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RESPONSIBILITY**

# **WORKPLACE SAFETY & HEALTH ACT**

*AN OVERVIEW*



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## Resources

- MB Dept. of Labour website  
<http://safemanitoba.com>
- MNU website  
<http://www.manitobanurses.ca>
- Printed WSH Act and Regulations
- CD Rom



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Workplace safety and health involves more than simply correcting unsafe actions and conditions. Section 2(2) of the Act, states that the objects and purposes of the Act include:

- the promotion and maintenance of the highest degree of physical, mental and social well-being of workers



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- the prevention among workers of ill health caused by their working conditions
- the protection of workers in their employment from factors adverse to their health
- the placing and maintenance of workers in working environments that are adapted to their individual physiological and psychological conditions



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## **Employer Responsibilities:**

- Providing a safe and healthy workplace
- Establishing a committee and ensuring the committee is effective
- Consulting and cooperating with the committee and committee representatives



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- Providing the information and training needed to protect the safety and health of workers
- Ensuring committee members obtain training in their duties
- Paying workers for all time spent in WSH orientation and training
- Ensuring that supervisors are competent and provide competent supervision



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- Arranging for the regular examination and maintenance of the workplace, tools and equipment to ensure the safety and health of workers
- Enabling the committee to inspect the workplace regularly
- Cooperating with Safety and Health Officers and/or Agents



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- Promptly correcting unsafe conditions and activities reported by the committee
- Ensuring that the committee investigates reportable incidents
- Knowing and complying with safety and health requirements



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## **Supervisors:**

- The WSH Act says that a supervisor is someone who is:
  - In charge of a workplace
  - In charge of or has authority over a worker
- They are also “workers” and bear all of the safety and health responsibilities assigned to workers



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- They are also agents of the employer and are often assigned significant responsibility for carrying out the employer's duties under the legislation
- They are liable to fines if they are found negligent of their duties



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## **Legal Responsibilities of Supervisors:**

- To ensure that all precautions are taken to protect the safety and health of workers
- To ensure that workers perform their work in accordance with procedures and safety and health laws



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- To ensure that workers use all devices and wear all personal protective equipment as required
- To ensure workers are advised of the safety and health risks for their work area
- To ensure that if a worker moves to another area or different activity, he or she is trained before he or she begins the new work



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## **Duties of Workers (WSH Act s. 5):**

Every worker while at work shall, in accordance with the objects and purposes of this Act,

- a) take reasonable care to protect his safety and health and the safety and health of other persons who may be affected by his acts or omissions at work;



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- b) at all times, when the nature of his work requires, use all devices and wear all articles of clothing and personal protective equipment designated and provided for his protection by his employer, or required to be used and worn by him by the regulations;



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## Other Duties:

- “consult and co-operate” with the workplace safety and health committee and with any other person exercising a duty imposed by the Act or Regulations



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- Report hazards (such as unsafe situations and activities) to the employer or supervisor immediately
- Participate in training and safety and health meetings
- Refrain from harassment



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## **Worker Rights:**

- **The right to know** about the hazards in the workplace, how to identify them and how to protect themselves
- **The right to participate** in making workplace safety and health decisions through consultation with committees and other workers



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- **The right to refuse** work believed by the refusing worker to be dangerous
- **The right to be protected** from discipline and/or harassment for fulfilling responsibilities or exercising rights under the legislation



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## **Right to Refuse - Section 43(1) of the WSH Act**

- A worker may refuse to work or do particular work at a workplace if he or she believes, on reasonable grounds, that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person.



