

BUILD TOGETHER

WOMEN OF THE BUILDING TRADES



Creating a Safe and Welcoming
Work Environment

Preventing and Addressing Workplace
Harassment and Discrimination



Harassment

In every province or territory in Canada, as well as for employees under federal power, there are human rights laws which make harassment in employment illegal. All employees have a right to work in an environment where their dignity is respected and they are free from harassment.

Most people, when they think of harassment, think of sexual harassment cases in which a superior attempts to coerce sexual favours from a female subordinate. However, the term “harassment” is far more inclusive than this. Harassment is not limited to sexual harassment.

Harassment is a behavior in the work place which causes the work environment to be stressful, degrading, and discriminatory for some employees. Harassment can affect the mental health of employees who are subjected to it, and have a negative effect on their ability to contribute as employees. The Canadian Human Rights Commission has defined it as “any unwanted physical or verbal conduct that offends or humiliates you” In essence, any behavior which is demeaning or offensive, and which is based on membership or presumed membership in a group protected by human rights law could be considered to be harassment.

There have been human rights cases regarding harassment because of race, sexual orientation, and disability. The prohibition on harassment extends to all people protected under human rights legislation. Any conduct or comments

aimed at humiliating or offending people because of their membership in a protected group¹ could be considered harassment.

It is important to note that harassment excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

Discrimination in the Workplace

Discrimination is simply the act of setting up or acting upon perceived distinctions or differences. The problem arises when the differences or distinctions that we use to make our decisions are irrelevant or based on stereotypes that have little or no basis in fact. Discrimination is defined as any distinction, exclusion, or preference based on certain grounds that nullifies or impairs equality of opportunity in employment or equity in the terms and conditions of employment.

¹ The term *protected group* or *affected group*, as is used in this Guide, refers to the various groups or conditions of people that are covered by the applicable Human Rights Code in either a province or Federally. This can include: race, ancestry, religion, place of origin, colour, ethnic origin, citizenship, creed, sex, pregnancy, sexual orientation, age, marital status, family status, mental or physical disability, social conditions, and political beliefs.

Types of Harassment in the Workplace

Quid Pro Quo

Quid Pro Quo is a Latin phrase that means “this for that”. In this kind of sexual harassment, the harasser demands a sexual favor; in return the victim keeps a job, gets a promotion or earns good assignments. It involves someone in a position of authority stating or implying that the victim’s job, promotion or assignment depends on submitting to sexual advances. This type of harassment may not always originate with the person in authority and in some cases that person in authority may be the object of someone who is seeking advancement in exchange for sexual favours. In either circumstance it is wrongful behaviour in the workplace.

Hostile Work Environments

Undesirable, unwanted conduct that unreasonably interferes with the victim’s job performance or creates an intimidating, hostile or offensive workplace creates a Hostile Work Environment.

Harassment by Non-Employees

An employer may also be responsible for the acts of non-employees, in regards to harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

It is important to note that conduct by nonemployees such as customers, representatives of the client in an on-site situation or the general public can create potential harassment situations. Employers are deemed to know, or to reasonably have to a known, in some circumstances that their employees are being harassed and that creates a situation where they are obliged to take appropriate action.

Sexual Favoritism

Incidents involving a supervisor playing favorites, rewarding those who respond to sexual advances. Employees who do not go along with the supervisor's demands and are denied promotions or the best job assignments may claim harassment.

Harassment Based on Gender

Behavior that is not overtly sexual, which is directed at a explicitly because of his or her gender. Profanity, pictures (including hand-drawn cartoons by an "artist" who thinks he/she is a wit), other materials, pranks, derogatory comments or other inappropriate behavior may be considered sexual harassment when it is based solely on gender.

Harassment Based on Sexual Orientation

Harassment based on sexual stereotyping i.e. “he doesn’t act like a real man should act” “she dresses and acts like a man”. Any harassment based on an individual’s sexual orientation is harassment. This can easily include conduct that the harasser thinks is “just in fun”. It is not unusual for the harasser to be dumbfounded that their conduct was offensive. As in a number of the other harassment situations the answer is in education around Respect in the Work Place.

