

WORKING WELL

Employers' Guide to Preventing and Stopping
Harassment in Saskatchewan Workplaces



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Introduction

Working Well is an employers' guide for dealing with harassment as defined in *The Occupational Health and Safety Act, 1993 & Regulations*.

Saskatchewan people have a right to healthy and safe work environments, free from harassment. Under the Act, employers are required to take reasonable steps to prevent and stop harassment that arises out of or is connected to a worker's employment.

This guide provides employers with information on the best way to handle harassment in Saskatchewan workplaces.

Definition of Harassment

On October 1, 2007 the definition of harassment in *The Occupational Health and Safety Act, 1993* (OHS Act) was expanded to include two categories.

Harassment Based on Prohibited Grounds

The first category has existed in the definition of harassment since 1993, and relates to harassment based on one of the prohibited grounds.

This includes any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and,
- constitutes a threat to the health or safety of the worker.

This type of harassment is prohibited in the OHS Act and *The Saskatchewan Human Rights Code*. It also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Sexual harassment may include:

- A direct or implied threat of reprisal for refusing to comply with a sexually orientated request
- Unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, attire, sex or sexual orientation
- Displaying pornographic or sexually explicit pictures or materials
- Unwelcome physical contact
- Unwelcome invitations or requests, direct or indirect, to engage in behavior of a sexual nature
- Refusing to work with or have contact with workers because of their sex, gender or sexual orientation

Note that certain types of conduct, such as displaying a poster or making comments that are overheard by another worker, are not specifically directed at one individual. However, such conduct is still considered harassment based on prohibited grounds. Even a single incident of inappropriate conduct relating to a prohibited ground is considered harassment.

Personal Harassment

The second category relates to personal harassment, which is not based on any of the prohibited grounds. It is sometimes referred to as “bullying”.

This includes any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects a worker’s psychological or physical well being; and,
- the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated.

Personal harassment must involve repeated conduct or a single, serious incident that causes a lasting harmful effect on the worker.

Personal harassment may include:

- Verbal or written abuse or threats
- Insulting, derogatory or degrading comments, jokes or gestures
- Personal ridicule or malicious gossip
- Unjustifiable interference with another’s work or work sabotage
- Refusing to work or co-operate with others
- Interference with or vandalizing personal property

All incidents of inappropriate conduct should be appropriately addressed to ensure that the workplace remains respectful and free of harassment.

What is Not Harassment

Day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes and disciplinary action are not considered to be harassment even if they sometimes involved unpleasant consequences. However, managerial actions must be carried out in a manner that is reasonable and not abusive.

Other situations that do not constitute harassment include:

- Physical contact necessary for the performance of the work using accepted industry standards
- Conduct which all parties agree is inoffensive or welcome
- Conflict or disagreements in the workplace that are not based on one of the prohibited grounds

Harassment can exist even where there is no intention to harass or offend. Every person must take care to ensure his or her conduct is not offensive to others.

Purpose of Harassment Legislation

Occupational Health and Safety (OHS) legislation protects workers from workplace harassment that may affect their health and safety. Unlike the Saskatchewan Human Rights Code, the OHS Act does not contain provisions to provide compensation to workers who have been harassed.

The OHS Act and regulations require employers to take action to ensure the following:

- Prevent harassment from occurring
- Stop harassment when it does occur
- Develop and implement a harassment policy that meets the requirements of the OHS regulations

Employers' Legal Duties

The Act indicates that every employer has a general legal obligation to ensure, as much as reasonably practicable, that workers are not exposed to harassment with respect to any matter or circumstance arising out of employment.

This duty extends to:

- Incidents that occur at the workplace or during work hours
- Conduct perpetrated by another employee (i.e. co-worker or supervisor) or the employer
- Incidents that occur outside of the usual workplace or after work hours that arise out of or are connected to a worker's employment, such as a work-sponsored social event or conference
- Conduct perpetrated by someone other than an employee, but with whom the worker is required to be in contact with, including clients, the public or people from contracting businesses

The regulations require all employers in Saskatchewan to develop and implement a written harassment policy. The requirements for developing and implementing a harassment policy are set out in section 36 of the regulations and are discussed in this guide. A sample harassment policy is also included at the back of this document.

Employers must ensure that harassment policies are implemented and that they are effective in preventing and ending harassment. Employers should also look beyond what is legally required and take additional action to create a respectful working environment. This can include proactive training on respectful workplaces, diversity and conflict resolution, as well as using effective management practices to clearly define tasks, roles and workload, and promote fairness and openness in the workplace.

Preventing Harassment

Employers must take a proactive approach to ensure that workplaces are free of harassment. As a best practice, employers should create their harassment policy to deal with complaints of harassment in conjunction with an harassment prevention program.

An harassment prevention program should encompass the following elements:

A Clear Statement of Employer Commitment

Employers must clearly state to their workers that harassment will not be tolerated and that they are working to ensure that no worker is subjected to harassment. This commitment should be emphasized in harassment policies¹ and harassment prevention programs.

Harassment policies and programs will only work effectively if employers demonstrate a sincere commitment to creating a harassment free workplace.

