

Workplace Harassment

WHAT IS WORKPLACE HARASSMENT?

The *Occupational Health and Safety Act* (as of June 15, 2010) defines workplace harassment as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”

This definition of workplace harassment is broad enough to include harassment prohibited under the Ontario *Human Rights Code*, as well as “psychological harassment” or “personal harassment.”

Some of the types of harassment that workers could experience in the workplace include sexual harassment, teasing, intimidating or offensive jokes or innuendos, display or circulation of offensive pictures or materials, unwelcome, offensive, or intimidating phone calls, or bullying. Leering, unwelcome gifts or attention, offensive gestures, or spreading rumours could also be considered harassment.

Workplace harassment, if left unchecked, can escalate. In some cases, it can lead to physical violence or even death.

SOURCES

Workplace harassment, like workplace violence, can arise from a variety of sources, such as other workers, supervisors, customers, clients, patients, students, intimate partners, or family members.

Harassment from different sources will result in different dynamics that may require different reporting and investigation procedures.

LEGISLATIVE FRAMEWORK: WORKPLACE HARASSMENT

There are two major pieces of legislation that apply to harassment in the workplace: the *Occupational Health and Safety Act* and the *Ontario Human Rights Code*. Descriptions are included below.

Occupational Health and Safety Act

Amendments to the *Occupational Health and Safety Act* as of June 15, 2010, will include the following provisions. The *Occupational Health and Safety Act* defines “workplace harassment” as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”.

Employers are required to prepare a policy regarding workplace harassment, and develop and maintain a program to implement that policy. The program must include measures and procedures that allow workers to report incidents of workplace harassment, and must explain how the employer will investigate and deal with incidents and complaints of workplace harassment.

Employers must provide information and instruction to workers about the contents of the policy and program. *The Occupational Health and Safety Act* can be found at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm.

For more information, see the Ministry of Labour's publications, *A Guide to the Occupational Health and Safety Act* <http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php> and *Workplace Violence and Harassment: Understanding the Law* <http://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php>.

Ontario Human Rights Code

The Ontario *Human Rights Code* (the Code) is a provincial law that gives everyone equal rights and opportunities, without discrimination or harassment, in specific areas such as employment, housing, and services. The Code's goal is to prevent discrimination and harassment based on the following 15 grounds: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (including pregnancy and gender identity), sexual orientation, disability, age (18 and over, 16 and over in occupancy of accommodation), marital status (including same-sex partners), family status, receipt of public assistance (in accommodation only), and record of offences (in employment only).

The Code defines harassment as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." Harassment may include inappropriate comments, jokes, or suggestions. Sexual harassment includes, but is not limited to, unwanted touching of a sexual nature. This can also constitute sexual assault, which is a criminal offence.

Under the Code, employers must prevent or stop harassment in the workplace. The Human Rights Tribunal of Ontario handles human rights complaints under the Code. Targeted workers or others have the right to file an application with the Ontario Human Rights Tribunal. Employers cannot penalize or threaten to penalize a worker who has filed a complaint. The Code can be found at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm.

For more information on the Code and filing an application, see the Resources section on page 31.

The Ministry of Labour may decide to take follow-up action, looking at compliance with *Occupational Health and Safety Act* requirements regarding workplace harassment.

3 Workplace Harassment

Workplace harassment may escalate to threats or acts of physical violence or a targeted worker may react violently to prolonged harassment in the workplace. It is important for employers to recognize these behaviours and to deal with them promptly because they could lead to workplace violence.

The requirement for all workplaces to have a workplace harassment policy and program will help workplace parties recognize and deal with workplace harassment before it escalates into possible workplace violence.

3.1 Workplace Harassment Policy

Employers must prepare and review a policy on workplace harassment at least annually, as required by the Occupational Health and Safety Act [Section 32.0.1(b) and (c)].

The policy is required regardless of the size of the workplace or the number of workers.

If six or more workers are regularly employed at the workplace, the policy must be in writing and it must be posted in a conspicuous place in the workplace.

If less than six workers are regularly employed in the workplace, the policy does not necessarily have to be written [Sections 32.0.1(2) and (3)]. However, a Ministry of Labour inspector may order the policy to be in writing [Section 55.1].

Employers may choose to prepare a separate policy regarding workplace harassment or they may combine it with a workplace violence policy [Section 32.0.1(1)(a)] or occupational health and safety policy [Section 25(2)(j)].