Bullying and Harassing Behaviour Can Include:

- Verbal aggression or yelling.
- Humiliating initiation practices or hazing.
- Spreading malicious rumours.
- Calling someone derogatory names.
- Vandalizing personal belongings.
- Sabotaging someone’s work.
- Making personal attacks based on someone’s private life and/or personal traits.
- Making aggressive or threatening gestures.

Bullying and Harassing Behaviour Does Not Include:

- Expressing differences of opinion.
- Offering constructive feedback, guidance or advice about work-related behaviour.
- Reasonable action taken by an employer supervisor relating to the management and direction of workers or the place of employment (e.g. managing a worker’s performance, taking reasonable disciplinary actions, assigning work).

Effects of Bullying and Harassment on the Target

People react differently to bullying and harassment. Reactions may include one of any combination of the following:

- Impaired concentrations or ability to make decisions, which could lead to safety hazards (such as lack of attention when working with dangerous equipment).
- Distress, anxiety, sleep disturbance, substance abuse, and/or suicidal thoughts or actions.
- Physical illness.
- Reduced work performance.

Effects on the Workplace

- Reduced efficiency and productivity due to poor staff morale.
- Increased stress and tensions between workers.
- High absenteeism rates.
- Higher turnover, resulting in higher recruitment costs.
- Higher levels of client dissatisfaction.

What if the Behavior that is Deemed to be Harassment wasn't Intended to Offend or Upset Anyone?

Some behaviour is so obviously intended to cause stress and humiliation to the recipient that it is clearly harassment. With other behaviour, the intent may be less clear. What one person considers to be lighthearted teasing or fun may be a source of stress, anxiety and unhappiness to another. Whether something is harassing or not depends on the effect it has on the person who is its target, not on the intent of the harasser. If behaviour is unwelcome, it is harassing.

However, if it is the behaviour that the harasser could not reasonably have known to be unwelcome, the person who is upset by the behaviour should make his or her discomfort know. If a person, after being informed, persists in behaviour that is unwelcome, that person is engaging in harassment.

A joke Can be Harassing

While humour is an important part of work place interaction, and can have a positive influence, it can also be used to degrade and insult. Jokes about the incompetence of women, or stereotypes of racial minorities, or imitations of a co-workers accent or disability can be hurtful, degrading and humiliating forms of humour. This kind of humour sends the message that some members of the work force are less valuable than others, and are not full accepted as equals in the workplace. If everyone in the work place enjoys a joke and finds it to be good fun, it is not harassing. If it targets a member of a group protected by human rights legislation in such a way as to denigrate members of that group, it may be harassing.

Harassment can Occur after Working Hours and Off Site

The protection against harassment in employment extends to all places and occasions where people are gathered together for work purposes. For example, harassment which occurred during the company picnic would still be the responsibility of the employer.

Sexual Harassment

Sexual Harassment is Not Always a Male Harassing a Female

Sexual harassment can include women harassing men, men harassing other men, and women harassing other women, as well as the more common scenario of men harassing women.

Forms of Sexual Harassment

- Propositioning.
- Explicit jokes.
- Demeaning comments.
- Sexual innuendoes.
- Discussing sexual activities.
- Unnecessary touching.
- Commenting on physical attributes.
- Reading or displaying sexually suggestive materials.
- Using demeaning, suggestive or inappropriate terms, such as “babe” (inappropriate nicknames can also create a harassment situation and whether or not there is a sexual nature involved is dependent upon circumstances).

- Using offensive gestures.
- Workers of one gender ostracizing those of the other.
- Granting job favors to those who participate in “consensual”² sexual activity.
- Using crude and offensive language.

Myth: Sexual harassment is a normal behavior and victims should feel complimented.

