

SEEKING GOVERNMENT ENFORCEMENT IN THE WORKPLACE REGULATIONS CANADA LABOUR CODE PART II

Human Resources and Skills Development Canada (HRSDC), through its Labour Program are responsible for the enforcement of the Canada Labour Code, Part II and all its Regulations. It is important to note that the workplace parties must first attempt to resolve the complaint through the internal complaint resolution process set out in the Code (section 127.1). A complaint cannot be handled if this internal resolution process has not been followed.

Human Resources and Skills Development Canada can be reached using the toll-free number: **1-800-641-4049**. You can also check the HRSDC-Labour Web Site to contact the closest regional office near you.

- Not having a Workplace Violence Prevention Policy in your workplace is a contravention
- Not having procedures to adequately respond to workplace violence in your workplace is a contravention
- Not providing health and safety training to health and safety committee members is also a contravention
- Not providing health and safety training to employees is also a contravention
- Not keeping adequate records of any health and safety education provided to employees is also a contravention
- Not providing the committee with a copy of the employer's Workplace Violence Prevention Measures Review evaluating the program's effectiveness is also a contravention

Under section 126(1)(j) of the Canada Labour Code Part II, every worker must report to the employer any situation that he/she believes to be a contravention of Part II of the Code by the employer, another worker or any other person.

Section 126(1)(g) further requires that every worker must report to the employer any thing or circumstance in a work place that is likely to be hazardous to the health or safety of the employee, or that of the other employees or other persons granted access to the work place by the employer;

The employee's right to complain is limited only by the need to have "reasonable grounds" for the belief.

The employer is required to respond to these reports as mandated in section 125(1)(z.02) of the Code. Worker complaints must be responded to and, more importantly, acted upon.

An internal complaint resolution process is established in section 127.1. This internal occupational health and safety complaint resolution process has to be used before other recourses available under Part II of the Code, except for the right to refuse dangerous work and the right of pregnant or nursing workers to temporarily withdraw from dangerous work. The process will include the following main steps:

The Internal Complaint Resolution Process

Step 1

A worker who believes on reasonable grounds that there has been a contravention to the Code or that there is likely to be an accident or injury to health makes a complaint to the supervisor (section 127.1(1));

Step 2

The worker and the supervisor must attempt to resolve the complaint between themselves as soon as possible (section 127.1(2));

Step 3

Referral of an unresolved complaint on the initiative of either of them to a chairperson of the workplace committee to be investigated jointly (section 127.1(3));

Step 4

The persons who investigate the complaint must inform the worker and the employer in writing of the results of the investigation (section 127.1(4));

Step 5

The persons who investigate the complaint may make recommendations to the employer with respect to the situation that gave rise to the complaint, whether or not they conclude that the complaint is justified (section 127.1(5));

Step 6

If the complaint is found to be justified, the employer must in writing and without delay inform the persons who investigated of how and when it will resolve the matter and must take appropriate action (section 127.1(6));

Step 7

If the persons who investigate the complaint conclude that a danger exists, the employer must ensure that no worker is exposed to that danger until the situation is rectified (section 127.1(7));

Step 8

The worker or employer may refer a complaint to a health and safety officer in the following circumstances (section 127.1(8)):

- (a) the employer does not agree with the results of the investigation;
- (b) the employer has failed to take action to resolve the matter or to inform the persons who investigated the complaint of how and when it intends to proceed; or
- (c) the persons who investigated the complaint do not agree as to whether the complaint is justified.

Step 9

The health and safety officer must investigate the complaint (section 127.1(9));

Step 10

After the investigation, the health and safety officer (section 127.1(10)):

- (a) can issue directions to an employer or worker;
- (b) can recommend that the employer and worker resolve the matter between themselves; or
- (c) if the officer concludes that a danger exists, he/she must issue directions.

Any failure in following this process by an employer is also a contravention. If the employer fails to initiate this process, a health and safety officer must be called immediately asked to intervene immediately.

To ensure better communications, there is also a requirement on the health and safety officer to provide the employer and the workplace committee with a copy of the report within ten days after completing a written report on the findings of an inquiry or investigation (section 141(6)).

National Joint Council Agreements – Health and Safety

The NJC Occupational Health and Safety Directive contain enhancements to the Canada Labour Code Part II. The Code and its pursuant applicable regulations (version in force on April 1, 2008) are incorporated in the Directive to ensure that we do not lose any rights incorporated in legislation should the Government of Canada decide to eliminate specific legal requirements in the future. In other words, if the law is significantly amended as to reduce the legal protection to all workers in the federal jurisdiction, we would still be able to retain our rights with our present inclusion of the Code and all its Regulations within our NJC Collective Agreement.

NJC Grievance Procedure

The NJC grievance procedure can be used to file a grievance for any collective agreement language that provides additional protection to the Canada Labour Code, Part II. It cannot be used if any alternative administrative procedure for redress is available under the Code.

There exists a fundamental problem with an adjudicator's jurisdiction to hear a grievance where there is an "administrative procedure for redress". Subsection 208(2) of the Public Service Labour Relations Act says:

"An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the Canadian Human Rights Act."

It has been decided by the Board that - where such a procedure exists - the Board has no jurisdiction and, indeed, you can't even file the grievance in the first place.

This applies even where there is a hook in our collective agreement (i.e. an NJC Directive incorporated the Canada Labour Code into our collective agreement).

The NJC OHS Directives should be read in concert with the appropriate sections of the Canada Labour Code, Part II, and the Regulations.

The CLC, Part II is the most appropriate mechanism for addressing the health and safety concerns of employees and it also provides the most effective way to ensure early resolution of such matters. Health and safety committees and representatives, in particular, ensure that health and safety concerns are addressed in the workplace.