

Workplace Harassment Toolkit

Information, Policies, and Procedures



CHIEFS OF ONTARIO
JUSTICE DEPARTMENT



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The Chiefs of Ontario Overview

The Chiefs of Ontario supports all First Nations in Ontario as they assert their sovereignty, jurisdiction, and their chosen expression of nationhood.

Guided by the Chiefs in Assembly, we uphold self-determination efforts of the Anishinaabek, Mushkegowuk, Onkwehonwe, and Lenape Peoples in protecting and exercising their inherent and Treaty rights. Keeping in mind the wisdom of our Elders, and the future for our youth, we continue to create the path forward in building our Nations as strong, healthy Peoples respectful of ourselves, each other, and all creation. The activities of the Chiefs of Ontario are mandated through and guided by:

- Resolutions passed by the Chiefs-in-Assembly of the 133 First Nations in Ontario;
- The Leadership Council made up of the Grand Chiefs of Political Territorial Organizations (PTOs) and the Independent and unaffiliated First Nations; and
- The elected Regional Chief for the Chiefs of Ontario.

Vision

First Nations in Ontario are united towards self-sufficiency and vibrancy while never forgetting who we are; this unity is facilitated through the Chiefs of Ontario. We envision a future where our inherent laws, lands, and traditions are recognized and respected by governments, industry, and the general public.

BACKGROUND

The Chiefs of Ontario has received funding from the Department of Justice Canada for a legal education project about sexual harassment in the workplace. The following toolkit is a component of this project.

This toolkit does not contain legal advice, it is intended to provide tips for individuals, employers, and community leaders about how to recognize and address sexual harassment in the community and in the workplace. This information is up to date as of January 2022. It is important to recognize that the law, or best practices, may change.

If you are in imminent danger, call 9-1-1 or the emergency response services in your community.

If any of the information contained within this toolkit is triggering, please reach out to your family, friends, support systems, or connect with help lines such as the First Nations and Inuit Hope for Wellness Help Line and Talk 4 Healing. **Contact information for these resources** can be found at the end of this toolkit.

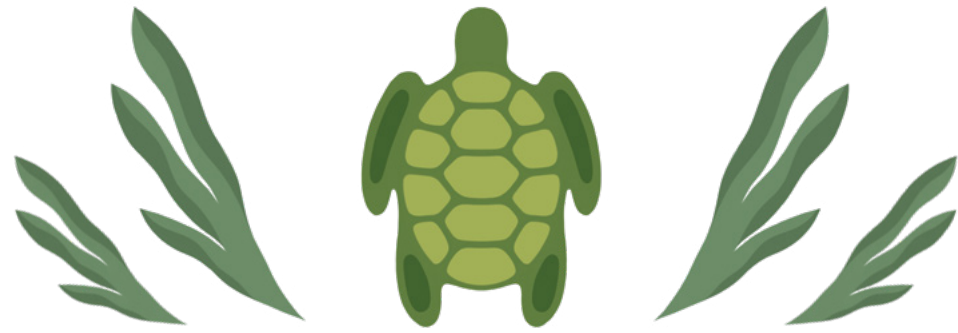
INTRODUCTION

Welcome to the Workplace Harassment Toolkit, a repository of information to help guide you in your understanding of how to create and maintain healthy relationships in the workplace, whether you are an employee, employer, witness or bystander, or ally. The Chiefs of Ontario has created this toolkit to provide information relevant to anyone involved in the workplace. Whether you are preparing to enter the workforce or have decades of experience, this toolkit will provide valuable insight into promoting healthy workplace cultures, asserting your rights, knowing your obligations and best practices along the way.

This toolkit is one initiative within the Sexual Harassment in the Workplace Project, a project meant to develop and share legal information with employees and employers across Ontario. Sexual harassment is an issue that can be present in any workplace under any circumstances. As an advocacy and support organization for First Nations in Ontario, we want to ensure that a First Nations lens is applied to this issue. This is why the Sexual Harassment in the Workplace Project is a First Nations-focused, holistic response to sexual violence and abuse, acknowledging that workplaces are integral to our daily lives and supporting our communities. These spaces should be safe, enriching, and protect our physical and psychological well-being. In the future, further training, webinars, and resources will be developed building on the topics within the toolkit with a particular focus on sexual harassment.

Understanding our rights and obligations can feel confusing and, at times, overwhelming. Sometimes we are unaware of what we should know or ask when it comes to our workplaces. This toolkit is meant to equip the reader with enough foundational information to approach your employer with a question or incident and feel empowered to speak up about concerns about well-being in the workplace. It will also allow employers to proactively review their policies, ensure they follow legislation and regulations, and better support healthy work environments.

The toolkit is divided into three parts, with **Part I** providing the necessary background to identifying harassment, how it can be experienced by individuals and how it can affect the overall workplace, along with the legal frameworks to assert your rights and the legal services that can provide support in applying this information to your own situations in the workplace. **Part II** will move into the federal and provincial expectations for the workplace and complaint processes in setting the culture and tone for workplace well-being that is transparent and embraced by all employees. This part highlights the importance of First Nation-led policies, incorporating values, teachings, and dispute resolution. Finally, there is an **Appendix** with template policies and procedures to provide a reference for Human Resources managers, office administrations and employers.



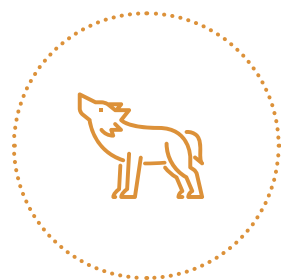
Message from Elder Donna Debassige, Wiikwemkoong Unceded Territory

As Indigenous people, we have been gifted with the Sacred Grandfather teachings that give us fundamental values to guide us. Included with that is the concept of consensus-building to reach mutually-beneficial closure of any difficult situations, always with the intention of restoring balance in relationships with peace and harmony.

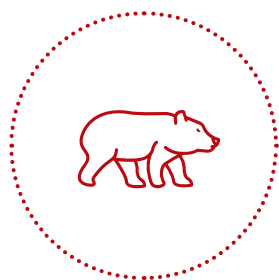
To live with these values and restore balance, it is important that we find our voices, to tell someone when there is bullying or violence in the workplace. A lot of the time, we'll talk about it at the kitchen table or with our best friends, but we don't bring it forward for a resolution.

How do we begin to find our voice? One way is understanding our mutual responsibilities to each other so that we can communicate and interact with each other with respect and kindness. This is grounded in our teachings. It is also having the information about your rights and knowing how to communicate your experiences of difficult situations so that others can help you and seek resolutions. The information in this toolkit is one part of a larger conversation around safe spaces and restoring balance.

THE 7 GRANDFATHER TEACHINGS:



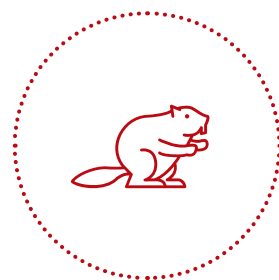
HUMILITY



BRAVERY



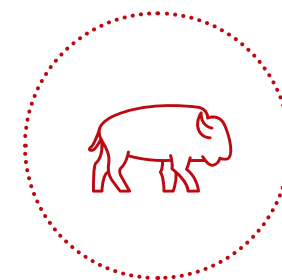
HONESTY



WISDOM



TRUTH



RESPECT



LOVE

Glossary

This Toolkit is intended to increase access to justice through accessible, plain language information. Given that these topics are often within a legal context, we wanted to include the following definitions so that you may become more familiar and comfortable with them.

Discrimination: Discrimination is an action or a decision that treats a person or a group badly for reasons such as their race, age or disability.

Federally Regulated: Industries and workplaces that abide by and are accountable to federal laws and policies. For workplaces, this would include the Canada Labour Code and the Human Rights Act.