Fact: *Sexual harassment is a power play - a tactic to dominate by embarrassment or degradation. Sexual harassment is not a victim's fault in any way. This is very much compounded where the harasser is a person in authority; this unequal balance of power makes it very difficult for the victim to resist.*

Is this Sexual Harassment?

Male employees whistle at a female employee as she walks through the warehouse

This may be sexual harassment, if it is unwanted and repeated. A female worker should not have to report to her supervisor that this is unwanted; it is the supervisor's responsibility to monitor the worksite; he or she should be aware of this behavior and warn the group that this may be sexual harassment.

This sort of situation represents a mild form of harassment; sometimes the victim could be a male working in an area

² *The power imbalance between the parties may blur this line beyond consent and into the area of compulsion.*

where everyone else is a female. Some people may think this is just good clean fun, the answer here is education. Having this pointed out most everyone will act appropriately.

A male worker asks a female co-worker if she ‘got any’ (or any other sexual context) over the weekend

This may be sexual harassment if it is unwanted and repeated.

A male on a crew asks a female on the crew out for a date. She says no, she’s not interested; he continues to ask.

This may be harassment (and easily could become sexual harassment) if it is unwanted and repeated.

A crew leader writes notes with sexual innuendos and leaves them in a female worker’s locker

This is sexual harassment. The fact that it is the crew leader who is leaving the notes puts the company in jeopardy since he is in a supervisory position (which assumes an imbalance in the power relationship which makes it difficult for the victim to say no).

Pin-ups of naked women are hanging in the shop

This is may be sexual harassment. Materials that are commonplace on television or in the newspapers might not be sufficient that is why the courts have ruled that pornography and pin-ups could create a hostile work environment. It’s a supervisor’s responsibility to make it clear that such pictures are completely inappropriate in the workplace. Pictures of naked men are equally inappropriate. The difference between pornographic, suggestive and acceptable materials is difficult to define but, it should suffice to say that if anyone is offended the best answer is to take stuff down!

A supervisor puts a hand on a worker's shoulder and says 'You're really doing a great job. Let's go out for a drink later and talk about your future with the company'

This can be sexual harassment if not going out has a negative impact on the worker's job. Even if saying no doesn't affect a worker's job, this behavior puts workers in a very uncomfortable position. Are they really free to say no? What will happen after they say no?

Supervisors also put themselves in a difficult position; even if they accept that the worker didn't want to go out, and they have no intention of asking that person out again, what would happen if by coincidence the worker was laid off? The worker might not believe that this was coincidence, and perhaps neither would the courts.

The way to avoid an uncomfortable situation is to have the conversation about the future on company time, on company premises and remove the potential connotation that it's more about going out than it is about business. Simply put, business is better conducted in a businesslike way during business hours and without the potential for innuendo.

Steve is a forklift operator. All of his co-workers are female. He is young and attractive and the women take turns teasing him about his physique and making suggestive remarks. As a result, Steve often finds it hard to concentrate on his work. This has led to errors and Steve has been given a warning by his boss. Steve has now asked the women to stop, but they treat it as a big joke and continue.

Steve is being sexually harassed. In this situation Steve has made an appropriate request for conduct to stop. This is an important element in any harassment situation. If the conduct doesn't stop Steve is entitled to make the employer to step in and do something.

In this circumstance Steve (this the same situation for a young woman in a similar circumstance) may be very reticent to bring a complaint forward. There are issues of being the “workplace rat” or being considered “weak” and very few people want to be cast into that role. It is most important that they understand that there is a route to be followed and that it is all right to do so. In the circumstances of this example the supervisor would need to use tact and usefully point out to the female co-workers that the situation really isn’t that amusing at all. It is amusement at the expense of the self-esteem of Steve and the fact is that he is making errors as a result is putting his employment at risk. If the co-workers understand that their amusement could get Steve fired perhaps they would look at the situation differently.

What Should an Employee do Who is Being Harassed?

The first thing an employee should do is tell the harasser to stop. It is essential to make it clear that the behaviour is unwelcome and objectionable. If the employee feels unable to approach the harasser, the employee should approach a member of management with whom he or she feels comfortable for help in communicating the problem to the harasser.

