



UNIFOR EDUCATION

# INVESTIGATING & RESOLVING WORKPLACE HARASSMENT:

## A UNIFOR GUIDE FOR LEADERSHIP



**unifor**

theUnion | lesyndicat

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## A MESSAGE FROM UNIFOR PRESIDENT, JERRY DIAS

Every worker deserves fairness, respect and dignity on the job. And every worker deserves a union that will see to it that these rights are upheld.



Our message is strong and clear: harassment will not be tolerated. That is why when union representatives are sworn in, each of us commits to “promote a harassment and discrimination-free environment in our workplaces, union and community.” It is why our oath of office commits us to “ensure the human rights of all members are respected.” Speaking out for social justice in broader society starts with ensuring every member’s safety and dignity is protected in the workplace.

When a worker experiences harassment it can have devastating and long-lasting effects on the individual and her/his family. If harassment is not dealt with properly, this adds to the hurt. Left unchecked, harassment can also poison the workplace and undermine solidarity. Our union, Unifor, is committed to dealing with any and all incidents of workplace harassment, violence and bullying.

But just as we are committed to dealing with harassment, Unifor is equally committed to decreasing the likelihood that harassment will occur. Workplace harassment isn’t an ill wind that ‘blows in from the outside’ – it’s produced in



our workplaces and we need to address factors that contribute to it – whether that’s speed-up; stressful, dangerous or hazardous conditions; job insecurity; unnecessary overtime; excessive supervision; job ‘ghettoes’ or discriminatory hiring. Reducing or eliminating working conditions that contribute to poisoned work environments and conflict is part of our overall workplace harassment prevention strategy. When we bargain vacation time and longer rest periods and job security we reduce the chances that our workplaces will become powder kegs. When we negotiate employment equity and seniority provisions we resist employer attempts to scapegoat, stereotype, or favour one group of workers over another. Preventing workplace harassment includes all of the work we do each day as a union to improve the lives of our members, build solidarity amongst workers, and develop respectful workplaces.

Our new union is tremendously diverse. We represent more women, workers of colour, religious minority members, lesbian, gay, bisexual and trans members, and people with disabilities than ever before. Our differences strengthen us. When all our members know that the union belongs to them and is there for them, we are a powerful force for creating greater equality in the workplace and society.

In solidarity,

JERRY DIAS

President, Unifor

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## SECTION 1: INTRODUCTION

Local Unifor leaders face many challenges. In addition to supporting the goals of the union, you are called on to inspire membership solidarity and deal with many workplace concerns.

This pocket guide outlines general guidelines for investigating cases of harassment and seeking fair and meaningful resolutions. It was written in response to the many requests we've had for clear and concise guidelines for handling workplace harassment. In your hands it can become a useful tool for restoring fairness, respect, and dignity on the job and in our union.

Harassment investigator training is available from Unifor and is recommended for all leadership. See page 79 for details on Unifor education programs.

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*Workplace harassment isn't simply a personal problem. It's a health and safety issue, a political issue, a human rights issue, and a trade union issue. As leadership, we need to deal with workplace harassment with the same kind of energy and commitment we put into issues like pay and benefits.*



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## **SECTION 2:**

### **DEFINING WORKPLACE HARASSMENT**

This section of the guide defines workplace harassment.

#### **WHAT IS HARASSMENT?**

Harassment is about power. It is cruel and destructive behaviour against others that can have harmful and serious effects. Harassment can hurt a person's dignity, physical or psychological well being, and it can create hostile and unsafe working conditions.

Harassment can be defined as any unwelcome action by any person, in particular, by management, customer, client and/or co-worker, whether verbal or physical, on a single or repeated basis, which humiliates, insults or degrades. "Unwelcome" in this context means any actions which the harasser knows, or ought reasonably to know, are not wanted by the victim of the harassment.

The term 'harassment' has a very specific legal and formal definition that is related to prohibited grounds outlined in human rights legislation, which differs by jurisdiction. Examples of prohibited grounds include: race, gender, sexual orientation, national or ethnic origin, age, disability, political affiliation, or religion gender expression, gender identity. The law further defines harassment as behaviour that the offender knows, or ought reasonably to know, is offensive.

Our Unifor policy includes harassment based on prohibited grounds and also covers personal harassment



and workplace bullying (defined on p. 10).

If you have negotiated a joint workplace policy, ‘harassment’ may be restricted to prohibited grounds, or it may have an expanded definition.

“Harassment is an expression of perceived power and superiority by the harasser(s) over another person, based on their: sex, race, creed, colour, religion, ethnic origin, place of origin, sexual orientation, political affiliation, gender identity, gender expression, marital status, family status, disability, language, age, conviction for which a pardon has been granted, social and economic class, activism and participation in the union”.

*An excerpt from the  
Unifor Workplace Harassment Policy*

## **SEXUAL HARASSMENT**

Sexual harassment includes any unwanted attention of a sexual nature, such as remarks about appearance or personal life, offensive written or visual actions like graffiti or degrading pictures, physical contact of any kind, sexual demands, or stalking. Sexual harassment is not about sex – it is about power.

Sexual harassment should not be confused with regular social and interpersonal relations between co-workers. Rather, it is behaviour that is coercive, forced, threatening, or unwanted.



The law identifies two other types of sexual harassment: quid pro quo and poisoned work environment.

### **QUID PRO QUO (LATIN TERM MEANING ‘THIS FOR THAT’)**

This type of sexual harassment involves demands for sexual favours in exchange for a job or some other employment-related benefit. If the person doesn't do what the harasser wants, the harasser may try to punish them in some way or threaten them.

### **POISONED WORK ENVIRONMENT**

This type of harassment occurs when the work environment is poisoned through behaviour such as repeated taunting, jokes, insults, or hostility. It can be both verbal and visual. It may be direct or indirect. For example, a group of male workers or managers may make it impossible for a woman worker to succeed on the job by denying her training or other information, by limiting her access to equipment, or by tampering with her work. Poisoned work environment can be based on race, gender, sexual orientation, age, etc. This type of harassment is more common between co-workers although it can occur between supervisors and workers as well.

### **RACIAL HARASSMENT**

Racial harassment is any action, whether verbal or physical, that expresses or promotes racial hatred in the workplace. It can include racial slurs, written or visually offensive actions, jokes, or other unwanted comments or acts. Forms of racial harassment include graffiti,



violence, insults, or refusals to work alongside people of colour. See poisoned work environment (p. 7).

### **HARASSMENT BASED ON RELIGION**

Harassment based on religion includes defamation of religious imagery, mockery of religious practices, customs or religious wear, etc. It may involve singling out a person or a group for mistreatment based on their actual or perceived religion.

### **HARASSMENT BASED ON SEXUAL ORIENTATION OR GENDER**

Any action, whether verbal or physical, that expresses or promotes hatred against gay men, lesbians, bisexual or transgender people. It can include: refusing to talk to or work with someone because of her or his sexual orientation, insulting gestures, physical assault, slurs, jokes, or taunting a person about their sexual orientation, gender expression, or gender identity.

