurrence.
- 127.1(1.1) - Complaints alleging the employer's response to a notice of an occurrence of harassment and violence contravenes the Code or Regulation, can be made to the person designated in the employer's policy.
- 127.1(9) - Head may decline to investigate a complaint related to an occurrence of harassment and violence if the Head considers that the complaint has already been adequately dealt with or is an abuse of process.
- 134.1(4.1), 135(7.1), and 136(5.1) - Policy committees, work place committees, and health and safety representatives respectively, shall not participate in investigations related to occurrences of harassment and violence.



# Regulations

## Important Terminology

### Notice of an occurrence

- Notice to the employer that there has been an occurrence of harassment and violence in the work place.

### Principal party

- The person who is the object of an occurrence of harassment and violence.

### Responding party

- The person who is alleged to have been responsible for an occurrence of harassment and violence.

### Applicable partner

- The policy committee, or if there is no policy committee, the work place committee or the health and safety representative.



# Regulations

## Important Terminology (cont'd)

### Designated recipient

A person or work unit in a work place, designated by an employer to receive a **notice of an occurrence**.

- Intent is to provide the **principal party** an alternate person to contact if the employer (supervisor, manager, director or business owner) is the **responding party** in an occurrence of harassment and violence.
- Organizations can have more than one **designated recipient**, as long as:
  - the **designated recipients** are all trained as per 12(5) of the Regulations, and,
  - the organization's harassment and violence prevention policy clearly identifies who are the **designated recipients**, and how they can be provided with a **notice of occurrence** as per 10(2)(e) of the Regulations.

### Person designated

- The person designated by the employer under 10.2(k) of the Regulations to receive complaints of contraventions of the Code or Regulations.
- Complaints must be made to the Person Designated or the Supervisor before they can be referred to the Labour Program.





# Employer Obligations - General

## Work Place Assessments

- Employers must jointly, with the applicable partner:
  - conduct the initial work place assessment to identify risk factors that may contribute to harassment and violence;
  - develop preventative measures to mitigate these identified risks factors; and,
  - monitor, review and update the work place assessment at least every 3 years, or if risk factors have changed.
  
- Employers must jointly, with the work place committee or health and safety representative:
  - review and if necessary update the work place assessment if:
    - a principal party ends a resolution process that is not resolved, or,
    - the responding party is not employee or employer (i.e. is a third party).



# Employer Obligations - General

## Prevention Policy

- Employer must jointly develop a prevention policy with applicable partner, which must include:
  - Mission statement.
  - Risk factors that contribute to work place harassment and violence.
  - Roles of the policy committee, work place committee and health and safety representative.
  - Summaries of:
    - employee training;
      - the resolution process, including how the privacy of persons involved will be protected; and,
      - emergency procedures.
- Policy must identify, describe how to contact, and list the duties of:
  - Designated Recipient - for receiving notices of an occurrence [10(2)(e) of Regulations].
  - Person Designated - for receiving complaints of contraventions of the Code or Regulations [10(2)(k) of Regulations].
- Policy must be reviewed and updated at least once every 3 years



# Employer Obligations - General

## Training

- Employer and applicable partner must jointly develop or identify training to be given to:
  - New Employees - within 3 months of starting employment, and every 3 years after that.
  - Current Employees – by December 31, 2021, and every 3 years after that.
  - Employers - by December 31, 2021, and every 3 years after that.
  - Designated recipients (for receiving notices of occurrences) - before assuming their duties.
  - Persons designated (for receiving complaints of contraventions of the Code or Regulations) - before assuming their duties.
  
- Employer and applicable partner must review and update training at least once every 3 years.



# Employer Obligations - General

## Reporting

- Fatality Report of employee death resulting from harassment and violence:
  - must be reported to the Labour Program within 24 hours of the employer becoming aware of the death;
  - report must include date, time and general description of the occurrence, and contact information for the person who can provide more information; and,
  - report can be made by calling 1-800-641-4049.
  
- Annual Report of harassment and violence occurrences:
  - must be reported to the Labour Program by March 1st of each year (beginning in 2022);
  - only one such annual report is required per employer (in addition to: Employers' Annual Hazardous Occurrence Reports);
  - report summarizes the data of notices of harassment and violence the employer received in the previous calendar year; and,
  - the report can be found here: [Form Detail \(servicecanada.gc.ca\)](https://www.servicecanada.gc.ca) and be submitted via email to: [EAHOR.INFO-RAESCR.INFO@labour-travail.gc.ca](mailto:EAHOR.INFO-RAESCR.INFO@labour-travail.gc.ca)



# Employer Obligations - General

## Reporting (continued)

- Monthly Status Updates:
  - Employer or designated recipient must provide monthly updates on the status of the resolution process related to a notice of occurrence to:
    - the principal party, starting in the month after the notice was provided; and,
    - the responding party, starting in the month after the responding party was first contacted.
  - must be provided each month, including the month the resolution process is completed; and,
  - employers may develop their own format for this report.
  
