

Prevention of Violence and Harassment in a Federal Workplace – Legal Resources Manual



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A. Introduction

In Canada, employment relationships can fall under provincial, territorial or federal jurisdiction. Most employment relationships fall under provincial or territorial jurisdiction. For example, in Nunavut, it is likely employers must adhere to requirements as set out in territorial legislation relating to employment, such as the [Nunavut Human Rights Act, SNu 2003 c.12](#), and the [Labour Standards Act, RSNWT \(Nu\), 1988, c L-1](#).

However, a small number of employers likely fall under federal jurisdiction. This means that they must adhere to federal legislation relating to employment, like the [Canada Labour Code, RSC 1985, c L-2](#).

Federally regulated employers generally include the following:

- Airlines, airports, and other businesses engaged in air transportation services;
- Banks;
- First Nations band counsels;
- Federal Crown corporations;
- Businesses engaged in radio and television broadcasting;
- Businesses involved in telecommunications services, such as telephone, Internet and cable; and
- Business engaged in road, maritime or rail transportation that cross provincial/international borders.

It is also possible for some employers to have employment relationships that fall under federal jurisdiction, and others that fall under provincial or territorial jurisdiction.

While all employers, regardless of jurisdiction, have legal obligations related to workplace violence and harassment, this Training Manual applies to federally-regulated employers. We recommend that you seek legal advice if you are unsure whether your employment relationship is federal or territorial. Employers regulated by the territorial laws of Nunavut are encouraged to refer to the [Prevention of Violence and Harassment in a Nunavut Workplace – Legal Resources Manual](#).

B. Legal Framework

Individuals have the statutory right to a workplace that is free from harassment. As a result, federally regulated employers are responsible for putting specific mechanisms in place to prevent, stop, and address harassment.

i. Applicable Legislation

Multiple legislations regulate harassment issues at the federal level. Effective January 1, 2021, the Canadian government enacted a new regulations amending Part II of the [Canada Labour Code, RSC 1985, c L-2](#) (the “CLC”). The Workplace Harassment and Violence Prevention Regulations, SOR/2020-130 (the “WPHVPR”) introduced new guidelines for the prevention and protection measures against harassment and violence in federally regulated workplaces.

In addition to the [CLC](#) and its regulations, section 7 of the [Canadian Human Rights Act, RSC 1985, c H-6](#) (the “CHRA”) also prohibits discrimination in the employment relationship.

ii. Definitions

a. Harassment and Violence

Harassment and violence, as defined in the [CLC](#), is broadly defined to include all types of harassment and violence. It would also include discriminatory harassment, sexual harassment, family violence, harassment by abuse of power and cyber harassment.

The test under all pieces of legislation is an objective one; whether the person knew or should reasonably have known that the action, conduct or comment would cause offence, humiliation, or cause other physical or psychological injury.

LEGISLATION

Canada Labour Code, RSC 1985, c L-2

122 (1) In this Part,

...

harassment and violence means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment;

b. Discriminatory Harassment

The [CHRA](#) states that federally regulated employers must respect, at all times during an employment relationship, prohibited grounds of discrimination. For example, it is considered a discriminatory practice to refuse to employ, continue to employ an individual, or differentiate adversely in relation to an employee based on a prohibited ground.

The enumerated grounds are:

- race;
- national or ethnic origin;
- colour;
- religion;
- age;
- sex;
- sexual orientation;
- gender identity or expression;
- marital status;
- family status;
- genetic characteristics;
- disability; and
- a conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Discriminatory harassment means any action, conduct or comment that meets the general definition of harassment and is related to one of the grounds protected under the [Canadian Human Rights Act](#) by subsection 3(1) of the [CHRA](#).

Additionally, although not codified in the [CHRA](#), the [CLC](#) and the WPHVPR clearly provide that an employer is responsible for ensuring the health and safety of their employees. Safety includes prevention of occurrences of harassment. Thus, an employer must not only prevent violence and harassment in the workplace, but also take the appropriate actions to address instances of harassment or violence when it occurs.



LEGISLATION

Canadian Human Rights Act, RSC 1985, c H-6

Prohibited grounds of discrimination

3(1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Employment

7 It is a discriminatory practice, directly or indirectly,

- (a) to refuse to employ or continue to employ any individual, or
- (b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

14(1) It is a discriminatory practice,

...

- (c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.

c. Sexual Harassment

Sexual harassment is unwelcome conduct, is of sexual nature, and detrimentally affects the work environment or leads to adverse work-related consequences.

