

Newsletter



Robinson Sheppard Shapiro
Avocats • Lawyers

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Update on the time limit to file a complaint for harassment

On June 12, 2018, an amendment to art 123.7 of the Labour Standards Act came into force, extending the time limit to file a complaint for psychological harassment from 90 days to two years from the last occurrence of the offending behaviour. We highlighted this in our July 3, 2018 newsletter.

The amendment has the following impact.

An incident of alleged psychological harassment that occurred on June 11, 2018, or earlier, fell under the 90-day rule. Following principles of statutory construction, the amendment cannot have a retroactive impact. Accordingly, an employee would have had until September 10 to file a complaint with the CNESST. Otherwise, the complaint would be time-barred. Such was the decision of the Tribunal administratif du travail in *Dinu et 9227-3754 Québec inc.*, 2018 QCTAT 4502.

Such an incident occurring on June 12 will be subject to the new, two-year limitation: the employee would have until June 12, 2020 to file a complaint.

However, there's a little twist to that.

As the definition of harassment involves repeated behaviour, an adjudicator may, in analyzing the evidence, consider all the incidences alleged by the employee, including those that, by themselves, could no longer be raised. In the above example, a complaint based on an incident that occurred on June 12 could allow the adjudicator to hear about earlier incidents to decide whether there was "repeated and hostile or unwanted conduct", as per the definition in art 81.18 of the *Labour Standards Act*.



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