Regulations to prevent workplace
violence and harassment

What we heard

Executive summary

- Workplace violence and harassment are recognized in Canada as serious hazards.
- The Government of Yukon is proposing two regulatory changes to the *Occupational Health and Safety Regulations*:
  - A new regulation to help prevent violence and harassment in the workplace.
  - An amendment to strengthen and clarify the requirement for hazard assessments.
- The Yukon Workers' Compensation Health and Safety Board (YWCHSB) hosted a public engagement process to solicit input from stakeholders and the public. It included stakeholder and public meetings, an online survey and written submissions.
- What we heard:
  - Support for a regulation as a way to help prevent workplace violence and harassment and for clarification about the requirements for workplace hazard assessments.
  - Support for workplace policies and procedures on violence and harassment.
  - Two categories of themes: the perceived challenges with the proposed regulatory changes and the ideas for solving those challenges.
  - Perceived challenges and concerns included variation in the size, capacity and diversity of Yukon workplaces; clarity about employer and worker responsibilities; workplace culture as a root problem; confidentiality; at-risk workers; the potential for misuse of the regulation; and, conflicting or overlapping definitions and related legislation.
  - Suggested solutions to these challenges and concerns included the provision of supports and resources; education and training; consistent and clear definitions; a collaborative approach; and, effective implementation and enforcement.
- The next steps are to finalize drafting of the new occupational health and safety regulation based on this report, amend the existing Part 1: General Regulations and to plan for effective and supportive implementation.

Background

Jurisdictions across Canada now recognize violence and harassment as serious workplace hazards that require occupational health and safety (OHS) organizations to play a role in prevention and enforcement. The human and financial costs of psychological injuries associated with these hazards are very high.[1]

In Yukon, the territorial government has taken steps to help prevent psychological injuries in the workplace. In a public engagement in 2017, almost 70% of survey respondents said they support amendments to the *Occupational Health and Safety Act* to allow for the development of "regulations aimed at preventing mental injuries at work."

[1] *Rebbit, Dave, Bullying, Harassment greatest workplace hazard of our generation, Canadian Occupational Safety Magazine, June 24, 2019,*
https://www.cos-mag.com/safety-leadership-culture/columns/bullying-harassment-greatest-workplace-hazard-of-our-generation/

An amendment to the Act the same year allowed for changes to the OHS regulations. By helping to prevent workplace violence and harassment, a regulation is intended to contribute to fewer incidents of psychological injuries at work. This aligns with YWCHSB's Vision Zero.

The Yukon government, with the assistance of YWCHSB, has been working on:

- A new regulation to help prevent violence and harassment in the workplace; and
- An amendment to strengthen and clarify the requirement for hazard assessments.

Workplace violence and harassment

We know that when workers experience psychologically healthy and safe workplaces, employers enjoy improved productivity, efficiency and reduced absenteeism. [2]

Generally speaking, "violence," in a workplace safety context, means the threat or actual use of physical force, which includes making threatening statements against workers in the workplace that causes an injury. It can also include situations of family or sexual violence.

Harassment means conduct or comments that a person knows, or reasonably ought to know, would cause offence or humiliation to a worker or adversely affects a worker's physical or psychological well-being. It includes workplace sexual harassment.

Yukon does not have a territorial health and safety regulation in place that specifically addresses preventing workplace violence and harassment. Ours is the last jurisdiction in Canada to have in place a regulation to prevent workplace violence and one of the last to have a harassment prevention measure.

Many diverse factors are involved in preventing violence and harassment in the workplace. YWCHSB can support in helping to prevent such incidents by requiring employers and workers to conduct hazard assessments, with an eye to both physical and psychological injuries, to have prevention policies and procedures in place and to take steps to mitigate these hazards.

Hazard assessment

Currently, in Part 1: General Regulations under the *Occupational Health and Safety Act* employers are required to prevent occupational injuries and diseases by eliminating or controlling workplace hazards where possible, to develop safe work practices, and to inform and train workers where it is not possible to control the hazard.

Hazard assessments identify the hazards present in a workplace and how best to eliminate and/or mitigate them. By adding a provision that identifies the requirements for assessing psychological as well as physical hazards, the government aims to make the regulation clearer and easier to understand for employers.

[2] CAN/CSA-Z1003-13/BNQ 9700-803/2013, Psychological health and safety in the workplace, CSA Group, p. 1 Introduction.

Engagement Process

Purpose

The purpose of this engagement was to hear about the needs, perspectives and ideas that our stakeholders as well as individual Yukon employers and workers have about the proposed changes to the *Occupational Health and Safety Regulations*.