### **HARASSMENT OF PEOPLE WITH DISABILITIES**

Any action, whether verbal or physical, intended to limit accessibility or promote fear or hatred of people with disabilities (including persons with HIV/AIDS). It can include:

- deliberately changing the environment of workers with visual disabilities;
- mocking people with hearing disabilities;
- placing needed objects out of reach of people with mobility disabilities;
- remarks about ‘deficiencies’;
- condescending or paternalistic attitudes and behaviour;



- sexual harassment of people with disabilities;
- harassment of people with invisible disabilities (for example, back injuries).

Harassment is often directed at workers with disabilities who have returned to work after injury. The union may need to ensure that anti-harassment training for supervisors and workers is part of a return-to-work program.

## **SOCIAL MEDIA AND HARASSMENT**

Cyber-bullying, character defamation on social media, sending or receiving offensive emails on personal accounts, etc. may all be considered forms of workplace harassment, poisoned work environment and /or bullying.

Any time a seriously offensive email, tweet, text, or *facebook* posting is delivered by one worker to a co-worker from the same workplace, it should be investigated as an instance of workplace harassment, whether or not the communication was written and delivered outside the workplace. In determining whether an individual's conduct on social media constitutes harassment, one of the criteria is whether the behaviour was intended to, or resulted in any spillover into the workplace.

A posting on *facebook* or social media will and should be considered to be public in nature unless circumstances clearly demonstrate otherwise – hence any defense that the communication was intended to be private will not prevail.

Each allegation of harassment is managed on a case-by-case basis.



## PERSONAL HARASSMENT AND BULLYING

The Unifor workplace harassment policy defines bullying and personal harassment as “deliberate actions such as offensive, malicious and/or cruel behaviour with the aim to humiliate, intimidate, undermine, or destroy the character or confidence of an individual or group of individuals, which may include teasing, ridicule, mobbing, repeating gossip or any other act or words that could psychologically hurt or isolate a member from other members, clients or peers”.

Bullying becomes an occupational hazard when it leads to adverse health effects such as physical and psychological ill health or behavioural change.

## WORKPLACE VIOLENCE

Workplace violence is the exercise of (or attempt to exercise) physical force by a person against a worker in a workplace that causes, or could cause physical injury to the worker. Workplace violence includes threatening behaviour or words.

## WHEN IS A COMPLAINT NOT CONSIDERED HARASSMENT?

There has been both backlash and confusion about workplace harassment. Some people mistakenly worry that they can't be friendly with their co-workers or that their intentions or actions will be misunderstood. A key question is whether one “ought reasonably to know” whether the behaviour is unwanted or offensive.

Here are some examples of *what is not considered harassment or bullying*:

- Friendly, consensual relations between co-workers
- Friction between co-workers, or workers and management
- Industrial relations (supervisors holding workers accountable to their jobs)\*

Harassment is behaviour that poisons the workplace. It is wrong and it is hurtful and it violates union solidarity. If a worker is being hurt (physically or psychologically) by another worker or supervisor, or their safety is threatened, the union must get involved and call on management to intervene. After all, it is management's responsibility to maintain a harassment-free workplace and maintain health and safety in the workplace.

\* It is not considered harassment when a supervisor gives a worker a hard time or is obnoxious to a worker if there are no prohibited grounds. However, it may be a violation of the collective agreement. Process that person's complaint as you would any grievance.

## **DEFINING 'WORKPLACE'**

Each of the following is considered part of the workplace:

- worksite
- cafeterias
- lockers
- conference rooms
- washrooms
- lobbies
- parking lots



In addition, the following activities are considered part of the workplace:

- training sessions
- layovers (for transportation workers)
- workplace functions
- any other place where work occurs

If harassment occurs outside the workplace but has an effect in the work environment and adversely affects co-worker or employee/employer relationships, it may also be defined as workplace harassment.

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## **SECTION 3:**

### **TOOLS FOR RESOLVING WORKPLACE HARASSMENT**

This section explains our Unifor Workplace Harassment Policy, as well as other options for dealing with workplace harassment. This section also explains the employer's responsibility and the union's responsibility.

#### **UNIFOR'S WORKPLACE HARASSMENT POLICY**

At our 2013 founding Convention, Unifor adopted a new Workplace Harassment Policy, as well as an anti-harassment policy for union events. These documents reflect the long-standing commitments of both founding unions, CAW and CEP, to preventing harassment and building respectful workplace and union cultures.

You can use the Unifor policy to address workplace harassment fairly and quickly. You may also have language in your collective agreement (or legislative language) that will give you additional strength to respond to workplace harassment. The full text of the Unifor policy is posted on our website ([www.unifor.org](http://www.unifor.org)).

#### **WHY DO WE NEED A WORKPLACE HARASSMENT POLICY?**

We need a workplace harassment policy for several reasons:



- It can be the fastest and simplest way to get the harassment to stop.
- Management doesn't always live up to its obligation to provide a harassment-free workplace.
- It's the union's job to hold management accountable.
- Sometimes a complaint will reveal other problems in the workplace. This can result in widespread changes.
- We need to be pro-active in creating a harassment-free environment, and not simply react to management or to situations as they occur.
- Workplace harassment hurts the union's solidarity.

## **WHAT IF WE HAVE NEGOTIATED A JOINT WORKPLACE HARASSMENT POLICY?**

Many of our locals have a long history of successfully negotiating joint workplace harassment policies. Today Unifor requires that anti-harassment language be negotiated in all collective agreements. This should include a clear definition of harassment, a complaint procedure with time limits, and at least some basic requirements for training. For example, in many of our workplaces we have negotiated four hour, or eight hour "Building Respectful Workplaces" training for all workers during work hours.

Check your collective agreement if you are unsure about whether or not you have a joint workplace policy. If you have negotiated a joint workplace harassment policy, then use the language in your collective agreement along with the information in this pocket guide as you conduct your investigation.



## **WHAT IF ALL WE HAVE IS A “NON-DISCRIMINATION CLAUSE” IN OUR AGREEMENT?**

All Unifor collective agreements should include a “non-discrimination clause.” You can use this clause to grieve workplace harassment. Use this pocket guide and the Unifor policy to investigate the complaint, then proceed with the normal grievance procedure.

## **WHAT IF THERE’S NO ANTI-HARASSMENT OR DISCRIMINATION LANGUAGE IN OUR COLLECTIVE AGREEMENT?**

Workplace harassment is against the law, and the law still governs the workplace. If your collective agreement doesn’t include a “non-discrimination” clause, or any other anti-harassment language, this does not stop the union from filing a grievance. Anti-discrimination laws in your province or territory (or if your workplace is covered under federal jurisdiction) are considered to be “read into” your collective agreement. That means that even if your agreement doesn’t actually spell out ‘non-discrimination’, it’s understood to be there (think of it as invisible ink in the agreement). Our collective agreements can improve on the language in the law, but can’t weaken it. Management’s duty to provide a harassment-free workplace is part of the law that governs the workplace. Go ahead and follow the Unifor Workplace Harassment Policy and complete the steps outlined in this pocket guide.



