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CANADA'S BUILDING
TRADES UNIONS



Creating a Safe and Welcoming Work Environment

Preventing and Addressing Workplace Harassment
and Discrimination

**BUILD
TOGETHER**
WOMEN OF THE BUILDING TRADES

A HANDBOOK FOR EMPLOYERS,
CONTRACTORS & UNIONS



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.

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.

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.

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 someones 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 workers 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 fully 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.

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

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 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 harassment (and easily could become 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 is sexual harassment; 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 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.

Tips for Employers and Unions on Preventing and Addressing Workplace Harassment & Discrimination

Employers Responsibilities:

Employers are responsible for providing their employees with a work environment that is free of any form of discrimination and harassment, and for dealing effectively with complaints when they occur within the workplace. Employers are required by law to take steps to prevent discrimination and harassment in the workplace.

Prevention is the best method for dealing with discrimination complaints. A discrimination-free workplace can be a key competitive advantage. Employers should actively communicate their commitment to anti-discrimination and harassment free workplace..

Employment discrimination and harassment is, of course against the law. If a complaint is made, an employer can find itself facing an intrusive and potentially lengthy investigation that may impact company morale and public image. Additionally, the remedies awarded by human rights tribunals can be expensive and far-reaching.

Aside from potential impact of a complaint, there are other good reasons for employers to ensure that their organizations are free from discrimination. Employees from affected groups are unlikely to be attracted to join organizations where discrimination occurs, resulting in the organization having less of a chance of employing the best people available, thus losing a key competitive edge. As well, if such employees do join the organization, employees from affected groups are less likely to reach their full potential for productivity and achievement. They are more likely to leave, and turnover can be costly to employers. Clearly, ensuring a working environment free from discrimination is the right thing to do.

Unions Responsibilities:

According to a statement endorsed by the Supreme Court of Canada, “Discrimination in the workplace is everybody’s business”. Thus, unions share a joint responsibility with employers to promote and protect equality in the workplace. Unions, along with employers, must ensure that the provisions of collective agreements do not discriminate. Where collective agreement provisions must be modified to allow an employee to be accommodated, unions are required to assist employers in this endeavour.

Many unions have been active in ensuring a discrimination-free workplace for their members. For example, in several cases, unions have negotiated collective agreement provisions on harassment and discrimination in the workplace and have been of great assistance to individual employees in pursuing their human rights through the grievance and arbitration process. However, in some cases, unions may be a part of the problem in a workplace, not part of the solution. In such cases, unions may be found responsible with the employer for workplace discrimination.

Employers and Unions Should Have:

Written & Communicated Policy

Have a written policy prohibiting illegal discrimination of all employees/union members/apprentices. There are more policies readily available online, from your lawyers, from human resources organizations and from the labour component of the provincial or federal government. The policy should also specifically address sexual harassment as prohibited conduct and describes steps to be taken if harassment occurs. Establish a procedure for reporting incidents of harassment to their direct supervisor, another level of management, union representative or human resource specialist. The policy needs to be communicated both initially and at regular intervals thereafter to the people who are going to be affected by the policy. This may also include those persons who come on your premises or on whose premises your members/employees will work on. Post the policy in prominent locations throughout the union hall/training center/workplace.

Resolution: Problem Solving, Investigations and Discipline

Have informal mechanisms that enable complainants to discuss concerns about harassment (sexual or otherwise) without filing a formal complaint. It is useful to have a person who is respected in the workplace and who has some skills around trying to mediate a solution to an issue before it becomes a cause célèbre. In a number of circumstances simply bringing the issue to someone's attention is sufficient to sort the problem out.

In the event that it is necessary to proceed beyond informal resolution or informal mediation make sure that you have an effective way to deal with investigations. Investigations need to be confidential, frequently sophisticated employers or unions, when they have a matter that must be investigated will get an outside person who has either specialized experience or training in the area of conducting an investigation to do the investigation and move matters forward. Investigations need to proceed in a timely manner and not be left to fester. Ensure there are disciplinary processes in place to address those found to have harassed others

Awareness Training

Harassment (sexual or otherwise) awareness training should be conducted for employees/union members/apprentices. Awareness training should be made available to new members and apprentices/new employees as soon as is practicable upon there being enrolled/employed. Training needs to be reiterated and reemphasized at regular intervals. This can be done at the morning toolbox safety talk.

Leadership should attend required training sessions to review relevant organizational policies, laws, build problem solving skills and commit them to create a harassment-free environment. Where leadership, from the top of the chain of command to the immediate supervisor, is not participating the impression is conveyed that the training sessions are just mere “window dressing” and are not a matter to be taken seriously. Where leadership is engaged the best results are always found.

Assessing the work environment

Periodically assess and regularly monitor the work/training environment for issues of harassment (sexual or otherwise) including pictures, calendars, magazines, graffiti, etc. Some employers use anonymous surveys of employees to gauge the work environment in their work place(s). If such objectional materials are found in the workplace use tact, discretion and treat the situation as an opportunity to educate. Of course, repeated conduct may form the basis for discipline.

