

DENTONS

# **Webinar on the *Act to prevent and fight psychological harassment and sexual violence in the workplace***

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# Presenters



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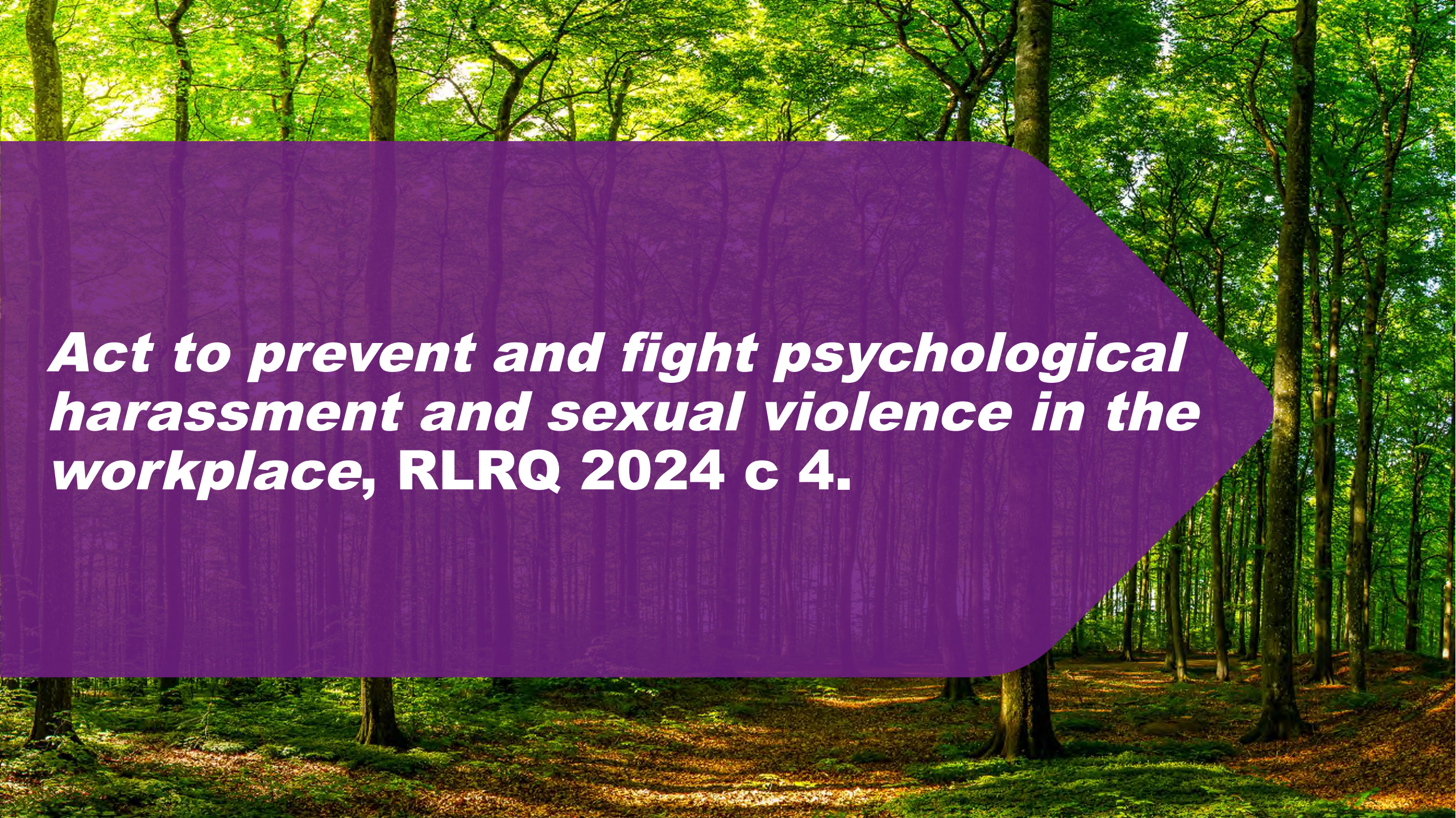


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## **Presentation Plan**

- I. Introduction (Context and Objectives)
- II. Main Amendments Introduced by the Act
- III. Key Consideration for Employers
- IV. Conclusion
- V. Q&A



***Act to prevent and fight psychological harassment and sexual violence in the workplace, RLRQ 2024 c 4.***

# I. Introduction

## The context and objectives of the *Act to prevent and fight psychological harassment and sexual violence in the workplace* (the “Act”)

- The purpose of this Act is to prevent and fight psychological harassment and sexual violence in the workplace by amending several Quebec laws, such as the *Act respecting occupational health and safety* (“**OHSA**”), the *Act respecting labour standards* (“**ARLS**”), the *Act respecting industrial accidents and occupational diseases* (“**ARIAOD**”) and the *Labour Code*.
- Greater consistency in occupational health and safety legislation and labour standards