Conduct of a sexual nature covers a broad range of actions and comments¹, such as:

- Physical contact,
 - Examples include: forced sexual acts, pulling off clothing, hugging, kissing, brushing against, patting, pinching
- Gestures or actions with sexual content,
 - Examples include: leering, ogling, exposing or fondling oneself, giving sexually explicit gifts or persistent romantic attention
- Verbal conduct,
 - Examples include: threats for failure to comply with sexual demands, or promises of job benefits for complying, sexual propositions, persistent romantic propositions, suggestive comments
- Denigration or insults based on gender.
 - Examples include: comments about physical attractiveness, sexist remarks

LEGISLATION

Canadian Human Rights Act, RSC 1985, c H-6

Sexual harassment

14(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

¹ Janzen v Platy Enterprises, [1989] 1 SCR 1252, 59 DLR (4th) 352.

d. Workplace, Employer, and Employee

Part II of the [CLC](#) regulating Occupational Health and Safety only applies if the incident in question occurs in the “workplace.” The definition of “workplace” is quite general in the legislation as it encompasses any location where an employee is engaged in work the employee’s employer.

On the one hand, an “employee” is any individual employed by an employer. On the other hand, an “employer” refers to any person employing one or more employees and includes an employers’ organization as well as any individual acting on behalf of the employer.

It is also important to note that former employees are also included in the scope of workplace violence and harassment obligations. Specifically, the [CLC](#) specifies that employers have an obligation to respond to occurrences of violence and harassment in the workplace involving a former employee, if the occurrence becomes known to the employer within three months after the day on which the former employee ceases to be employed by the employer.

The definitions used are comprehensive to encompass a broad spectrum of realities and apply to the varying employer and employee relationships in all sorts of workplaces.

LEGISLATION

Canada Labour Code, RSC 1985, c L-2

Definitions

122 (1) In this Part,

“**employee**” means a person employed by an employer; (employé)

“**employer**” means a person who employs one or more employees and includes an employers’ organization and any person who acts on behalf of an employer; (employeur)

“**workplace**” means any place where an employee is engaged in work for the employee’s employer; (lieu de travail)

Former Employees

125(4) Except as provided for in the regulations, the obligations set out in paragraphs (1)(c) and (z.16) apply to an employer in respect of a former employee in relation to an occurrence of harassment and violence in the workplace if the occurrence becomes known to the employer within three months after the day on which the former employee ceases to be employed by the employer.

iii. Employer and Employee Obligations

a. Employer Obligations

The employer must take all reasonable steps to prevent and stop violence and harassment connected to the work place or an employee’s employment. Further, the employer has the obligation of responding and reporting every occurrence of workplace violence or harassment following the regulations.

Additionally, employers must ensure that all employees undergo training to prevent harassment and violence in the workplace in order to prevent such incidents in the workplace, and to ensure all are informed of their rights and obligations related to workplace harassment and violence.

Further, employers must ensure that the person designated to receive complaints related to harassment and violence in the workplace has knowledge, training and experience of issues relating to harassment and violence in the workplace, as well as the requisite knowledge of the legislation relating to such issues.

b. Supervisors and Managers

Supervisors and managers are often acting on behalf of the employer in the workplace. They are usually identified in harassment policies as individuals to whom an employee can report a complaint of harassment.

As they play a leadership role in most organizations, they must also receive workplace harassment and violence prevention training.

c. Employee Obligations

While the legislation provides employees with the right to employment free from harassment, practically speaking, this responsibility falls to everyone in the workplace. All employees must complete training in the prevention of harassment and violence in the workplace.

LEGISLATION

Canada Labour Code, RSC 1985, c L-2

Specific duties of employer

125 (1)

...

(c) except as provided for in the regulations, investigate, record and report, in accordance with the regulations, all accidents, occurrences of harassment and violence, occupational illnesses and other hazardous occurrences known to the employer;

...

(z.16) take the prescribed measures to prevent and protect against harassment and violence in the workplace, respond to occurrences of harassment and violence in the workplace and offer support to employees affected by harassment and violence in the workplace;

...

(z.161) ensure that employees, including those who have supervisory or managerial responsibilities, receive training in the prevention of harassment and violence in the workplace and are informed of their rights and obligations under this part in relation to harassment and violence;

(z.162) undergo training in the prevention of harassment and violence in the workplace;

(z.163) ensure that the person designated by the employer to receive complaints relating to occurrences of harassment and violence has knowledge, training and experience in issues relating to harassment and violence and has knowledge of relevant legislation;

C. Workplace Violence and Harassment in Practice

i. How Harassment Manifests

Harassment can take many forms in the workplace and is sometimes difficult to identify.