Engagement methods and participation

Pre-engagement phase

We began with a pre-engagement phase that ran from April 16 to May 8, 2019. We identified stakeholder organizations that represented broad employer and worker perspectives and contacted them by email and telephone.

Stakeholders:

- Worker representative groups
- Chambers of Commerce
- Yukon government: Public Service Commission, Respectful Workplace Office, Women's Directorate
- Yukon Human Rights Commission
- Tourism Industry Association of Yukon
- Community associations

April: One-on-one pre-engagement conversations between our third-party facilitator and stakeholders to explore their interest and initial reactions to a new workplace violence and harassment regulation and an amended workplace hazard assessment regulation.

May 7: A facilitated stakeholder group session to identify key considerations and test early policy ideas.

Public engagement phase

We ran the public engagement phase from June 7 to 30, 2019. We reached our stakeholders directly by invitation and we advertised the public engagement through newspapers, radio, posters, direct email to Yukon employers registered with YWCHSB and online. Local media covered the story.

We provided each participant with a Policy Framework written in plain language that outlined our early policy ideas. This formed the basis for discussion.

June 18, morning: A facilitated workshop with our stakeholder group from 9 a.m. to noon in which nine stakeholders participated. We designed this second workshop with stakeholders to solicit feedback on the proposed policy framework.

June 18, afternoon: A public open house from 3 to 7 p.m. in which 20 members of the public participated. This was a more fluid and conversational approach with members of the public dropping in and participating in ongoing conversations at one central table.

Online survey: A survey was available online at engageyukon.ca from June 7 to 30, 2019. We provided background information about the purpose as well as the Policy Framework document. There were 88 responses to the survey.

Written submissions: We invited Yukoners to provide written submissions. We received three submissions.

Social media: We advertised the June 18 public open house on the Government of Yukon Facebook page and promoted the online survey on Twitter. The YWCHSB website provided information and links to materials and to the survey.

What we heard

Overall, there was resounding support for a new regulation to help prevent violence and harassment as a way to mitigate the risk of psychological injury. As well, there was support for clarification about the requirements for workplace hazard assessments.

All stakeholders recognized the need for preventive measures to stop violence and harassment in the workplace from occurring in the first place. An occupational health and safety regulation is one such measure.

The proposed regulatory approach to help prevent workplace violence and harassment focuses on employers having policies and procedures in place. Almost every person who responded to our online survey (93%) agreed that workplaces should have policies, procedures or other measures to address prevention of violence and harassment.

Should workplaces have policies, procedures or other measures in place to address the prevention of workplace violence and harassment?

No - 4% I don't know - 3%
Yes - 97%

Yes   No   I don't know
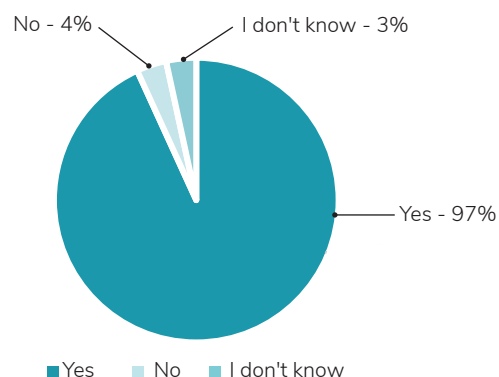
We also heard agreement that employers have a responsibility to prevent violence and harassment from occurring in their workplace/s and that hazard assessments are vital and should be performed regularly.

At the engagement stage, the Yukon government proposed that all workplaces have harassment prevention policies and procedures in place. Initially the government also proposed that only workplaces that identified violence as a potential hazard assessment be required to have violence prevention procedures. We heard that the proposal was too complex and that stakeholders would prefer all workplaces to have harassment and violence prevention policies and procedures.