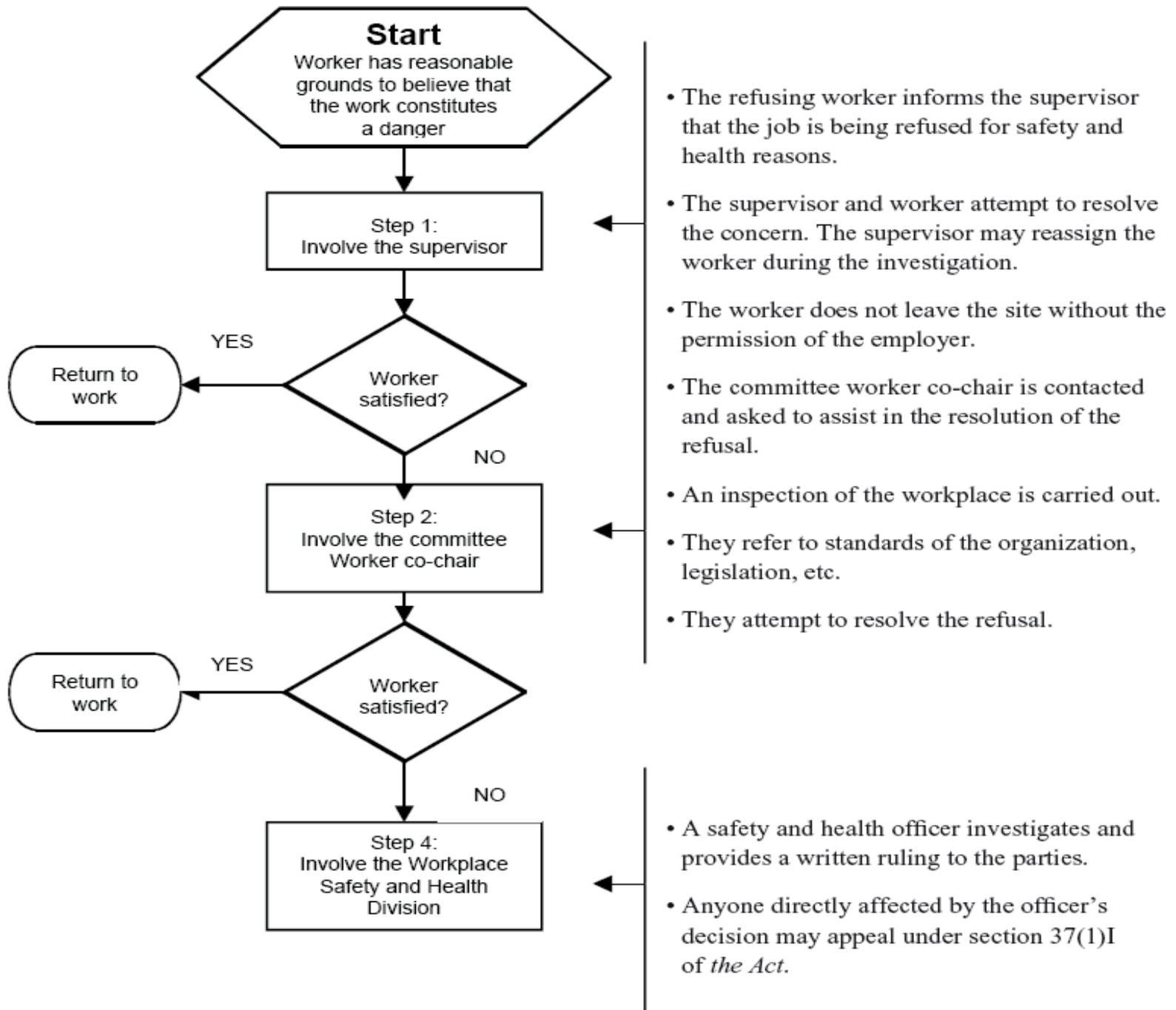
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- Section 43.1 applies only to safety and health issues
- It is an individual decision that has to be based on a personal belief that the work is dangerous
- During a refusal, the refusing worker is protected from discriminatory and/or disciplinary action

## Procedural summary for investigating a refusal to work





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## What is due diligence?

- Due diligence means that a person has a legal duty to take every precaution reasonable in the circumstances to avoid both harm and an offence against the law.