- Hazardous Occurrence Investigation Reports:
  - Disabling employee injuries, and the implementation of emergency procedures, resulting from occurrences of harassment and violence are not required to be reported to the Labour Program under Part VX of the *Canada Occupational Health and Safety Regulations*, (or other associated regulations).



# Employer Obligations – Resolution Process

## Receipt of Notice of an Occurrence

- Upon the employer or designated recipient receiving a notice of an occurrence, they must:
  - conduct an initial review of the notice to determine the identity of the principal party;
  - contact the principal party within 7 days to advise them:
    - their notice has been received, or they have been identified as the principal party in a notice;
    - how to access the employer’s harassment and violence prevention policy;
    - of each step in the resolution process; and,
    - that they may be represented during the resolution process.
  - within 45 days, review the notice with the principal party, and see if agreement can be reached on whether not the occurrence meets the definition of harassment and violence in the Code;
  - make every reasonable effort to resolve the occurrence;
  - contact and provide the responding party the same information given to the principal party if the matter is not resolved initially; and,
  - If the principal party requests an investigation, provide the principal and responding parties with notice of an investigation.



# Employer Obligations – Resolution Process

## Selection of Investigator

- If the principal party requests an investigator, the employer or designated recipient must:
  - provide the principal and responding parties with notice that an investigation will be conducted;
  - select an investigator from:
    - a list of investigators jointly identified by the employer and applicable partner if there is such a list; if no list exists,
    - any person that is agreed to by the employer and the principal and responding parties; or,
    - if no such agreement is reached within 60 days, from a list maintained by the Canadian Center for Occupational Health and Safety (CCOHS).
  - Ensure the investigator has knowledge and training in:
    - investigative techniques;
    - harassment and violence in the work place; and,
    - the *Canada Labour Code-Part II*, the *Canadian Human Rights Act*.