An employer can show commitment by:

- Assigning top management to the development and implementation of the harassment policy
- Having top management express at meetings the importance of a harassment-free workplace and support the company policy
- Developing a policy statement that reflects the employer's commitment
- Providing workers and supervisors with harassment prevention training
- Acting promptly to end any harassment and prevent its recurrence

¹ Section 36(1)(c) of the regulations requires the harassment policy to include a commitment that the employer will make every reasonably practicable effort to ensure that no worker is subjected to harassment.

- Reviewing the adequacy and effectiveness of the policy regularly and in consultation with the employer's Occupational Health Committee (OHC)
- Protecting workers from reprisal or retaliation for making a harassment complaint or behaving in a way that reflects the harassment policy

Supervisor Training and Commitment

In order to prevent and stop harassment, supervisors must be appropriately trained to set good examples, be alert to problems, receive harassment complaints and protect workers from reprisal or retaliation.

Setting a Good Example

Supervisors need to understand the importance of their behavior and the influence it has in the workplace. Showing respect for workers at all levels is critical. Supervisors should never act in a way that could be seen as disrespectful or harassing. They should never approve of others acting that way.

Being Alert to Problems

Supervisors need to be aware of signs that harassment may be occurring. Signs of harassment may include rumors, increased absenteeism, decreased motivation, reduced job performance and increased staff turnover.

If a supervisor thinks harassment may be taking place, the supervisor must act promptly and appropriately.

Although situations will vary, appropriate action can include:

- Speaking privately to the worker who is potentially being harassed to find out if they have experienced unwelcome behavior
- Speaking privately to the person whose conduct may be harassing to indicate that that his or her conduct is potentially offensive
- Directing workers to remove offensive material or displays that go against the OHS Act or the harassment policy of the workplace
- Bringing serious concerns to the attention of upper management
- Holding an awareness session on harassment

Receiving Harassment Complaints

Supervisors must take all complaints seriously. Workers should never be discouraged from pursuing or resolving a complaint in accordance with the harassment policy.

Those responsible for receiving harassment complaints should:

- Explain the harassment policy to the complainant
- Tell the complainant the options for dealing with harassment as stated in the policy
- Advise the complainant that the complaint will be kept confidential
- Protect the complainant from reprisal or retaliation for making the complaint

The complaint should be processed in accordance with the relevant harassment policy. The complaint may be informally resolved or investigated if these are options in the policy.

Protecting Workers from Reprisal or Retaliation

The supervisor should protect the worker making the complaint from reprisal or retaliation.

This may include taking the following action before the investigation is complete:

- Cautioning the alleged harasser about the types of behavior that will not be tolerated
- Moving the alleged harasser to another work unit
- Moving the complainant to another work unit at the complainant's request
- Suspending the alleged harasser with pay while waiting for a final determination

Consent of the complainant and the alleged harasser to significant changes in job duties or location before an investigation is complete is required to avoid the appearance that the changes are a reprisal for bringing a complaint or an unjustified form of discipline.

Worker Training and Commitment

Harassment policies must contain a statement indicating that every worker is entitled to employment free of harassment. It is important to note that the responsibility for employment free from harassment falls to everyone in the workplace. All workers have a duty to refrain from causing or participating in the harassment of another worker.

To be effective in preventing harassment, workers need to know their rights and responsibilities. They need to understand the kind of behavior that is and is not acceptable and what they should do if they are harassed or if they become aware that others are being harassed.

Workers must be assured that:

- They have the right to bring harassment concerns to their employer without fear of reprisal
- They can have confidence that their concern will be addressed in a confidential and professional manner
- Action will be taken to stop harassment

Awareness and commitment to harassment-free workplaces can be encouraged in a variety of ways. For instance, information meetings can be held to explain and raise awareness about harassment. Such meetings would include information on:

- Worker rights and responsibilities under the OHS Act
- The workplace harassment policy and the process for making a complaint
- Types of behaviour prohibited by the policy, including behavior by third parties that will not be tolerated
- Tips for helping create a respectful workplace
- The process for investigating a harassment complaint and the provisions of the policy that ensure confidentiality, due process and fairness
- The potential consequences to an individual who causes or participates in harassment
- The employer's commitment to protect workers from reprisal or retaliation for making a harassment complaint

Other ways to encourage awareness and commitment to harassment-free workplaces is to:

- Ensure that all new workers receive orientation on harassment that includes information on how harassment can damage the personal and professional lives of others
- Ensure that persons delivering the information understand the policy and make clear that the employer takes harassment seriously
- Include harassment information in workers' handbooks or in a reference brochure
- Post the names of the people designated to receive harassment complaints
- Display posters or other materials in highly visible workplace locations to remind workers and others that the workplace is committed to being a respectful and harassment-free workplace
- Obtain videos and publications that provide examples of harassment from OHS and use them for training and orientation purposes

Developing and Implementing a Harassment Policy

The OHS Act & Regulations clearly indicate employers' responsibility to develop a written harassment policy and what items must be included in that policy.

Consultation

In developing an effective harassment policy, employers must seek input from their Occupational Health and Safety Committee (OHC).

Some benefits of consulting the OHC include:

- OHC members can be a resource of information and ideas
- OHC support for the policy is essential in its implementation
- OHC assistance in monitoring the effectiveness of the policy

In small workplaces that do not have an OHC or representative, employers should ask workers for their input and ideas. An example of workers having input is asking them to review and comment on the policy before it is put into effect.