Contact the Unifor Human Rights Department to discuss training for workplace harassment investigators as well as membership training (for example, we have a one-day Building Respectful Workplace program that is open to all union members that is delivered through our area schools).

Listed below are some other ‘creative’ ways of pursuing the complaint. But first, a word on jurisdiction.

## **JURISDICTION: THE LAWS THAT GOVERN THE WORKPLACE**

Where you live, and who you work for, determines whether provincial, territorial or federal laws apply in your workplace (this includes labour laws, health and safety laws, and human rights laws).

Most workers in Canada are covered under provincial or territorial human rights legislation. However, most workers in the following industries fall under federal jurisdiction:

- federal public service
- Canada Post
- interprovincial or international transportation (i.e., road, railway, ferry or pipeline)
- airports and air transportation
- shipping and navigation
- businesses on First Nations reserves
- some crown corporations
- RCMP, military





- broadcasting
- telecommunications
- banks

## HEALTH AND SAFETY LEGISLATION

Health and safety legislation varies by jurisdiction. In some cases health and safety legislation is an important tool for resolving workplace harassment and violence. Thanks to the dedicated lobby efforts by the CAW, CEP, other unions and community advocates, important new amendments and regulations were added to some occupational health and safety legislation in Canada. Generally speaking, the new legislation expressly names harassment and violence as hazards to the health and safety of the worker and it requires employers to take proactive measures to prevent workplace harassment and violence.

The exact legal definition of workplace violence may vary from one jurisdiction, province or territory to another. The federal regulation, for example, says workplace violence means:

*“any action, conduct, threat, or gestures of a person toward an employee in their workplace that can reasonably be expected to cause harm, injury or illness to that employee.”*

Harassment is a serious occupational hazard for workers. Workers who feel under constant attack, who are physically harassed, whose confidence is undermined, are working in unsafe conditions.



If a worker is being harassed at work, they may be able to use their right to refuse unsafe work under the legislation that applies to the workplace. See page 33 of this pocket guide to find out if “right to refuse based on harassment” is legislated in your jurisdiction.

Some legal decisions now tell us that stress induced by sexual harassment may be covered under **worker’s compensation**. While these decisions are important, we don’t want to rely on legislation that only kicks in once the worker is seriously injured. The legislation is still unclear and the process is lengthy.

The union has many avenues for addressing harassment. At the end of the day, however, management may simply agree to work with you to resolve the complaint not because of language in the agreement or the legislation, but because no employer wants to go through a potentially lengthy, expensive, and embarrassing human rights complaint against them.

## WHAT ABOUT THE HUMAN RIGHTS COMMISSION/TRIBUNAL?

When a worker experiences harassment they may first assume that they need to “file a complaint with the Human Rights Commission/Tribunal”. While it is their right to do so, you should inform them of the following:

- the Commission/Tribunal will most likely insist that the complainant try the workplace procedure first
- the Commission/Tribunal process may take years to complete

- the Unifor workplace harassment policy (or the joint workplace harassment policy if you have one in your agreement) will be much more likely to get the behaviour to stop, result in a fair resolution, and be faster.

Encourage the worker to work with you and follow the informal and formal workplace harassment policies outlined in the Unifor policy and/or the joint workplace harassment policy.

If a worker still wants to take their case to the Human Rights Commission/Tribunal, the Unifor Human Rights Department or your Unifor National Representative can provide further information to you and/or the complainant about that process. You will still need to investigate.

## **WHOSE RESPONSIBILITY IS IT TO RESOLVE HARASSMENT COMPLAINTS?**

### **THE EMPLOYER'S RESPONSIBILITY**

**The law requires an employer to provide a workplace which is free of harassment.**

This doesn't simply mean 'policing' the workplace, or only responding to complaints when they occur. Employers need to:

- have anti-harassment policies and processes in place
- commit to anti-harassment and human rights training for both management and workers.

Some employers may understand that workplace harassment is disruptive. From their point of view,



workplace harassment can cause serious organizational problems (such as absenteeism, decrease in productivity, employee turnover, plus expensive investigations and potential liability).

Other employers understand all too well just how effectively workplace harassment divides workers. They know it can weaken solidarity and union strength. And they understand all too well how much time and energy the union uses to respond to harassment cases – time and energy we can't use to enforce other areas of the collective agreement.

### **THE UNION'S RESPONSIBILITY AND OBJECTIVES**

When a worker, or a group of workers, harasses another worker, they are working against the basic union principles of solidarity and equality. Harassment creates a climate of intolerance and division among the membership. By eroding our unity, it weakens our position at the bargaining table and on the picket line.



## WE ARE COMMITTED TO:

**Ensuring a confidential and fair process.** It is our job to defend workers' rights under the collective agreement and to uphold Unifor policy.

**Stopping the harassment.** The ultimate goal is to stop the problem, not to make it worse, or to further isolate the person who makes the complaint.

**Responding to the complainant's needs.** Any worker who files a harassment complaint has the right to representation. Most workplace harassment complaints can be settled quickly without having to resort to a formal complaint.

**Holding the employer accountable for a harassment-free workplace.** As a union we have a legal responsibility to enforce the employer's obligation to maintain a harassment-free workplace.

**Educating to prevent further incidents and change the culture of the workplace.** Anti-harassment policies and training are key negotiating priorities for our union.

## OUR APPROACH AND THEIR APPROACH

Even where the employer has agreed to a joint anti-harassment procedure in the collective agreement, our approach will often differ from theirs. Experience tells us that the employer will likely opt for the quickest, cheapest solution – for example, severe discipline or discharge of a harasser. While discipline or discharge is warranted in some circumstances, the union will want to conduct a full investigation followed by more comprehensive solutions – for example, solutions that



include anti-harassment training for all workers.

**Workplace harassment will not go away if we don't address it.** It will get worse. The situation will become harder to deal with, and the union may be held responsible under human rights or other legislation.

Some human rights cases that we take on won't make us 'popular' with the membership. However, in other instances, our members appreciate that we are challenging a known harasser. The attitudes that led to the harassment may or may not be widespread in the workplace. And, like everyone else, union leaders can become the targets of racial, sexual, or other forms of harassment – your opinions and action may be attacked.

Through all of this, our job is to represent the members' complaints or grievances, at the same time as we push for changing attitudes and better working conditions in the workplace.

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## **SECTION 4:**

### **BACKGROUND INFORMATION**

This section answers some frequently asked questions about the investigation process.

#### **WHO INVESTIGATES INCIDENTS OF HARASSMENT?**

The person who takes the complaint may or may not be the person who carries out the investigation. One or more of the following people may conduct the investigation:

- joint “Building Respectful Workplace” committees
- shop steward or committee person
- local unit chairperson
- local union president
- workplace equity representative
- workplace women’s advocate
- one or more appointed workplace harassment investigators
- health and safety representatives\*
- any combination of the above

Ideally, someone who has been trained to deal with harassment complaints conducts the investigation. In many workplaces we have successfully bargained for workplace harassment investigator training. Contact your Unifor National Representative or the Unifor Human Rights Department for details.