# Employer Obligations – Resolution Process

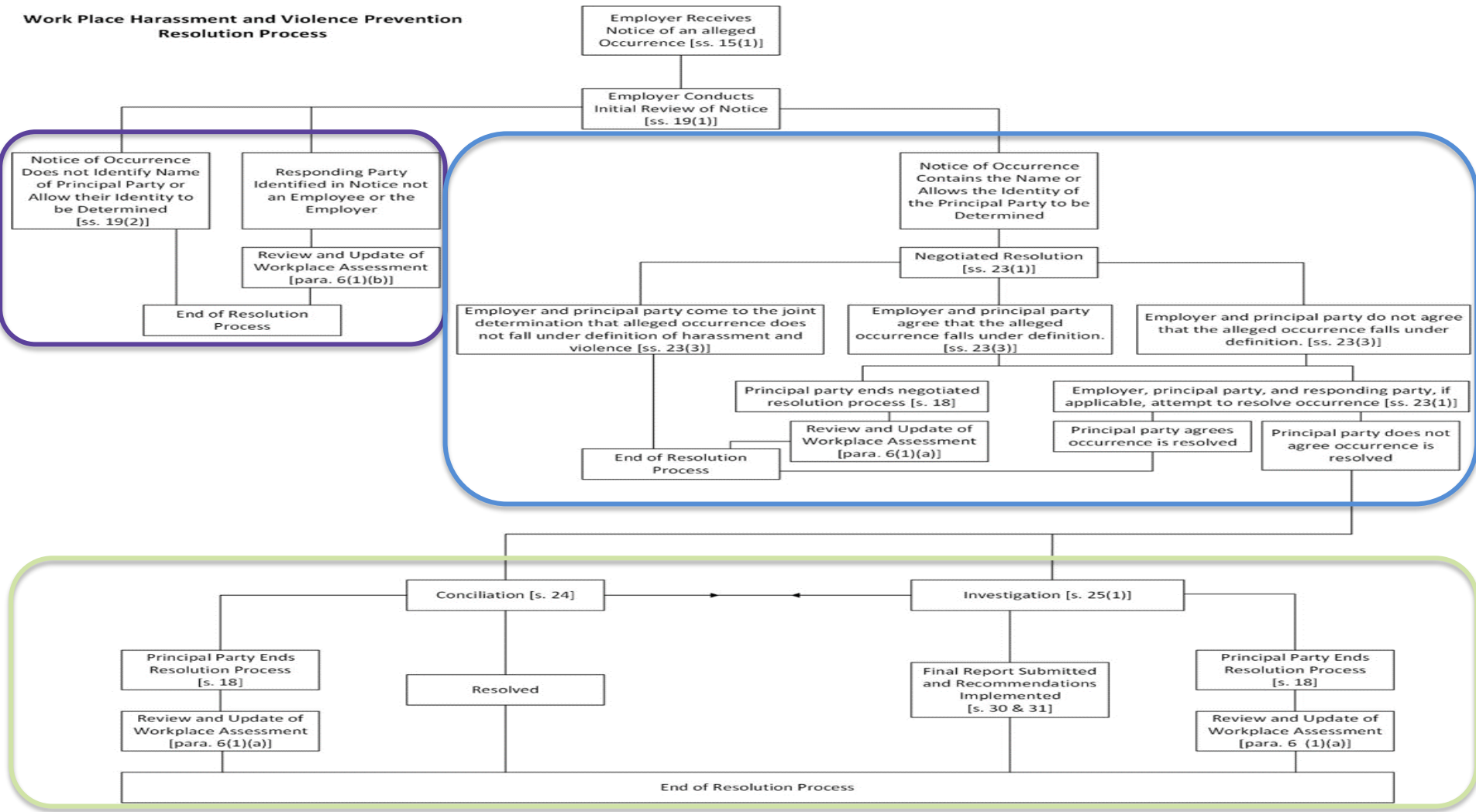
## Investigation

- Upon the investigator being selected, the employer or designated recipient must:
  - provide the investigator with any information that is relevant to the investigation;
  - ensure the investigator provides both parties and the employer a written statement that they are not in conflict of interest; and,
  - ensure the investigator's report:
    - contains a general description of the occurrence, conclusions, and recommendations;
    - does not reveal directly or indirectly the identity of any person involved in the occurrence or resolution process; and,
    - is provided to the principal and responding parties, and the work place committee or health and safety representative.
  - employer must jointly determine with the work place committee or health and safety representative which recommendations to implement (and if agreement cannot be reached, must record the employer's decision and the reason);
  - employer must implement the jointly agreed to recommendations within 1 year of receiving the notice of occurrence; and,
  - after implementing the recommendations, provide the parties a final monthly status update: resolution process completed.