Only a small proportion of respondents to our survey (12%) indicated that they had never experienced or witnessed violence, harassment or bullying in a Yukon workplace.
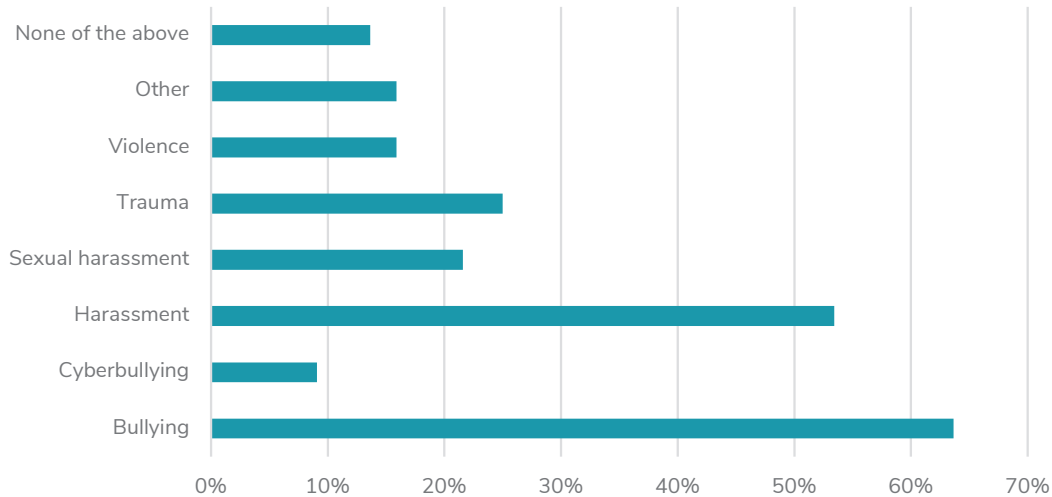
Have you ever experienced or witnessed any of the following risk factors in a Yukon workplace?
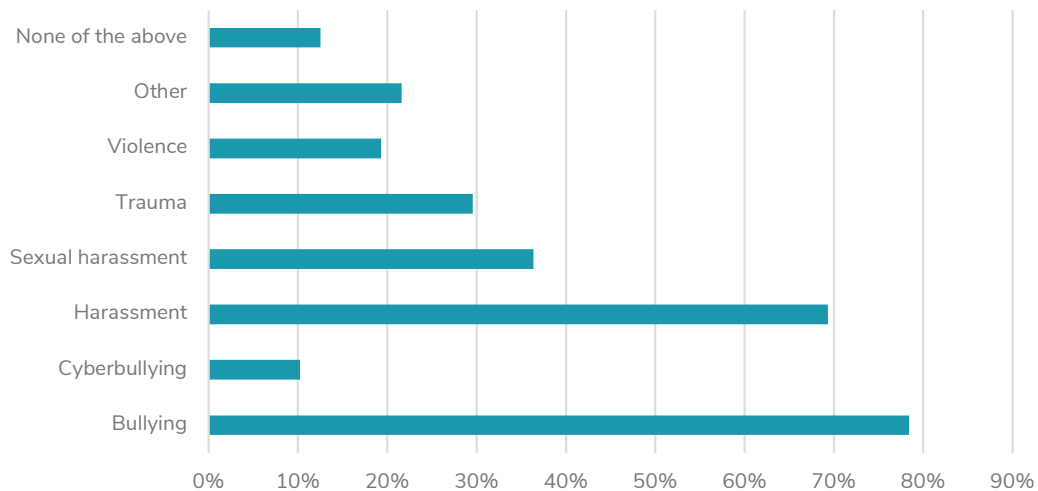
Most respondents had witnessed or experienced violence or harassment at work recently (within the last two years).

Have you experienced or witnessed any of the following risk factors in a Yukon workplace within the past two years?

We found the themes arising from the engagement were consistent across the conversations, meetings, survey and written submissions. Broadly, they fell into two categories: the perceived challenges with the proposed regulatory changes and the ideas for solving those challenges.

Challenges

Workplace size and diversity

A common concern among stakeholders and the public was for the health and safety requirements to be practical and effective in all workplaces regardless of the size or the nature of the organization. Many Yukon employers have fewer than 10 employees and operate in remote locations. The drafting and implementation of the regulations, therefore, should take into consideration the size, capacity and diversity of Yukon employers.

Thought should be given, for example, to how best to support smaller employers who likely do not have the human resource capacity to implement policies and procedures on violence and harassment prevention or have adequate knowledge about how to conduct a thorough hazard assessment. Some specific types of workplaces may also need to be considered, for example, where trauma is prevalent, such as emergency response services. As well, the question was raised about who a worker would report an incident to in a small and potentially remote workplace.

Responsibility for preventing violence and harassment in the workplace

We heard that although the employer is responsible for the identification and prevention of workplace hazards, identifying safety hazards and precautions is a responsibility shared with workers.

Participants noted that while employers may not always be able to prevent violence and harassment from happening, it is up to them to set up the right conditions. One challenge is that employers, supervisors and managers do not always know how to prevent this issue or how to respond when it occurs.

Half of the respondents to our online survey (48%) were not aware of any policies in their workplace relating to violence, harassment and bullying.

