

Harassment: Understanding, recognizing and addressing it in the workplace

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Have you heard statements like these thrown around casually by both employers and employees:

“My boss harassed me at work today to finish my project”; “my employee accused his co-worker of harassing him by making jokes about me”; or “I feel personally harassed by my co-worker for making jokes at my expense”?

As an employment lawyer, “workplace harassment” is a term I frequently hear. It describes a wide range of conduct, sometimes without understanding the legal connotations of the term. Businesses, however, can be held legally liable for workplace harassment.

Harassment can take many different forms. Appropriate workplace direction or exercise of managerial authority is not harassment, and neither is casual banter. Understand what types of conduct might comprise workplace harassment in a legal context to prevent, or respond appropriately to allegations of, workplace harassment.

Understanding harassment

Workplace harassment generally takes three forms:

- Bullying and harassment – inappropriate verbal and/or physical conduct by a person that knows or should know would cause the worker to be humiliated, intimidated or degraded. Generally, it means conduct that is known or reasonably known to be offensive. Bullying and harassment do not include reasonable action taken by a supervisor relating to the management and direction of workers or the workplace. Workers who suffer mental

injury as a result of workplace bullying and harassment may be eligible for workers compensation or human rights damages.

- Discrimination – a distinction, intentional or not, relating to personal characteristics of an individual or group that impose burdens or limit access to opportunities. Discrimination may breach human rights legislation if the characteristic is a protected or recognized ground of discrimination: race, age, religion, mental or physical disability, sex, sexual orientation, gender identity or expression, and marital or family status.

- Sexual harassment – unwanted and unwelcome conduct of a sexual nature, verbal or physical, that interferes with a person's work or job opportunities. It includes sexual advances, sexually-oriented remarks and behavior, or repeated and unwelcome sexual suggestions or comments.

Where is the workplace?

Conduct that occurs beyond the four walls of the office may still amount to workplace harassment where there is a nexus to the workplace. Your office holiday party, an external workshop, the firm golf tournament, or business trip are places where workplace harassment could take place. Recognizing harassment Harassment covers a spectrum of behaviours, from spreading malicious rumors, to verbal aggression, to vandalizing personal belongings, to something as severe as hazing. Harassment also encompasses behaviours that might be harder to recognize, such as jokes, gestures, remarks, display or circulation of materials such

as videos or images, intrusive questions about one's personal life, or refusal to work with an individual.

It doesn't matter whether the person committing the behaviour intended for it to be offensive, or whether the victim reported the incident immediately. If it was reasonable for the person on the receiving end to feel humiliated, intimidated, or degraded, the behaviour may be considered harassment.

Taking steps to address harassment at your workplace

It is the responsibility of management to act as role models and promote and maintain a workplace that is free of bullying, harassment, and discrimination. It should be made clear that harassment is not tolerated. Businesses should institute a formal reporting complaint system for employees to address incidents of harassment and make employees aware of the reporting or complaint procedure. If required, corrective, disciplinary or remedial measures should be taken.

Failing to address harassment has consequences

Appropriately addressing harassment is important for employers to avoid liability. Employers are required to take all reasonable steps to provide a safe environment and ensure the health and well-being of their workers, as there are consequences for failing to do so. While it can be tempting to think that harassment is not an issue in your workplace, statistics show that harassment happens in most workplace settings. Victims of discriminatory harassment, including sexual harassment, may have their



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complaint adjudicated by the Human Rights Tribunal. In British Columbia, almost 80% of all Human Rights complaints arise from the employment context. Complaints can be brought against both the corporate employer as well as individuals who the victim alleges to have participated in harassment. If a complaint of discriminatory harassment is found to be justified, the Tribunal may award damages for injury to dignity, feelings, or self-respect. Some awards have been greater than \$25,000, and the Human Rights Tribunal has indicated that there is an upward trend for the quantum of such damages. Understanding and proactively addressing harassment at the early stages is accordingly vital to protecting yourself and your workplace. Unfortunately, harassment happens. Harassment can cause disruption to the workplace, injury to employees' dignity and feelings, and legal liability for employers. It's important to know what it is and how to address it in order to create a positive working atmosphere for all.