Harassment: Comments or conduct that is abusing, insulting, threatening or otherwise unwelcomed. It can cause feelings of shame, hurt, annoyance, vulnerability, and isolation.

Jurisdiction: Applicable laws and institutions based on whether your situation is governed by rules of a particular province or the federal government.

Poisoned Work Environment: A workplace where there is gossip, discriminatory remarks, and negative attitudes that are shared amongst coworkers, even if it is not directed towards anyone in the office, can create a poisoned work environment.

Provincially Regulated: Industries and workplaces that abide by and are accountable to provincial laws and policies. For workplaces, this would include the Ontario Employment Standards, Occupational Health and Safety, and Ontario Human Rights Code.

Reprisal: Any punishment, retaliation, or threat of retaliation, including being fired, denied opportunities at work, suspension, or discipline (or threatening to do so), intimidating or coercing you.

Workplace: Anywhere that the employee is engaged in work for the employer.



PART I: Understanding Workplace Issues

Workplace and Employment

Before we get into various workplace issues, it is important to understand what we mean when we say "workplace." The definition of workplace may seem obvious to many employees who routinely enter their place of employment in the morning, afternoon, or evening, sign in or sit at their desks and begin their work for the day. But what about working from home arrangements? Travelling to an assembly? A summer student?

To begin, the workplace is more than one physical space; it is anywhere that the employee is engaged in work for the employer.¹ This includes how employees connect online, via social media platforms or emails, and in-person at conferences and assemblies. Working from home and experiences of domestic violence can also enter the realm of workplace violence and harassment. The employer has an obligation to make all these spaces safe and free from harassment and discrimination. We will explore these further throughout the toolkit.

Temporary employment such as summer students, internships, or short-term contracts are still considered employment and, therefore, have the same rights in the workplace. Even a job interview where you are not yet employed is still considered employment. If you, as someone who has applied or interviewed for a job, feel the decision on your employment was due to turning down a sexual advance or because of a disability, age, or other discriminatory factors, you are entitled to seek a resolution.

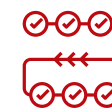
Common Workplace Issues

There are various types of workplace issues that can arise from working alongside coworkers, manager/supervisors, trusted individuals in the community, a client, or a community member.

To create safe and positive workplaces, we need to be able to identify harassment, discrimination, and lateral violence. Without acknowledging what these look like, we may not have the tools needed to address them.

HARASSMENT

The legal definition of harassment is "to engage in a course of vexatious comment or conduct that is known or ought to reasonably be known to be unwelcome".² There are several components to this definition that can be broken down into parts.



A "course" of comment or conduct means that harassment is typically more than one incident (although one incident, depending on severity, can still constitute harassment)



"Vexatious" means conduct that cause feelings of frustration, annoyance, and/or shame and vulnerability.



When an incident "ought to reasonably be known as unwelcome," it means others would also define it as harassment.

It is important to note that identifying harassment is usually based on case-by-case circumstances. For instance, if an employer is providing critical feedback that you do not like as part of their performance management responsibilities, this would not constitute harassment.

All employees/workers have the right to a workplace that is free of harassment. The employer has an obligation to provide its employees with a workplace environment that is free from harassment and discrimination. This includes being free from harassment and discrimination from coworkers, managers as well as non-employees such as subcontractors or community members.

Workplace harassment is illegal. Workplace harassment also leads to many non-legal effects, like loss of productivity, physical and psychological harm, staff turnover, low morale, negative publicity, and future recruitment issues. Harassment, if left unchecked, can escalate into workplace violence.

All employees/workers, including supervisors, are required to:

- Treat coworkers with respect
- Comply with their workplace's harassment prevention policy
- Report incidents of harassment in accordance with their workplace's reporting procedures
- Cooperate in any harassment investigations
- Refrain from reprisals (not retaliate or punish someone who reports incidents of harassment)

DISCRIMINATION AND HUMAN RIGHTS

Harassment and violence become a human rights violation when the incident(s) arise from discrimination, including being targeted or treated differently, or harassed based on the following protected grounds:³

- Disability
 - Age
 - Creed
 - Sex/pregnancy
 - Family status
 - Marital status
 - Sexual orientation
- Gender identity
 - Gender expression citizenship
 - Race
 - Place of origin
 - Ethnic origin
 - Colour
 - Ancestry

Discrimination includes negative attitudes that can be expressed as “isms” (ageism, sexism, racism, etc.) and refer to a way of thinking about other persons based on negative stereotypes about race, age, sex, etc. When people are stereotyped, all people in the group are given the same characteristics, regardless of their individual differences.⁴

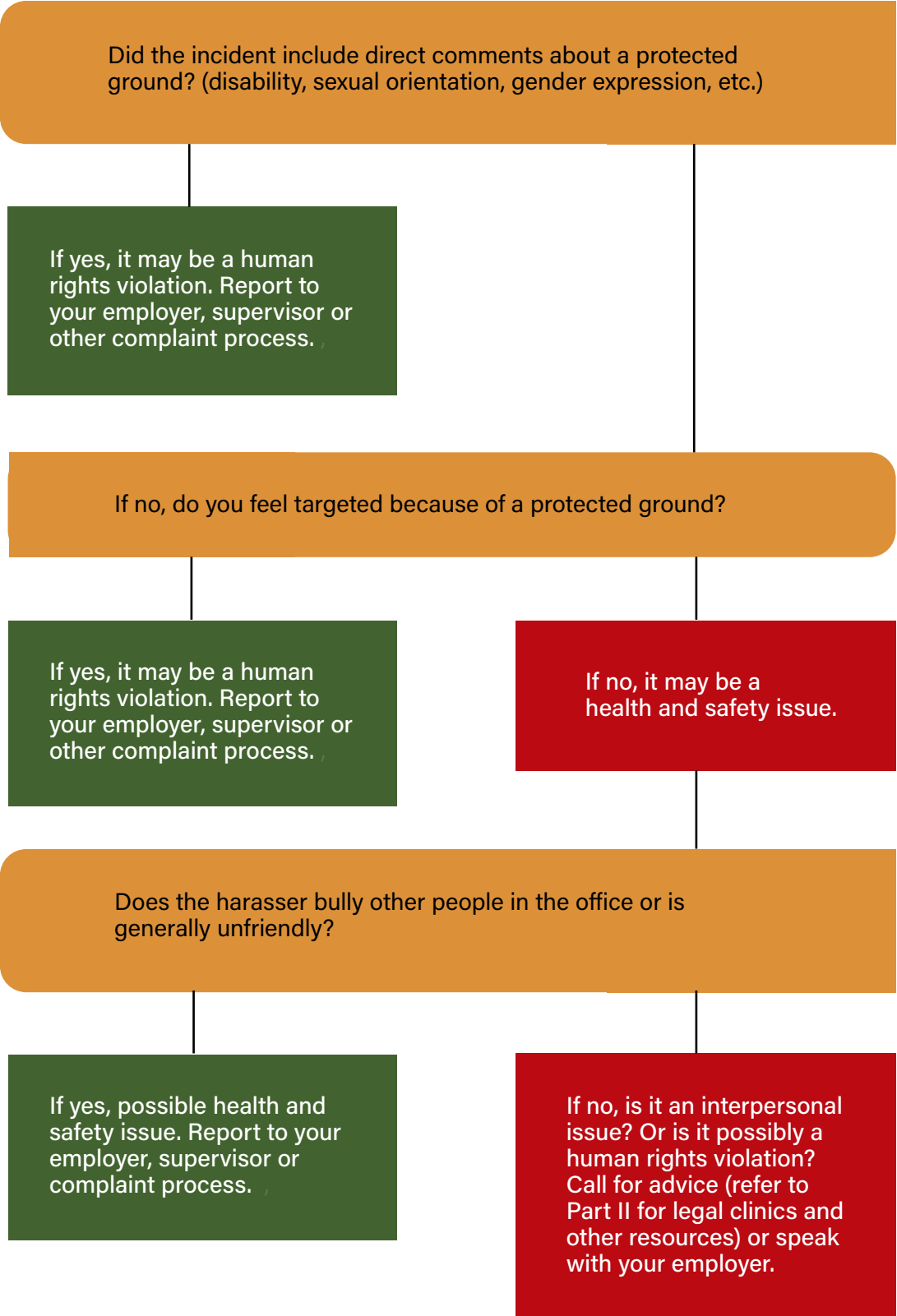
GENERAL HARASSMENT OR HUMAN RIGHTS VIOLATION

As an employee facing difficulties in the workplace such as harassment and/or discrimination, the ability to identify and communicate the type of issue you are experiencing may help you in seeking a resolution. For instance, general harassment and discrimination based on the protected code grounds listed above are two different experiences.