Harassment will generally include any inappropriate conduct or comment against a known employee, or ought reasonably to be known, to be unwelcome. It does not have to be manifested as a series of repeated incidents, as one occurrence can constitute harassment. The comments or conduct at issue is generally personal.

Examples of harassment may include, but are not limited to:

- Bullying and/or cyberbullying (threatening, spreading rumours, or negatively talking to or about someone online or on social media);
- making offensive jokes or remarks;
- playing unwanted practical jokes;
- tampering with someone's work equipment or personal belongings;
- persistently criticizing, undermining, belittling, demeaning or ridiculing a person;
- misusing authority to create hardship for an individual; and
- verbal threats or intimidation.

Harassment in the workplace will also include any form of retaliation or reprisal against an individual for having invoked a harassment policy, participating or cooperated in an investigation under a harassment policy, or having associated with a person who invoked a harassment policy.

Further, harassment in the workplace can present itself in various forms such as discriminatory harassment, sexual harassment and harassment by abuse of power.

Discriminatory harassment refers to harassment that is related to one of the grounds protected under the [CHRA](#).

...race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Many of the examples provided for harassment above will be considered discriminatory harassment if they include references to one or more of these personal characteristics referred to in the [CHRA](#).

Sexual harassment refers to harassment involving any unwelcome behaviour, speech, gesture or contact of a sexual nature or that may be perceived by the employee as a condition of a sexual nature to their employment, including any training/promotion opportunity (*quid pro quo*). Examples may include, but are not limited to a direct or indirect invitation or request to engage in sexual acts or behavior, displaying pictures or materials with sexual material, jokes of a sexual nature, unwelcome physical contact, or direct or implied threat of retaliation for refusing to engage with a sexual request.

Harassment by abuse of power is behaviour that constitutes harassment and involves inappropriate use of the authority and power conferred by a position to compromise a person's employment, undermine a person's performance, jeopardize a person's livelihood or otherwise interfere with a person's career.

It is also important to note that the conduct does not need to be directed at one particular person. For example, employees who make comments of an unwelcome sexual nature that are made openly at the workplace or overheard by another person may also be considered sexual harassment.

ii. How Workplace Violence Manifests

Violence in the workplace generally manifests itself in three ways:

1. The exercise of physical force by a person against an employee at a workplace that causes or could cause physical injury to the employee;
2. An attempt to exercise physical force against an employee in a workplace that could cause physical injury to an employee; and
3. An employee reasonably interprets a statement or behavior as a threat to exercise physical force against the employee at a workplace that could cause physical injury to the employee.

Examples of behavior, which could constitute violence at a workplace include, but is not limited to:

- Physical or verbal assault or abuse which can include hitting, shoving, pushing, kicking or inappropriate physical closeness or contact;
- Threatening behavior such as shaking fists, destroying property, throwing objects, derogatory or inappropriate jokes, verbal or written threats that can be insulting or taunting, swearing, condescending language or any expression of intent to inflict harm.

Violence in the workplace is not limited to the actions or behavior of an employee against another employee. Employers have a responsibility to take every reasonable precaution to ensure the health and safety of employees at a workplace, including any risk of violence at a work site from a non-employee.

Workplace violence may also occur in the context of a personal or domestic dispute that finds its way to a workplace. Examples include:

- If an acquaintance of an employee attends the workplace to claim money owing to them from a poker game over the weekend, and the acquaintance exercises physical force against the employee, the employer shall take every reasonable action to intervene (for example, call the police or security) and protect the employee.
- If an employer becomes aware of domestic/family violence such that the employee is likely exposed to physical injury at the workplace, the employer shall take every reasonable precaution to protect the employee.
 - Domestic/family violence is widely understood as a pattern of behavior used by one person to gain power and control over another person with whom they have had a personal relationship.

iii. Management Decisions vs Workplace Harassment and Violence

Harassment does not include any reasonable action taken by an employer or supervisor relating to the management and direction of the employees or the workplace.

Legitimate exercise of management rights such as performance reviews, discipline and day-to-day management action and decisions are not considered harassment. Moreover, some of these managerial responsibilities may require sternness or objective criticism on the part of a manager or supervisor, particularly where disciplinary action is being imposed; this does not constitute harassment either. Additionally, disagreeing or having a conflict of personality with a manager does not adhere to the definition of workplace harassment and violence.