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- Due diligence describes a very high standard to take reasonable care.
- In the context of the Act and Regulations, this due diligence standard is reflected in the following principles:



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- The Act imposes a duty on everyone in the workplace to take reasonable care to protect their safety and health and that of others, to the degree that they have the authority and ability to do so.
- This general duty is in addition to, and goes far beyond, merely complying with the law.



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- If someone is charged with contravening the legislation, they cannot successfully defend themselves by saying that they did not intend to break the law or did not mean to fail to comply.
- To defend themselves adequately, they must be able to show that they took every reasonably practicable action to ensure compliance.



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What does “reasonably practicable” mean?

- ✓ What a reasonable person in the same position and circumstance would have done to prevent the incident
- ✓ When making that determination, three main factors need to be taken into account:
  - 1) foreseeability;
  - 2) preventability;
  - 3) control



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- Due diligence requires a proactive and systematic approach to safety and health.
- This standard can best be met within a workplace by establishing and implementing a safety and health program that includes several key components.



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## **An effective WS&H Program:**

1. Identifies Hazards,
  - for example, in Health Care:
    - WHMIS
    - Working Alone
    - Musculoskeletal Injury



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2. Assesses the risks associated with those hazards
3. Implements measures to eliminate or minimize those risks
4. Monitors each part of the program to ensure that it is adequate and effective



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## **Critical role of committees**

- Employers consult and co-operate with the committee for the purpose of resolving concerns on matters of safety, health, and welfare at work.
- The Division interprets “consult” to mean that, while not obliged to obtain the approval or permission of the committee, an employer is obliged to consider, in good faith, the views and opinions of the committee in the process of making a decision



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- To fulfill the obligation to consult in good faith, an employer must give the committee a real opportunity:
  - **To be informed** of information essential to making a reasonable and informed assessment;
  - **To review and assess** the information and possible alternatives or options;



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- **To comment** and, or make recommendations on the possible options and alternatives; and
- **To be considered.** This means the employer will consider the recommendations of the committee and where applicable, give the committee credible reasons for not accepting or implementing the committee's recommendations.



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## **Committee responsibilities include:**

- Participating in the identification and control of hazards
- Helping to identify and resolve safety and health concerns of workers
- Inspecting the workplace regularly



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- Receiving and distributing information, including publications sent from the Workplace Safety and Health Division to employers and employees
- Meeting regularly to discuss workplace safety and health concerns
- Maintaining records of meetings and returning copies to the Workplace Safety and Health Division



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- Investigating reportable incidents
- Helping to establish and promote safety and health programs and policies
- Helping to develop and promote safety and health training



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- Investigating refusals to work under section 43 of the Act
- Carrying out responsibilities set by specific regulations
- If the committee does not deal with a problem, the employer is responsible for taking the initiative.



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- Committees and representatives don't have direct responsibility (and the accompanying legal liability) for controlling hazards.
- Their role is to monitor the WS&H Program to ensure it is working properly.
- They have no management authority. Their role is to advise and recommend.



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## How are committees structured?

- The employer must ensure that the committee is structured and maintained as required by law
- All employees have a duty to help the employer make the committee effective.
- Each committee must have at least four, but not more than 12 members



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- At least half the members must be workers not involved in management
- Worker members of the committee shall be appointed in accordance with the constitution of the union
- The employer must select management members



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- The employer may provide clerical support to the committee
- Support personnel who are not committee members should not vote or participate unduly in committee deliberations



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## Selecting members:

- The membership should represent workers with significantly different concerns, for example:
  - Different shifts
  - Different units
- All bargaining units should to be represented.
- The names of committee members must be posted



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## Selecting co-chairpersons

- Each committee must have two chairpersons
  - One member representative chairperson
  - One employer representative chairperson
- Both co-chairpersons have the same rights and responsibilities, including the right to call and chair meetings.



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- The employer co-chairperson is expected to keep the employer informed about the committee's activities.
- The worker co-chairperson is responsible for keeping workers informed.
- Both co-chairpersons are entitled to receive information sent to them by the WSH Division and distribute it to workers.