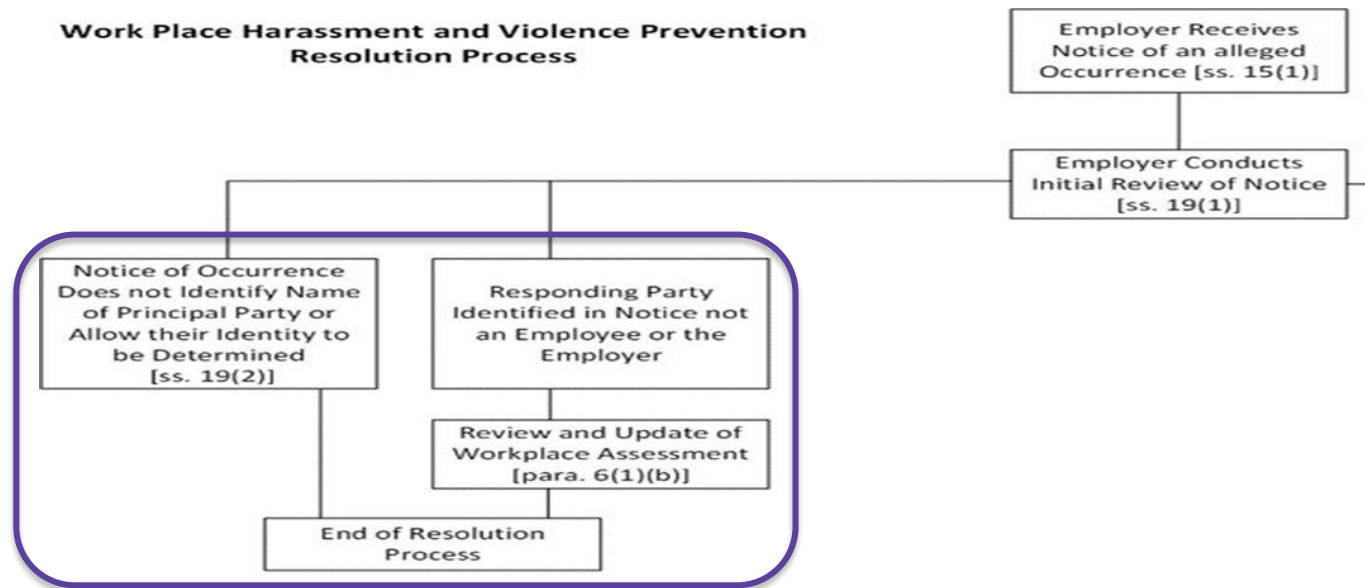




**Work Place Harassment and Violence Prevention Resolution Process**



## Work Place Harassment and Violence Prevention Resolution Process

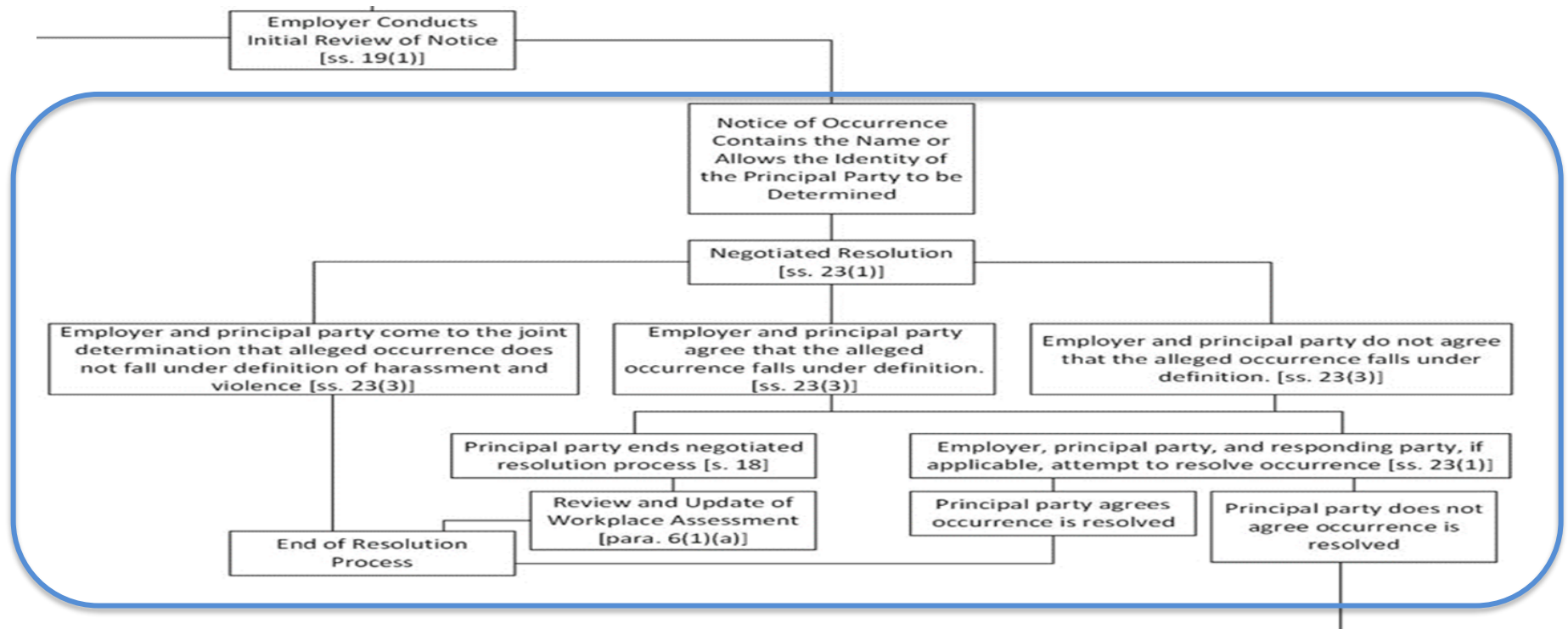


The purpose of the initial review is to determine if the notice of occurrence contains the information required at section 16 of the Regulations. If the notice does not contain all of the information required by section 16, the employer or designated recipient should give the principal party or witness the opportunity to provide the missing information.

However, if the notice does not contain sufficient information to allow the identity of the principal party to be determined, an employer is:

- not required to take further action to resolve the occurrence; and,
- may therefore deem the occurrence resolved.