Harassment arises in this context if there is an abusive or discriminatory element present. Examples include, but are not limited to, the use of vulgar or degrading names when referring to employees, yelling, humiliating, berating, or deliberately making an employee feel insecure.

iv. The Right to Refuse Unsafe Work

The [CLC](#) gives three specific scenarios where an employee has the right to refuse work:

- to use or operate a machine that constitutes a danger to the employee or to another employee;
- to work in a place; or
- to perform an activity that constitutes a danger to the employee or to another employee.

Additionally, ***danger*** is defined to mean *any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered.*

While not explicitly listed as a circumstance for which an employee can refuse work, the Canadian courts have held that the definition of “danger” is broad enough such that workplace harassment and violence may constitute a valid refusal under the [CLC](#) where it poses an imminent or serious threat to the life or health of the employee.

LEGISLATION

Canada Labour Code, RSC 1985, c L-2

Definition of “danger”

122(1) danger means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered;

Refusal to work if danger

128 (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that

- (a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;
- (b) a condition exists in the place that constitutes a danger to the employee; or
- (c) the performance of the activity constitutes a danger to the employee or to another employee.

Investigation — harassment and violence

134 (4.1) Despite paragraph (4)(d), a policy committee shall not participate in an investigation, other than an investigation under section 128 or 129, relating to an occurrence of harassment and violence in the workplace.

D. Workplace Violence and Harassment Policies and Procedures

i. The Harassment and Violence Policy

Depending on the nature of the workplace, an employer might be obliged to establish a Policy Health and Safety Committee and/or a Workplace Health and Safety Committee per the regulations in the [CLC](#). Under the WPHVPR, references to “applicable partner” mean the applicable policy committee or health and safety representative.

The WPHVPR requires employers to develop a workplace harassment and violence prevention policy, with a number of prescribed elements, including:

- a mission statement regarding the prevention of workplace harassment and violence;
- a description of the respective roles within the workplace in relation to harassment and violence prevention;
- a description of internal and external risk factors;
- a summary of the training to be provided;
- a summary of the resolution process, including the identity of the designated recipient and the manner in which a notice of occurrence may be provided;
- a summary of emergency procedures that must be implemented where there is immediate danger to the health and safety of an employee;
- description of the manner in which privacy and confidentiality will be protected;
- a description of support measures available to employees within their geographical area (respecting medical, psychological or other support services); and
- the reasons for which a review and update of the workplace assessments must be conducted.

Training for workplace harassment and violence to be provided to employees, the employer and designated recipient. Employees should be trained within three months of hire, and at least once every three years or following any update to training or assignment to a new role where there are increased or specific risks to workplace harassment and violence.



LEGISLATION

Workplace Harassment and Violence Prevention Regulations, SOR/2020-130

Workplace Harassment and Violence Prevention Policy

Joint development

10 (1) An employer and the applicable partner must jointly develop a workplace harassment and violence prevention policy.

Policy content

(2) The policy must contain the following elements:

- (a)** the employer's mission statement regarding the prevention of and protection against harassment and violence in the workplace;
- (b)** a description of the respective roles of the employer, designated recipient, employees, policy committee, workplace committee and health and safety representative in relation to harassment and violence in the workplace;
- (c)** a description of the risk factors, internal and external to the workplace, that contribute to workplace harassment and violence;
- (d)** a summary of the training that will be provided regarding workplace harassment and violence;
- (e)** a summary of the resolution process, including
 - (i)** the name or identity of the designated recipient, and
 - (ii)** the manner in which a principal party or witness may provide the employer or the designated recipient with notice of an occurrence;
- (f)** the reasons for which a review and update of the workplace assessment must be conducted under subsection 6(1);
- (g)** a summary of the emergency procedures that must be implemented when an occurrence poses an immediate danger to the health and safety of an employee or when there is a threat of such an occurrence;
- (h)** a description of the manner in which the employer will protect the privacy of persons who are involved in an occurrence or in the resolution process for an occurrence under these Regulations;
- (i)** a description of any recourse, in addition to any under the Act or these Regulations, that may be available to persons who are involved in an occurrence;
- (j)** a description of the support measures that are available to employees; and
- (k)** the name of the person who is designated to receive a complaint made under subsection 127.1(1) of the Act.

Policy to be made available

(3) An employer must make the policy available to all employees.