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## Terms of office

- Terms are two years unless otherwise stated by the union's constitution.
- Members may serve for more than one term.
- A member should not leave the committee until a replacement is elected/appointed by the union.



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## Quorum at meetings

- The quorum for committee meetings shall consist of one-half the employer members and one-half the worker members.
- The WSH Division recommends that alternate committee members be selected so a quorum can always be formed.



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## Frequency of meetings

- The committee must meet at least quarterly.
- The Director of the WSH Division can require any committee to meet more than once every three months.
- Either co-chairperson may call special and emergency meetings.



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## Minutes of meetings

- The WSH Division provides a minutes form (encouraged), but “home made” forms are acceptable if they use the same format.
- Minutes must be kept for at least ten years.



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- The co-chairpersons must sign the minutes after each meeting. The employer must ensure that, within seven days, a copy is:
  - sent to the Workplace Safety and Health Division
  - posted in the workplace on a designated bulletin board
  - circulated to committee members



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## Dealing with the concerns of workers

- Committees can be invaluable in encouraging workers to discuss their concerns and suggest solutions.
- Methods include:
  - conversations
  - contacts during inspections and investigations
  - meetings



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## Procedure for Handling Concerns

- Where a safety or health concern is identified, the appropriate supervisor must attempt to remedy or resolve the concern.
- Where practicable, a worker member of the WSH Committee shall be involved in this effort.



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- In certain circumstances it may be desirable for the worker affected to participate as well.
- Concerns resolved in this manner shall be recorded in the minutes of the next meeting, although the Committee may choose not to record matters of a minor nature.



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- Where a satisfactory resolution cannot be achieved at the supervisor level, the committee member or the appropriate supervisor shall ensure that the concern is placed on the agenda of the next regular safety and health committee meeting for the purpose of resolving the concern.



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- The matter will be placed on the agenda of each successive meeting until it is resolved.
- If no agreement can be reached regarding the response of an employer the matter may be referred to a safety and health officer of the WSH Division.



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- If an employer receives written recommendations from the committee identifying anything that may pose a danger to safety or health, the employer must respond in writing to the committee no later than 30 days after receiving the recommendations unless the employer implements all of the recommendations within 30 days of receiving the recommendation.



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## **Workplace Safety and Health Regulation:**

- Musculoskeletal Injuries (Part 8)
- Personal Protective Equipment (Part 6)
- Health Care Facilities (Part 39)
- Working Alone or in Isolation (Part 9)
- Harassment
- Violence in the Workplace



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## Part 10: Harassment

- The Workplace Safety and Health Act includes specific requirements regarding workplace harassment.
- The Act was amended, effective February 1, 2011 to include psychological harassment or “bullying” in the definition and regulation.



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- Employers are required to have written policy on harassment and violence in the workplace
- Policies must be posted for employees to review
- Employers must ensure that workers comply with the policy



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## Section 1.1 Definitions

“harassment” means:

- a) Objectionable conduct that creates a risk to the health of a worker; or
- b) Severe conduct that adversely effects a worker’s psychological or physical well-being.



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1.1.1(1) For the purpose of the definition "harassment" in section 1.1, conduct is

- a) objectionable, if it is based on race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, marital status, family status, source of income, political belief, political association, political activity, disability, physical size or weight, age, nationality, ancestry or place of origin; or



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- b) severe, if it could reasonably cause a worker to be humiliated or intimidated and is repeated, or in the case of a single occurrence, has a lasting, harmful effect on a worker.



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- 1.1.1(2) Reasonable conduct of an employer or supervisor in respect of the management and direction of workers or the workplace is not harassment.
- 1.1.1(3) In this section and in the definition "harassment" in section 1.1, conduct includes a written or verbal comment, a physical act or gesture or a display, or any combination of them.