\*In cases where we are using health and safety legislation to pursue a harassment or bullying complaint, health and safety representatives and those who have traditionally



handled the investigation and resolution of harassment and violence should meet to review how to best proceed, drawing on each-others' experience and strengths. Together they should review the legislation and discuss how to make the most of health and safety tools to ensure the whole membership is safe from harassment and violence.

In many instances management may reserve (and exercise!) the right to question their employees and take part in either a joint investigation or a separate investigation. Our goal is to insist on a joint investigation to ensure our members are best represented.

### **WHO INVESTIGATES IF A JOINT WORKPLACE HARASSMENT POLICY HAS BEEN NEGOTIATED?**

If you have negotiated a joint workplace harassment policy, and if that policy indicates that management plays a joint role in investigations, then follow the guidelines in your agreement for direction on how to proceed. See the flowchart on page 93 for a sample workplace harassment joint process.

Even if you do have a joint policy in place, this booklet answers a number of questions and provides important general guidelines that you can make use of as an investigator.

### **WORKPLACE EQUITY REPRESENTATIVES**

Workplace equity representatives are negotiated positions. The role of the equity representative is to:

- promote equity in the workplace
- work with community outreach initiatives
- coordinate education efforts





- assist with anti-harassment work
- work with leadership and investigators to resolve difficult human rights complaints

## **WOMEN'S ADVOCATES**

Sometimes women need to discuss matters such as violence or abuse at home, or workplace harassment, with another woman. They may need help finding out about community resources to deal with these and other issues. Women's advocates are women employment equity representatives who, besides their regular duties, are specially trained to assist women who need referrals. Women's advocates are provided with a confidential phone line and office space.

If appropriate, explain the role of women's advocates to the complainant, and offer to set up a time for them to meet.

In workplaces where Unifor has not negotiated for women's advocates or workplace equity representatives, union leadership is required to take on this role. To learn more about negotiating a women's advocate in your workplace, see [www.unifor.org](http://www.unifor.org) or contact [women@unifor.org](mailto:women@unifor.org).

## **WHAT IF THE ALLEGED HARASSER IS A UNION MEMBER?**

Your role is to provide due process for both the complainant and the alleged harasser. You need to conduct a full and fair investigation and stop harassment in the workplace. There's no question that this is an extremely difficult balancing act. Don't prejudge anyone's actions



without knowing the facts. At the same time, don't defend actions, behaviour or attitudes that are racist, sexist, homophobic, ableist (discriminatory against people with disabilities), etc.

### **WHAT IF THE ALLEGED HARASSER IS A CUSTOMER, DELIVERY PERSON, CONSULTANT OR MEMBER OF ANOTHER BARGAINING UNIT?**

The union should file a grievance against the employer for failing to provide a harassment-free work environment. Some joint workplace policies actually specify that you can make a complaint about someone who is not a paid employee, like a customer or delivery person. This is especially important for our members who work with the public, with volunteers, or with outside contractors.

### **WHAT IF THE ALLEGED HARASSER AND THE VICTIM HAVE BEEN (OR ARE) INVOLVED IN AN INTIMATE OR DOMESTIC RELATIONSHIP?**

The employer and the union are responsible for investigating and dealing with *any* harassment or violence that occurs in the workplace. It is not an excuse to say "they're in a relationship" or "they have a history", or even "they're married" - harassment, violence and bullying that occurs in the workplace must be investigated and dealt with.

### **WHAT IF THE ALLEGED HARASSER IS MANAGEMENT?**

If the alleged harasser is part of management, keep the following in mind:

Harassment is about power. If harassment occurs



between people where there's already a power relationship (such as that between supervisor and worker), the odds are really stacked against the worker. In these cases, harassment would usually include a spoken or unspoken threat of discipline or of 'making life hell' for the worker if she or he doesn't comply, or if they complain.

Management's response is a reflection of their commitment to ending workplace harassment. Management creates the culture of the organization. We must make it crystal clear that they need to take full and immediate action to ensure that management representatives are beyond reproach on this issue.

## **WHAT IF THE ALLEGED INCIDENT TOOK PLACE AT A UNION EVENT?**

The responsibility of creating and preserving a safe and harassment-free environment is a collective one assumed by all Unifor members. Unifor aims to provide leadership in setting standards of behaviour which reflect our commitment to equality.

Unifor will not tolerate any form of harassment, bullying or violence within the union environment, whether it is at the Local, Regional/Québec or National level. Such actions may result in sanctions being taken against a member.

At our founding 2013 Unifor Convention we adopted a Unifor Policy on Harassment at Union Events. A copy of the policy is available on our website at: [www.unifor.org](http://www.unifor.org). For information on investigating harassment at union events, contact our Human Rights Department at 1-800-268-5763.



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## WHAT ARE THE TIME LINES FOR THE INVESTIGATION?

You may deal with a workplace harassment concern in a matter of hours. Sometimes it may take a few days, or even weeks, to conduct a fair investigation and resolution. In the best case scenario, the complainant (with the support of the union) confronts the alleged harasser, the harasser apologizes, and the offending behaviour stops. If the complainant is satisfied with the result, then you've done your job. Be sure to write up the incident (see *General Guidelines for Record-keeping*, page 77).

The local union president and the unit chairperson must contact the UNIFOR national representative, and if necessary, they will meet with a senior company representative(s) to carry out an investigation. The issue must be handled with confidentiality, and is to be resolved **within 10 working days** of notifying the unit chairperson and local union president. An extension to the ten day time limit may be granted with written request to the National President's office.

*Excerpt from Unifor Workplace Harassment Policy*

The Unifor Workplace Harassment Policy clearly outlines time lines for investigating and resolving workplace harassment complaints; however, if you have negotiated a Joint Workplace Harassment Procedure, these time lines may be different, so check your Collective Agreement.

Grievance policies also have clear time lines for resolution. But time lines don't come into effect until the complainant has 'been made aware' of a violation. Usually people are keenly aware when they have been violated. However, sometimes a worker may have a delayed reaction to an incident or to a series of so-called 'harmless' jokes or slurs. Sometimes workers won't bring a complaint forward until they are certain that no harm can be done to them. Or, if they see the alleged behaviour being directed at someone else they may finally speak up because they want it to stop. In other instances, a worker may not file a complaint until they learn that what is happening to them is against the law, or it violates an employer or union policy. If the union receives a complaint about an incident or incidents that allegedly occurred some time in the past, we should still carry out an investigation.

A full workplace harassment investigation may take more time to resolve than the grievance policy allows for. The union may need to file a general grievance (failure to provide a harassment-free workplace) before the investigation is complete. Or, we may need to negotiate with the employer to waive time lines during the investigation. They may agree to this simply because they want to avoid a full-blown human rights complaint.

## **WHAT IF THE WORKER DOESN'T WANT TO FILE A COMPLAINT?**

The complainant may need to talk with someone about the alleged harassment, but may not want to lodge a formal complaint. Work with them to try and resolve the issue informally and/or address any concerns they may have about filing a formal complaint. If they still don't want to



proceed, the union must make a judgement call. . .

