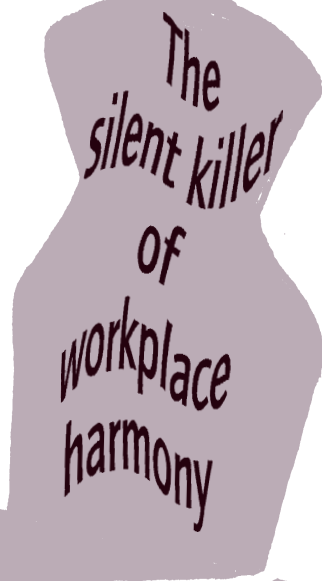




How to write a policy to prevent

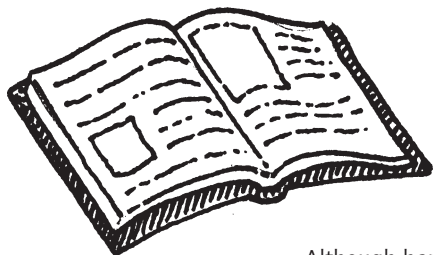
Harassment

by Louise Pohl



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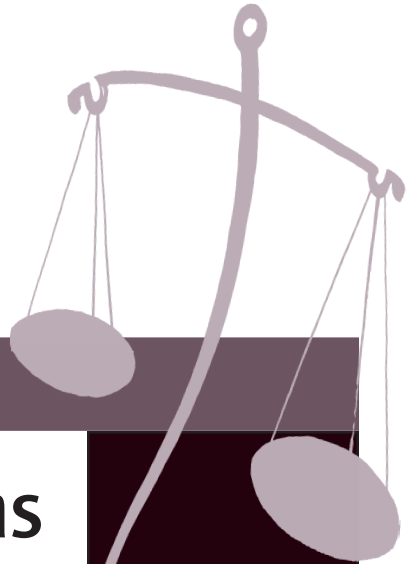
Although harassment is a form of discrimination (see the *Glossary*), for the purpose of this manual, the word harassment will be used more frequently. In most cases, you could substitute or add the word discrimination without affecting the meaning. For example, you could have a Harassment Policy, a Discrimination Policy or a Harassment and Discrimination Policy.

Section 1

Legal obligations for employers and employees

Employer
liability

The scope
of human
rights law





Section 1: Legal obligations for employers and employees

This section of the manual briefly reviews the precedent-setting Supreme Court decision that resulted in employer liability for harassment in the workplace. It also defines the scope of human rights law, including areas of our lives covered by the legislation, time limits, and protected categories.

Employer liability

In 1987, the Supreme Court of Canada made a precedent-setting decision affecting all workplaces in Canada. In the case of *Robichaud v. Canada (Treasury Board)*, a finding of sexual harassment was made against Bonnie Robichaud's supervisor but, more importantly, the Court stated: "it must be admitted that only an employer can remedy undesirable effects; only an employer can provide the most important remedy – a healthy environment."

Because of the broad nature of this Supreme Court ruling, it is accepted that employers are liable in virtually all circumstances for any harassment carried out by their employees. Interaction between co-workers outside the workplace may or may not involve employer liability, depending on whether that interaction impacts workplace behaviour and opportunity. For example, inappropriate behaviour that occurs between two employees at an office party, while attending a work-related conference, or at a working lunch or dinner could be harassment under human rights law.

Although you cannot avoid your liability, you can take certain steps to foster a harassment-free work environment. It is important that you, as an employer:

- act quickly and effectively when concerns are brought to your attention

- develop a harassment policy
- educate your employees about the policy

Individual employees begin to bear some responsibility where employers have taken reasonable steps to prevent harassment and deal with reports of alleged inappropriate behaviour.

The scope of human rights law

In Canada, human rights law is second only to the *Canadian Charter of Rights and Freedoms* in terms of authority and so overrides federal and provincial legislation and collective agreements. Although very powerful, human rights law is narrow in its application.

Human rights law prohibits discrimination in only three areas:

- employment
- service customarily available to the public
- tenancy

Since this document deals with harassment in the workplace, it will only examine the first category: employment.

The legislation prohibits employers from refusing to hire people because of their membership in one of the protected groups defined by that legislation. In addition, an employer is prohibited from discriminating with respect to dismissals, lay-offs, promotions, transfers, or any other term or condition of employment. Harassment is one way in which discriminating conditions of employment can occur.

Time limits

In order to file a harassment complaint with an appropriate human rights agency, a person is limited to the protected categories named in the relevant human rights legislation, for example, religion, age, disability, or race.

There is also a time limit from the last occurrence of the behaviour until a complaint is filed – usually six months to one year.

Examples of protected categories

Every province in Canada has human rights legislation defining the protected groups in that province. There is also federal human rights legislation covering employees of agencies under federal jurisdiction regardless of the province where they are located.

Some examples of employees covered federally are those working for:

- Canada Post
- Department of National Defence or other federal departments
- Air Canada, Via Rail Canada, or other transportation companies regulated at the federal level
- telecommunications organizations
- federal corrections institutions

The protected categories in the *Canadian Human Rights Act* are: race, national or ethnic origin, colour, religion, age, sex, marital or family status, physical or mental disability, conviction for which a pardon has been granted, or sexual orientation.

By comparison, the *BC Human Rights Code* contains the following protected categories: race, colour, ancestry, place of origin, religion, political belief, marital or family status, physical or mental disability, sex, sexual orientation, age, or criminal or summary conviction unrelated to the employment.

For the protected groups in other provinces and territories, see *Appendix A*.



CHECKLIST

- ✓ Are you clear about your liability regarding harassment in your workplace?
- ✓ What are you prepared to do to fulfill your legal obligations?
- ✓ What are the protected categories in your human rights legislation?