## II. Key Amendments Introduced by the Act

- *Act respecting occupational health and safety, RLRQ c S-2.1.*
- *Act respecting labour standards , RLRQ c N-1.1.*
- *Act respecting industrial accidents and occupational diseases, RLRQ c A-3.001.*



***Act respecting occupational  
health and safety***

# ***Act respecting occupational health and safety***

New definition of “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”*

In effect as of March 27, 2024



# ***Act respecting occupational health and safety***

- Continuation of the legislative changes brought in 2021 by **the *Act to modernize the occupational health and safety system***, which introduced the employer's obligation to prevent and fight sexual violence.
- Important definition as it is used for the application of the **ARIAOD**.
- The **ARLS** also refers to it in s 97.1.



# ***Act respecting occupational health and safety***

## New regulatory authority

- New regulatory power specifically enabling the **Commission des normes, de l'équité, de la santé et de la sécurité au travail** (“CNESST”) to specify any measures to be taken by an employer to prevent or stop sexual violence.
- Addition of the corollary obligation for employers to implement measures prescribed by the regulation.

In effect as of March 27, 2024

# ***Act respecting occupational health and safety***

## Modification to prevention mechanisms

- Inclusion of sexual violence in the assessment of work-related psychosocial risks
- Inclusion of the psychological or sexual harassment policy in the prevention program or action plan

In effect as of October 1, 2025





***Act respecting labour standards***

# ***Act respecting labour standards***

## Expanding employer obligations

- Specific obligation to prevent and make stop harassment by third parties (confirmation of the obligations outlined in existing case law)
- Policy title renamed to reflect that employers are expected to be more proactive

In effect as of March 27, 2024



A decorative background at the top of the slide features a close-up of several daisy flowers with bright yellow centers and white petals, set against a blurred background.

# ***Act respecting labour standards***

A well-established trend in case law

- *Rodriguez Vergara c 9169-1022 Québec inc.*, 2009 QCCRT 0224.
- *Marquez Vilo c 9103-2615 Québec inc.*, 2020 QCTAT 236.
- *Plouffe c Armoires etc... inc.*, 2022 QCTAT 1290.

# *Act respecting labour standards*

## Psychological Harassment Prevention and Complaint Processing Policy

- The Act specifically sets out the minimal content that an employer must include in its psychological harassment prevention and complaint processing policy.

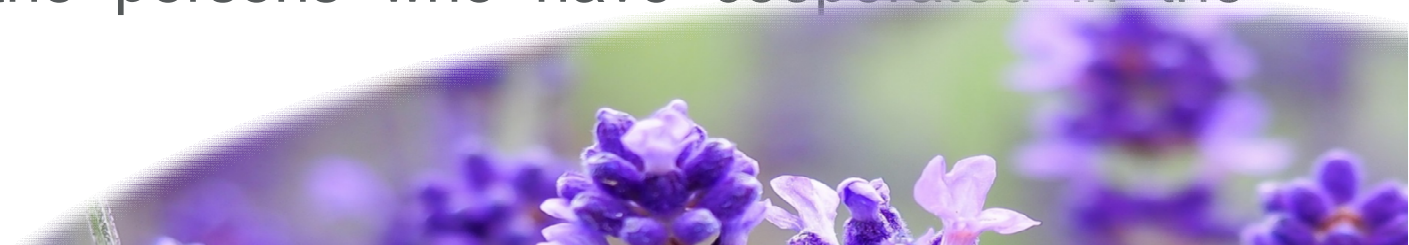
In effect as of September 27, 2024

# ***Act respecting labour standards***

## **Mandatory policy content:**

- The methods and techniques used to identify, control and eliminate the risks of psychological harassment;
- The specific information and training programs on psychological harassment prevention that are offered to employees;
- The recommendations on behavior to adopt when participating in work-related social activities;
- The procedures for making complaints to the employer;
- 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;

In effect as of September 27, 2024





# ***Act respecting labour standards***



## **Mandatory policy content (continued):**

- The process for managing a situation of psychological harassment, including the process that applies to the holding of an investigation by the employer;
- The names of persons designated to receive complaints or reports;
- 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.

In effect as of September 27, 2024



# ***Act respecting labour standards***

## Protection Against Reprisals

- The Act established protection against reprisals for employees who report a situation of psychological harassment against another employee or collaborate in the process of a psychological harassment complaint.

In effect as of March 27, 2024

# ***Act respecting labour standards***

Prohibition of amnesty clauses mandating employers to ignore past disciplinary measures imposed on an employee for misconduct involving violence.

When imposing disciplinary measures relating to violence, an employer may (shall) take into account past disciplinary measures imposed for violent conduct.

