

Workplace Harassment: from investigation to prevention

Version 1.0



Harassment can be as toxic to worker health as any other workplace hazard.

Only in recent years have health and safety laws changed to recognize this reality. Harassment is widespread in Canadian workplaces. Forty-five per cent of Canadian workers report being bullied on the job, according to a 2014 nationwide survey conducted for CareerBuilder Canada. Only 44 per cent reported the bullying to their employer. Half of those who did report said no corrective action to address the bullying was taken. One in four chose instead to leave their job.

What is workplace harassment?

Ontario's *Occupational Health & Safety Act (the 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." The *Act* also includes a specific definition of workplace sexual harassment, although the *Act's* definition is intended to cover all 15 prohibited grounds for discrimination and harassment under Ontario's *Human Rights Code*.

The *Act* also defines what harassment is not – "a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace."

Elsewhere, harassment is known as moral harassment, psychological violence and bullying. Regardless of the label, common harassing activities and behaviours can involve incidents or patterns of behaviour intended to humiliate, degrade, threaten, intimidate and/or offend the victim(s) including:

- rumour spreading;
- mobbing;
- excluding individuals from work related activities;
- reviewing work unfairly or trivial fault-finding;
- belittling behaviour or comments;
- removing freedoms while adding responsibilities;
- dividing tasks unfairly, hindering work, expecting disproportionate results, or playing favourites;
- setting unreasonable job requirements or duties;
- unreasonably blocking applications for training, promotion or leave;
- doling out unfair blame, recrimination or discipline – especially in front of others.

Workplace risk factors

Certain workplace factors, including the physical layout of the workplace, the nature of the work, how it's organized and managed, can increase the risk of

workplace harassment.

Workers can be more vulnerable to harassment if they are working: alone; at night; in an isolated location or at a mobile workplace; where money is exchanged or where alcohol is served.

Those who serve the public in retail, service and hospitality sectors, or who provide a range of public services including health care, social services, transportation, security and law enforcement have increased exposures to harassment.

Workers can also be harassed through the employer's use of social media. An arbitration ruling concluded the Toronto Transit Commission (TTC) must protect its employees from harassment from members of the public through TTC-operated social media. The arbitrator ruled protective measures are required by the *Human Rights Code*, the Collective Agreement and obligations under the *Act*.

Economic recession, global competition, outsourcing, and new technologies are also changing the nature of work and employment relationships. More work is precarious – part-time, insecure, poorly paid and with few benefits. A Report by the Law Commission of Ontario says 22 per cent of Ontario jobs can be deemed precarious. A 2009 study by the Institute for Work & Health found workers with insecure jobs are more likely to experience sexual harassment.

Government temporary foreign worker programs also create low-wage, insecure jobs especially in care-giving, agriculture and seasonal industries. Laws governing these working arrangements and the dependencies that result make it more difficult for workers to report abusive treatment.

The 2016 study by the U.S. Equal Employment Opportunity Commission on workplace harassment identifies organizational factors that may predict the risk of harassment. Some of these include: lack of diversity, cultural and language differences; social discourse outside work (eg. post 9/11 harassment of Muslim Americans); presence of 'superstar' employees; power disparities among staff; customer/client service dependent workplaces and decentralized workplaces such as chain stores.

A 2014 Angus Reid poll of 1,500 Canadians found 28 per cent reported being sexually harassed. Eighty per cent did not report the incident to their employer citing concerns of job loss and fear they wouldn't be believed. Women were almost four times more likely than men to experience sexual harassment.

Members of LGBTQI communities are also more likely to report harassment. Racial minority groups are more likely to

be subject to workplace discrimination and harassment. Many of these workers often work in more hazardous jobs, thereby compounding the threats to their mental and physical health.

Generally, workplaces with marked 'incivility' where rude, disrespectful behaviours are tolerated are more likely to experience harassment.

The impact of workplace harassment

Workplace harassment and related stress can cause psychological and physical harm. Psychological impacts include anxiety, depression, post-traumatic stress disorder, sleep disturbances and even work-related suicide. Chronic stress is also associated with musculoskeletal disorders and coronary heart disease. A weakened immune system can also contribute to the common cold and increase the risk of cancer.

Workplace harassment hurts affected victims and their families, but it can ripple through an entire organization causing increased conflict, absenteeism and staff turnover. Left unchecked, harassment can create a toxic work environment. Studies find that those who witness workplace bullying are also more likely to report more stress and mental health issues.

More concerning, workplace harassment can escalate into physical violence. Some researchers have found a link between verbal abuse and the increased risk of physical injury at work, especially among health care workers.

The fear of escalating violence is very real. Theresa Vince, a human resources manager at a Sears Canada store in Chatham, Ontario, was shot at work in 1997 by her boss who had sexually harassed her for years before the incident. Pierre Lebrun took the lives of four former co-workers and his own during a shooting at an OC Transpo operation in Ottawa in 1999. Lebrun had been repeatedly teased about his stutter by colleagues.

What is the law in Ontario?

Until recently, those seeking legal protection against harassment found it in human rights and criminal law. Since 2010, Ontario health and safety law requires employers to protect workers against workplace violence and harassment by developing policies and programs and providing information and instruction on the content of those programs to workers. Employers must also assess the workplace for the risk of violence and report the results to the joint health and safety committee (JHSC), health and safety representative or workers where there is no representative.