Defining Harassment

OHS regulations require the policy to include a definition of harassment that includes the definition in the Act. Harassment is defined in section 2(1)(1), 2(3) and 2(4) of the Act and encompasses harassment based on the prohibited grounds and personal harassment.

Harassment is also prohibited by *The Saskatchewan Human Rights Code* and extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome. Sexual harassment is defined separately in many effective harassment policies.

What is Not Harassment

In the normal operation of workplaces, employers must manage and supervise workers. Harassment does not include day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes and disciplinary action. These actions are not harassment, even if they sometimes involve unpleasant consequences. Note that managerial actions must be carried out in a manner that is reasonable and not abusive.

The policy also does not extend to harassment that arises out of matters or circumstances unrelated to a worker's employment. For example, harassment that occurs during a social gathering of co-workers after work that is not sponsored by the employer is not covered. However, harassment that occurs while attending a conference or training session at the request of the employer would be covered within this policy.

An employer's harassment policy should include a statement urging workers to ensure their comments, conduct or displays are inoffensive and appropriate.

Procedure for Handling Harassment Complaints

Having clear procedures is important to ensure that harassment complaints are dealt with in a consistent, competent, fair and effective manner.² This increases worker-confidence that harassment complaints will be handled in an appropriate way.

When creating a procedure for handling concerns employers should consult with the OHC to answer the following questions:

How can workers bring complaints to the attention of employers?

Employer harassment policies must explain how complaints of harassment can be brought to the attention of the employer.

Below are some ways for employers to share information on harassment policies with workers:

- An information meeting should be held with all staff to explain and answer questions about the new policy and its implementation
- Supervisors will review the policy with new workers as part of their orientation
- Persons designated to receive, investigate or resolve complaints will be trained in their roles and responsibilities under the policy
- All managers, directors, officers and supervisors should be asked to set a good example and help foster a respectful workplace
- A list of persons designated to receive complaints shall be posted on the company bulletin board

² Section 36 of the OHS regulations require the harassment policy to include statements that may affect the procedure to be followed in dealing with a harassment complaint, but it does not direct the exact process to be used.

In some workplaces, employers may state that a worker should bring a harassment complaint to the immediate supervisor or, in the event of a conflict with that supervisor, any other supervisor in the workplace.

Any person designated to receive complaints must be adequately trained in the following:

- The importance of taking all complaints seriously and confidentially
- The harassment policy
- Their role in the overall process of handling complaints

What are the duties of the person receiving a complaint?

Any person designated to receive harassment complaints should:

- Advise a worker on how to bring the complaint to the attention of the employer
- Not discourage or prevent a worker from seeking the assistance of an Occupational Health Officer (OHO) or from pursuing any other legal rights
- Take complaints seriously and avoid ridiculing or dismissing a worker's concerns
- Keep complaints in confidence and not disclose complaints except in accordance with the policy or as required by law
- Carry out other duties assigned under the policy

What are the different options for handling a complaint?

Many policies give the complainant more than one option in how to proceed with the complaint.

The options are listed below.

Opportunity to Seek Information and Advice

Harassment policies should clearly state that workers can go to supervisors or those designated to hear harassment complaints to seek information or advice. In turn, those who hear complaints must provide the options available under the policy for resolving a complaint and explain the rights of complainants.

Making Informal Harassment Complaints

Sometimes when making an informal complaint a complainant may not wish to identify the harasser or ask for direct intervention. The complainant may want only information, advice and the indirect assistance of supervisors or the employer in stopping the offending behaviour from continuing.

The policy should direct the person receiving this type of complaint to do the following:

- Advise the complainant on the contents of the harassment policy
- Counsel the complainant, when appropriate and possible, to clearly and firmly express to the alleged harasser that the harassment is objectionable and must stop
- Offer to indirectly intervene in stopping the harassment by arranging for all staff to attend workshops, videos and staff meetings to review the harassment policy
- Encourage the complainant to file a formal complaint where the matter complained of poses a serious threat to the health and safety of the worker or others, is criminal in nature or where circumstances lead the supervisor to suspect that the complainant's intervention and educational activities cannot prevent the harassment from recurring

In other circumstances the complainant names an alleged harasser and requests that information intervention take place. In this case, the complainant does not seek an admission of guilt, apology or discipline for the alleged harasser. Rather, the complainant is looking for an agreement with the alleged harasser that the offensive behavior will not continue. This agreement does not have to be in writing.

The policy should direct the person receiving this type of complaint to do the following:

- Conduct separate informal discussions between the supervisor and the complainant, and between the supervisor and the alleged harasser
- Arrange a meeting, with the agreement of both parties, between the complainant and the alleged harasser that is facilitated by a trained and impartial person or mediator
- Encourage the complainant to file a formal complaint where the matter complained of poses a serious threat to the health and safety of the worker or others, is criminal in nature or where circumstances lead the supervisor to suspect that informal discussions or facilitated mediation cannot prevent the harassment from recurring

As no formal investigation or admission is required, the policy should indicate that no record of the complaint or of the agreement should be kept on either the complainant's or the alleged harasser's personnel file. Note that the informal agreement should not be viewed as an admission that the alleged harasser engaged in harassing behavior.

Making Formal Harassment Complaints

A formal complaint is one where the complainant makes a written allegation of harassment against a named alleged harasser. This requires a formal investigation to determine if harassment has taken place. This type of complaint requires the employer to take action to stop the harassment and prevent its reoccurrence.

