

Workplace Harassment and Sexual Harassment

The *Occupational Health and Safety Act (OHSA)* protects against personal harassment in the workplace. The definition is wide enough to include all types of employment-based harassment prohibited under the *Ontario Human Rights Code (OHRC)* and it explicitly includes workplace sexual harassment.

The *OHSA* defines workplace sexual harassment to include:

- engaging in a course of vexatious comment or conduct against a worker, in a workplace because of sex, sexual orientation, gender identity or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or
- making a sexual solicitation or advance where the person making it is in a position to confer, grant, or deny a benefit or advancement to the worker and the person knows or ought reasonably to know the solicitation or advance is unwelcome.

What is Workplace Harassment?

Vexatious physical conduct is a form of workplace harassment and sexual harassment. Harassment may also arise from a range of types of conduct: verbal, written, social, cyber, or psychological conduct. It may also arise through a combination of types of conduct. Vexatious conduct or behaviour that is physical may be both unlawful harassment and criminal conduct. For example, inappropriate sexual touching is sexual harassment but may also constitute sexual assault and the police should be notified in such cases. Physical harassment may also amount to workplace violence under the *OHSA*.

Workplace harassment includes unwelcome words or actions that are known or should be known to be offensive, embarrassing, humiliating, or demeaning to a worker or group of workers in a workplace. It can also include behaviour that intimidates, isolates, or even discriminates against the targeted individual(s).

Examples of workplace harassment may include:

- making remarks, jokes, or innuendos that demean, ridicule, intimidate or offend;
- displaying or circulating offensive pictures or materials in print or electronic form;
- bullying;
- repeated offensive or intimidating phone calls or emails; or
- workplace sexual harassment.

Workplace sexual harassment may include:

- asking questions, talking, or writing about sexual activities;
- rough or vulgar humour or language related to sexuality, sexual orientation, or gender;

- displaying or circulating pornography, sexual images, or offensive sexual jokes in print or electronic form;
- leering or inappropriate staring;
- invading personal space;
- unnecessary physical contact, including inappropriate touching;
- demanding hugs, dates, or sexual favours;
- making gender-related comments about someone's physical characteristics, mannerisms, or conformity to sex-role stereotypes;
- verbally abusing, threatening, or taunting someone based on gender or sexual orientation; or
- threatening to penalize or otherwise punish a worker if they refuse a sexual advance.

Harassment is most commonly thought to involve more than one instance of vexatious comment or conduct. However, there may be situations where the conduct is sufficiently vexatious to amount to harassment in itself. For example, a single instance of unwelcome sexual solicitation or advance from a supervisor or manager could constitute workplace sexual harassment. The vexatious behaviour does not have to be long-standing to be considered harassment: multiple instances over a relatively short period of time may be harassment. In other words, harassment may be found to have occurred over weeks or months or years or just over the course of a day.

Members feeling they have been a victim of workplace harassment are encouraged to contact their local or ETFO Professional Relations Services (PRS) to get support and advice. PRS staff can help review with you your evidence and assertions of harassment and discuss whether this is likely to be seen as unlawful harassment or not. For example, reasonable action taken by the employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

Employers Responding to Workplace Harassment and Workplace Sexual Harassment

Workplace harassment should be reported as promptly as possible to appropriate supervisors or school board Human Resource personnel. School boards have workplace harassment policies in place that outline processes for making complaints and setting out what steps will be taken in response. As an ETFO member, you are entitled to union representation throughout these processes.

The OHSA requires that employers take all reasonable steps to protect the health and safety of workers. This includes having a written program and policy in place to receive and respond to complaints of harassment. All school community members (staff, administrators, parents, students, volunteers) should be expected to adhere to such policies. Often it is a worker's supervisor who should be notified of the complaint. If the supervisor is the harasser, there will be an alternative way to make the complaint. Your school board policy should explain who will be involved in the process, how information will be obtained, how and when an investigation will be carried out and how the complainant and harasser will be informed of the outcome and corrective action.

Policies may make available an informal means for resolution of complaints. Where workplace harassment investigations are conducted, they should be conducted in a fair, respectful, and timely manner with all concerned: complainant, respondent, and witnesses. Information provided in a workplace harassment process will not be disclosed except as needed to investigate, to take corrective action or to otherwise comply with the law. Please refer to your school board's policy and procedure for more specified information.

Workplace harassment including sexual harassment, is a serious allegation that should only be made in good faith. However, no complainant should suffer a reprisal for making a complaint, even a complaint that is not considered substantiated.

If you have a complaint to make or if you are accused of workplace harassment or sexual harassment, you should contact your local ETFO office or ETFO PRS immediately to seek advice and assistance. Separate ETFO representatives will be involved where persons on competing sides of harassment complaints seek assistance.

School boards failing to carry out their responsibilities properly may be in breach of the collective agreement or legislative provisions. Ministry of Labour inspectors may order an employer to carry out an independent workplace harassment investigation. Grievances may be considered with your local. Recourse may also be available under the OHRC or OHSAA. Workers injured from workplace harassment may have a valid claim under the *Workplace Safety and Insurance Act (WSIB)* and anyone who experiences suffering from workplace harassment is encouraged to seek medical assistance. Assistance through Employee Assistance Plans may also be helpful, but ETFO recommends that this not be exclusive of members consulting their primary treatment providers.

For additional information on school board investigations, please see PRS Matter Volume # 97. For further information, contact your local ETFO president or Professional Relations staff in PRS at 416-962-3836 or 1-888-838-3836.

PD:JR:SM