### **. . . THE INVESTIGATOR'S ROLE**

The investigator can simply write up notes from the discussion and file them for future reference. Encourage the complainant to keep a written journal of what has happened in case they change their mind or the situation changes.

### **. . . THE UNION'S ROLE**

If the alleged harassment is a case of poisoned workplace environment, the union may still decide to file a general grievance (without naming the complainant). We can demand that the employer resolve the issue and provide anti-harassment training for all workers and supervisors.

## **WHAT IF SOMEONE FILES A MALICIOUS COMPLAINT?**

False accusations have been grossly exaggerated by those who refuse to acknowledge the reality of widespread workplace harassment. In the few instances where complaints are found to be trivial, frivolous, vexatious, or made in bad faith, the complainant may be disciplined. The complainant has the right to dispute any discipline.

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## SECTION 5: STARTING THE INVESTIGATION PROCESS

This section provides you with step-by-step procedures for completing either an informal or formal investigation.

### HEARING ABOUT AN ALLEGED HARASSMENT

You may find out about the alleged harassment\* by:

- having the complainant talk to you in person, by phone or in writing
- hearing or seeing the behaviour yourself or from your counterpart in management
- hearing about the alleged behaviour from the person who has been accused
- having others who have seen or heard it tell you
- hearing a rumour or receiving an anonymous message about the behaviour

\* You must use the terms **alleged** harasser and **alleged** harassment until an investigation takes place and, based on the evidence, the incidents are found to have occurred.



## **INFORMATION YOU NEED TO START AN INVESTIGATION**

Each incident is unique.

How you proceed will depend on:

- the needs of the person making the complaint
- the nature of the alleged harassment
- the language in your collective agreement
- what jurisdiction you work in (provincial or federal)
- your assessment of management's response
- your assessment of the local's support

## **CHECK YOUR BIAS**

Every complaint should be taken as both serious and sincere. The complaint may not make sense to you, it may seem 'small' or unusual, but you must reserve judgement until all the facts have been considered. Like everyone else, you carry attitudes, assumptions, stereotypes, and bias. These should not taint the investigation process or outcome. Your job is to find out (as fully as possible) what happened, and make an informed judgement about whether that constitutes harassment. As with any grievance, you need to keep personalities and popularity out of the picture.

## **DETERMINING THAT THIS IS HARASSMENT**

Read through "What is harassment" (page 5) before you continue. This will help you to determine whether it is appropriate to follow the Workplace Harassment Policy.





## **RIGHT TO REFUSE**

Our joint anti-harassment policy model language includes the right to refuse based on harassment. Unifor recommends that all local unions negotiate “right to refuse based on harassment” language into our collective agreements.

In Ontario, Bill 168 (which came into force on June 15, 2010) extends the right to refuse work if a worker has reason to believe that workplace violence is likely to endanger herself or himself. If your workplace is covered under Ontario legislation, you should inform the complainant of their right to refuse work if they believe they are in imminent danger.

For information on health and safety legislation in other jurisdictions that is relevant to workplace harassment and violence see pages 94-100 in this pocket guide. As a union we can take political action to improve right to refuse legislation to ensure it covers situations of harassment and violence.

## **WHEN TO INVOLVE THE POLICE**

Neither the Unifor Workplace Harassment Policy nor any joint workplace policies take the place of police investigations. If the alleged harassment is a serious criminal offence (for example, physical or sexual assault, death threats), strongly encourage the complainant to report the incident to the police. If the individual wants help through this process, offer to help them or help them find support (for example, from a Women’s Advocate, see page 25 or from another workplace representative).



If a criminal investigation does take place, you will still need to conduct a workplace investigation and file a grievance if applicable.

## **INFORMING THE RIGHT PEOPLE ABOUT THE COMPLAINT**

Confidentiality is key to the investigation process. However, there are people who need to know what's going on. This ensures that the investigator is doing their job, and that the policy is respected.

According to Unifor policy, the incident must be brought to the immediate attention of the unit chairperson and the local union president by the complainant or whomever they have chosen to assist them. If this case involves a union leader (for instance, shop steward, committee person), you need to notify your Unifor National Representative immediately. Together you can determine how the case should proceed, what role you will each play, and who else will be part of the process. If no union leaders are involved in the alleged harassment, you still need to inform your Unifor National Representative at the final stage of the investigation process. They may need to be part of a resolution meeting.

If you don't have a joint policy, you will need to use your common sense to determine when to talk with your employer. Be practical. In small workplaces you may need to let the employer know you're investigating a complaint of alleged harassment as soon as you receive the complaint, especially if it's obvious that the situation is explosive.

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## **SECTION 6:**

### **RESOLVING A HARASSMENT COMPLAINT INFORMALLY**

It's almost always better to try and solve co-worker harassment informally. However, in cases of extreme harassment, use common sense: it could be unsafe for the complainant to confront the alleged harasser. If a member fears for their safety, there may be reason to involve the police.

#### **STEP 1:**

##### **TALK WITH THE PERSON WHO IS ALLEGEDLY BEING HARASSED.**

Ask them about their needs. There's a good chance they'll tell you they "just want it to stop." Ask if they have directly told the alleged harasser to stop the behaviour. Encourage them to do so, if they haven't already. In many cases, a firm demand to stop the harassment will work. The harassment will not go away if it's ignored.

#### **STEP 2:**

##### **SUPPORT AND ENCOURAGE A PERSON WHO WANTS TO CONFRONT THE ALLEGED HARASSER.**

If the complainant wants support in confronting the alleged harasser, you or someone else can accompany them.

People who have been harassed do not have to confront the alleged harasser. Complainants can take



their concerns directly to a committee person or other appropriate union or management official. That person may attempt to resolve the situation by dealing directly and fairly with the alleged harasser.

Some victims of discrimination or harassment are reluctant to confront the alleged harasser because they fear retaliation. They may not have the support of their co-workers, or they may think that their supervisors or others (perhaps union leadership) will not believe them.

### **STEP 3:**

#### **WRITE IT DOWN.**

Always keep a written record of harassment complaints, including those resolved informally (see sample *Unifor Harassment Complaint Form*, page 81, and *General Guidelines for Record-keeping*, page 77). These notes may be needed later, if the situation re-occurs. Keep your copy of the completed complaint form stored in a locked cabinet in the local office.

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## **SECTION 7:**

### **RESOLVING A HARASSMENT COMPLAINT THROUGH A FORMAL INVESTIGATION**

If you cannot resolve the harassment complaint through an informal process, you will need to follow these steps to begin the formal investigation.

#### **STEP 1:**

##### **DETERMINE WHO SHOULD CONDUCT THE INVESTIGATION.**

To determine the most appropriate person please read “*Who investigates incidents of harassment*” (see page 23). Meet with that person to talk about the facts around the complaint. Inform the investigator of the facts, not your opinions of those facts. The investigator should now prepare for the investigation.

The following steps are for the person who is investigating the complaint.

#### **STEP 2:**

##### **READ THE NECESSARY BACKGROUND INFORMATION.**

Read through *General Guidelines for Conducting Interviews* (page 75) and *General Guidelines for Record-keeping* (page 77).