The following decision tree may aid you in understanding different types of harassment. This will help you be able to spot them when you see them and know what avenues might be available, what legislation might apply, and where you would want to call for legal information, which is found at the beginning of **Part II** of the toolkit.

There can be many grey areas where there is not a clear distinction between general harassment and discrimination. You are not expected to determine this alone. Whether you call a legal aid clinic or other public legal information centres, they will do their best to point you in the right direction based on a particular situation.

HARASSMENT FLOW CHART



LATERAL VIOLENCE

Lateral violence is a form of bullying and harassment that may impact First Nation communities. It differs from general workplace violence in that it is a cycle of abuse rooted in factors such as colonization, oppression, intergenerational trauma and the ongoing experience of racism and discrimination.⁵ When trying to resolve or get help for an issue of lateral violence, it will most likely be resolved in the same ways as other forms of harassment. These pathways are outlined in **Part II** of the Toolkit. However, it can be helpful to know when a particular situation is lateral violence, as it will likely need a more trauma-informed approach and a culturally-specific resolution.

EXAMPLES OF LATERAL VIOLENCE:

- Nonverbal intimidation (raising eyebrows, making faces, eye rolling)
- Sarcasm
- Yelling or using profanity
- Handing over work assignments with unreasonable deadlines or duties that will ensure the person will fail
- Obvious name calling
- Bickering
- Making snide comments and remarks
- Being purposely unavailable to meet with staff
- Whining
- Blaming
- Making jokes that are offensive by spoken word or email
- Belittling a person's opinions
- Making up and/or exaggerating scenarios
- Repeating rumours
- Undermining activities
- Using put downs
- Gossiping
- Ignoring, excluding, or freezing out people
- Withholding information or giving the wrong information purposely
- Constantly changing work guidelines
- Blocking requests for a promotion, leave or training
- Not giving enough work so the individual will feel useless
- Refusing to work with someone
- Backstabbing
- Complaining to peers and not confronting the individual
- Failing to respect privacy
- Breaking the confidences of others

When someone is experiencing lateral violence, it can cause the following mental, emotional, and physical issues. It is important for an employer, human resources, and health and safety committees to be able to spot the following harms that are created by lateral violence so that they know when someone may need help:

- Sleep disorders – either too little or too much sleep;
- Changes in eating habits – either eating more or less or differently;
- Weight loss or gain;
- Moodiness;
- Self-doubt – you question all your decisions and abilities;
- Decreased self confidence;
- Feelings of worthlessness;
- Forgetfulness;
- Chronic anxiety;
- Depression;
- Emotional and teary eyed;
- Missing work more often; and Weakening immune system – getting sick or illnesses more frequently

A workplace may be experiencing lateral violence when there is an atmosphere of the following:

- High staff turnover;
- Loss of corporate history;
- Low morale;
- Decreased customer service;
- Increased financial costs;
- Increased absenteeism;
- Lack of teamwork; and
- Unhealthy competition

POISONED WORK ENVIRONMENT

A workplace where there is gossip, discriminatory remarks, and negative attitudes, even if it is not directed towards anyone in particular, can create a poisoned work environment.⁶ For instance, if a co-worker makes a comment about a customer, patient, or community member that involve their age or reputation in the community, it can cause anxiety or worry that these opinions are held about employees in the workplace.

While a poisoned work environment is not harassment, it relates to the discrimination and psychological well-being in the workplace. Much like the atmosphere created by lateral violence, it is damaging to the employee's well-being and overall productivity in the workplace.

Whether the employer overhears these remarks or are informed by an employee, they have an obligation to address it and create a more positive, inclusive work environment. Having the proper policies and protocols in place, such as the ones in **Part II** of this toolkit, is a minimum standard for creating this type of work environment.

FAMILY (DOMESTIC) VIOLENCE

The Canadian Centre for Occupational Health and Safety describes family (domestic) violence as any form of abuse or neglect that a child or adult experiences from a family member, or from someone with whom they have an intimate relationship. It has also been described as the abuse of power within relationships of family, trust or dependency that endangers another person.⁷

Overall, family (or domestic) violence is a pattern of behaviour used by one person to gain power and control over another with whom they have or have had an intimate relationship. It can include many forms of behaviours.

There are additional dimensions to harassment and violence in a family relationship that are unique, such as:

- Using property, pets, or children to threaten and intimidate
- Not arriving for child care
- Economic abuse such as withholding or stealing money, stopping a partner from reporting to work, or from getting or keeping a job
- Sexual, spiritual, or emotional abuse or neglect

Although we may think of family (domestic) violence as a private issue, the effects of this violence often enter the workplace due to the impacts it has on mental, emotional, and physical well-being. An employee may receive harassing or threatening phone calls or inappropriate visits from the family member at the workplace. Their experience of violence may affect their workplace performance and attendance, leading to issues at work.

IDENTIFYING SEXUAL HARASSMENT IN THE WORKPLACE

Sexual harassment is defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to negative job-related consequences for the person experiencing harassment. It attacks the dignity and self-respect of the victim, both as an employee and as a human being. Sexual harassment may be a display of economic power or superiority over another person; it can also result from the learning of unhealthy behaviours or boundaries. It is important to be aware of how your actions affect others and learn healthy communication and boundaries with your coworkers or employees.

EXAMPLES OF SEXUAL AND GENDER-BASED HARASSMENT:

- Demanding hugs
- Invading personal space
- Making unnecessary physical contact, including unwanted touching
- Using language that puts someone down and/or comments toward women (or men, in some cases), sex-specific derogatory names
- Leering or inappropriate staring
- Making gender-related comments about someone's physical characteristics or mannerisms (such as clothing, weight, and appearance)
- Making comments or treating someone badly because they don't conform with sex-role stereotypes
- Showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online)
- Sexual jokes, including passing around written sexual jokes (for example, by e-mail)
- Rough and vulgar humour or language related to gender
- Using sexual or gender-related comments or conduct to bully someone
- Spreading sexual rumours (including online)
- Making suggestive or offensive comments or hints about members of a specific gender
- Making sexual propositions
- Verbally abusing, threatening, or taunting someone based on gender
- Bragging about sexual prowess
- Demanding dates or sexual favours
- Asking questions or talking about sexual activities
- Making an employee dress in a sexualized or gender-specific way
- Acting in a paternalistic way that someone thinks undermines their status or position of responsibility
- Making threats to penalize or otherwise punish a person who refuses to comply with sexual advances (known as reprisal)

Mental Health Resources

Part I of this toolkit has discussed many sensitive topics such as harassment, discrimination and violence that may have triggered many emotions and memories of experiences that relate to these issues.