Leadership models appropriate behavior

Ensure all individuals who are in leadership roles (president, general manager, job steward, foreman, etc.) are aware of the importance of their compliance with policy and actively model appropriate behavior. To effectively represent workers who report harassment, leaders should be trained to understand the victim's dilemma, to take harassment (sexual or otherwise) complaints seriously and to handle the complaints with sensitivity. Leaders must remain objective and impartial as they process the complaint. Confidentiality is a very important aspect of this process, since reputations and livelihoods are at stake..

Effectively deal with the issue of Tradeswomen & Fear

Oftentimes, many people (consider a woman in a new environment and a new job) are not comfortable speaking out as they are afraid. Tradeswomen are afraid to report instances of harassment even when the company they work for has formal anti-harassment policies.

Tradeswomen fear making the situation worse, or being targeted by their co-workers. Tradeswomen fear the employer/union will not be supportive and it won't make a difference if they complain and that complaining could make it worse.. Unfortunately, the experience of some in this area has proven to be so; this is a state of affairs that we should all consider to be intolerable and refuse to allow it to continue into the future. Tradeswomen fear they won't be taken seriously, or believed. That is why it is so important for workers to have their shop stewards and management be champions of respectful workplaces.

We may not be able to change attitudes, but we can and must change behaviour. Moreover, as people change their behaviour, they often change their attitudes. Supervisors are not responsible for changing workers' attitudes; they are responsible for appropriate behaviour on a site. The minimum expected behaviour from everyone within the union or employed by the employer is civility, that is treating others with respect and expecting to be treated respectfully yourself. No one needs to suffer in silence for the amusement of others or to tolerate the bad behaviour of others. We will meet the standard and those who do not can expect corrective action which may entail discipline and eventually discharge or loss of membership!

Q & A

What should an employer do if the harassment is found to have occurred in the workplace?

If a complaint of harassment is proven, remedies may include verbal or written reprimand, mandatory counselling, transfer of the harasser, dismissal, or other alternate forms of discipline of the harasser. The complaint must be handled in a manner that is fair and respectful of the rights of both the complainant and the harasser. The employer should also take steps to ensure that the complainant is not penalized in any way for making the complaint, whether the complaint is made to the employer or to the human rights adjudicative body.

What could happen if an employer doesn't deal properly with the issue of harassment in the workplace?

An employer can be held responsible for harassment in the workplace, even if he or she is unaware that the harassment is occurring. Penalties may include requirements to make monetary compensation for financial losses resulting from the harassment and for injury to self-respect. Additionally, an employer may be required to change workplace policies and procedures by putting into practice an educational program on discrimination and harassment, implementing a human rights complaint process, or introducing anti-discrimination policies.

When will a union be considered a party to a discriminatory rule or practice?

A trade union will be considered to be a party to a discriminatory rule or practice if any of the following situations occurs³:

- The union has participated in the formulation of a work rule that has a discriminatory effect on an employee. The union's participation in the formulation of the work rule will be assumed if the rule is a provision in a collective agreement negotiated by the union, since all provisions in a collective agreement are formulated jointly by the parties; employers and unions must therefore bear equal responsibility.
- The accommodation of an employee who is differentially affected by a workplace rule requires the co-operation of the union, but the union impedes the efforts of the employer to provide accommodation.
- The Union allows, directly or indirectly, a discriminatory practice, by its officials
- The Union 'leadership' does not react to a situation that requires its intervention.

³ This list should NOT be considered final, there are as many ways for the Union, as employer itself, as trainer or apprenticeship agency to commit a discriminatory act, and how the Union handles its responsibility may also be the subject of a complaint

How to Create a Safe and Welcoming Workplace Checklist

Signs of an inclusive Employer:

- A clear, consistent and communicated commitment that extends to all people connected to the organization
- Diversity (i.e. job ads indicating that they hire women).
- Gender neutral and inclusive language.
- Recruiting practices that include highlighting or showcasing diversity in posters, videos and marketing materials.
- Reference to diversity goals and anti-harassment or zero tolerance policies.

Signs of a Safe and Welcoming Work Environment

- Clean, accessible women's washrooms.
- Safety equipment in a variety of sizes to fit a variety of people.
- Safety signs posted.
- Sexual harassment/Respectful workplace policies in place
- No offensive posters or photos on the walls.
- Respect in the Workplace materials displayed.

Steps to Ensure a Safe and Welcoming Workplace

- Develop a policy statement on bullying and harassment.
- Train supervisors and workers and refresh them at regular intervals.
- Clearly and consistently make certain that the policy is communicated to those who will be affected by it
- Take steps to prevent or intervene in incidents of bullying and harassment.
- Develop and implement procedures to report and deal with incidents.
- Inform workers of the policy statement and procedures to address incidents.
- Train supervisors and workers.
- Orient all new workers on bullying and harassment policy and procedures
- Ensure that the existence of the policy, procedures and expected conduct is intermittently but regularly communicated to maintain focus on the issue.

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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