## **STEP 3:**

### **GET A COPY OF THE UNIFOR HARASSMENT COMPLAINT FORM.**

On pages 81 of this Pocket Guide, there is a sample *Unifor Harassment Complaint Form*. You can obtain copies of the form from your Unifor National Representative. If your local has a joint union-management workplace harassment policy, there may be a separate Harassment Complaint Form you should also use.

## **CONDUCTING A FULL & FAIR INVESTIGATION**

### **Do:**

- take the issue seriously as soon as you hear of it – this will set the tone for the investigation
- prepare in advance for interviews
- be sensitive to the emotions and needs of the complainant
- inform the alleged harasser about the complaint early on
- make sure the alleged harasser has the opportunity to tell their side before any assumptions or decisions are made
- interview all relevant witnesses
- follow up on leads you get from the interviews
- check out any inconsistencies
- recognize and put aside your biases about the

complainant, the alleged harasser, the witnesses, or the issue of harassment

- keep the investigation going, even if the alleged harasser denies the allegation
- keep the complainant informed – they shouldn't have to find out about the results from someone else
- keep the overall workplace climate in mind, not just the specific incident and people
- keep accurate and detailed records
- keep it confidential
- educate yourself on the issues – acknowledge that you may have more to learn about these issues

### **DON'T:**

- jump to conclusions before completing the investigation
- look for answers that will support these conclusions
- use your own values of right and wrong to decide how the investigation gets resolved
- take sides or give in to a 'popularity contest'
- delay the process – the conflict will only get worse





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## **SECTION 8:**

### **INTERVIEWING THE COMPLAINANT**

Telling someone about harassment is a huge step for most people. For far, far too long, those who experience discrimination and harassment have been told that they are the problem, that they should be able to take a joke, that they shouldn't make trouble, or worse, that they 'asked for it'. You need to be sensitive to this, and acknowledge their courage in bringing forward the complaint.

#### **STEP 1:**

##### **ACCOMMODATE REQUESTS FOR ADDITIONAL SUPPORT.**

Respect any request to have a woman, translator, person of colour or other advocate present with them during the investigation.

#### **STEP 2:**

##### **ASK KEY QUESTIONS.**

The following questions will help you to get the necessary information you need from the complainant:

- Who is the alleged harasser?
- What did the alleged harasser do?
- What did the alleged harasser say? Can you remember the exact words?
- When did this happen? If it happened a long time ago, and it's just now being reported, why is that? Where did this happen? Can you be specific?
- Were there any witnesses?

- How would you describe your relationship to the alleged harasser?
- Has this happened before?
- Has this happened to others?\*
- Who else have you talked to about this?
- How has this affected you?
- What have you done about it so far?
- What would you like me to do?
- Do you need me to help you find support to get through this process?
- Do you feel alright about returning to your work area?
- How do you think this should be solved?

\* While many harassers make life exceedingly difficult for several people, it's also common for a harasser to target just one individual. Just because the harassment hasn't been directed at anyone else, this doesn't mean it hasn't happened to the complainant.

### **STEP 3:**

#### **BE SUPPORTIVE DURING THE INTERVIEW.**

Try to put the complainant at ease. They need to get a sense that:

- you believe them
- you're not blaming them for what allegedly happened
- you're really listening
- you're not jumping to conclusions or expecting certain answers
- you can be trusted to carry out a full and fair investigation

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As an investigator, you can't judge the situation. But you can reassure the complainant that you're listening and taking notes. And you can let the person know that you understand that they did not like what they said was done to them. Do not suggest that the complainant 'misunderstood' what the alleged harasser did or said.

If the complainant is too uncomfortable to outline the details of the alleged harassment, ask them if they'd prefer to write it down.

People cope with harassment in different ways. Some people go over every detail again and again in their minds. Others block out as many details as they can. If you're interviewing someone who can't remember details, it might help to ask about other events that occurred around the same time. This could help them remember.

If a situation has been going on for months or years before it is reported, don't be judgmental or impatient – there may be very good reasons why the complainant is coming forward now.

Harassment may cause shame, fear, anger, shock, humiliation, loneliness and stress. Harassment often leads to time off work and problems at home. The emotional and physical problems and illnesses brought on by it can be long lasting.



## **STEP 4:**

### **MAKE SURE YOU FIND OUT WHAT THE COMPLAINANT WANTS TO DO.**

Make sure you ask the complainant what they need to happen to resolve the complaint. Don't make any promises, but let the complainant know that you are listening to their needs.

If the complainant wants counselling, you can probably help them find something appropriate, but you should not take on the role of counsellor yourself.

## **STEP 5:**

### **DESCRIBE THE INVESTIGATION PROCESS AND EXPLAIN THE TIMELINES.**

Outline the investigation process and time lines to the complainant. Let them know when you will follow up with them.

Make it clear that you may need to talk to witnesses to complete your investigation.

Stress the need to keep the process as confidential as possible. Commit to doing your absolute best to ensuring that confidentiality is maintained. Ask that they do the same.

Let the complainant know that they can return to you with questions or to go over the case. They may want to bring you more details as they remember them.



## **WHAT IF THE COMPLAINANT IS AFRAID OF RETALIATION?**

Retaliation is itself a form of workplace harassment, and will be treated as an even more severe offense. You should let both the complainant and the alleged harasser know that retaliation will lead to serious consequences. Reassure the complainant that the national and local union takes the issue of workplace harassment to heart. We will not tolerate harassment, and we are committed to safe and fair workplaces for everyone.

## **HOW IS THE COMPLAINANT PROTECTED DURING THE INVESTIGATION?**

Depending on the nature of the complaint, you may need to insist that the employer give the complainant the option to:

- have the alleged harasser transferred (especially in cases where retaliation seems likely)
- take time off with pay while the complaint is being investigated (in severe cases)
- get counseling (paid for by the employer)
- stop working with the alleged harasser



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## **SECTION 9:**

### **PREPARING THE COMPLAINANT'S SIGNED STATEMENT**

#### **STEP 1:**

#### **WORK WITH THE COMPLAINANT TO PREPARE A STATEMENT.**

Near the end of the interview, work with the complainant to prepare a statement. Help them write a clear, accurate and detailed summary of the allegations. Be aware of language and literacy levels. You may need to write up the complaint and have the person sign it, and you should also arrange for translation where necessary (both for the interview and the written statement).

#### **STEP 2:**

#### **IDENTIFY WHO MAY SEE THE STATEMENT.**

Advise the complainant that depending on the circumstances, their statement could be made known\* or shown to:

- other union leadership
- members of senior management
- legal counsel
- any human rights officials who may become involved
- the alleged harasser

\* We would make known the general nature of the complaint to the alleged harasser at the outset of the



investigation. If the complaint were not resolved at an early stage, and if the process went to arbitration, the actual statement might then be shown to the alleged harasser as part of respecting the rights of the accused.