Joint review and update

(4) An employer and the applicable partner must jointly review and, if necessary, update the policy at least once every three years and following any change to an element of the policy.

Training

Joint development or identification

12 (1) An employer and the applicable partner must jointly develop or identify the training on workplace harassment and violence that is to be provided to employees, the employer and the designated recipient.

Required training elements

(2) The training must be specific to the culture, conditions and activities of the workplace and include the following elements:

- (a)** the elements of the workplace harassment and violence prevention policy;
- (b)** a description of the relationship between workplace harassment and violence and the prohibited grounds of discrimination set out in subsection 3(1) of the *Canadian Human Rights Act*; and
- (c)** a description of how to recognize, minimize, prevent and respond to workplace harassment and violence.

Joint review and update

(3) An employer and the applicable partner must jointly review and, if necessary, update the training at least once every three years and following any change to an element of the training.

Employee

(4) An employer must ensure that an employee is provided with the training

- (a)** within three months after the day on which their employment begins or, in the case of an employee whose employment began before the day on which these Regulations come into force, within one year after the day on which these Regulations come into force;
- (b)** at least once every three years after that; and
- (c)** following any update to the training under subsection (3) or their assignment to a new activity or role for which there is an increased or specific risk of workplace harassment and violence.

Designated recipient

(5) An employer must ensure that the designated recipient is provided with the training before assuming their duties under these Regulations and at least once every three years after that.

Employer

(6) An employer must undergo the training within one year after the day on which these Regulations come into force and at least once every three years after that.

Support Measures

Information available to employees

13 An employer must make available to employees information respecting the medical, psychological or other support services that are available within their geographical area.

ii. Addressing Violence and Harassment in the Workplace

All allegations of violence and harassment must be addressed according to the legislative requirements and the employer's policy. Employers must respond to every notice of occurrence of harassment and violence in the workplace. Employers must follow the policy and procedure they have put in place, as this allows for all complaints to be addressed consistently, fairly, and effectively.

How a complaint is brought, how one is to be received, and how it is handled will be dictated by the formal policy in each particular work site pursuant to the legislative requirements in the WPHVPR. The policy should be reviewed regularly with all employees and should be easy for them to locate.

iii. Assessment of the Risks of Violence

The Workplace Committee must assess the risks of workplace violence specific to a particular workplace and should conduct reassessments of these risks as often as necessary.

The Workplace Committee and employers must ensure that employees are informed of the nature and extent of risk from violence. The information provided to an employee may include personal information related to a risk of workplace violence from a person with a history of violent behavior if the employee can be expected to encounter that person in the course of his or her work and the risk of workplace violence is likely to expose the employee to physical injury. The employer, however, will not disclose more personal information than is reasonably necessary to protect the employee from physical injury.

LEGISLATION

Workplace Harassment and Violence Prevention Regulations, SOR/2020-130

Prevention and Protection Measures

Workplace Assessment

Joint assessment

5 (1) An employer and the applicable partner must jointly carry out a workplace assessment that consists of the identification of risk factors under section 8 and the development and implementation of preventive measures under section 9.

Joint monitoring and updates

(2) An employer and the applicable partner must jointly monitor the accuracy of the workplace assessment and, if necessary, update it in order to reflect a change to the information set out in the assessment, including

- (a)** a change to the risk factors identified under section 8; and
- (b)** a change that compromises the effectiveness of a preventive measure developed and implemented under section 9.

Review after three years

(3) An employer and the applicable partner must jointly review the workplace assessment every three years and, if necessary, update it.

iv. Reporting Emergencies and Imminent Threats of Violence

The Emergency Notification Procedure must be used when there is an occurrence of workplace violence (or harassment) that poses an immediate danger to the health and safety of an employee.

Employees should not ignore threatening or violent behavior at a workplace, whether on the part of a colleague or a non-employee (i.e. visitor, client, customer, contractor, etc.). Employees who experience or witness violence, or threats of violence, should immediately report the situation to a supervisor, security or Human resources.

If it is an active situation, the employee should immediately call 911.

LEGISLATION

Workplace Harassment and Violence Prevention Regulations, SOR/2020-130

Emergency Procedures

Joint development and implementation

11 (1) An employer and the applicable partner must jointly develop emergency procedures that are to be implemented if

- (a) an occurrence poses an immediate danger to the health and safety of an employee; or
- (b) there is a threat of an occurrence referred to in paragraph (a).

Procedures available

(2) An employer must make the emergency procedures available to all employees.

