

Implementation Strategies Project

Coordinated by the Lower Mainland Multicultural Education Consortium, in
association with
Multiculturalism B.C.; and
the Ministry of Skills, Training and Labour



Session 6: Human Rights and Harassment

- defining Human Rights and Harassment legislation
- employer liability
- prevention as a responsibility
- handling complaints

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Learning Objectives

- To define harassment
- To understand Human Rights legislation, its jurisdictions and implications
- To practise skills related to handling complaints
- To develop knowledge and understanding related to employer liability
- To identify steps to prevention and action

Agenda

Agenda, Objectives

What's offensive?

Defining Harassment

Legislation

-- *Lunch*

Handling Complaints

Employer Liability

Consequences of Harassment

Closure

HARASSMENT DEFINED

It's behaviour that's humiliating, intimidating, undermining of self esteem, excluding and isolating.

It includes a wide range of behaviours from jokes, to displays of visual images, to offensive comments, to physical contact such as touching and assault.

Harassment is an abuse of power.

Harassment has the effect of making another person feel powerless, disadvantaged, and victimized. Supervisors who harass can cause employees to fear reprisals, e.g. a poor performance appraisal, an assignment of undesirable jobs, or even a loss of one's job.

Co-worker's behaviour when harassing can be undermining, detrimental to self esteem, excluding and isolating.

Harassment reflects and reinforces existing inequalities in the workplace and in society as a whole. When harassment happens, someone is putting someone else down. Harassment is a demeaning practice, one that constitutes an affront to the dignity and the self respect of the employees who are forced to endure it.

Powerlessness is a key reason why so few victims of harassment report what has happened.

Harassment is discriminatory.

When harassed an individual or a group is treated differently than others. Different treatment may be on the basis of gender, race, ethnicity, disability, sexual orientation, religion, etc.

Harassment is unwelcome.

Who can know if a behaviour is harassing? The person who experiences it knows. Who can tell if a joke is offensive? The person who hears the joke can tell. Who

knows if a touch is harassment? The person who is touched knows.

An interaction which is welcome and mutually enjoyed isn't harassment. However, if the interaction is not welcome, it may be experienced as harassment. Times are changing. What was welcomed and enjoyed in the past may not be today.

How do we know when some behaviour is not welcome? Others tell us or they show us with their body language and by their actions.

Harassment has negative job-related consequences.

Quid Pro Quo: If submission to sexual advances or other behaviours of a sexual character is made a condition of employment or a factor in an employment decision such as a promotion, it's sexual harassment and it's illegal.

It is a serious form of harassment because it directly affects the victim's livelihood.

Poisoned Work Environment: If the practice interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment, it's harassment and it's illegal.

A hostile work environment can often indirectly threaten job security because it can result in poor work performance or have a detrimental impact on one's physical and emotional health.

Usually a "poisoned" environment develops over time and results from repeated behaviours such as comments, jokes, and other forms of harassment. Courts usually look for harassing behaviour that is persistent (repeated) and has a certain level of intensity; however, they have ruled on single incidents.

Intent doesn't matter.

Whether a person intended to harass or behaved in a deliberately harassing manner isn't the issue. Lack of intent is no defense.

In matters of discrimination, impact is the key. Tribunals look at the intensity and gravity of the harassing behaviour and the impact.

Repetition isn't necessary.

One incident can constitute harassment, depending on the behavior and the impact. More serious behaviours need only occur once to constitute harassment. The courts will be more likely to look for repeating behavior if they consider the impact of the behavior to be less serious.

HUMAN RIGHTS: FEDERAL AND PROVINCIAL

Federal

Federal Crowns

Airlines

Banks

Inter-provincial
Transportation

Ports

Telecommunications

Provincial

Provincial Crowns

Civic Government

Colleges, Universities
School Districts

Hospitals

Hotels

Landlords

Restaurants

Retailers

Resource Industries

B.C. Human Rights Act - Employment

No person or anyone acting on their behalf shall:

- (a) refuse to employ or refuse to continue to employ a person,
or
- (b) discriminate against a person with respect to employment
or any term or condition of employment

Discrimination because of a persons':

- race
- political belief
- age
- place of origin
- sexual orientation
- sex (gender)
- criminal conviction/ charge (unrelated to employment)
- ancestry
- marital status
- colour
- religion
- physical or mental disability
- family status

Bona fide occupational requirements:

are job requirements that will exempt an employer from complying with the prohibitions required in the B.C. Human Rights Act. These job requirements must be reflective of the true nature of the job and must be complied with for reasons of safety or business efficiency.

Duty to accommodate:

refers to the employers obligation to accommodate employees' or prospective employees' with respect to their religion, disability, culture, etc. up to the point of an "undue hardship" being placed on the employer.

HANDLING A COMPLAINT

FIRST MEETING WITH COMPLAINANT:

- Be supportive, listen and take seriously
- Reassure confidentiality
- Obtain all necessary information, data, and dates
- Remain impartial
- Know your responsibilities
- Provide options, follow-up & timeline

INVESTIGATION:

- Do not base action on heresay^{af}
- Keep complaint confidential
- Remain impartial
- Discuss remedy with someone else (e.g. committee, advisor)
- Take action
- Follow through on promises

HANDLING A COMPLAINT

RESOLUTION:

- Take action with harasser
- Share progress with complainant
- Resolve any other issues
- Document action taken
- Monitor workplace as necessary — review policies.

HANDLING HARASSMENT

SOME GUIDING PRINCIPLES:

- Be proactive
- Be approachable
- Assure confidentiality
- Be empathetic
- Ensure expedience
- Empower and involve complainant
- Take action

Employer Liability

- Legislation is remedial, not punitive
- Employer is in the best position to eliminate harassment
- Employer must provide an environment free from harassment
- Responsible for any act committed by connected persons
- Regardless of knowledge
- Harassment by non-employees
- No formal complaint necessary

WHAT SUPERVISORS, MANAGERS, and EMPLOYERS CAN DO ABOUT HARASSMENT

- Model appropriate behaviour
- Ensure everyone is aware of harassment policies and procedures
- Encourage employees to report harassment
- Educate all employees -- education is the key to prevention
- Stop harassment that you are aware of -- be proactive
- Ensure full and prompt investigation of any complaints of harassment
- Know internal and external resources

WHAT WE CAN DO ABOUT HARASSMENT

- Be emotionally supportive
- Offer support towards action
- Be a role model
- Ask your supervisors/employers to take action
- Ask your union representative to take action
- Challenge inappropriate and harrassing behaviour when it happens