### **WHAT IF THE COMPLAINANT WON'T WRITE OR SIGN THE STATEMENT?**

Writing a statement can be nerve-wracking for some people. Give the complainant the option to use another room to write the statement, and give them as much time as they need. They may even need to take the statement home to think it through more carefully. In this case, follow up with them the next day and keep the investigation moving along.

### **STEP 3: SIGNING THE STATEMENT.**

Once the statement is written, ask the complainant to review it carefully and make any needed changes. If you both agree that it accurately represents what they've told you, ask them to sign it. Make one copy for them, one for you, and put the original signed statement in the case file.

If the complainant won't write or sign the statement, ask them why. If they are afraid of retaliation, talk this through with them (see page 45). If they still won't write or sign a statement, you will have to write one based on the notes you took during the interview (see *General Guidelines for Record-keeping*, page 77). Put a note on the statement explaining their reasons for not signing it. Write that it best represents the event(s) described to you, and sign your own name.





If the complainant wants to add or change any part of their statement later, that's fine. Ask them to write out the changes or additions, and staple it to their statement.

Do not permit anyone to make any changes on the actual statement itself.

#### **STEP 4:**

#### **END THE INTERVIEW.**

Thank the complainant for coming to speak with you.



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## **SECTION 10:**

### **INTERVIEWING THE ALLEGED HARASSER**

#### **STEP 1:**

##### **EXPLAIN THE PURPOSE OF THE MEETING.**

Here is an example of what you might say:

*“Jack, I’ve been asked to conduct an investigation into an allegation of harassment. The complaint has been made against you by one of our members. I’m going to explain the allegation and then you’ll have a chance to tell your side of the story. But first, I want to tell you about the investigation process. I’ll try to answer any questions that you have. My role is to conduct a full and fair investigation and ensure that the employer maintains a harassment-free workplace.”*

#### **STEP 2:**

##### **EXPLAIN THE PROCESS OF THE INVESTIGATION.**

Go over the Unifor Workplace Harassment Policy (and the employer’s policy) with the alleged harasser. Explain the process of the investigation. Let them know that you will need to write down notes during your conversation.

#### **STEP 3:**

##### **LET THE PERSON KNOW THEIR RIGHTS.**

Explain that they have the right to a full investigation and that you will make every effort to ensure confidentiality. They should also ensure this



process is confidential. Make it clear that you will need to talk to witnesses about the case.

#### **STEP 4:**

##### **EXPLAIN THE FACTS.**

Recite the facts of the situation as related to you by the complainant. Provide specific details.

#### **STEP 5:**

##### **LET THE PERSON AGREE OR DISAGREE.**

Go through the facts again, step-by-step. Pause to give the alleged harasser the chance to agree or disagree. Let them say what they admit to and what they deny.

#### **STEP 5A:**

##### **ADMITTING THE HARASSMENT.**

If the alleged harasser admits to the behaviour, explain that the behaviour is unwelcome. It must stop. Let the person know that disciplinary action may be taken against them. You must also advise them of their right to dispute any discipline.

#### **STEP 5B:**

##### **DENYING THE ALLEGED HARASSMENT.**

If the alleged harasser denies the behaviour, ask them again about each specific part of the incident. Ask the person to clarify, for each incident, which part they admit to doing and which part they deny.

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**STEP 6:****ASK FOR WITNESSES.**

Ask if there are any witnesses who can give evidence about whether or not the behaviour took place or could not reasonably have taken place (for example, the alleged harasser was somewhere else at the time).

**STEP 7:****ASK ADDITIONAL QUESTIONS IF THE ALLEGED HARASSER IS A SUPERVISOR.**

If the complaint includes an alleged abuse of supervisory power, you can ask the following questions (after you've gone through the process outlined above):

- Can you explain your action(s)?
- Do you have written records or evidence to support your explanation?
- How do you explain the difference (if any) between how you treated, managed, evaluated the complainant compared with her/his co-workers?
- If the complainant was disciplined or promoted, were other workers judged by the same criteria or process?
- How do you explain your change (if any) in treatment/behaviour of the complainant after the complaint was filed?



## **STEP 8:**

### **TELL THE ALLEGED HARASSER NOT TO TALK TO THE COMPLAINANT.**

Advise the alleged harasser that they should not confront or talk with the complainant (or anyone else in the workplace) about the harassment investigation or allegations. Any attempt to 'get back at' the complainant will not be tolerated. Retaliation is treated as an even more serious offence than the action that led to the complaint.

## **STEP 9:**

### **STATE THE ALLEGATION.**

Before the interview ends, you should tell the alleged harasser exactly what the allegations are, even if they are not cooperating. This is to prevent them from saying later in a hearing that no one told them what they were accused of.

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## **SECTION 11:**

### **PREPARING THE ALLEGED HARASSER'S STATEMENT.**

#### **STEP 1:**

##### **WRITE A STATEMENT.**

Ask the alleged harasser to help you draft a clear, detailed summary of their position. Be aware of language and literacy levels. You may need to write up the complaint and have the person sign it, and you should also arrange for translation where necessary (both for the interview and the written statement). Once the statement is written, ask them to review it carefully and make any needed changes.

The alleged harasser may be reluctant to work with you to write the statement. Give them the option to use another room to write the statement, and give them as much time as they need.

#### **STEP 2:**

##### **SIGN THE STATEMENT.**

Once you both agree that the statement accurately represents what the alleged harasser has told you, ask them to sign it. Make one copy for them, one for you, and put the original signed statement in the case file.

If the alleged harasser refuses to write or sign a statement, you will have to write one based on the notes you took during the interview (see *General Guidelines for Record-keeping*, page 77). Put a note on the



statement explaining their reasons for not signing it. Write that it best represents the event(s) described to you, and sign your name.



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## SECTION 12:

### INTERVIEWING WITNESSES

*Witness:*

- someone who may have seen/heard the alleged harassment taking place
- someone who could describe first-hand the working relationship of the people involved
- anyone whose name was mentioned during the interviews with either the complainant or the alleged harasser

Use your best judgement when you interview witnesses. You need to do a full investigation, but you need to balance this with maintaining confidentiality. Remember, you don't need to interview everyone in the workplace!

### STEP 1:

#### ASK THE WITNESS QUESTIONS.

Don't ask leading questions. For example, instead of saying "I hear you may have been in the washroom yesterday when that graffiti went up," say "Were you in the washroom yesterday? Did notice anything unusual? Who did you see in there?"

Focus on the witness's observations not on their assumptions or conclusions about what did or did not happen, and not on the personalities of the workers involved in the alleged harassment.



You need to determine if the witness:

- saw or heard the alleged harassment taking place
- knows whether or not the alleged harasser had the opportunity to commit the alleged harassment
- talked with the complainant or the alleged harasser about the alleged harassment before the complaint was filed

If you are investigating poisoned work environment, you may want to ask other workers a general question about workplace harassment: “Have you experienced harassment in this workplace?”, without initially naming the alleged harasser. If, during your investigation you uncover a number of cases of alleged harassment, you should go to the employer and demand that anti-harassment policies, procedures, and training be put in place. You may also need to go forward with other investigations.

