

STOP HARASSMENT: A GUIDE FOR CUPE LOCALS



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of Public Employees

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This guide is for local union stewards, officers and other activists. It covers:

- The definition of harassment.
- The effects of harassment.
- An overview of workers' rights and employers' responsibilities.
- How the union can challenge harassment and support members.
- A checklist for anti-harassment policies and collective agreement language.



The pamphlet *Speak out! Stop harassment* is for members who have experienced or witnessed harassment, or who want to organize on the issue.

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Harassment and other forms of violence undermine our solidarity as workers. A united union membership that challenges harassment is stronger and able to make gains elsewhere too. CUPE has been successful in advocating for healthy, safe and respectful workplaces. This guide provides information and ideas to help locals continue that progress.

A

WHAT IS WORKPLACE HARASSMENT?

Harassment is offensive behaviour that a reasonable person would consider unwelcome.

If the target of harassment considers the behaviour offensive¹ and unwelcome, and a reasonable person would anticipate that response, the behaviour is harassment.

Different laws, collective agreements and other legal texts define harassment differently, but according to overarching legal standards:

- The behaviour can be direct or indirect, obvious or subtle, active or passive.
- It can take written, verbal, physical, electronic or any other form of expression.
- Harassment can be physical, psychological, or a combination of the two.
- The effect on the target of harassment, not the intent of the harasser, defines harassment. “I didn’t mean to offend” or “it was meant as a joke” is not a legitimate defense.
- The person who is the target of harassment is not required to tell the harasser to stop.
- Harassment can be one incident or repeated incidents. It is often several incidents over a period of time. However, it can be a single incident that has a severe impact on the target.

Harassment is illegal under a number of laws and prohibited by policies and collective agreements. Depending on where you work and the type of harassment, it might be illegal or prohibited under:

- The collective agreement
- Employer policies
- Human rights laws
- Occupational health and safety laws
- Employment standards laws
- Labour relations laws
- Workers’ compensation laws
- Tort law
- Sector-specific regulation (e.g. education sector laws that prohibit bullying)
- Criminal law if the harassment involves physical or sexual threat, or assault

¹ There are many other terms used to describe harassing behaviour, including humiliating, insulting, hostile, aggressive, intimidating, coercive, abusive or threatening.

Workplace harassment is either human rights harassment or personal harassment.

1. Human rights harassment is related to discrimination, which is illegal under human rights legislation.

2. Personal harassment is not related to protected human rights characteristics but still illegal under health and safety and other laws.

Human rights harassment

In all jurisdictions, human rights legislation prohibits discrimination-related harassment.

Depending on the jurisdiction of your workplace (provincial, territorial or federal), your list of “prohibited grounds” for discrimination can include: age, sex, race, gender, colour, creed, religion, ethnicity, pregnancy, ancestry, political belief, marital status, family status, language, citizenship, civil status, nationality, place of origin, physical disability, mental disability, criminal conviction, Aboriginal origin, social condition, sexual orientation, gender identity, gender expression, source of income, linguistic background or other grounds.

Consult the law in your jurisdiction for the specific prohibited grounds.

Workers and unions often advocate for new grounds and broader interpretation of existing grounds. For example, discrimination related to gender identity or gender expression is argued under “gender” protection if gender identity or expression are not listed as protected grounds.

The target of harassment might not even have the protected characteristics. For example, a worker who is straight might be the target of “jokes” about being gay. He could claim harassment related to sexual orientation, even though he is not gay.

It is also not necessary for comments to be targeted at an individual. For example, a woman exposed to derogatory comments about women could claim harassment if the behaviour created a hostile work environment for her, even though the comments were not about her or directed at her.

Personal harassment

Personal harassment is any harassment that does not fall under human rights prohibited grounds.

Harassment is a serious occupational hazard. It directly threatens workers' physical and psychological safety, and it makes workers vulnerable to other work hazards. Ontario, Manitoba, Saskatchewan and BC specifically address harassment under health and safety law. In other provinces, workers can use their right to refuse unsafe work or other health and safety rights to prevent or challenge harassment.

Quebec addresses psychological harassment in its employment standards law.

In some jurisdictions, workers are entitled to compensation for physical or psychological injuries related to harassment, and some workers' compensation regimes provide benefits.