Joint review and update

(3) After every implementation of the emergency procedures under subsection (1), an employer and the applicable partner must jointly review and, if necessary, update the procedures.



v. Bringing a Violence or Harassment Complaint

a. Definitions:

The WPHVPR provides multiples definitions regarding the resolution process once a complaint is made.

LEGISLATION

Workplace Harassment and Violence Prevention Regulations, SOR/2020-130

Definitions

1 (1) The following definitions apply in these Regulations.

Act means Part II of the *Canada Labour Code*.

designated recipient means a work unit in a workplace or person that is designated by an employer under section 14.

occurrence means an occurrence of harassment and violence in the workplace.

principal party means an employee or employer who is the object of an occurrence.

responding party means the person who is alleged to have been responsible for the occurrence in notice of an occurrence provided under subsection 15(1).

witness means a person who witnessed an occurrence or is informed of an occurrence by the principal party or responding party.

b. First Level: Informal Approach

Employees are encouraged to first address the situation with the person responsible for unacceptable behavior, if appropriate. They are also encouraged to seek advice from managers, HR Business Partners or other Health and Safety representatives on dealing with a difficult situation. However, this approach is not suitable for all instances, including imminent threats of physical violence.

c. Second Level: Formal Complaint (Notice of Occurrence)

The complaint (referred to as a “Notice of Occurrence” in the [CLC](#)) can be made:

- to the employer or the designated recipient set out in the policy (e.g. Human Resources);
- orally or in writing;
- by the Principal Party (the “complainant” or “victim”), or a witness (such as a coworker).

During the whole process, the complainant has the right to:

- file a complaint and participate in the resolution process;
- have their complaint treated confidentially;
- be treated fairly;
- be provided with appropriate means of resolution (early resolution, investigation);
- be accompanied or represented during the resolution process.

The complainant has the obligation of:

- fully cooperating in the complaint resolution process, and
- being truthful and honest at all times during the resolution process.

On the other hand, the respondent (referred to as the “Responding Party” in the [CLC](#)) has the right to:

- be informed that a complaint has been filed against them;
- be made aware of the allegations against them;
- respond to the allegations against them;
- be provided with appropriate means of resolution (early resolution, investigation);
- have the complaint filed against them treated confidentially;
- be accompanied or represented during the resolution process.

The respondent has the same responsibilities as the complainant during the resolution process.

After a formal complaint is submitted, the complaint is subject to an initial review to ensure that it contains the name of the principal party (complainant) and responding party (respondent), if known, the date of the occurrence and a detailed description of the occurrence. It should be noted that the initial review is not an admissibility assessment.

An anonymous complaint is valid under the [CLC](#) only where it is filed by a witness, and contains the name of the complainant, or provides information sufficient for the employer to identify the complainant. If the complainant cannot be identified, the issue is deemed to be resolved.

d. Response:

Under the [CLC](#), the designated recipient/employer must contact the complainant within seven days after receiving a complaint, confirm receipt of the complaint, explain how to access the policy, explain the resolution process, and inform them of their right to be represented (or accompanied) during the resolution process.

On the first occasion where the responding party is contacted regarding the occurrence, the designated party must provide them with the same information. The responding party is contacted when relevant in the resolution process (for instance, can be after the negotiated resolution).

If the complaint was received from a non-anonymous witness, the designated recipient/employer must contact the witness within seven days to confirm receipt of the complaint.

The designated recipient/employer must respond to every complaint if the principal party can be identified. Failure to respond to a complaint is considered an offence under the [CLC](#) and a violation under the Administrative Monetary Penalties ([CLC](#)) Regulations, SOR/2020-260.

The [CLC](#) now notably specifies that the employer’s obligations to respond to occurrences of harassment and violence in the workplace apply in respect of a former employee if the occurrence becomes known to the employer within three months after the day on which the former employee ceases to be employed by the employer.

Options for Resolution:

Three options can be pursued for resolution, so long as the resolution process is completed within one year (subject to few exceptions). The designated recipient is responsible for choosing the best option but the complainant has the right to withdraw at all times.

Additionally, where a notice of occurrence or complaint has been filed, the WPHVPR requires the employer or designated recipient to provide monthly updates to both the complainant and respondent as to the status of the resolution process.

1. Negotiated Resolution:

This is an early resolution option consisting of having the parties attempt to resolve the matter through discussions and/or meetings, separately or together, with the designated recipient.

The designated recipient/employer and the principal party must make every reasonable effort to resolve the occurrence. It may or may not involve the responding party.