It is important that as employees, employers, and as human beings, we feel heard and supported when we are going through difficult times.

If you are experiencing any distress or would like to talk to someone, please consider reaching out to any of the following resources:

FIRST NATIONS AND INUIT HOPE FOR WELLNESS HELP LINE

The Hope for Wellness Help Line offers immediate help to all Indigenous peoples across Canada in the following languages: Ojibway, Cree, Inuktitut, English, and French. They provide 24/7 culturally grounded assessment, referrals, counselling, and support in times of crisis, and suicide intervention.

Call: 1-855-242-3310 (toll-free)

Connect to the Hope for Wellness online chat.

TALK 4 HEALING

Talk 4 Healing provides 24/7 culturally sensitive counselling, advice and support to Indigenous women, in the following languages: Ojibway, Oji-Cree, Cree, English, and French.

Call: 1-855-554-4325 or visit the Talk 4 Healing website for online support.



PART II: The Building Blocks of a Safe Workplace

Now that **Part I** is complete, we should have a basic understanding of some of the terminology, examples, and tips for building healthy, harassment-free workplaces. The toolkit will now move into more in-depth advice about federally and provincially legislated workplaces, and the expectations and protections that flow from them that is helpful for both employees and employers. Within this section, there are referrals for seeking additional advice and information based on the different federal and provincial legislation that apply to the workplace.

Federally or Provincially Regulated Workplaces

Jurisdiction is the system of laws and power to make legal decisions and judgements. Jurisdiction matters because it provides the direction on the legal obligations for an employer and protection for the employees. It is what governs the employer and determines who they are accountable to if the legislation is not being enacted properly.

Jurisdiction can be complex, especially when looking at employment on-reserve. As an employee, you are not expected to determine jurisdiction on your own. If you know that your employer is either federally or provincially regulated, you can look to the relevant information on laws and referrals below. If you are unsure, you can contact any of the referrals below to seek further direction and use the following information as general guidelines and standards for the workplace, as all workplaces will have policies and procedures addressing harassment.

LAWS PROHIBITING WORKPLACE HARASSMENT

Both the federal and provincial governments have legislation under human rights and occupational health and safety that prohibit harassment in the workplace.

For employers, it is important to maintain compliance with the most up to date legislation and regulations on workplace violence and harassment. These provide the necessary guidelines and standards for employers to adapt for their workplace.

For employees, understanding the laws where legislation and regulations come from can help you better understand your rights. There are services such as legal clinics and law offices that can assist you in understanding these laws to interpret and apply them to your situation, assess the steps to be taken internally by the employer and where complaints can be made outside of the workplace.

In addition to knowing your rights in the workplace, it is important know that any retaliation or threat of retaliation for asserting your rights is also illegal. This means that there should not be any negative consequences for speaking up about or reporting issues that you or others are facing in the workplace. Acts of reprisal from an employer or manager could include firing (or threatening to do so), suspension or discipline (or threatening to do so), intimidating or coercing you, or imposing a penalty (such as a transfer or reduction of hours).

FEDERAL LEGISLATION (CANADA)

In the federal jurisdiction, the employer's statutory duty to prevent harassment and violence in the workplace is found in the following legislation:

THE CANADIAN HUMAN RIGHTS ACT, R.S.C. 1985, C. H-6 (CHRA)

The Canadian Human Rights Act expressly prohibits harassment in the workplace. Under sections 3 and 14 of the CHRA, harassment is prohibited based on the following grounds of discrimination:

Race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.⁸

CANADA LABOUR CODE

*The Canada Labour Code*⁹ requires the employer to take certain steps to prevent harassment and violence in the workplace. Those steps are found in Workplace Harassment and Violence Prevention Regulations, SOR/2020-130.¹⁰

FEDERAL REFERRALS

If you feel you are in immediate danger, call 9-1-1 or the emergency response services in your community.

CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission provides legal information on the *Canadian Human Rights Act* and accepts complaints about harassment in the workplace for federally regulated workplaces.

Online: <https://www.chrc-ccdp.gc.ca/en>

Email: info.com@chrc-ccdp.gc.ca

Call toll-free: 1-888-214-1090

TTY: 1-888-643-3304

CANADIAN CENTRE FOR OCCUPATIONAL HEALTH AND SAFETY

The Canadian Centre for Occupation Health and Safety provides advice, information and resources on occupational safety for federal and provincial jurisdictions.

Online: <https://www.ccohs.ca/safetyinfo.html>

Call: 905-572-2981 or Toll free: 1-800-668-4284

LABOUR PROGRAM

Canada's Labour Program provides information, accepts inquiries and complaints for federally regulated workplaces.

Email: NA-ERO-GD@labour-travail.gc.ca

Call: 1-800-641-4049 to speak with a Labour Program Officer.

ONTARIO LEGISLATION

In Ontario, the employer's statutory duty to prevent harassment and violence in the workplace is found in the following legislation:

The **Human Rights Code, R.S.O. 1990, c. H.19**, prohibits harassment in the workplace. Harassment is a form of discrimination when it is based on the following enumerated grounds of discrimination:

Race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status and disability.¹¹

The **Occupational Health and Safety Act**¹² prohibits both workplace harassment and workplace violence.

PROVINCIAL REFERRALS

If you feel you are in immediate danger, call 9-1-1 or the emergency response services in your community.

HUMAN RIGHTS LEGAL SUPPORT CENTRE

The Human Rights Legal Support Centre (HRLSC) is an independent agency, funded by the Government of Ontario, to provide legal services to individuals who have experienced discrimination. The HRLSC provides legal assistance to individuals when they take an application to the Human Rights Tribunal of Ontario to resolve a human rights dispute.

HRLSC offers services for Indigenous peoples through their Indigenous Services team. More information on the Indigenous Services team can be found on their website:

Online: <https://www.hrlsc.on.ca/en/services-indigenous-people>

Call: (416) 597-4900

Toll Free: 1-866-625-5179

TTY: (416) 597-4903

TTY Toll Free: 1-866 612-8627

For Indigenous Services: press 4 in the options to reach the Indigenous Human Rights Advisor.

OCCUPATIONAL HEALTH AND SAFETY

Complaints to Occupational Health and Safety Ontario can be filed online and by phone.

Online: <https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint>

Health and Safety Contact Centre: 1-877-202-0008 (TTY: 1-855-653-9260)

LEGAL AID CLINICS

Legal Aid provides legal assistance to for low-income people in Ontario.

Online: <https://www.legalaid.on.ca/more/corporate/contact-legal-aid-ontario/>

Toll free: 1-800-668-8258

TTY (teletypewriter) – Use Bell's Relay Service: 1-800-855-0511

Email for general inquiries: info@lao.on.ca

OTHER LEGISLATION: COMMON LAW

In addition to statutory law (such as the federal and provincial laws above), judges have decided that harassment can lead to employer liability under the common law.¹³ This is important, because it means that if someone needed to escalate a workplace harassment issue beyond their employer and into the courtroom, these are the ways in which a judge would look at the case. For example:



The common law duty of fairness. The employer has the implied duty to treat its employees fairly, with civility, decency, respect and dignity.¹⁴



Sexual battery. Sexual battery involves the use of force in the form of physical sexual contact that is harmful and offensive. It is an attack on the victim's dignity and personal autonomy.¹⁵



Intentional infliction of mental suffering. The conduct must be offensive and outrageous, calculated to produce harm, and result in a visible and provable injury.¹⁶

CRIMINAL CODE

Apart from the CHRA, the CLC and the Workplace Harassment and Violence Prevention Regulations, there is a statutory duty under section 217.1 of the federal Criminal Code, R.S.C. 1985, c. C-46, for the employer (and its officers, directors and supervisors) to take reasonable steps to prevent bodily harm to any person arising from the work performed in the workplace.¹⁷

REFERRALS

To initiate a criminal or civil suit, you may want to seek legal advice from a private lawyer, paralegal, or law firm. The Law Society of Ontario's Lawyer Referral Service can connect you with a lawyer or paralegal and offers up to 30 minutes of free consultation.¹⁸

Training and Transparency

Every employer is required to have policies that are compliant with the relevant legislation outlined above. Review and training requirements are provided in the legislation to ensure that the policies are up to date and employees are able to receive training and access these policies.