A number of provinces have recently addressed bullying in regulation for the education sector. Members who work in the education or post-secondary sector might be able to use these rules to challenge harassment.

Laws and rules on harassment are evolving. Consult your servicing representative for current information in your jurisdiction.

The term "workplace" in workplace harassment is broadly defined. Harassment can occur at functions and locations related to the workplace, such as conferences, training sessions, social gatherings, work travel, work email, a client's home or other work-related situations.

The harasser or target can be:

- A supervisor, manager, board member or other employer representative.
- A co-worker.
- A client, patient, student or parent (a group we will call user/client in this document).
- A contractor, community member or other visitor or member of the public coming into the worksite.
- One person or a number of people. (In this guide, we say "harasser" and "target", for ease of reading, but incidents can involve groups.)

Harassing behaviours could include:

- Spreading malicious rumours, gossip or innuendo.
- Persistently criticizing, demeaning or ridiculing a person.
- Undermining or deliberately impeding a person's work.
- Excluding or isolating someone.
- Verbal threats or abuse.
- Physical threats or assault.
- Calling someone derogatory names.
- Teasing or joking about a person.
- Hazing or pranks.
- Displaying offensive posters, cartoons, images or other visuals.
- Making aggressive or threatening gestures.
- Unwelcome invitations or requests.
- Vandalizing or hiding personal belongings or work equipment.
- Unwelcome physical contact.
- Publicly ridiculing or disciplining.
- Blocking applications for leaves, training or promotion.

A wide range of behaviour falls under harassment, from persistent teasing to assaults. It all counts. Union locals should support members concerned about harassment, whatever the form and degree of severity.

Harassment is not:

- Consensual workplace banter and interactions.
- Reasonable management action carried out in a fair way, like day-to-day actions by a supervisor or manager related to performance, absenteeism, assignments, discipline and even dismissal – as long as they respect the collective agreement, policies and legislation, are reasonable and are not abusive or discriminatory.
- Every workplace disagreement, though if a conflict is poorly handled or left unresolved, it can lead to harassment. Unlike harassment, healthy conflict can be a constructive rather than a destructive process.

Harassment is a **form of violence**. See CUPE's violence prevention kit at cupe.ca/health-and-safety for information and tools on other forms of violence.

The term **bullying** is defined in different ways; it can be either the same as harassment or a form of harassment. Bullying is not specifically mentioned in health and safety or human rights legislation. (BC refers to bullying in policy related to health and safety law, as a synonym for harassment.) In other laws and rules, bullying is sometimes defined more narrowly than harassment. For example, the definition of bullying might require intent, repetition or threat, or equate bullying with only personal harassment or psychological harassment.

Terms used to describe harassment include:

- Bullying
- Mobbing
- Abuse
- Workplace aggression
- Worker-to-worker violence
- Victimization
- Hazing
- Social undermining

We use the term harassment in this guide because it is clearer, stronger and used more often in laws and policies. In a harassment case, consider all legal avenues, whatever the terminology.

B WHAT ARE THE EFFECTS OF HARASSMENT?

Workers as targets can:

- Be blamed, disbelieved and isolated
- Develop health problems, such as anxiety, depression, and post-traumatic stress
- Get injured
- Need sick leave or other absences from work
- Lose out on training, promotion or transfer opportunities
- Lose income or even their job

Workers as witnesses can:

- Suffer many of the same consequences
- Be afraid to support or help the target, fearing they may also be harassed
- Join in, participating in the harassing behaviour

Workers as a group can:

- Become divided by harassment, undermining worker solidarity and union strength

Employers face:

- High turnover, absenteeism, use of sick leave, and long-term disability costs
- Increased risk of errors and accidents
- Decreased morale, productivity and motivation
- Recruitment problems and training costs
- Expensive investigations, arbitration, court costs, and potential financial and legal liability

Users/clients can:

- Suffer worse quality of care or service when there is high turnover, absenteeism or a poisoned environment
- Be harassed themselves

Workers who are marginalized by sexism, misogyny, homophobia, transphobia, racism, colonialism, ableism and other forms of oppression face particular challenges. For example, research suggests that racialized workers, compared to their co-workers, are more likely to be attacked on personal characteristics rather than work performance. Women are less likely than men to have their reports of harassment recognized as work-related and even less likely to be compensated for related workplace illness.