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## **Harassment Prevention Policy**

- Must be developed in consultation with the Workplace Safety and Health Committee
- Must include the following statements:
  - ✓ Every employee is entitled to work free of harassment



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- ✓ The employer must ensure, as much as is reasonably practicable, that no employees are subject to harassment in the workplace
- ✓ The employer will take corrective action respecting any person under the supervisor's direction who subjects a worker to harassment



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EVERYDAY

**EVERYONE'S  
RESPONSIBILITY**

- ✓ The employer will not disclose the name of a complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is
  - necessary to investigate the complaint or take corrective action with respect to the complaint, or
  - required by law.



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RESPONSIBILITY**

- ✓ A worker has the right to file a complaint with the Manitoba Human Rights Commission.
- ✓ The employer's harassment policy is not intended to discourage or prevent the complainant from exercising any other legal rights pursuant to any other law.



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RESPONSIBILITY**

- ✓ The Harassment Prevention Policy must also provide information on:
  - How to make a harassment complaint
  - How harassment complaints will be investigated
  - How the complainant and the alleged harasser will be informed of the results of the investigation.



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**EVERYONE'S  
RESPONSIBILITY**

## **Part 11: Violence in the Workplace:**

- Now includes new requirements to protect workers from workplace violence. Amendments took effect on August 31, 2011.
- It is now mandatory for workplaces to develop and follow a Violence Prevention Policy if the workplace provides public services, including:



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RESPONSIBILITY**

- **Workplaces used to provide healthcare services**
  - a hospital
  - a personal care home
  - a psychiatric facility
  - a medical clinic;
  - a community health centre;
  - a physician's office;



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RESPONSIBILITY**

- an ambulance
- a residential care facility for children, youth or adults;
- a place where home care services are provided;
- any other workplace where physical or mental health treatment or care is provided to a person (except first aid services as covered by Part 5)



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RESPONSIBILITY**

- Pharmaceutical-dispensing
- Education
- Financial
- Police, corrections or other law enforcement
- Security
- Crisis counseling and intervention
- Taxi cab and transit bus



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RESPONSIBILITY**

- A violence prevention policy must describe the actions and measures employers will take to eliminate or control the risk of violence to workers. Building on requirements already in place, this section has been expanded to include:
- Measures to summon immediate assistance when violent or threatening situations occur.
- A description of any location at the workplace where violence has occurred or may (reasonably be expected to) occur.



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RESPONSIBILITY**

- A description of any specific job functions where the worker has been or may (reasonably be expected to) be exposed to an incident of violence.
- Procedures a worker will follow to report an incident of violence to the employer.
- Procedures the employer must follow to document and investigate any incident of violence, and to put any control measures in place (as a result of the investigation) to eliminate or reduce the risk of further occurrence.



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RESPONSIBILITY**

- A statement that the personal information disclosed, regarding an incident of violence, will be the minimum amount necessary.
- A recommendation that a worker who has been harmed as a result of a violent incident at the workplace is advised to consult their health care provider for treatment or referral to post-incident counseling, if appropriate.



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RESPONSIBILITY**

## **Information for Workers (section 11.5):**

- If a risk of violence has been identified at the workplace, employers are required to inform workers about the nature and extent of the risk of violence to workers. Building on requirements already in place, this section has been clarified to include:
- An employer's release of personal information, regarding the risk of violence from a person who has acted violently in the past and whom workers may encounter while at work, unless otherwise prohibited by law.



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RESPONSIBILITY**

- Each year, Employers must prepare a report on violent incidents that will contain:
  - Records of all incidents of violence at the workplace
  - Results of any investigation into an incident of violence at the workplace, including a copy of any recommendations for control measures or for changes to the violence prevention policy and a copy of any report prepared under Part 2.9 of the Regulation;
  - Description of control measures put in place following investigation into an incident.



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RESPONSIBILITY**

- The annual report on workplace violence must be provided to:
  - The committee at the work place, or
  - The representative at the workplace
  - If there is no committee or representative at the workplace, the report must be provided to the workers at the workplace.



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