In effect as of March 27, 2024





## ***Act respecting labour standards – Amnesty Clauses***

- Especially relevant in unionized workplaces, where collective agreements often include amnesty clauses.
- The purpose of the amendment is to better protect individuals from repeated offenders or people who are physically or psychologically violent.
- Currently, these clauses limit employers' ability to take into account past disciplinary measures imposed for violent conduct.
- In practice, employers will still have to consider the person's rehabilitation as extenuating circumstances.

In effect as of March 27, 2024

# ***Act respecting labour standards***

## Possibility of awarding punitive damages

- Creation of a special provision reserving the right for the Administrative Labour Tribunal to order an employer to pay punitive damages to an employee who is a victim of psychological harassment, even though it is also recognized that the employee is a victim of an employment injury resulting from that harassment.

In effect as of March 27, 2024





***Act respecting industrial  
accidents and occupational  
diseases***

# ***Act respecting industrial accidents and occupational diseases***

Presumption of employment injury resulting from sexual violence in the workplace:

- Creation of two new presumptions of employment injury intended to facilitate the recognition of an employment injury resulting from sexual violence in the workplace.

In effect as of September 27, 2024



# ***Act respecting industrial accidents and occupational diseases***

Presumption of employment injury in the workplace :

*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.*

In effect as of September 27, 2024



# ***Act respecting industrial accidents and occupational diseases***

Presumption of disease resulting from sexual violence in the workplace :

*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.*

Does not necessarily have to be committed by the worker's employer, an executive officer or a worker

In effect as of September 27, 2024

# ***Act respecting industrial accidents and occupational diseases***

New measures to protect the confidentiality of medical records

- Changes in access procedures
- Addition of new sanctions / offenses

These changes apply to all occupational injury cases.

In effect as of September 27, 2024

# ***Act respecting industrial accidents and occupational diseases***

## Changes in access procedures

### SECTION 38

An employer has a right of access free of charge to the record in the possession of the Commission in respect of an employment injury suffered by a worker while he was employed by him.(...)

(...)

However, **only the health professional designated by the employer** has a right of access free of charge to the medical record and the physical rehabilitation record in the possession of the Commission in respect of the employment injury suffered by the worker.

### AMENDED SECTION 38

An employer has a right of access free of charge to the record in the possession of the Commission in respect of an employment injury suffered by a worker while he was employed by him.(...)

(...)

However, **the employer does not have a right of access** to the medical record and the physical rehabilitation record in the possession of the Commission in respect of the employment injury suffered by the worker; **only the health professional designated by the employer has a right of access, free of charge.**

In effect as of September 27, 2024

# ***Act respecting industrial accidents and occupational diseases***

## SECTION 39

A health professional shall report to the employer who designated him in respect of the medical and physical rehabilitation record of a worker to which the Commission gives him access; he may on that occasion give the employer a summary of the record and an opinion to enable him to exercise his rights under this Act.

No person to whom the health professional reports may use or communicate the information or opinion received by him on that occasion for any other purpose than the exercise of the rights of the employer under this Act.

## AMENDED SECTION 39

A health professional shall report to the employer who designated him in respect of the medical and physical rehabilitation record of a worker to which the Commission gives him access; he may on that occasion **communicate to the employer only the information required to** give the employer a summary of the record and an opinion to enable him to exercise his rights under this Act.

**“The employer or the person, authorized by the employer, to whom the health professional reports may not use** or communicate the information or opinion received by him on that occasion for any other purpose than the exercise of the rights of the employer under this Act.

In effect as of September 27, 2024

# ***Act respecting industrial accidents and occupational diseases***

## Addition of new sanctions / offenses:

Fine of \$1,000 to \$5,000 for individuals, and \$2,000 to \$10,000 for corporations;

- **Employer's** attempt to obtain medical records
- Illegal disclosure of information by a **health professional**

In effect as of September 27, 2024

# ***Act respecting industrial accidents and occupational diseases***

## Extension of the time limit

- The deadline for filing a claim for an occupational injury or disease resulting from sexual violence with the CNESST will be extended from six months to **two years**.

In effect as of September 27, 2024





# ***Act respecting industrial accidents and occupational diseases***

## **Exception to the Imputation Rule**

Creation of a special rule stipulating that, with certain exceptions, the cost of benefits due for injuries resulting from sexual violence will be charged to all employers.

In effect as of March 27, 2024

# III. Key Consideration for Employers

- Overview of the risks and obligations
- Recommendations for compliance
- Consequences of non-compliance





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# **IV. Conclusion**





# Conclusion

- This Act introduces **significant** legislative changes.
- Amendments are meant to ensure better management of harassment and violence situations, to further **harmonize** existing legislation and to **facilitate recourse for victims**.
- Employers need to **review their existing practices and policies** to ensure compliance with these new requirements.

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# Thank you



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