Does your workplace have a policy in place to address any of the following risk factors?
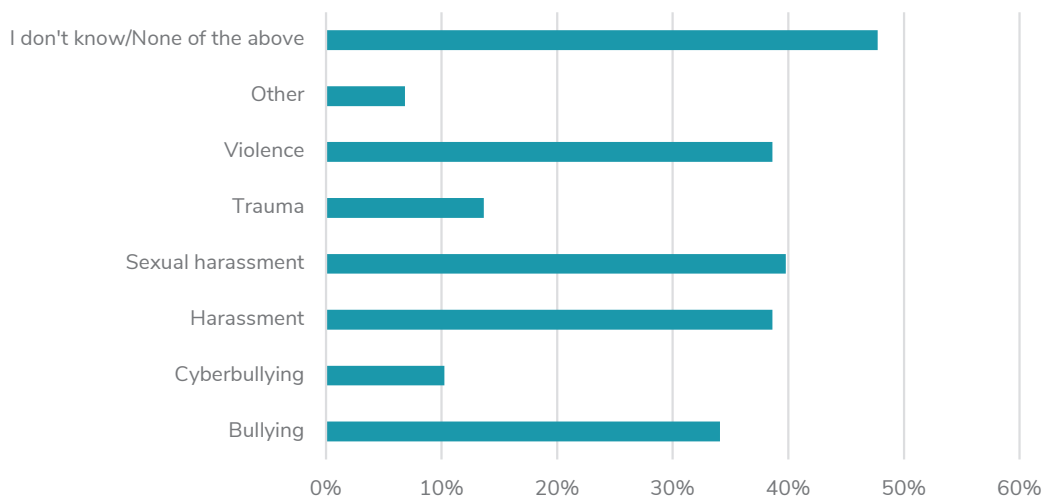
Workplace culture and attitudes, change management

Participants told us that one of the problems in this area is the stigma surrounding mental illness, including in the workplace. Addressing violence and harassment is linked to preventing psychological injury at work. Psychological injuries are real injuries and need to be recognized as such.

We also heard that in some situations bullying is seen, and even accepted, as part of the workplace culture. As well, people are not necessarily aware that they do not have to tolerate harassment at work. Some saw the creation of a workplace culture as a joint responsibility for everyone in the workplace; others saw employers and managers as key.

Changing the culture of a workplace to prevent violence and harassment goes beyond a regulation that requires workplace policies and procedures. As well, it does not guarantee compliance with those policies and procedures.

In other situations, the workplace culture may be such that workers do not, and will not, make a complaint of harassment because they do not trust that it will be dealt with. Some employers are champions in this area while others need support to implement changes in their workplace culture.

Confidentiality

We heard concerns about the potential for problems with confidentiality when reporting violence and harassment, especially given the size of our communities and workplaces in Yukon. Confidentiality concerns were also linked to workplace culture, especially where these are rooted in distrust about reporting and investigation. It was pointed out that where a worker is in a vulnerable situation, a lack of confidentiality in reporting or inaction over a complaint may cause further trauma.

Confidentiality when reporting a complaint about a direct supervisor or a safety representative is a concern that is particularly pertinent to small organizations.

Workers most at risk

Participants pointed out that some workers are more vulnerable than others to workplace violence and harassment.

There are different experiences and needs based upon age and gender that need to be considered. New and young workers may be particularly vulnerable to workplace harassment. As well, workers in some workplaces are more exposed to trauma.

Potential for misuse

Some people expressed concerns related to the potential for misuse of an occupational violence and harassment regulation, for example the fear that employers will have to deal with an over-reporting of harassment.

Conflicting and overlapping definitions and legislation

Yukoners do not necessarily have a common language or set of definitions for violence and harassment or for risk and hazard. The regulations need to be very clear on these definitions so as to provide consistency about what is or is not within their scope. For example, when does normal workplace practice become harassment? One person commented, "Causing offence is part of being human, but what distinguishes it from harmful harassment?"

The question of the interface between a violence and harassment regulation and other legislation was raised, specifically in relation to the *Human Rights Act*: how would an employer distinguish their responsibilities under an occupational health and safety regulation compared with the Act?
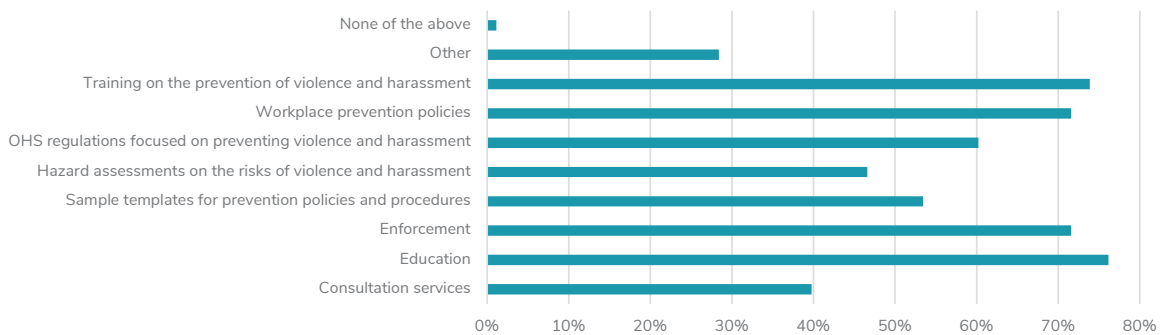
Suggested solutions

We heard a wide range of possible solutions to many of the challenges that engagement participants identified.