This must begin no later than 45 days after the day on which the notice is provided. Reasonable efforts includes (but is not limited to) reviewing the allegations to determine whether they meet the definition of “harassment and violence” under the [CLC](#).

2. Conciliation/Mediation:

Conciliation/mediation consists of having the parties attempt to resolve the matter through discussions with a third-party conciliator or mediator. This is an optional and voluntary process where the complainant and the respondent must agree to conciliation and agree on who is to facilitate the conciliation.

The purpose of this process is not to determine right or wrong, nor is it intended to impose discipline. Rather, it is both parties coming to an agreement to resolve the situation.

If the parties are unable to resolve the complaint at this stage, the principal party may request an investigation.

3. Investigation:

An investigation occurs when resolution or conciliation are unsuccessful, and the complainant requests an investigation. If the complaint is withdrawn, or resolved through negotiated resolution or conciliation, the investigation must be discontinued.

The designated recipient selects the investigator from the list of investigators established with the Policy Committee and this individual must:

- be trained in investigative techniques;
- have knowledge, training and experience that are relevant to harassment and violence in the workplace; and
- have knowledge of the *Canada Labour Code*, the *Canadian Human Rights Act*, the WPHVR, and any other legislation relevant to harassment and violence in the workplace.

The investigator will determine if there was an occurrence of workplace harassment or violence and issues an anonymous report. This report will contain a general description of the occurrence, their conclusions, including those related to the circumstances in the workplace that contributed to the occurrence, and their recommendations to eliminate or minimize the risk of a similar occurrence. The report will never reveal any party's identity or information that would allow their identity to be determined and will not provide recommendations on specific corrective actions that should be implemented.



A copy of the report would be provided to the complainant, the respondent, the Health and Safety Workplace Committee and the designated recipient if they received the complaint.

The Workplace Committee and employer are subsequently required to implement the investigators' recommendation. Additionally, the employer may impose corrective action where a violation of the policy is confirmed.

Completion of the Resolution Process:

The Notice of Occurrence (complaint) resolution process must be completed within one year after the day it is filed, except in certain situations.

The resolution process is considered completed when:

- The complainant cannot be identified
- The workplace assessment was reviewed and updated (if needed) where:
 - the principal party withdrew from the process; or
 - the responding party is a third party (not an employee or the employer)
- The occurrence is resolved through early resolution or conciliation
- An investigation was conducted, and the investigator's recommendations were implemented.



E. Practical Scenarios

Harassment is not always easy to identify. We invite you to review and discuss the following scenarios. Might they constitute harassment? Why or why not? If they do constitute harassment, what might the employee do?

The holiday party

Mario told a sexist joke about women at the company holiday party. Approximately ten other colleagues heard the joke, some of whom were women.

Is this harassment? It is possible.

The scenario does not provide any information as to whether or not any of his colleagues were offended by Mario's joke. Note that the conduct could be considered harassment (or discriminatory harassment) regardless of whether there were female colleagues present. It is also important to note that the employer may need to act on a complaint even though the incident took place outside of the office. It occurred at a company event.

The spontaneous massage

Sabrina previously studied massage therapy. She loves using her talents on her colleague, Francis. She gives him several neck massages a day, without asking him for permission. According to her, he is simply too shy to ask her, but as he does not reject her, it is clear that he enjoys it.

Is this harassment? It is possible.

It is possible that this amounts to harassment. Just because Francis does not say anything to Sabrina does not mean it is not harassment. Massaging colleagues is not normal workplace behavior, and Francis may feel deeply uncomfortable.

The chronically late employee

Matt is always late. He is disciplined for this behavior. He apologizes and indicates that he does not intend to be late. Disciplinary measures are imposed nevertheless.

Is this harassment? No.

The disciplinary measures do not amount to harassment. Even if Matt disagrees with the discipline imposed, it is not considered harassment as the employer is exercising their management rights.

Personality conflict

David and Kim do not get along. They constantly argue about everything, and since they work in the same department, they are in frequent contact. Each exchange ends in a verbal fight, and the two are very clear to the effect that they are unable to work together.

Is this harassment? Likely no.

This would likely not be considered harassment as personality conflicts or disagreements between two colleagues does not constitute harassment.

The office crush

Ben likes Laura. He often compliments her, invites her out for dinner, and tells her that they would make a great couple. He even bought her flowers on Valentine's Day. He is determined to make Laura his girlfriend.

Is this harassment? It is possible.