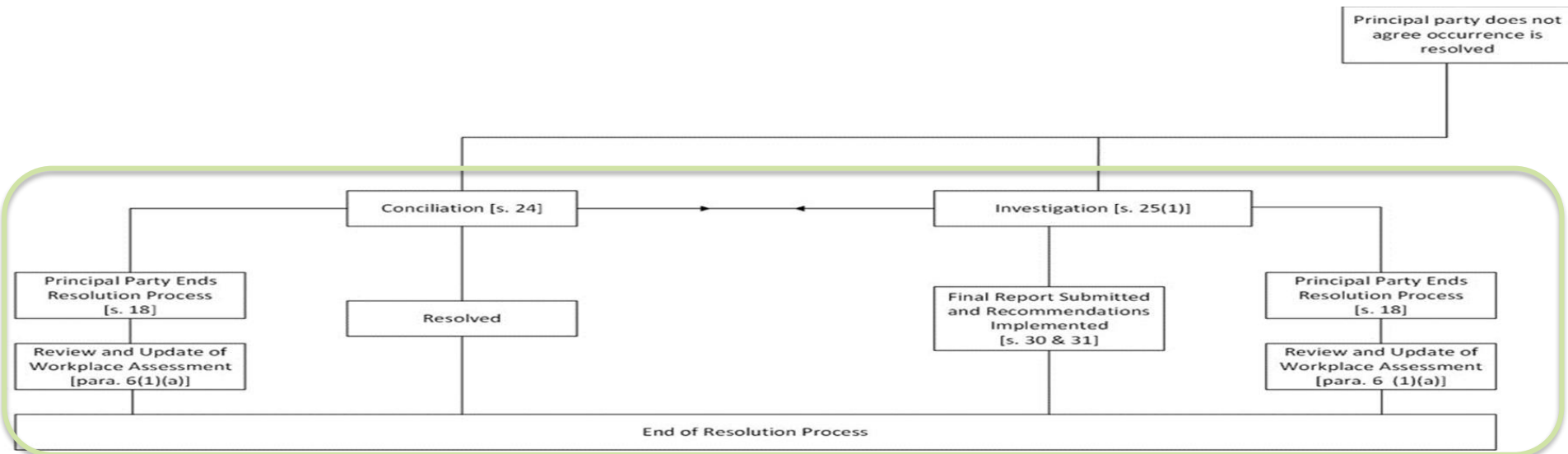




Negotiated resolution is a form of informal resolution in which the principal party meets (either virtually or in-person) with the employer or designated recipient to:

- discuss the occurrence;
- clarify the information that was submitted in the notice of an occurrence; and,
- attempt to reach resolution.





#### When Conciliation is Requested

- Employer must allow principal and responding party to participate in conciliation if both agree to conciliation and on the person to facilitate it.

#### When an Investigation is requested by the principal party under subsection 25(1)

- Employer must provide notice that an investigation is to be carried out.
- Employer must select a person to act as an investigator from the list developed jointly with the applicable partner, if such a list exists.
- If there is no jointly-developed list, employer must select a person to act as an investigator that is jointly agreed upon with the principal party and the responding party.
- If parties cannot come to agreement within 60 days, employer must select a person from the roster of investigators managed by CCOHS.
- Employer must provide the investigator with all information that is relevant to the investigation.



# Transitional Provisions – Section 42 of the Regulations

If an employer becomes aware of an occurrence of “work place violence” or “harassment and violence”:

- BEFORE January 1<sup>st</sup>, 2021

they must follow sections 20.1, 20.2 and 20.9 in the *Canada Occupational Health and Safety Regulations (Violence Prevention in the Work Place*, or the applicable associated Regulations).

- AFTER January 1st, 2021

they must follow the resolution process outlined at sections 14-34 of the Regulations.



# Additional Resources

- [Interpretations, Policies and Guidelines \(IPGs\)](#)
- [Sample Risk Assessment tool](#)
- [Sample Policy](#)
- [Sample User Guide](#)
- [Requirements for Employers](#)
- [Bill C-65 \(Canada Labour Code -Part II\)](#)
- [Work Place Harassment and Violence Prevention Regulations](#)



# Connect with us...

The Labour Program is working to determine the most effective ways to connect with stakeholders and partners.

- Social media, Twitter, LinkedIn, Facebook
- Publish prosecutions online
- Linking information on the Canada.ca website (Health and Safety)

**1-800-641-4049 – Labour Toll Free Line**



**Follow us on Twitter @ESDC\_GC**

**[www.Labour.gc.ca](http://www.Labour.gc.ca)**



# Questions?