Employers may also deal with workplace harassment by including it in an existing anti-harassment or anti-discrimination policy based on the criteria for harassment in Ontario's Human Rights Code. However, if an employer has an existing anti-harassment or anti-discrimination policy, the policy would need to be modified in order to meet the requirements of the Occupational Health and Safety Act. This is because the act's definition of "workplace harassment" goes beyond the prohibited grounds in the code. See Section 4.4 of this guide for a list of the prohibited grounds in the code.

The workplace harassment policy should:

- ◆ show an employer's commitment to addressing workplace harassment;
- ◆ consider workplace harassment from all sources such as customers, clients, employers, supervisors, workers, strangers and domestic/intimate partners;
- ◆ outline the roles and responsibilities of the workplace parties in supporting the policy and program; and
- ◆ be dated and signed by the highest level of management at the workplace.

See Appendix C for an example to help you develop your workplace harassment policy.

Can the workplace harassment policy and program be combined?

Yes, the policy and program can be combined as long as all of the requirements of the policy and program are complied with. Although the Occupational Health and Safety Act does not require the program to be in writing, an employer may choose to combine the workplace harassment policy and program.

3.2 Workplace Harassment Program

Under the Occupational Health and Safety Act, an employer must develop and maintain a program to implement the workplace harassment policy [Section 32.0.6(1)].

The program must include:

- (a) measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor [Section 32.0.6(2)(a)];
- (b) how the employer will investigate and deal with incidents and complaints of workplace harassment [Section 32.0.6(2)(b)]; and
- (c) any prescribed elements that may be included in regulations made under the act [Section 32.0.6.(2)(c)].

See Appendix D for an example to help you develop your workplace harassment program.

Does an employer have to assess the risk that harassment may occur in the workplace?

The Occupational Health and Safety Act does not require an employer to assess the risk of workplace harassment.

3.3 Information and Instruction on Workplace Harassment

An employer must provide appropriate information and instruction to workers on the contents of the workplace harassment policy and program, as required by the Occupational Health and Safety Act [Section 32.0.7].

All workers should be aware of the employer's policy on workplace harassment. Workers should:

- ◆ know how to report incidents of workplace harassment to the employer or supervisor; and
- ◆ know how the employer will investigate and deal with incidents or complaints of workplace harassment.

Workers may need other information and instruction on workplace harassment, depending on their jobs.

Some workers may need to be trained to recognize and respond to harassment or trained in specialized techniques to deal with harassment.

Supervisors may need additional information or instruction, especially if they are going to follow up on reported incidents or complaints of workplace harassment.

Employers, supervisors and unions also need to be aware of their responsibilities to prevent and address harassment prohibited under Ontario's Human Rights Code.

See Section 4.4 - Ontario Human Rights System for more information.

4 Roles and Responsibilities

4.1 Joint Health and Safety Committees / Health and Safety Representatives

Joint health and safety committees and health and safety representatives have the same powers and responsibilities for workplace violence hazards as they do for other occupational health and safety hazards under the Occupational Health and Safety Act. For example, their role during a work refusal [Section 43] is the same for workplace violence as it is for any other workplace hazard.

These committees and health and safety representatives should also be able to recognize risks of workplace violence in the course of carrying out their regular functions such as inspecting workplaces.

An employer may wish to consult with his or her workplace's joint health and safety committee or health and safety representative when developing workplace violence and workplace harassment policies and programs.⁵

Employers must advise the joint health and safety committee or health and safety representative of the results of an assessment of workplace violence risks [Section 32.0.3(3)(a)] or the results of a reassessment [section 32.0.3(5)]. For more information, see Section 2.3 - Assessing the Risks of Workplace Violence.

Employers must also inform the committee or health and safety representative if a person is killed, critically injured, disabled from performing their usual work, or requires medical attention due to workplace violence [sections 51(1) and 52(1)]. For more information, see Section 2.9 - Notices.

For more information, see *A Guide for Joint Health and Safety Committees and Representatives in the Workplace*.

⁵ For those workplaces that fall under the Health Care and Residential Facilities Regulation (O. Reg. 67/93) there are specific requirements for consulting with the joint health and safety committee or health and safety representative on certain matters. For more information see sections 8 and 9 of the regulation.

4.2 Ministry of Labour

The Ministry of Labour carries out workplace inspections to:

- ◆ ensure compliance with the Occupational Health and Safety Act and its regulations; and to
- ◆ ensure the workplace's internal responsibility system is working.

Ministry of Labour health and safety inspectors may check to ensure employers, supervisors and workers are complying with workplace violence and workplace harassment requirements. They may do this as part of a general inspection of a workplace or when investigating a specific complaint or incident.

Inspectors may issue written orders to comply with the act when contraventions are found [Section 57].