How will the policy address a complainant's other legal rights?

Harassment policies should address the other legal rights of complainants in the following ways.

The Act with Respect to Harassment

The harassment policy must refer to certain sections of the Act and regulations on harassment, including:

- Section 3(c) of the Act concerning the employer's general duty
- Section 4(b) of the Act concerning the worker's general duty
- Section 27 of the Act which prohibits an employer from taking discriminatory action against a worker for seeking enforcement of the Act
- Section 36 of the regulations which concerns creating and implementing a harassment policy

An employer may consider printing the full text of these sections in the policy, although it is sufficient if the policy simply makes reference to them.

The Assistance of an Occupational Health Officer

The harassment policy must indicate a worker's right to request the assistance of an OHO to resolve a harassment complaint. The person designated to receive the complaint should bring this right to the attention of complainants.

A worker may choose to seek the assistance of an OHO before the employer has opportunity to resolve the complaint. Unless it is inappropriate, normally the OHO will direct the employer to attempt to resolve the complaint in accordance with the existing harassment policy and recommend the employer take immediate action to protect the complainant from further harassment, reprisal or retaliation.

If a worker chooses to seek the assistance of an OHO after the employer has attempted to resolve the matter, the OHO will investigate to determine whether the employer has complied with the existing harassment policy and has taken every reasonable action to ensure a workplace free of harassment.

From the investigation, the OHO may do the following:

- When harassment has not taken place within the meaning in the OHS Act and employer's policy, no further action is required; however, the OHO may make recommendations on how to resolve the matter
- When harassment has not taken place within the meaning of the OHS Act, but has taken place within the meaning of the employer's policy, the OHO will recommend the employer to implement the harassment policy
- When harassment has taken place within the meaning of the OHS Act, and it is likely to be continued or repeated, the OHO will direct the employer to take action to stop the harassment

Reference to The Saskatchewan Human Rights Code

The harassment policy must refer to the provisions of *The Saskatchewan Human Rights Code* respecting discriminatory practices and the worker's right to file a complaint with the Saskatchewan Human Rights Commission.

The provisions of *The Saskatchewan Human Rights Code* regarding discriminatory practices in the workplace include sections 10, 16, 17, 18, 27 and 31 of the Code. Reference in an employer's harassment policy to these section numbers in the code meets the requirements of the OHS Act.

The Saskatchewan Human Rights Code can be found at www.shrc.gov.sk.ca

Reference to Other Legal Rights

The harassment policy must include a statement that the policy is not intended to discourage or prevent the complainant from exercising any other legal rights in order to meet the requirements of the OHS Act.

People in supervisory or management positions, as well as those investigating and resolving complaints, should know that it is not appropriate to discourage or prevent a complainant from pursuing or exercising any other rights they have.

There is no obligation on the employer or supervisor to explain these other legal rights and they should avoid counselling or advising workers about them.

Formal Complaints and Investigations

In certain circumstances, workers who feel they have experienced harassment arising out of their employment will wish to make a formal complaint.

Creating a process to receive and investigate formal complaints in a consistent, fair and effective manner is very important. The process for receiving and investigating a formal complaint should include the following:

- A complaint should be made in writing and the complainant should sign it. This is the best way to ensure the complainant's concern is understood and addressed.
- Many policies include a formal complaint form. This is a helpful tool to ensure that the basic relevant information is known in each case.
- Once a complaint has been made, an initial assessment must occur to determine whether the conduct in question falls within the policy's definition of harassment. Where it is determined that the conduct does not fall within the scope of the policy, the complainant should be informed of that and the right to seek the assistance of an OHO.

- Where the conduct complained of falls within the scope of the policy it is necessary to determine if any immediate action is required to protect the complainant or others from further harassment, reprisal or retaliation while they wait for the investigation and resolution of the complaint.
- Consultation of the harassment policy sets out who will investigate the complaint and how the investigation will be conducted to ensure that the process meets the requirements of the OHS Act concerning confidentiality and fairness to all parties.

Confidentiality

An employer must not disclose the name of the complainant or the alleged harasser except where it is necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint or where required by law. A statement to this effect must appear in the harassment policy to fulfill the requirements of the OHS Act.

The policy should also set out how confidentiality will be maintained at every stage of the process. This may include the following:

- Giving direction about who will be informed of a harassment complaint at each stage of the process
- Describing the training and direction on how to maintain confidentiality that is given to persons who are designated to receive or facilitate the resolution of complaints
- Stating who will have access to the results of the investigation

Other practices that help to maintain confidentiality include the following:

- Advising both the complainant and the alleged harasser during the initial stages of the complaint process that they should keep the matter in confidence
- Interviewing no more witnesses than necessary
- Cautioning witnesses not to discuss the investigation or their statement with anyone
- Ensuring that others who participate in the process, including shop stewards, mediators, supervisors and management, understand and commit to keep the process in confidence
- Describing during the initial stages of the complaint process who will have access to the results of the investigation

Fairness

As a best practice, harassment policies should set out guidelines or procedures that ensure the process will be fair and also appear fair to both the complainant and alleged harasser.

The policy should address the following:

Bias

How will the complainant and the alleged harasser be assured that the people who receive, investigate or take action on the complaint are not biased?