If Ben's advances make Laura uncomfortable, if she asks him to stop, or if he is too intrusive or too persistent, it may constitute harassment. However, it is also possible that Laura is happy with Ben's advances and gladly accepts his invitation.

The office email

Damian sends an email to several colleagues, which contains inappropriate racist and sexist jokes. Shirley finds them to be offensive.

Is this harassment? It is possible.

While Damian likely means no harm or offence in circulating these jokes, we know that at least one of his colleagues, Shirley, has found them to be offensive. Damian must take care to ensure that his conduct – the circulating of these jokes – is not offensive to others. They could well constitute harassment.

Text Messages between colleagues

Cindy and Bobby work together. Cindy gave Bobby her personal cell number because he came to her house on the weekend to pick up a couch he had bought from her. Since giving him her number, Bobby sends Cindy text messages commenting on how she looks every day and that he would like to go out with her. Cindy sometimes receives these text messages at work, but they mostly occur in the evenings and on the weekends. They make Cindy uncomfortable.

Is this harassment? It is possible.

Even if Bobby is unaware that his text messages to Cindy are unwelcome, Cindy finds them to be offensive. Even though the majority of the text messages are sent outside of work hours, and on personal phones, Cindy and Bobby are coemployees, and Cindy is now uncomfortable around Bobby in the workplace.

Threatening phone calls at work

Jill shares an office with Bernadette. Several times during the day, Bernadette receives threatening phone calls from her boyfriend. Bernadette shared a voicemail with Jill where her boyfriend threatened to come to the office if she didn't return home that evening. Bernadette says she is embarrassed and doesn't want anyone to know about the calls. Jill is concerned about what might happen if Bernadette's boyfriend shows up.

What should Jill do?

Even though Bernadette's boyfriend is not an employee, his threatening phone calls may put Bernadette (or other employees) at risk in the event that he does show up. It is evident that both Jill and Bernadette are concerned. This situation would likely constitute a threat of violence such that it should be reported to the employer in accordance with the workplace violence policy.

F. Accommodations During an Investigation

When a workplace violence or harassment complaint is made, employers should immediately consider whether any accommodation is necessary while the investigation is ongoing.

Generally, at the outset of an investigation, consideration should be given to whether any accommodation measures are required for the complainant, particularly if they normally work closely with, or report to, the alleged offender.

Examples of accommodation measures might include:

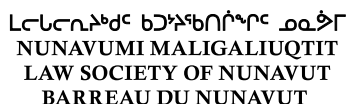
- A temporary transfer of the complainant to another work site or department;
- Leave with pay if the complainant is unable to attend the workplace (i.e. for medical reasons associated with the allegations);
- Temporary suspension with pay of the alleged offender so as to remove them from the work site;
- Temporary change in work schedules or shifts such that the complainant and respondent do not work at the same time.

Depending on the circumstances, it may also be necessary for the employer to consider accommodation measures at the conclusion of a workplace investigation.

For example, the complainant may require a gradual and supported return to work, with the assistance of counselling or other supports. It is also possible that the complainant remains in another department or at another work site long term, particularly if the alleged offender was their supervisor at the time the complaint was brought forward.



G. Report and Referral Form



Report and Referral Form

Be mindful that it is not your duty to investigate. Avoid giving advice. These topics are sensitive, and it is important that the investigation be done by a trained professional.

Treat this information as confidential and ensure that all information is stored in a secure manner and location.

Please complete this form to document all Reports and Referrals – Sexual Harassment in the Workplace Workshops and Summary Legal Advice Sessions

Name: Lawyer/Facilitator _____

Email Address: _____ Contact Number: _____

Briefly describe the information received (only as much as is required to explain report/referral):

TYPE OF CONTACT	COMMUNITY	REFERRAL – IN (legal service) or Out	GENDER	AGE
Email / Phone / In- Person / Other		(non-legal service e.g. health services, psychosocial support, etc.)	M / F/ Other / prefer not to say	(13-17) / (18-64) or 65 +

Is this a Report of a Child In Need of Protection? Y / N

If yes – Name of Child: _____

Person to whom Report made and Agency affiliation:

Contact Information: _____ Alt Contact: _____

Referral To Services:

Agency: _____

Contact Name: _____

Contact Information: _____

Referral To Services:

Agency: _____

Contact Name: _____

Contact Information: _____

Referral To Services:

Agency: _____

Contact Name: _____

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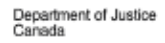
Referral To Services:

Agency: _____

Contact Name: _____

Contact Information: _____

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