If the behaviour doesn’t stop, the employee should seek assistance through the organization’s harassment policy procedures, if they exist, or through a member of management or a union representative.

The employee should document the incidents related to the harassment and maintain a written record that includes the who, where, when and how of the harassment, as well as the names of any witnesses.

Be More Than A Bystander

Stopping harassment and discrimination is not just the responsibility of the employer, the union, or the victim. Anyone who witnesses or observes verbal, written, graphic, or other behavior that may be harassing/discriminatory can play a role in stopping it. Harassment & discrimination in the workplace is as much a men's issue as it is a woman's issue.

Even though it may feel risky to intervene, or that it is interfering in someone else's business, being proactive to stand up and to try to stop harassment & discrimination sends a message that the behavior is not legitimate; the behaviour is unwelcome and inappropriate in the workplace. A witness to harassment (sexual or other) can be critical in supporting the victim by urging the perpetrator to cease the behavior, recording what happened, and alerting the supervisor/union of the problem.

What Bystanders Can Do?

Refuse to join in when derogatory, degrading and abusive attitudes or behaviors are being displayed.

- **Register your lack of approval for such attitudes or behaviors by leaving the individual or group who are perpetrating them or by speaking up:** Staying silent while others act and behave inappropriately actually condones what they are doing; leaving shows that you don't agree with it and are not willing to participate and act as an audience. Sometimes, speaking up can be a very difficult thing to do!
- **Give control to the individual who is the target of the harassment/discrimination by speaking directly to them:** ask "Is he/she bothering you?", or "Are you okay?" and ask "Is there any way I can help?" This takes power away from the perpetrator. If the individual says that she/he would like your help, do what you can to be of assistance. If the person expresses that she/he is not in need of your help, respect this and move on.
- **Vocalize your support as intervention:** call out in support "Hey leave her/him alone", "I don't like how you are treating her/him, stop it".
- **Refuse to join in and discourage others from participating:** Register that you don't agree when derogatory, degrading and abusive attitudes or behaviors are displayed. Be direct about what you have seen, point out the exact behavior/attitude/words/action and don't pass judgment on the individual perpetrating it.

You Can Say Something to the Effect of:

- “I don’t think that joke is funny.” or “that joke makes me uncomfortable”
- “Your words/actions are uncalled for, what you’re saying/doing is wrong.”
- “Your words/actions are having a negative effect on that person; do you mean to make her/him feel badly? Everyone has the right to be physically and emotionally safe and you are infringing on that right.”
- “It’s wrong to treat someone that way. I don’t agree with what you’re doing/saying.”
- “What you’re doing is harassment, not only is it wrong, it’s hurtful.”
- “How would you feel if another person did this to your mother, sister, wife or daughter?”
- “The words/actions you’re using are derogatory, degrading, abusive and/or violent towards women/men. I won’t tolerate this kind of behavior. Stop what you’re doing.”

Rally other bystanders to join you in voicing disapproval:

“By being silent, you’re saying that this action/behavior/attitude/word is alright with you. Well it’s not okay with me, I don’t respect it and I hope you don’t either”.

All of the guidelines listed in this handbook have a trickle-down effect and every bit counts in creating a safe and welcoming work environment for everyone.

For more information and resources including template policy statements, reporting procedures, investigation guide/ procedures & forms, please visit buildtogether.ca

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Sources: Chicago Women in Trades, Wider Opportunities for Women (WOW) IBEW Sexual Harassment Booklet, Canadian Labour Law Reporter, Volume 2, Human Rights/Equity Issues, Discrimination in the Workplace 7125, Canadian Labour Law Reporter, Volume 2, Human Rights/Equity Issues, Harassment in the Workplace, 7130, Canadian Labour Law Reporter, 8150, Harassment in the Workplace- Recognition and Prevention, Work safe BC, BC Lions “Be more than a Bystander” campaign.