Legal or Union Counsel

Both the complainant and the alleged harasser have the right to be accompanied by legal or union counsel during the investigation process.

Right to Be Informed

How will the complainant and the harasser be fully informed of the harassment process, as well as their rights under the OHS Act and *The Saskatchewan Human Rights Code*?

Full Answer and Defense

How will the alleged harasser be informed of the complaint in a manner sufficient to entitle him or her to make a full answer and defense?

Where an investigation into a complaint is required, the alleged harasser is usually entitled to receive a copy of the written complaint. Sometimes a written complaint can contain unnecessarily insulting or embarrassing opinions or statements about the alleged harasser. Such statements, if known by the alleged harasser, may cause additional ill-feelings and interfere with achieving a mediated resolution between the complainant and alleged harasser.

It is good practice when a written complaint is made to:

- Inform the complainant that a copy of the written complaint may be provided to the alleged harasser
- Have the supervisor offer assistance to the complainant in completing the written complaint to avoid including unnecessarily insulting or embarrassing opinions or statements about the alleged harasser
- Where an investigation is not required and a mediated or informal solution is sought, avoid giving the alleged harasser a copy of a written complaint and have the supervisor provide a verbal or written summary

Credibility of Witness Evidence

A fair investigation process should ensure that the evidence used to make an assessment is credible. Investigators should be trained in investigative practices that include:

- Interviewing witnesses separately
- Taking signed written statements from witnesses and allowing them time to review their statements and confirm accuracy
- Avoiding hearsay and instructing witnesses to only describe what they personally know or witnessed
- Considering witness bias
- Avoiding witness intimidation by advising witnesses that their statements will not be shared with either the complainant or the alleged harasser except as required by law, or to the extent necessary (ie. a summary), to allow the alleged harasser to make full answer and defense

Unnecessary Delay

There should be no unnecessary delay between receiving the complaint, conducting the investigation, preparing the investigation report and taking action following the investigation.

Taking Action

Investigations will lead to a decision on whether harassment actually occurred and whether the complaint was made in good or bad faith.

No Harassment

When an investigation finds that harassment has not taken place and the complaint was made in good faith, both the complainant and the alleged harasser should be informed of the results of the investigation. The complainant should be advised of the right to seek the assistance of an OHO or to lodge a complaint with *The Saskatchewan Human Rights Commission*.

When it has been found that harassment has not taken place and a complaint has been made in bad faith, the investigator determines that a complainant made allegations of harassment, which he or she knows are not true. A bad faith complaint can damage the integrity of an employer harassment policy and can have serious negative effects in the workplace.

An employer should take action to discipline workers who make a complaint in bad faith, but should not question the sincerity or good faith with which a complaint is made unless there is believable and persuasive evidence to the contrary.

Where appropriate, an employer may also wish to inform other persons who were involved with the investigation that harassment was found not to have taken place. This action may be necessary where the reputation of the alleged harasser may be negatively affected by the complaint or investigation.

Harassment Took Place

Employers must take corrective action with any person who harasses another in the workplace to meet the requirements of section 36 (1) of the Act. When an investigation determines that harassment has taken place, they need to decide what they will do to stop, prevent and deter harassment.

Options may include action against persons in the workplace and third parties, including customers, clients and contractors.

The employer must ensure that:

- The action is effective in stopping harassment and preventing its recurrence
- The action is effective in protecting the complainant or others from reprisal
- The action protects the privacy of the complainant and the harasser as much as possible
- The action does not go against the collective agreement or any worker's employment contract
- Any discipline imposed on a worker is appropriate

Employers should not fail to take the action necessary to stop the harassment because they fear the trouble and expense that may result from defending the decision. An employer's action will be defensible if it is based on a fair and competent investigation.

The harassment policy does not have to describe the exact actions employers need to take in particular situations. Creating a rigid policy will limit the choice of actions. It is good practice, however, to list the types of actions employers may take if harassment is found. It demonstrates the employer's commitment to dealing with harassment and can strengthen workers' commitment to a harassment-free workplace.

Sample Harassment Policy for Saskatchewan Workplaces

Statement of Commitment

Every worker is entitled to employment free of harassment. *(Employer Name)* is committed to a harassment free workplace where everyone is treated with dignity and respect.

Or

Every worker is entitled to employment free of harassment. *(Employer Name)* is committed to ensuring a productive work environment where the dignity and worth of every person is respected. Workplace harassment will not be tolerated and *(Employer Name)* will take all reasonable steps to prevent harassment and stop it if it occurs.

Definition of Harassment

This harassment policy covers the following:

Harassment Based on Prohibited Grounds

This includes any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and,
- constitutes a threat to the health or safety of the worker.

This type of harassment is prohibited in the OHS Act and *The Saskatchewan Human Rights Code*. It also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Sexual harassment may include:

- A direct or implied threat of reprisal for refusing to comply with a sexually orientated request
- Unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, attire, sex or sexual orientation
- Displaying pornographic or sexually explicit pictures or materials
- Unwelcome physical contact
- Unwelcome invitations or requests, direct or indirect, to engage in behavior of a sexual nature
- Refusing to work with or have contact with workers because of their sex, gender or sexual orientation

Personal Harassment

This includes any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects a worker's psychological or physical well being; and,
- the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated.