Workers belonging to more than one equity-seeking group can experience multiple forms of harassment, making the effects more complex and usually worse. For example, a racialized woman can face sexual and racial harassment at the same time – with worse outcomes as a result.

C

WHAT CAN THE LOCAL UNION DO?

Make sure employers carry out their responsibilities

By law employers must provide a work environment that is free from harassment. Employers control the organization and are therefore the only ones who can ensure a healthy and safe work environment. A general statement in a workplace anti-harassment policy or collective agreement may state that the union supports the employer's attempts to create a harassment-free work environment.

Employers cannot guarantee that no harassment will occur, but they must:

- Do everything they can to prevent harassment, and not ignore the signs.
- Protect workers, investigate, and follow up when they become aware of harassment.

Preventative measures might include establishing workplace arrangements that minimize the hazards that lead to harassment. For example, in an environment where clients are often verbally aggressive, an employer might establish a process to screen calls and quickly direct angry customers to a manager.

Negotiate and enforce collective agreement language and policy

Many collective agreements have language that prohibits harassment, and many workplaces have an anti-harassment policy statement. See *page 15* for a summary of what that language and policy should include.

Depending on your jurisdiction, your employer might be required by law to develop and implement an anti-harassment policy.

Many collective agreements have language in other areas that relate to harassment, such as discrimination, violence, health and safety, workload and duty to accommodate.

Harassment can be grieved even when the collective agreement doesn't mention it. Further, a collective agreement cannot diminish rights that an employee has under law. For example, the employer and union cannot agree to a definition of harassment that is weaker than what is in legislation. This applies to both human rights and personal harassment.

An arbitrator can also apply the law even if the collective agreement is silent on the issue of harassment. For example, an arbitrator can apply rules against discrimination or unsafe work in a harassment case, even if there is nothing that specifically applies in the collective agreement.

Members can use the grievance procedure to get the employer to comply with the law. A union that does not support members facing harassment is potentially liable under human rights law and duty of fair representation.

If you are filing a grievance relying on the law instead of specific collective agreement language, seek advice on how to word the grievance in your jurisdiction.

Demand better working conditions

Often an incident of harassment is the tip of the iceberg, signaling an unhealthy workplace climate and wider power-relationship problems. The union doesn't have to wait for harassment to occur to take action. We can improve workplace conditions through bargaining, mobilization, lobbying, and other collective actions.

Understaffing, job insecurity and other characteristics of the work environment contribute to harassment and are a form of structural violence. Structural violence describes how institutions and social practices cause physical and psychological harm. Structural oppression – discrimination that is built into our culture, rules, and institutions like the workplace – is also a form of structural violence and contributes to harassment. Restructuring, cuts and privatization make these conditions worse. For more on these aspects of harassment, see the CUPE document *Workplace Harassment and Mental Injuries: Examining Root Causes*.

Specific, concrete and enforceable legal rights that address root causes of harassment are the most effective way to combat structural violence and oppression. For example, legislated minimum staffing levels, no-contracting-out language in collective agreements, and employment equity programs can reduce harassment through healthier working conditions.

Promote a harassment-free environment within the union

Establish an internal (union) anti-harassment policy, code of conduct and equality statement to provide a harassment-free union environment. Include anti-discrimination and anti-harassment language in the local bylaws. It may be helpful to refer to CUPE's national Code of Conduct (see Appendix B in CUPE's Guide to Preparing Local Union Bylaws) and Equality Statement.

Train union leaders and stewards to recognize and challenge harassment. CUPE offers workshops on violence, harassment, human rights, and health and safety. Find out more from your servicing representative.

If you see inappropriate behaviour deal with it head on, especially in the union environment, like a local meeting. Show members the union doesn't accept harassment.

Appoint someone on the executive to deal with harassment issues.

Write articles for your website or newsletter about harassment, members' rights, and ways to stop or prevent harassment.

Survey members about their experiences with harassment and discrimination.

Build alliances with local community groups fighting discrimination and violence. For example, invite a speaker to a union event, sponsor a community event, or support a joint action.

The union's actions on harassment send an important message. Members can be reluctant to come forward with concerns about harassment. Members who trust the union to challenge harassment and advocate for a harassment-free workplace are more likely to come forward.