For federal workplaces, according to the Canada Labour Code, policies should be reviewed, staff training should be offered, with training for new employees within 3 months.

For Ontario workplaces, according to the Occupational Health and Safety Act, every employer must prepare and review a policy annually. There are requirements for posting a written policy or communicating it verbally. Training on the policy should occur when the employee is hired and the employer must identify how often it is needed otherwise.

Policies and procedures should outline the expectations for conduct, the workplace values, and responsibilities for protecting ourselves and each other in the workplace. They should include clear steps for making complaints and resolving harassment and violence in the workplace.

As an employee, you can expect your employer to have versions of the following types of policies to address workplace harassment including:

1. **Workplace Health and Safety Policy;**
2. **Workplace Violence and Harassment Policy, and**
3. **Accessibility Policy.**

More information on sample policies can be found in Part III.

Complaint Process Overview

Policies and procedures will contain a complaint process triggered when a complaint or report is submitted by an employee. If you are unsure of what a complaint process normally looks like or whether your employer is doing their job of seeking a resolution, the following processes will provide guidance on what steps and options are available to resolve a complaint. These processes can be adapted to fit the workplace so it may not look exactly like the processes described below, as these are baseline, minimum requirements.

The steps laid out below may feel systematic and impersonal, so it is important to remember that you are in control of whether you make a complaint and you choose to move forward through the process. You can end a complaint process as you see fit and complaints can be made outside of your workplace if your employer did not resolve the matter.

If you decide to make a complaint, your employer is required to handle it in a confidential, professional, and sensitive manner that prioritizes the well-being of the individual experiencing harassment. Information about the complaint should remain confidential except to the extent necessary to protect workers, to investigate the complaint or incident, to take corrective action or otherwise as required by law.

FEDERALLY LEGISLATED COMPLAINT PROCESS

The following process is from the Canada Labour Code for federally regulated workplaces.¹⁹



1. Reporting

When an incident of harassment occurs, it is important to report this to your employer,²⁰ HR manager or office administration either verbally or in writing. The report should include as much detail as possible, including the name of the person committing the harassment, date/time of the incident(s), any witnesses to the incident and a description of what happened.

The incident should be reported to your employer or a staff member who has been designated to receive complaints. If your complaint involves your manager or employer, then you can report to another staff member instead.

You may end the complaint process at any time by informing the person that received your complaint.



2. Response

Once you have reported an incident, the person that you reported the incident to should follow up with the following information:

- A. That your notice has been received;
- B. How you can access the workplace harassment and violence prevention policy;
- C. Each step of the resolution process; and
- D. That you may be represented during the resolution process.²¹



3. Negotiated Resolution

This step is necessary to make every reasonable attempt to resolve the incident. This may be done directly with the person you reported the incident to, or it may also involve a discussion with the person who committed the harassment. You should not feel pressured to resolve the incident at this stage, instead you are able to pursue further conciliation efforts and/or an investigation.

The following are voluntary steps. If the complaint is resolved, conciliation and/or investigation will not be pursued or triggered.



4. Conciliation

Conciliation is a mediated effort to seek a resolution conducted by a facilitator that both you and the person who committed harassment agreed upon. This can include alternative or Indigenous dispute resolution approaches, as outlined below.



5. Investigation

A formal investigation is conducted by an investigator²² that will present a report with recommendations to the employer and the Health and Safety Committee or the person who has been in charge of the complaint in the workplace.

PROVINCIALY LEGISLATED COMPLAINT PROCESS

The following process is from the Ontario Occupational Health and Safety Act for provincially regulated workplaces.²³



1. Reporting

The report of the incident should include the following information:

- Name(s) of the employee(s) who has/have allegedly experienced workplace harassment and contact information;
- Name of the person accused of committing harassment, their position and contact information (if known);
- Names of the witness(es) (if any) or other person(s) with relevant information to provide about the incident (if any) and contact information (if known); and
- Details of what happened including date(s), frequency and location(s) of the alleged incident(s);

- A. Any documents you have that are relevant to the complaint;
- B. List any documents someone else may have that could be relevant to the complaint.



2. Investigation

The employer will ensure that an investigation appropriate in the circumstances will be conducted into complaints or incidents of workplace harassment.²⁴

In a provincially regulated workplace, there is a requirement to follow up on harassment concerns, whether there is a formal complaint or not.

ALTERNATIVE AND INDIGENOUS DISPUTE RESOLUTION MODELS

There are many opportunities within these complaint processes to allow Alternative Dispute Resolution (ADR) and Indigenous Dispute Resolution (IDR) processes. Employers can take culturally appropriate processes, values, and traditions that are important within their communities and use them as part of the complaint and resolution process.

If you're an employee going through a situation at work, you can consider asking for the resolution to take place through an ADR or IDR process.

ADR allows different groups with a dispute to develop a solution that works for everyone. This may occur just between the parties as negotiation, while other times the disputing parties bring in a facilitator to mediate discussions and help find a creative solution. If negotiation or mediation are not successful, the parties may even have an arbitrator (an expert in the law) help them come to a solution.

While these ADR methods are popular, concerns remain that these Western-centric tools can create challenges with cultural differences or exploitation when used in Indigenous contexts. For example, "mediation" practices might not consider the possibility of requesting the assistance of an Elder to resolve disputes.

"Conciliation" is another ADR method, similar to mediation, and is a more inclusive term that respects the First Nation circle traditions. Conciliation puts more importance on the neutral party, such as an Elder, being the one to find a creative solution for both disputing parties. The use of conciliation as a resolution process is explicitly referenced in the federal legislation on workplace complaints and it can include all of these things.

IDR is a framework made up of Indigenous approaches to ADR, utilizing traditional values and practices in order to resolve conflicts. Often, IDR is a form of restorative justice where an Elder or someone respected in the community facilitates a circle to bring about a resolution and recognizes how Indigenous culture can play a powerful role in the solution of problems.

IDR differs between communities based on culture and traditions. IDR is unique as it prioritizes solutions consistent with the culture of the groups involved and makes the groups central to the decision making.

Facilitation style and purpose can differ between circles. These circles can be requested and set up between the person who has experienced the harassment and the person who has committed the harassment. Here is a non-exhaustive list of circles that may be used during conciliation:



Talking Circle: a safe environment for sharing points of view with others.



Teaching Circle: an educational circle that encourages dialogue, respect, and the co-creation of learning content and social discourse.



Sharing Circle: opportunity to verbalize feelings and identify how we can support each other. A facilitator would gather and combine ideas to the end goal of keeping families or individuals safe, healthy, and happy.



Healing Circle: opportunity to guide emotional release by encouraging participants to let go of their negative feelings. A facilitator would identify what experiences are triggering negative emotions and what experiences can lead to positive emotions.



Ceremonial Spirit Circle: a circle to practice a symbolic ceremony and an opportunity to evoke energies to create change, to honour, and to acknowledge the experiences and feelings of the person who has been harassed.

FAMILY (DOMESTIC) VIOLENCE LAWS AND SAFETY-PLANNING

Both federal²⁵ and provincial²⁶ employers have obligations to an employee that is the victim of family violence or is the parent of a child who is a victim of family violence. These obligations include providing a leave of absence, counselling, relocation, legal or law enforcement assistance.