Personal harassment must involve repeated conduct or a single, serious incident that causes a lasting harmful effect on the worker. All incidents of inappropriate conduct should be appropriately addressed to ensure that the workplace remains respectful and free of harassment.

Personal harassment may include:

- Verbal or written abuse or threats
- Insulting, derogatory or degrading comments, jokes or gestures
- Personal ridicule or malicious gossip
- Unjustifiable interference with another's work or work sabotage
- Refusing to work or co-operate with others
- Interference with or vandalizing personal property

What is Not Harassment

This harassment policy does not extend or apply to day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes and disciplinary action. These actions are not harassment, even if they sometimes involve unpleasant consequences.

Note that managerial actions must be carried out in a manner that is reasonable and not abusive.

The policy also does not extend to harassment that arises out of matters or circumstances unrelated to the worker's employment. For example, harassment that occurs during a social gathering of co-workers that is not sponsored by the employer is not covered. However, harassment that occurs while attending a conference or training session at the request of the employer is covered within this policy.

Other situations that do not constitute harassment include:

- Physical contact necessary for the performance of the work using accepted industry standards
- Conduct which all parties agree is inoffensive or welcome
- Conflict or disagreements in the workplace, where the conflict or disagreement is not based on one of the prohibited grounds

Harassment can exist even where there is no intention to harass or offend another. Every person must take care to ensure his or her conduct is not offensive to another.

Employer's Commitment

(Employer Name) and its managers and supervisors will take all complaints of harassment seriously. We are committed to implementing this policy and to ensuring it is effective in preventing and stopping harassment, as well as creating a productive and respectful workplace.

This commitment includes the following:

Informing All Persons in the Workplace of their Rights and Obligations

- A copy of the harassment policy will be provided to all workers
- A copy of the harassment policy will be posted on the company bulletin board
- The company's policy statement on harassment will be posted in each work area in a location that is visible to all staff and the public

Training All Persons in Implementing the Harassment Policy

- An information meeting will be held with all staff to explain and answer questions about the new policy
- Supervisors will review the policy with new workers as part of their orientation
- Persons designated to receive, investigate or resolve complaints will be trained in their roles and responsibilities under the policy
- All *(Employer Name)* managers, directors, officers and supervisors will be asked to set a good example and help foster a respectful workplace
- A list of persons designated to receive complaints shall be posted on the company bulletin board

Assigning Responsibility for Implementing this Policy

- Consulting with the OHC worker representative or shop steward, *(Employer Name)* will designate *(number)* people who may receive harassment complaints and assist in facilitating their resolution
- Consulting with the OHC worker representative or shop steward, *(Employer Name)* shall designate *(number)* people who will investigate harassment complaints
- *(Employer Name)* will designate the unit managers authorized to take corrective action in accordance with this policy

Protecting Workers Trying to Prevent or Stop Harassment

- Harassment complaints and investigations will be held in the strictest of confidence except where disclosure is necessary for the purposes of investigating the complaint, taking corrective action with respect to the complaint or as required by law
- Action will be taken to prevent reprisal against persons who make a harassment complaint in good faith, which may mean informing complainants and alleged harassers of this commitment

Promptly Taking Action Necessary to Stop and Prevent Harassment

- Appropriate action, sufficient to ensure the harassment stops and does not happen again, will be taken against persons who are or were engaged or participated in harassment
- When necessary, customers, contractors or other visitors to the workplace will be informed that certain conduct directed toward staff will not be tolerated or allowed to continue

Ensuring the Policy Remains Current

- The effectiveness of the policy will be reviewed in consultation with the OHC worker representative or shop steward every *(number)* of years

Worker's Duty

In accordance with section 4 of the OHS Act, all workers, including managers and supervisors employed by *(Employer Name)* shall refrain from causing or participating in the harassment of another worker, and co-operate with any person investigating harassment complaints.

Complaint Procedure

This policy sets out three types of complaint procedures that may be used following instances of harassment.

No Alleged Harasser Named and Informal Resolution Sought

Step 1

An individual reports an incident or concern to the supervisor or person designated to receive harassment complaints.

Step 2

The person receiving the complaint reviews the complaint procedures with the complainant and informs the unit manager of the complaint.

Step 3

The unit manager takes action appropriate and necessary to address the complaint.

Such action may include:

- Having staff meetings to discuss and review the policy
- Providing workshops, videos or written information on the prevention of harassment

The unit manager informs the complainant of the action that will be taken to address the complaint or concern.

Confidentiality

With this procedure, *(Employer Name)*, or anyone acting on behalf of the company, should not disclose the complainant's name or other identifying information to any person. However, in certain circumstances the complainant may agree to release identifying information in order to implement the harassment policy, the resolution process or the final resolution itself.

Alleged Harasser Named and Informal Resolution or Mediation Sought

Step 1

An individual reports an incident or concern to their supervisor or anyone designated to receive harassment complaints. The complaint should be recorded in writing in a form consistent with the harassment complaint form attached to this policy.

Where an informal resolution is sought, the complainant should indicate the type of resolution and resolution process sought. Examples include an apology, supervisory counselling, a facilitated meeting with the alleged harasser, workshops or training sessions and mediation.

Step 2

The person receiving the complaint reviews the complaint procedures with the complainant and informs the unit manager of the complaint. Where it is alleged that the unit manager is involved in the harassment, the person receiving the complaint refers the matter to another manager. The person receiving the complaint will also meet privately with the alleged harasser to review the complaint and determine whether there is an agreement on a resolution or a resolution process.