Support members affected by harassment

In addition to the collective actions described above, the local union offers support to individual members affected by harassment. This section describes members' rights and concrete steps union representatives can take.

Members' rights

The union has a legal duty to represent all members of the bargaining unit affected by the harassment.

The complainant (target) has the right to:

- Work in a healthy and safe work environment.
- Have a complaint heard and receive a fair, unbiased investigation of the facts.
- Have a union representative with them at any time during the complaint process.
- Confidentiality.
- Be free from retaliation for filing a complaint.

The respondent (alleged harasser) has the right to:

- Work in a healthy and safe work environment.
- Know the full nature of the allegations in order to make a full response.
- Have their response heard and receive a fair, unbiased investigation of the facts.
- Confidentiality.
- Fair discipline, should discipline occur.
- Union representation as provided by the collective agreement during any investigation and discipline procedure.

Other members have the right to:

- Work in a healthy and safe work environment.
- Receive support if they have witnessed and been harmed by harassment.
- Be free from retaliation for participating in an investigation.

First steps

When a member comes to the union with a harassment issue, or the union learns of alleged harassment another way, talk with the target as soon as possible about their experience, needs and options.

The person who takes the complaint may or may not be the person who carries out the investigation. Union stewards, officials or other member representatives handling harassment should have harassment expertise and be trusted by the member.

Listen without judgment and offer the member support. Talking about harassment can be difficult for the target. Acknowledge this difficulty and show that you take the complaint seriously.

Clarify the facts and encourage the member to collect evidence. The member should keep a record of all incidents: the time, date, location, what was said or done, and any witnesses. Evidence might include emails, handwritten notes, photographs or physical evidence like vandalized personal belongings.

Take notes in case there is a grievance or other followup. Find out what happened, where, when and who was involved.

Ask your servicing representative for advice on handling investigations.

Harassment is a sensitive issue. Treat all parts of the harassment investigation carefully and with strict confidentiality.

Provide information on the options for going forward.

Informal resolution

In some cases of co-worker harassment, a member might want to resolve the problem without going to the employer. If the complainant agrees, talk to the respondent about the concerns and arrange a meeting between the members to resolve the problem.

If the complainant wants support confronting the alleged harasser, accompany them. This situation might require two stewards – one to represent the complainant and one the respondent.

Some members opt for a group circle, mediation or other alternative dispute resolution processes.

Sometimes a respected neutral person can act as informal facilitator. They might be a member of the local, or someone external.

In many cases, a firm demand to stop the harassment will work. The harassment will not go away if it's ignored.

Try to resolve co-worker harassment informally only if the target chooses this route; it might not be a safe option. People who have been harassed do not have to confront the alleged harasser. They can directly file a grievance or other complaint. Always leave open the opportunity to proceed formally.

Involve management in an informal resolution if appropriate. Support the member in raising the issue with their manager (or someone higher up if their manager is the alleged harasser) or the human resources department, if the target chooses this option. The member might feel unable to raise the matter directly and want you to handle this communication.

Formal complaint

Circumstances vary in harassment situations. If informal resolution is not possible or advisable, support the member in filing a complaint with the employer or, if necessary, file a grievance, use an alternative dispute resolution process, or pursue other legal avenues. Grievance time limits always apply.

The order and labeling of the processes are not set in stone; sometimes a formal complaint is the first step, followed by informal resolution, and alternative dispute resolution can be either formal or informal.

Depending on the situation, use no-discrimination, anti-harassment, violence, health and safety² or other language in your collective agreement to file a complaint or a grievance. You can also refer to relevant human rights, health and safety or other legislation.

The union should not be a partner in an employer investigation of a harassment complaint. Co-facilitating a process that leads to the discipline of a member could lead to a conflict of interest.

For investigation of co-worker harassment complaints, assign different union representatives for the complainant and respondent. Establish a “firewall” between them; the two representatives should not communicate about the complaint.

Make sure the steps in the grievance procedure or other complaint resolution process are followed as quickly as possible.

Maintain confidentiality as much as possible. The union should try to prevent gossip and protect the members’ privacy. However, the target must self-identify and name the alleged harasser in a complaint, and if the complaint goes to formal adjudication, what they say to the employer cannot be confidential.

Protect the target from isolation, demotion, forced transfer, increased workload or other negative repercussions from co-workers or the employer.