The ministry may also prosecute an employer, supervisor or worker if a contravention is found or if they have failed to comply with an order of an inspector, a director or the minister [Section 66(1)].

See *A Guide to the Occupational Health and Safety Act* for more information on the role of ministry inspectors.

Police may also investigate violent incidents and complaints. See Section 4.3 of this guide for more information about the role of the police.

It is not the role of ministry inspectors to resolve or mediate specific allegations of harassment in the workplace.

Employers are responsible for investigating and dealing with incidents and complaints of workplace harassment. They are also responsible for making decisions on what steps, if any, should be taken as a result.

A worker may also seek resolution of a workplace harassment incident or complaint outside of the employer's internal investigation procedure. In particular, a worker may do this if he or she believes the employer did not properly deal with the matter.

For example, a worker may:

- ◆ contact the Human Rights Tribunal of Ontario to file an application to have their matter heard if the alleged harassment is based on one of the grounds prohibited under the Ontario Human Rights Code; or

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- ◆ seek to resolve harassment issues through the grievance arbitration process if they are represented by a union; or
 - ◆ seek to resolve harassment issues through civil litigation, depending on the circumstances.

4.3 Police

Canada's Criminal Code deals with matters such as violent acts, threats and behaviours such as stalking. The police should be contacted immediately when an act of violence has occurred in the workplace or when someone in the workplace is threatened with violence.

4.4 Ontario Human Rights System

Ontario's Human Rights Code is a provincial law that gives everyone equal rights and opportunities without discrimination or harassment in specific areas such as employment, housing and services.

The code's goal is to prevent discrimination and harassment based on the following 15 grounds:

- ◆ race
- ◆ ancestry
- ◆ place of origin
- ◆ colour
- ◆ ethnic origin
- ◆ citizenship
- ◆ creed (religion)
- ◆ sex (including pregnancy and gender identity)
- ◆ sexual orientation
- ◆ disability
- ◆ age (18 and over, 16 and over in occupancy of accommodation)
- ◆ marital status (including same sex partners)
- ◆ family status

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- ◆ receipt of public assistance (in accommodation only) and
 - ◆ record of offences (in employment only).

“Disability” covers a broad range and degree of conditions, some visible and others not. A disability may be present from birth, caused by an accident or developed over time. It may include physical, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions.

Under the Human Rights Code, protection from discrimination or harassment includes past, present and perceived conditions involving disabilities.

For example, a person who experiences discrimination because he or she was an alcoholic in the past is protected. Similarly, a person whose condition does not limit his or her workplace abilities at present, but who may be at greater risk of having limitations in the future is also protected.

When dealing with workplace violence and harassment, employers should be aware of their responsibilities for people with disabilities under the Human Rights Code.

Under the code, employers have an obligation to keep the workplace free of discrimination and harassment related to one or more of the code’s prohibited grounds.

Employers, supervisors and workers may be held liable under Ontario’s human rights system if harassment occurs in the workplace or at work-related functions. They may also be liable for failing to take proper steps to address and prevent that harassment.

Ontario’s human rights system consists of three separate and independent parts. They are the:

- ◆ **Human Rights Tribunal of Ontario** which decides if someone’s human rights have been violated. If a person thinks his or her rights under the code have been violated, he or she can file an application directly with the tribunal and it will decide the best way to deal with the situation.
- ◆ **Human Rights Legal Support Centre** which helps people who file applications with the tribunal. Services may include advice, support and legal representation.
- ◆ **Ontario Human Rights Commission**, which provides leadership for the promotion, protection and advancement of human rights, and builds partnerships across the human rights system. This includes developing policies and providing targeted public education, monitoring human rights, doing research and analysis, and conducting human rights inquiries. In matters affecting the broad public

interest, it may take its own cases to the tribunal or intervene in human rights cases before the tribunal.

An employer who wishes to learn more about his or her obligations under the code should visit the websites of the Commission or the Tribunal.

A worker who believes that a matter involving prohibited grounds was not properly addressed by his or her workplace should contact the Human Rights Legal Support Centre for help, or the Tribunal directly to file an application to have the matter heard.

4.5 Health and Safety Associations

Ontario's health and safety associations provide training programs, products and services to employers and workers.

The associations, which include industry-based safe workplace associations, the Workers Health and Safety Centre and Occupational Health Clinics for Ontario Workers, are funded by Ontario's Workplace Safety and Insurance Board.

Employers and workers can contact the appropriate association for information, resources and assistance to help them comply with workplace violence and workplace harassment requirements under the Occupational Health and Safety Act.

A complete listing of the health and safety associations is available at: www.wsib.on.ca/wsib/wsbsite.nsf/public/HealthSafetyCommunity .