Step 3

Where there is agreement on the resolution or resolution process to be used, the person receiving the complaint informs the unit manager of the agreement and facilitates the agreed upon resolution or resolution process.

Step 4

The complainant is informed that a formal complaint procedure is possible if the complainant, the alleged harasser or the unit manager do not agree on a resolution process, or if the resolution process does not resolve the matter to the complainant's satisfaction.

Step 5

Where the complainant and alleged harasser agree to a resolution, the unit manager follows up with the complainant to ensure the agreed resolution was effective in stopping and preventing further harassment. Where the complainant indicates that the harassment has not ended, the unit manager counsels the complainant to pursue an alternate resolution process, including a formal investigation.

Confidentiality

With this procedure, (*Employer Name*), or anyone acting on behalf of the company, should not disclose either the complainant's or alleged harasser's name or other identifying information to any person. In certain circumstances the complainant and alleged harasser may agree to release identifying information in order to implement the harassment policy, the resolution process or the final resolution itself.

Alleged Harasser Named – Investigation Required

Step 1

An individual reports an incident or concern to their supervisor or anyone designated to receive harassment complaints. The complaint should be in writing, dated and contain the following information:

- Name and job title of the complainant and contact information
- Name and job title of the alleged harasser and available contact information
- Description of the conduct, display or events considered objectionable, including dates and location of events
- Names and available contact information of any possible witnesses
- Description of the basis of the alleged harassment, such as the prohibited grounds
- Remedy sought
- Other information or material the complainant considers relevant
- Signature of the complainant

Step 2

The person receiving the complaint reviews the complaint procedures with the complainant and provides a written copy of the complaint to the unit manager. Where it is alleged that the unit manager is involved in the harassment, the person receiving the complaint refers the matter to another manager. The person receiving the complaint also provides a copy of the written complaint to the alleged harasser and reviews the complaint procedures with the alleged harasser.

Step 3

The person receiving the complaint, the unit manager and other relevant parties such as human resource managers, review the complaint and determine whether conduct of the alleged harasser falls within the harassment policy and whether there are appropriate resolution options other than investigation acceptable to the complainant and the alleged harasser. This group will conduct the investigation where one is required.

Step 4

Where an investigation is required, the unit manager appoints an investigator or investigation team.

Investigators will be trained in conducting an investigation in accordance with this policy and will have no apparent bias or interest in the outcome of the investigation. Alternatively, the investigator will be chosen from a list of investigators approved by (*Employer Name*), the union, the OHC co-chair or the workplace representative.

Where the complainant or the alleged harasser objects to the appointment of an investigator, on the basis of bias or conflict of interest, the unit manager will appoint another investigator.

Step 5

Investigators must act in accordance with the following guidelines:

- The investigation commences and concludes as soon as reasonably possible
- Witnesses are interviewed separately and written witness statements are prepared
- Witnesses are asked to review and sign their written statements
- Witnesses are advised to keep the investigation and the identity of the complainant and alleged harasser in confidence, unless they are required to disclose them by law
- The complainant and alleged harasser are entitled to be accompanied by legal or union counsel during the interview and investigation process
- During the investigation process, both the complainant and the alleged harasser are entitled to be informed of all the allegations made against them and allowed the opportunity to make full answer and defense

This does not mean that either party is entitled to see or receive copies of the complete statements. However, both are entitled to see or receive an adequate summary of the evidence to make a full answer and defense.

Step 6

Once the investigation is complete, investigators will prepare a written report setting out a summary of the evidence, a description of any conflict in the evidence, the conclusions on the facts and reasons for reaching those conclusions, as well as the recommended corrective action where harassment has been found to have occurred.

The investigators' report will be delivered to the unit manager, the complainant and the alleged harasser. The report is marked as confidential and delivered with the notation that it should be kept in confidence unless disclosure is required by law or is necessary to implement corrective action or other legal remedies.

Step 7

The unit manager will then:

- Take appropriate and effective corrective action
- Inform the complainant and harasser of the corrective action
- Inform the complainant of the right to file a complaint with OHS or The Saskatchewan Human Rights Commission

Note: Where the corrective action is different from the action recommended in the report, the unit manager should provide reasons for not taking the investigators' recommended action.

Step 8

The unit manager, after the corrective action has been taken, follows up with the complainant to ensure that the corrective action was effective in stopping and preventing harassment. If the complainant indicates that harassment has not ended, or suffers reprisal as a result of making the complaint, the unit manager should take additional or alternative corrective action to resolve the complaint. Further investigation may be necessary.

Confidentiality

With this procedure, (*Employer Name*), or anyone acting on behalf of the company, should not disclose the name of the complainant or the alleged harasser, as well as any information that may identify the complainant or alleged harasser. The disclosure of such information may be necessary, however, to conduct the investigation, implement corrective action or pursue other legal remedies.

All documents and statements obtained during the course of the investigation, including the names and copies of witness statements, should not be disclosed to any person unless required by law.

Taking Action to Stop and Prevent Harassment

In taking action to stop harassment and prevent its reoccurrence, *(Employer Name)* will be guided by the following considerations and options.