If the complainant and respondent need to be kept apart at any step in the process, talk with your servicing representative about negotiating those arrangements with the employer. Try to ensure the impact of any changes does not punish the complainant, for example changing their shift or assignment against their wishes.

Negotiate a protocol with the employer for union representation of witnesses, and ensure witnesses are on paid time. Many members are nervous about being interviewed during an investigation and want union representation.

Keep a record of any recommendations made against the employer by an arbitrator, human rights tribunal or other third party, and ensure the employer follows through. If there is another case involving similar facts and the employer failed to comply with previous recommendations, the employer’s liability will increase.

² Pursue a health and safety complaint through the health and safety committee or staff representative.

Other actions

Whatever the process (informal resolution or a formal complaint), the union has other responsibilities.

Be pro-active. Watch for signs of harassment, patterns and root causes. For example, high absenteeism and stress levels, turnover of particular groups in a department or sudden changes in a member's behaviour might indicate a problem. Take action to reduce and eliminate the hazards and factors that contribute to harassment. See CUPE's violence prevention kit for more information on dealing with harassment as a health and safety issue.

People who experience or witness harassment might fear embarrassment, retaliation or isolation if they draw attention to the problem. The union should inquire carefully and do what it can to protect members from negative consequences. Find union members or counsellors who can support the target and witnesses, as needed. Explore Employee Assistance Plan options.

Help the target secure sick leave (or another type of leave) or file a workers' compensation claim, as needed. Lost time due to stress may be compensable.

Help the target get a temporary work reassignment if necessary.

Ensure that harassment complaints are handled in a culturally safe way, respecting the cultural values and practices of members involved.

When to involve the police

Some harassment has a criminal element (for example physical or sexual assault or death threats). If it occurs in the workplace, approach the employer and suggest they get legal advice about involving the police. The union may need to go up the chain of command if the manager who is approached doesn't act.

If the police are involved and demand that the union turn over its records, tell them to get a warrant and get specific legal advice immediately.

There are special considerations when members face criminal charges, but normally the union still has a duty to investigate and file a grievance where appropriate. Consult your servicing representative about getting specific legal advice.

CHECKLIST FOR ANTI-HARASSMENT CONTRACT LANGUAGE OR POLICY

Strong anti-harassment language and policy helps the employer prevent and address harassment. It also helps workers understand what harassment is, how it can happen, what the law says, appropriate responses, and how to eliminate or at least minimize it in the workplace.

Your anti-harassment collective agreement clause and employer policy should:

- State the employer's responsibility to provide a harassment-free workplace.
- Define harassment, for example as offensive behaviour that a reasonable person should have known would be unwelcome. Refer to human rights, health and safety and other laws, for example listing the prohibited grounds of discrimination. See Section A of this guide for more information on what should be covered by the definition of harassment, for example:
 - Behaviour can be direct or indirect, obvious or subtle and in any form of expression
 - Repeated incidents or one serious incident
 - Psychological or physical
 - Human rights or personal
 - Workplace is broadly defined
 - Effects not intent matter
 - Harasser can be a supervisor, co-worker, user/client or other person in the workplace
 - Examples of harassment, noting that the list is not exhaustive

- ❑ State how the employer will prevent and correct harassment (see Section C of this guide), for example the employer will:
 - Prevent harassment
 - Provide a harassment-free work environment
 - Treat all complaints seriously and deal with harassment situations immediately upon becoming aware of them, whether or not a formal complaint has been made
 - Provide a fair, timely and effective process for investigating and resolving incidents and complaints
 - Treat complaints in a sensitive and confidential manner
 - Encourage the reporting of behaviour which breaches the policy
 - Ensure protection from retaliation
 - Provide workers who are targets and witnesses with counseling, accommodation or other support
 - Inform the union, for example send the union all investigation reports
 - Train supervisors and workers when they are hired and on an ongoing basis
 - Inform workers of the policy statement and steps taken to prevent harassment
 - Commit to eliminate the hazards and control the risk factors for harassment, including work environment factors

- ❑ Include language that says that nothing in the collective agreement affects the right of an employee subjected to harassment to seek any available legal remedy.

- ❑ Require an annual review of the policy and its implementation.

Ask your servicing representative for sample contract and policy language or other advice.