Training for What Matters Most

Information Bulletins for
health, safety and
environmental representatives

Resource Lines

In 2016, expanded employer duties on workplace harassment include:

- developing and maintaining a written program to implement the harassment policy in consultation with the joint health and safety committee or representative
- setting up procedures and measures for workers to report incidents to someone other than their supervisor or employer, if those persons are the alleged harasser
- establishing how information obtained during harassment investigations may be disclosed
- ensuring investigations are appropriate to the circumstances
- communicating, in writing, the results of a harassment investigation to the worker and alleged harasser (if they're an employee)
- reviewing, at least annually, the harassment program.

Complaint-driven laws however may fail to protect vulnerable worker populations who are more likely to be unaware of their rights and afraid to report abuse. Ministry of Labour, Immigration, Training and Skills Development health and safety inspectors however have new powers to order harassment investigations, at the expense of the employer, by an impartial, qualified person.

The Ministry has implemented a *Code of Practice to Address Workplace Harassment*. Although it falls far short of an enforceable regulation, the Code includes sample policies, programs and an investigation template. The Ministry also offers the guideline, *Workplace Violence and Harassment: Understanding the Law*.

In most jurisdictions, workers have less access to compensation benefits for work-related mental health conditions. That may be changing too. A 2014 decision by Ontario's Workplace Safety and Insurance Appeals Tribunal however ruled that compensation policies which restrict mental injury claims to those caused by traumatic events, violate workers' equality rights under the *Canadian Charter of Rights and Freedoms*.

Still, inequities persist even when workers are compensated for work-related mental injuries. A study by Canadian and Australian researchers finds claimants with mental injuries are less likely to be offered modified work and less likely to return to work than workers with musculoskeletal disorder claims.

Other jurisdictions

Most Canadian jurisdictions include workplace violence in their health and safety laws and more are now recognizing harassment and/or bullying. In 2004 Quebec introduced psychological harassment language into its Labour Standards Act but Saskatchewan was first in 2007 to include harassment prevention obligations in its health and safety regulations. Since then British Columbia, Alberta, Manitoba, Northwest Territories and Nunavut have included some reference to harassment and/or bullying in their regulations.

The Canada Labour Code's *Canadian Occupational Safety and Health Regulations on Violence Prevention in the Work Place* also identifies bullying as a risk factor for violence.

The European Union has taken a broader approach through framework directives to ensure the safety and health of workers in every aspect of work. The EU *Charter of*

Fundamental Rights declares a worker's right to working conditions that respect health, security and dignity. Many member states have laws which address psychosocial risk factors and obligate employers to conduct risk assessments and identify preventive action.

In France, 'moral harassment' can bring both civil and criminal charges. A former France Telecom CEO was convicted of moral harassment in a criminal court for what some called corporate bullying following major restructuring and massive layoffs. Between 2008 and 2009 some 35 France Telecom employees committed suicide, many leaving suicide notes citing the strain of 'management through terror.'

Preventing workplace harassment

Acknowledging how the workplace can contribute to mental injuries is a critical step in preventing harm and finding workplace-based solutions. This begins with a commitment from organizational leaders to provide a psychologically healthy and safe workplace that is diverse, inclusive and respectful. Workplace policies and practices should reflect these values and drive efforts to root out risk factors which can contribute to all forms of violence, including harassment.

Elements of an effective workplace harassment prevention program include:

- Developing a harassment prevention policy that reflects specific workplace concerns. Ensure the policy addresses all grounds for harassment covered by the Ontario Human Rights Code.
- Assessing the workplace by incorporating psychosocial risk factors into regular workplace inspections. Don't forget to include risk factors related to the physical layout of the workplace, especially those that cause isolation.
- Gathering and considering worker input through surveys and questionnaires, an easy, effective and anonymous way for workers who may be afraid to report concerns.
- Establishing procedures for confidentially sharing investigation conclusions with affected workers and sharing anonymous, aggregate results of harassment investigations with the JHSC to monitor program effectiveness.
- Providing clear and unambiguous training for all staff which outlines both acceptable organizational actions and patterns of behaviour and unacceptable actions and behaviours and consequences of latter, including possible discipline.
- Offering specific training for: JHSC members to understand and address workplace harassment risk factors and how to provide support to victims; workers most at risk including how to identify and respond during high-risk situations; supervisors to recognize and address risk factors as well as effective human resource management.
- Ensuring harassment investigation procedures and processes are transparent, accessible and trusted. Assure staff harassment will not be tolerated and incidents will be promptly and seriously addressed.
- Supporting victims of workplace harassment, including affected colleagues, through employer-provided employee assistance programs and appropriate accommodation of injured workers.

Many resources and tools exist to support

workplace harassment prevention efforts including:

- Occupational Health Clinics for Ontario Workers *Mental Injuries Toolkit*
- OHSCO *Developing Workplace Violence and Harassment Policies and Programs: A Toolbox*
- Guarding Minds@Work developed by Centre for Applied Research in Mental Health and Addiction
- *Workplace Mental Health Promotion: A How-to Guide* by Canadian Mental Health Association.

Some workplaces are adopting the Canadian Standards Association *National Standard on Psychological Health and Safety in the Workplace (CAN/CSA-Z1003-13)*. Commissioned by the Mental Health Commission of Canada, the Standard focuses on worker psychological health and preventing psychological harm in the workplace. Those implementing the voluntary Standard have reported significant improvements in worker well-being and productivity.

Beyond minimum standards, unionized workers may be able to negotiate specific contract language on workplace violence and harassment prevention and also begin to address other risk factors through provisions for adequate staffing and protection for those working alone.

NOTE: Workers Health & Safety Centre offers comprehensive training to address workplace violence and harassment, psychosocial hazards, occupational stress and post-traumatic stress. See additional Resource Lines, *Workplace Violence: predictable and preventable* and *Domestic Violence in the Workplace: breaking the silence*. For more information, contact a WHSC training services representative near you.



Resource Lines

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