The Canadian Centre for Occupational Health and Safety has outlined several additional steps that employers can take to ensure the safety and well-being of an employee.²⁷ While respecting confidentiality and privacy as part of their workplace violence and harassment prevention policy, employers should also take responsibility to:



Identify Warning Signs.



Establish a support network.



Develop or support a safety plan.



Talk to the employee and work together to identify solutions. Follow up and check on their well-being.



Offer flexible work scheduling if it can be a solution.



Call the police if the abuser exhibits criminal activity such as stalking or unauthorized electronic monitoring.



If the victim and abuser work at the same workplace, do not schedule both employees to work at the same time or location wherever possible.



If the abuser works at the same workplace, use disciplinary procedures to hold the abuser accountable for unacceptable behaviour in the workplace. When necessary, relocate the employee so that they cannot be seen through windows or from the outside.

When relevant, additional elements of a safety plan may include:

- Ask for a recent photograph or description of the abuser. Alert others such as security and reception so they are aware of who to look for.
- Do not include their contact information in publicly available company directories or website.
- Change their phone number, have another person screen their calls, or block the abusers calls or emails.
- Pre-program 911 on a phone or cell phone. Install a panic button in their work area or provide personal alarms.
- Provide a well-lit parking spot near the building or escort the individual to their car or to public transit.

What You Should Know Checklists

FOR EMPLOYERS AND LEADERSHIP

- ☐ Make sure your staff, Chief and Council, and Boards of Directors are trained to know and implement their workplace policies and procedures about harassment.
- ☐ Make sure you know about your obligations to your employees and community members to prevent and address sexual harassment and violence – know which laws apply.
- ☐ Have a good policy and procedure for addressing sexual harassment and violence for all the workplaces that Chief and Council oversee.
- ☐ Have a good policy and procedure for addressing sexual harassment and violence for community members to use if they claim harassment or violence when receiving services from the First Nation.
- ☐ Do not impose negative consequences on those who speak up.

FOR EMPLOYEES

- ☐ Ensure that you are aware of your employer's policies and procedures.
- ☐ If you think you are being sexually harassed or are experiencing sexual violence, if you feel you can, tell the person to stop.
- ☐ If you are experiencing violence at home – tell your employer.
- ☐ If you feel like you can't tell them to stop, then keep notes of what happens.
- ☐ Even if there is no policy, you can tell someone at work – this might be your manager, or the Band Manager or Human Resources person.
- ☐ Ask a friend or family member for support.
- ☐ There are laws to help you – you might be able to file a human rights complaint, an occupational health and safety complaint, or go to the police.

FOR COMMUNITY MEMBERS

If you have experienced sexual harassment or violence as someone who is receiving services from your First Nation, there are legal protections.

- ☐ Report the incident to the manager or administration of the organization.
- ☐ Ask for their policies and procedures for handling these types of complaints.
- ☐ There are laws to help you – you might be able to file a human rights complaint or go the police.



Appendix: Templates, Policies and Procedures

Building on the information we have provided thus far, we have now reached our final part of the toolkit. The appendix provides templates for employers, human resource staff, and other administrators involved in policy making at their workplace to review and reflect on their own policies.

Policy and Procedure for Harassment, Violence and Bullying

The following template is a Workplace Harassment and Bullying Policy that could be used by a First Nation that is considered a federal employer or for community members who receive services from the First Nation.

FIRST NATION HARASSMENT, VIOLENCE AND BULLYING POLICY AND PROCEDURE

This policy is enacted by [FIRST NATION / BOARD OF DIRECTORS] to address service to our community and clients, and to show our policies and procedures for harassment and violence.

ZERO TOLERANCE FOR HARASSMENT AND VIOLENCE – POLICY STATEMENT

This means:

Community members and users of the [FIRST NATION / SERVICE PROVIDER ETC] have the right to receive services without being harassed, bullied, or discriminated against by the staff, Board, Chief and Council or other leaders.

Employees and Volunteers of the [FIRST NATION / SERVICE PROVIDER ETC] have the right to a workplace that is free from discrimination, harassment, violence, and bullying.

Employees / leadership found to have violated this policy may be subject to discipline or other sanctions, up to and including termination.

Community members / service users who violate this policy may have their ability to use services restricted - including:

- You may not be able to use some services anymore.
- You may not be able to attend services with your regular worker, or you may have to attend services with someone there to observe.
- You may be banned from entering [FIRST NATION / SERVICE PROVIDER ETC] buildings.
- You may be banned from [FIRST NATION / SERVICE PROVIDER ETC] events.

[FIRST NATION/SERVICE PROVIDER ETC] is committed to providing its employees, members, clients, and service users with an environment that is free from discrimination, harassment and violence. All individuals are required to conduct themselves in a professional, courteous and respectful manner while delivering and receiving services or interacting with staff, volunteers and clients.

Harassment is defined as [STATUTORY DEFINITION]/means engaging in a course of vexatious comment or conduct that is known or ought to reasonably be known to be unwelcome. Workplace harassment includes:

Discriminatory harassment, which targets an individual or group of individuals based upon characteristics protected under the [HUMAN RIGHTS STATUTE NAME], including [INSERT PROTECTED GROUNDS/race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status and disability].

Sexual harassment, which is defined as [STATUTORY DEFINITION] includes unwelcome and vexatious sexual conduct or comments, an unwelcome sexual advance/solicitation by a person in a position to grant or deny a benefit to the employee/worker or a reprisal for refusing that sexual advance/solicitation

Bullying/Personal harassment/Workplace harassment is defined as [STATUTORY DEFINITION]/is vexatious or objectionable unwelcome conduct, comments, gestures or physical acts that are repeated or, if a single incident, the offending conduct is sufficiently serious to cause a lasting harmful effect on the employee/worker/cause an employee/a worker to be humiliated or intimidated/adversely affect an employee's/a worker's psychological or physical well-being/amount to a threat to an employee's/a worker's health and safety.

Every client, community member or user of services delivered by [FIRST NATION/ SERVICE PROVIDER ETC] has the right to receive those services free from discrimination, harassment, and bullying.

[FIRST NATION/SERVICE PROVIDER ETC] prohibits and will not tolerate any form of harassment or bullying by any employee/a worker, member of management or third party, including [vendors/patients/customers/clients/visitor], regardless of whether it is:

- Verbal (for example, derogatory statements, racial slurs, derogatory comments or jokes, unwelcome sexual advances or requests for sexual favors).
- Physical (for example, assault or inappropriate physical contact).
- Visual (for example, displaying derogatory or sexually suggestive posters, cartoons or drawings, leering or making sexual or derogatory gestures).
- Online (for example, derogatory statements or sexually suggestive postings in any social media platform including Facebook, Twitter, Instagram, Snapchat, etc.).

[INSERT OTHER EXAMPLES SPECIFIC TO CONTEXT.]

This list is illustrative only, and not exhaustive. No form of sexual harassment or bullying will be tolerated.

All parties have a role in preventing workplace harassment and bullying. All employees/ workers are responsible for working in compliance with this Harassment and Bullying Policy and Procedure and encouraged/required to report any incidents of harassment or bullying to the Company.

[FIRST NATION / SERVICE PROVIDER ETC, EMPLOYER NAME] will make every reasonable practicable effort to ensure that no [employee/worker] is subjected to workplace harassment. If [EMPLOYER NAME] becomes aware of a potential incident of harassment or bullying, it will investigate the incident in a fair, timely and confidential manner, in accordance with [EMPLOYER NAME]'s harassment investigation procedures. The employer is committed to taking appropriate corrective measures to stop any harassment and avoid future incidents.