Respondents to our survey indicated their support for the following solutions.

What factors might contribute to the effectiveness of preventing workplace violence and harassment in Yukon?

Supports and resources

One consistent theme was for employers to have support and resources to understand and comply with the regulations, especially those employers with fewer than 10 employees and no dedicated human resources supports.

Some stakeholders suggested that YWCHSB take a supporting-employers-towards-compliance approach rather than an enforcement-only approach. Ideas for such support included tools—for instance, simple and customizable templates for policies and procedures—guidance on best practices, workplace signs about violence and harassment, a helpline with coaching support and examples of what constitutes violence and harassment in the workplace. As well, some employers need support to ensure that the intent of the policies and procedures become part of their workplace culture.

To support ease of implementation, there was a preference for workplace policies on violence and harassment to be combined, rather than separate policies and procedures for each.

Education and training

The variation in levels of understanding about preventing, identifying and addressing workplace violence and harassment among employers, supervisors and workers creates a need for information, education and training.

Ideas for meeting learning needs included:

- Holding a Yukon educational event or conference about these aspects of occupational health and safety;
- Providing free training programs;
- Leveraging existing video and online resources and programs;
- Holding workshops on developing policies and procedures;
- Providing information about best practices in this area including the CSA standard on psychological wellness in the workplace.

We heard from employers and workers that there are needs for guidance and education in a number of areas; these included:

- What constitutes workplace violence and harassment;
- How to implement the workplace violence and harassment regulation;
- How to prepare workplace safety policies and procedures;
- How to ensure workers are aware of policies and procedures;
- How to respond to workplace violence or harassment (when prevention measures fail);
- What avenues of support are available to workers;
- What the relationship will be between employers' responsibilities under the new regulation and under existing legislation;
- How, and how often, to conduct hazard assessments; and
- How assessments for physical hazards differ from assessments for psychological hazards in the workplace.

Managers and supervisors need training and education to have effective "people skills;" they need to know how to manage. At the same time, workers also need to know how to express themselves.

We also heard that learning the skills individuals need to prevent violence and harassment, such as conflict de-escalation and respectful behaviour, needs to start in schools. This will also help prepare young workers who are entering workplaces for the first time.

Consistent and clear definitions and language

We heard that YWCHSB should provide very clear definitions for the terms "violence," "harassment," "risk" and "hazard." This will provide clarity and support consistency in implementing the new and amended regulations.

Partnerships

There was strong support for a collaborative approach to implementation of the regulations. Working together helps to avoid duplication of effort, allows for sharing of resources and can result in solutions that are more workable and effective. Ideas included offering collaborative workshops and toolkits (especially for small businesses), sharing already existing tools and programs, and working together on developing templates for policies and procedures.

Implementation and enforcement

We heard a need expressed for graduated implementation and enforcement of the regulations, especially the new regulation to help prevent workplace violence and harassment. As noted above, there is a need for YWCHSB to take an approach that supports employers to comply with the regulation, rather than an enforcement approach, especially in the early stages of implementation.

Another suggestion was to explore the possibility of small employers either opting in or being exempted from the violence and harassment regulation. Feedback also identified looking at a risk-based approach as possible solution to the diversity of Yukon employers.

In an open question, our online survey asked which types of workplaces should have policies, procedures or other measures in place to address the prevention of workplace violence and harassment. We received 75 responses to this question. Of these, 58 (77%) indicated that all Yukon workplaces should have these in place. Other answers identified specific situations (such as, where workplace violence and harassment has been a problem or where there are workers who are new to Canada) or specific types of employers (such as large employers, the tourism sector, schools, governments).

Next steps

Following the public engagement and preparation of this "What We Heard" report, the next step is to draft a new regulation to help prevent violence and harassment in the workplace and draft an amendment to the existing occupational health and safety regulation regarding workplace hazard assessments.

Plans for implementing the regulations will then take shape. To support implementation, we will take into account the ideas we heard during the public engagement that we have described in this report, for example, policy and procedure templates and educational resources.