Individual Awareness and Counselling

Individuals may not be aware of the effects of their behavior. In many cases, speaking to the person in private about the inappropriate behavior will be enough to resolve a situation.

In certain instances, it may be more effective for a supervisor to speak with the offending person or to arrange and facilitate a meeting between the complainant and alleged harasser.

Complainants should not be encouraged to confront the alleged harasser if they are reluctant to do so, if the alleged harassment is of a very serious nature or if the alleged harasser denies engaging in the alleged conduct.

Staff Awareness and Counselling

Standards of behavior change over the years. Some individuals or groups may not be aware that behavior, which was acceptable to their co-workers in the past, is not acceptable anymore. A staff awareness session may be helpful to correct problems based on lack of awareness. Relevant videos, lectures and facilitated group discussions may increase awareness of behaviors that are unacceptable and the reasons for the changes.

Interim Action

A unit manager may have grounds to believe that a complainant will be exposed to continued harassment or reprisal while waiting for the investigation or resolution process to occur. The unit manager must take immediate action to protect the worker from continued harassment or reprisal. Any interim action should respect the alleged harasser's rights based on the employment contract or collective bargaining agreement in place.

Considering the above-mentioned rights, the unit manager's action may include:

- Cautioning the alleged harasser about the types of behavior that will not be tolerated
- Moving the alleged harasser to another work unit
- Moving the complainant to another work unit at the complainant's request
- Suspending the alleged harasser with pay while waiting for a final determination

Mediation

Mediation offers both parties the opportunity to develop an understanding of the problem and resolve the complaint before or during the formal investigation process. The mediator facilitates separate discussions or joint meetings between the complainant and the alleged harasser, for the purpose of resolving the complaint.

Mediation may take place at any point in the resolution process as long as both parties agree to participate in mediation. Where the complainant and alleged harasser agree to participate in mediation (*Employer Name*) shall arrange for a person, who is trained and independent, to act as mediator.

Disciplinary Action

An employee who has knowingly engaged or participated in the harassment of a co-worker will be disciplined. The discipline will be subject to the employee's rights under the employment contract or collective bargaining agreement in place.

The discipline imposed on an employee, who is found to have engaged or participated in harassment in the workplace, may include reprimand, relocation, demotion, suspension or termination of employment.

The severity of the discipline will depend on the following:

Seriousness of the Alleged Conduct

- Whether the conduct is an offence under the criminal code
- Whether the conduct is an offence under the OHS Act or *The Saskatchewan Human Rights Code*
- The extent of the mental or physical injury caused to the complainant by the conduct
- Whether the harasser persisted in behavior that was known to be offensive to the complainant
- Whether the harasser abused a position of authority

Risk of the Harasser Continuing with Similar Harassment of the Complainant or Others

- Whether the harasser acknowledges the conduct was unacceptable and makes a commitment to refrain participating in future harassment
- Whether the harasser has apologized to the complainant or taken action to repair any harm caused by the conduct
- Whether the harasser has agreed to participate in awareness sessions, training or other recommended counselling or treatment

Third-Party Harassers

This policy covers harassment connected to any matter or circumstance arising out of the worker's employment. Customers, clients, patients, contractors or their workers and others invited to the workplace could engage or participate in the harassment of an employee. *(Employee Name)* may have limited ability to investigate or control their conduct. However, *(Employee Name)* shall take reasonably practicable action to stop or reduce the risk to its workers of being harassed by third parties.

This action may include:

- Posting the harassment policy statement in locations visible to third parties
- Requiring certain contractors and their workers to accept and meet the terms of the harassment policy and removing workers who participate in harassment from the workplace

Where a client or customer has been asked to stop abusing or harassing a worker and does not, workers are authorized to end telephone conversations, politely decline service and to ask the customer or client to leave the workplace.

Malicious Complaints

It is uncommon for someone to make a false claim deliberately, but it can happen. Where an investigation finds a complainant has knowingly made a false allegation, the complainant will be subject to appropriate discipline.

Other Options for Complainants

Nothing in this policy prevents or discourages a worker from referring a harassment complaint to OHS under the OHS Act & Regulations.

A worker may also file a complaint with the Saskatchewan Human Rights Commission under *The Saskatchewan Human Rights Code*.

A worker also retains the right to exercise any other legal avenues available.

Terms and Abbreviations

Allegation

a statement or assertion that has not been proven

Alleged

suspected but not proven

Best Practice

wisest action to take based on current knowledge

Complainant

a person making a complaint of harassment

In Good Faith

refers to a claim of harassment with good intentions

In Bad Faith

refers to a claim of harassment when the complainant knows that the allegations are not true

OHO

Occupational Health Officer

OHC

Occupational Health Committee

OHS

Occupational Health and Safety

OHS Act

The Occupational Health and Safety Act, 1993

OHS Regulations:

The Occupational Health and Safety Regulations, 1996

OHS Act and Regulations

The Occupational Health and Safety Act, 1993 and The Occupational Health and Safety Regulations, 1996



Occupational Health and Safety

Regina

400-1870 Albert Street
REGINA SK
S4P 4W1
Phone: 306-787-4496
Toll Free: 1-800-567-7233
Fax: 306-787-2208

Saskatoon

851-122 Third Avenue North
SASKATOON SK
S7K 2H6
Phone: 306-933-5052
Toll Free: 1-800-667-5023
Fax: 306-933-7339



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