Any violation of this policy [or its related procedures] may be grounds for disciplinary action, up to and including termination of employment, in accordance with [EMPLOYER NAME]'s Disciplinary Policy.

This Workplace Harassment and Bullying Policy applies to all employees/workers at any location where an employee/worker works/is engaged in work or work-related activities for the Company. This policy also applies where harassment is connected to the workplace but arises outside of the workplace or outside of working hours if the harassment either detrimentally affects the workplace or leads to adverse job-related consequences to the victim.

This Policy is not intended to discourage or prevent an employee/a worker from exercising any other rights, actions or remedies that may be available under the [HUMAN RIGHTS/OHS/MINIMUM STANDARDS LEGISLATION NAME]. The employee/a worker has the right to file a sexual harassment complaint/complaint where the harassing incident is based upon human rights grounds with [GOVERNMENT BODY NAME]. If an employee needs further assistance dealing with harassment they may contact [their union,] a health and safety representative, a human resources representative, community health centre or mental health community worker, the Employee Assistance Program or a legal support centre.

Any questions about this policy or its related procedures should be directed to [DEPARTMENT NAME].

This Workplace Harassment [and Bullying] Policy, [and its related procedures], will be reviewed and updated whenever there is a change that affects its effectiveness in preventing workplace harassment [and, at minimum, every [NUMBER] years].

[

[DATE]

[POSITION TITLE]

]

Harassment Complaint Procedure

The following is a sample harassment complaint. This would be used in the event that someone experiences harassment and would like to submit a complaint to their employer. The template policy below includes details such as who should receive and resolve the complaint, who will conduct investigations, and who is in charge of the further steps for seeking resolution.

HARASSMENT COMPLAINT PROCEDURE POLICY

Any employee who is the subject of workplace harassment may choose to report the incident while someone who becomes aware of an incident of workplace harassment is required to report the matter, as soon as possible, to [their supervisor/the Human Resources Department], who will attempt to informally resolve the matter to the mutual satisfaction of both the victim and the alleged harasser. If the conduct involves their supervisor, the employee/worker should contact the Human Resources Department/the next level above their supervisor/the [EMPLOYER NAME]'s hotline instead.]

If the supervisor/Human Resources Department cannot informally resolve the incident to the mutual satisfaction of both the complainant and the alleged harasser, or in situations where informal resolution is not appropriate, [EMPLOYER NAME] will conduct a formal investigation into the incident.

If the incident is not informally resolved, the complainant [will be encouraged to / will be required to] complete a [Discrimination, Harassment or Reprisal Complaint Form/ COMPLAINT FORM NAME], and provide this form to their supervisor/the Human Resources Department. The supervisor must provide this form to Human Resources within [24 hours/[TIME FRAME]] of receiving the complaint.

Harassment Investigations

The following harassment investigation template policy sets the expectations for who will conduct the investigation, confidentiality, timeliness, and implementation of the investigation's outcomes.

HARASSMENT INVESTIGATIONS POLICY

[EMPLOYER NAME] is committed to investigating incidents of harassment in a timely, impartial, and objective manner when it becomes aware of an incident of workplace harassment, or it receives a complaint of workplace harassment.

The harassing incident investigation will be conducted by [the Human Resources Department/the supervisor/[DEPARTMENT NAME]] or [if the circumstances require it/if a health and safety inspector orders it], a neutral third party. Both the complainant and the alleged harasser [are/may be] required to participate and cooperate in the investigation.

Confidentiality will be maintained, consistent with the needs of the investigation. Confidential information will only be disclosed for the purpose of the investigation, as required to take corrective action, or as required by law.

The investigation will be completed in a timely manner, generally within [ninety (90)/ [NUMBER]] days, unless extenuating circumstances warrant a longer investigation. Within [ten (10)/[NUMBER]] calendar days after completion of the investigation, the complainant and the alleged harasser will be notified of the outcome of the investigation [and any corrective action taken]. If the harassing incident is substantiated, reasonable corrective action will be taken to prevent future incidents. Appropriate corrective action may vary from re-education and retraining of the harasser, to removing the harasser's potential contact with the complainant in the workplace, to discipline or dismissal for just cause in accordance with [EMPLOYER NAME]'s Disciplinary Policy.

The employer will keep records of the harassment investigation including:

- [A copy of the complaint or details about the incident.]
- [A record of the investigation including notes.]
- [A copy of any investigation report.]
- [A summary of the results of the investigation that was provided to the victim and the alleged harasser, if the alleged harasser was a worker.]
- [A copy of any corrective action taken to address the complaint or incident of workplace harassment.]

[All records of the investigation will be kept confidential. The investigation documents, including the investigation report will not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, take corrective action or otherwise as required by law. These records will be kept for [at least one year/[TIME PERIOD]].]

Reprisals Prohibited

A Reprisals Policy may be helpful for employers to set out their commitment that no reprisal or penalty will be taken against a person for bringing forward a harassment complaint in good faith or participating in a harassment investigation.

REPRISALS POLICY

Any [employee/worker] who makes a harassment complaint in bad faith, maliciously or without a reasonable and probable basis, engages in a reprisal against [an employee/a worker] for filing a harassment complaint or interferes with a harassment investigation will be subject to discipline, in accordance with [EMPLOYER NAME]'s Disciplinary Policy.

Community Member or Service User Procedure

A Community Member or Service User complaint policy will guide what needs to happen if a community member experiences harassment while accessing or receiving services from a federally regulated organization.

Note that if you are an employee and you experience harassment from a community member, you should refer to your workplace's harassment procedure instead of this one.

COMPLAINT PROCEDURE POLICY

[FIRST NATION/HEALTH AUTHORITY/EDUCATION AUTHORITY ETC] has developed specific complaints procedures for community members or service users to report any incident of harassment [or bullying].

Community members and service users may always use the procedures available and provided for under the relevant human rights legislation.

Any community member / client or service user who thinks they are the subject of discrimination, harassment or bullying when they are receiving services from the [FIRST NATION/HEALTH AUTHORITY/EDUCATION AUTHORITY ETC], should report the matter as soon as possible, to:

- [name [FIRST NATION/HEALTH AUTHORITY/EDUCATION AUTHORITY ETC] harassment officer, or CEO/Band Manager].
- If the conduct involves the harassment officer, or CEO/Band Manager, then the complainant should report to that person's supervisor.
- If the conduct involves a member of Chief and Council, then the complaint should be reported to the CEO/Band Manager who may seek to engage outside assistance to resolve the matter.

The [Harassment Officer / CEO / Band Manager] will attempt to informally resolve the matter to the mutual satisfaction of both the complainant and the alleged harasser, if appropriate. Note it may not be appropriate in all circumstances.

If the [Harassment officer, CEO/Band Manager] cannot informally resolve the incident to the mutual satisfaction of both the complainant and the alleged harasser, or in situations where informal resolution is not appropriate, [EMPLOYER NAME] will conduct a formal investigation into the incident. The [Harassment officer, CEO/Band Manager] may choose to work with an outside investigator.

If the incident is not informally resolved, the complainant [will be encouraged to/ will be required to] complete a [Discrimination, Harassment or Reprisal Complaint Form/ [COMPLAINT FORM NAME]], and provide this form to [/the Human Resources Department/ SUPERVISOR].

Formal Workplace Investigations Process

Formal workplace investigations are conducted by someone who is trained in investigative techniques, has the necessary knowledge, training, and experience on harassment and violence in the workplace, and has knowledge of the applicable legislation. This may be someone within the organization or an independent, third-party investigator. The investigator will assess the incident and provide a report with recommendations.

FOR EMPLOYERS



1. Determine whether a Formal Investigation is Necessary

The need for a workplace investigation is generally triggered by a complaint (either formal or informal), observation of improper behaviour, misconduct, a breach of policies, or there is a demand (legal or legal action) to initiate a formal investigation.

Part of the decision whether to undertake a formal investigation may include looking at the nature and seriousness of the complaint, procedural requirements, identities of the complainant and respondent, and the complainant's preferences.



2. Determine the Appropriate Investigator

If you have determined that a formal investigation is needed, the next step is to determine whether you require an internal or external investigator utilizing the following criteria:

- A. Regardless of whether the investigator is internal or external, make sure the investigator is trained in conducting investigation.
- B. Look at the investigator's professional and academic qualifications, their years of practice and their history of conducting similar types of investigations; competent and knowledgeable.
- C. The investigator should have an understanding of the issues raised by the allegations and be able to recognize potential legal pitfalls.
- D. The investigator must be impartial, neutral, and objective. Conclusions should not be based the investigator's prior knowledge or relationship with the complainant or the respondent.



3. Determine the Investigation Mandate and Retain the Investigator

The investigator and the employer should determine what is to be investigated and limit the scope of the investigation. The investigation is not to examine every aspect of the employer's / First Nation operations, rather focus on a specific incident(s) of harassment. If the investigation reveals a more serious incident of widespread harassment, then the investigator should bring this to the employer's/ First Nation's attention.



4. Establish Solicitor-Client Privilege and Litigation Privilege

This is referring to the Solicitor-Client privilege when working with a law firm or legal representative.



5. Identify Sources of Evidence

A. This could include identifying what reports, videos, documents, notes, emails, witnesses, etc. may be potential sources of evidence for the investigator to review and/or interview.



6. Document Review and Protection

A. The employer provides the relevant documents, notes, emails, reports, and/or videos to the investigator.

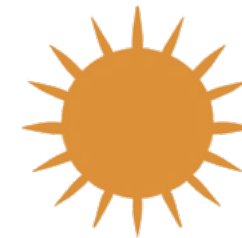
CONDUCT THE INVESTIGATION

1. Prepare for Witness Interviews
2. Conduct Interviews
3. Conclude Investigation
4. Report Conclusions to Employer
5. Subsequent Employer Steps (may include corrective measures, communication with complainant and respondent, reporting and file retention)

EMPLOYEE PARTICIPATION IN INVESTIGATIONS

If you are an employee facing harassment or violence, you may request to begin or end the investigation at any time. An investigation can take place in conjunction with other dispute resolution processes, such as negotiation or conciliation. However, when an investigator's report is being provided to the employer, you can no longer withdraw from the investigation process or continue to pursue resolution through negotiation or conciliation.

If the employer is not taking adequate steps to resolve the incident of harassment or violence, you may consider forums such as occupational health and safety and human rights tribunals to make a complaint against your employer and the perpetrator. Referrals for this process are listed in **Part II**.



Footnotes

- 1 Government of Canada. "Work Place Harassment and Violence Prevention," Employment and Social Development Canada, (<https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/104-harassment-violence-prevention.html>).
- 2 Ontario. "Part III.o.I: Workplace violence and workplace harassment," Ministry of Labour, Training and Skills Development, (<https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-iii0i-workplace-violence-and-workplace-harassment>).
- 3 Canadian human rights commission. "What is Discrimination" (<https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-discrimination>). Ontario Human Rights Commission. "The Ontario Human Rights Code" (<http://www.ohrc.on.ca/en/ontario-human-rights-code>).
- 4 "What is "discrimination"?" Ontario Human Rights Commission, (<http://www.ohrc.on.ca/en/iii-principles-and-concepts/2-what-discrimination>).
- 5 "Aboriginal Lateral Violence," Native Women's Association of Canada, (<https://www.nwac.ca/wp-content/uploads/2015/05/2011-Aboriginal-Lateral-Violence.pdf>).
- 6 "Harassment/ poisoned environment," Ontario Human Rights Commission, (<http://www.ohrc.on.ca/en/policy-discrimination-against-older-people-because-age/8-harassmentpoisoned-environment>).
- 7 Government of Canada. "Violence and Harassment in the Workplace - family (Domestic) Violence," Canadian Centre for Occupation Health and Safety, (https://www.ccohs.ca/oshanswers/psychosocial/violence_domestic.html).
- 8 Canadian Human Rights Act, R.S.C. 1985, c. H-6 (CHRA) (<https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#:~:text=2%20The%20purpose%20of%20this,are%20able%20and%20wish%20to>).
- 9 Canada Labour Code. Section 125(1)(z.16), Part II (Health and Safety).
- 10 Government of Canada. "Work Place Harassment and Violence Prevention Regulations (SOR/2020-130)" Justice Laws Website, (<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2020-130/index.html>).
- 11 Human Rights Code, R.S.O. 1990, c. H.19. (<https://www.ontario.ca/laws/statute/90h19#:~:text=1%20Every%20person%20has%20a,status%2C%20family%20status%20or%20disability>).

- ¹² Government of Ontario. “Occupational Health and Safety Act, RSO 1990, c O.1.” (<https://www.ontario.ca/laws/statute/90o01>).
- ¹³ Baker v Twiggs Coffee Roasters, 2014 HRTO 1803 at para 11; see also Halliday v Van Toen Innovations Incorporated, 2013 HRTO 583. (<https://canlii.ca/t/g6dlv>).
- ¹⁴ Potter v New Brunswick Legal Aid Services Commission, 2015 SCC 10 at para 84. (<https://canlii.ca/t/ggkhh>).
- ¹⁵ Obront v The Dominion, 2019 ONSC 594 at para 24. (<https://canlii.ca/t/hx6b4>).
- ¹⁶ Boucher v Wal-Mart Canada Corp, 2014 ONCA 419 at para 41. (<https://canlii.ca/t/g6xvb>).
- ¹⁷ Criminal Code (R.S.C., 1985, c. C-46) (<https://laws-lois.justice.gc.ca/eng/acts/c-46/page-51.html#:~:text=2171%20Every%20one%20who%20undertakes,from%20that%20work%20or%20task>).
- ¹⁸ Law Society of Ontario. “Lawyer Referral Service” (<https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>).
- ¹⁹ Work Place Harassment and Violence Prevention Regulations (SOR/2020-130) (<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2020-130/page-1.html>).
- ²⁰ Canada Labour Code, RSC 1985, c L-2, s 126(1)(b), (f), (g), (j) (<https://laws-lois.justice.gc.ca/eng/acts/L-2/page-16.html#docCont>).
- ²¹ All participants are welcome to have legal representation if they choose, however, internal workplace investigations are not criminal investigation (usually) and legal representation isn’t necessary. Representation can include a support person such as a friend or family member that collect information or attend the resolution process, however, they cannot speak on your behalf or participate.
- ²² An investigator must be someone who is trained in investigative techniques, has the knowledge and experience on harassment and violence in the workplace and has knowledge of the applicable legislation. This may be someone within the organization or an independent, third-party investigator.
- ²³ Government of Ontario. “Code of practice to address workplace harassment” (<https://www.ontario.ca/page/code-practice-address-workplace-harassment#section-7>).
- ²⁴ Occupational Health and Safety Act, RSO 1990, c O.1, s 32.0.2(2)(d); online: (<https://www.ontario.ca/laws/statute/90o01#BK57>).
- ²⁵ Canada Labour Code, 1985, c L-2, s 206.7(2)(a)-(f).
- ²⁶ Employment Standards Act, 2000, SO 2000 c, 41, s 49.7(2).
- ²⁷ Government of Canada. “OSH Answers Fact Sheet,” Canadian Centre for Occupational Health and Safety. (https://www.ccohs.ca/oshanswers/psychosocial/violence_domestic.html).

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