## **STEP 2:**

### **EXPLAIN THE PROCESS.**

Explain the need to keep this process confidential. They should not talk with anyone in the workplace about the investigation. Let them know that you will do your best to ensure that the evidence they provide will be kept confidential, released only on a need-to-know basis, as part of the investigative process.

## **STEP 3:**

### **WRITE A STATEMENT.**

Ask the witness to write and sign a statement.



**STEP 4:**  
**END THE INTERVIEW.**

Thank the witness for the interview.



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## **SECTION 13:**

### **EVALUATING THE COMPLAINT**

#### **EVALUATING THE PROCESS**

You need to make sure the process itself was fair and complete:

- Was the allegation investigated?
- Was the alleged harasser told about the allegations?
- Are all of your facts based on observations, documentation, and evidence, and not on assumptions?
- Have all the relevant witnesses been interviewed?
- Are there any outstanding questions? Are there any inconsistencies? If so, is it possible to clear them up? Who should be interviewed and what questions need to be asked?

#### **EVALUATING THE EVIDENCE**

As an investigator, your job is to gather all the evidence from everyone involved. When it appears to be a case of one person's word against another, it's important to look at the overall context and the workplace climate. Think through all that you have heard, and be creative and energetic in conducting a full investigation.

Workplace harassment doesn't need to be proven "beyond a shadow of a doubt." In fact, it rests on a "balance of probabilities."



You need to evaluate the information you collected and decide if there are sufficient grounds to go to the next step. If there's clearly not enough evidence to go forward on an individual case, you can negotiate with the employer for a group solution (such as anti-harassment or human rights training).

You need to determine the likelihood that the harassment took place:

- Did the alleged harasser have the opportunity to commit the behaviour?
- Did the alleged harasser specifically deny or admit to each allegation?
- Were the witnesses credible?
- Did any of the witnesses observe the alleged behaviour first-hand?
- Does their information support or contradict the other information collected during the investigation?
- What is the relationship between the witness and the complainant, and the witness and the alleged harasser? Does the witness have an interest in the outcome of the investigation?

## **PROCEEDING WITHOUT WITNESSES**

If there are no witnesses, part of the case may rest on credibility, and part of the case will rest on a broader examination of the workplace climate. Just because someone is 'well-liked' or 'popular', doesn't mean they didn't harass someone.

## **IS IT A COMPLAINT OF “POISONED WORK ENVIRONMENT?”**

- Read through the description of ‘poisoned work environment’ (page 7).
- How many workers participated in the alleged harassment?
- Who else was allegedly harassed? (By whom?) How did that person respond to the behaviour? (If they ‘went along’ with the behaviour, it does not change the complainant’s statement that it was unwelcome.)
- How frequent / widespread was the harassment?
- Who saw the alleged harassment?
- How did the alleged harassment affect the complainant’s ability to do their job?
- Did the supervisor of the complainant know or should they have known about the alleged harassment?

## **IS IT A HARASSMENT COMPLAINT?**

- Did the alleged behaviour violate the Unifor Harassment Policy or the Joint Harassment Policy? If not, did the alleged behaviour violate another section of the collective agreement or employer rule?
- Was the behaviour unwelcome? Did the alleged harasser know it was unwelcome? Should they have known that their behaviour was unwanted and/or offensive? Again, even if the complainant initially went along with the alleged harasser’s behaviour, that behaviour could still be unwelcome to the complainant.



## **WHAT IF THE COMPLAINANT WANTS TO WITHDRAW THE COMPLAINT?**

Find out why the complainant wants to withdraw the complaint, and try to address their concerns (such as threats of retaliation). Once the union has been made aware of workplace harassment, we should carry through with the investigation, as with any grievance. If it is a case of poisoned workplace environment, we may decide to file a general grievance (without naming the complainant), and demand that the employer resolve the issue and provide anti-harassment training for all workers and supervisors. There may be extreme situations when a complainant has reason to believe that carrying through with the complaint will create even more serious repercussions for them. If this is the case, contact your National Representative to discuss appropriate action.



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## **SECTION 14:**

### **THE INVESTIGATOR'S REPORT**

#### **STEP 1:**

##### **ORGANIZE THE FACTS.**

Once you have completed the investigation, prepare an outline for your report by organizing the facts in a logical order. Read through *General Guidelines for Record-keeping* (page 77).

#### **STEP 2:**

##### **WRITE A REPORT.**

The investigation report should summarize the investigation. Remember, your report will be used to help determine how the complaint gets resolved.

The report should include:

- summary of allegation and complainant's statement
- summary of alleged harasser's statement
- summary of witnesses' statements
- summary of findings
- summary of proposed resolve
- name of each investigator and position in the union

Remember, your report should:

- be logical and easy to read
- provide substantiated proof
- offer specific recommendations (with reasons for the recommendations)



### **STEP 3:**

#### **SUBMIT THE REPORT TO YOUR UNIT CHAIRPERSON.**

Remember to maintain confidentiality when handling the report.

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## **SECTION 15:**

### **FOLLOW-UP.**

This section outlines steps for follow-up and identifies possible resolutions of the harassment issue.

#### **POSSIBLE RESOLUTIONS**

The resolution must be fair and consistent with Unifor policy regarding discrimination and harassment in the workplace. As a worker representative you will, no doubt, have a sense of what ‘fairness’ means in this and any other instance.

#### **MANAGEMENT RESPONSES**

If the investigation substantiates the harassment complaint, and if there is no way to satisfactorily resolve it without involving the employer, then the unit chairperson must take up the issue with management.

#### **POSSIBLE DISCIPLINARY ACTIONS**

Management may discipline the worker in one or more of the following ways, depending on past history and the severity of the complaint:

- give the harasser a verbal or written warning about their behaviour;
- require that the harasser apologize to the complainant, either in person or in writing;
- require that the harasser take anti-harassment or human rights training, and/or get counseling;



- suspend, demote, transfer, dismiss (in the most extreme cases, or in cases of repeated harassment where there is a record of progressive, corrective discipline for related or similar offences and where the worker can be reasonably expected to have known the consequences).

## **APPROPRIATE RESOLUTIONS**

In cases where there is a joint workplace harassment policy, the union should agree to a fair resolution that considers the complainant's needs and continues to respect the alleged harasser's right to due process. If we agree to a resolution that results in the employer disciplining one of our members, we are unlikely to follow through with any grievance against that discipline. As a union we have a zero tolerance of harassment in the union and in the workplace. This means we take seriously our legal and moral responsibility to play a part in stopping workplace harassment.

It is important to note that workplace resolutions are handled on a case-by-case basis, and cases involving prohibited grounds may be subject to stronger disciplinary actions.

Before agreeing to a resolve, the union should advise the complainant and the alleged harasser of the general nature of the findings and seek input on the resolve.

## **MANAGEMENT INACTION**

If management fails to act, then the union should grieve failure to provide a harassment-free workplace. If

the complaint is not resolved through the grievance procedure, proceed to arbitration.

### **EXCESSIVE DISCIPLINE**

Management may ignore workplace harassment until they are forced to take action. At this point, they may discipline the alleged harasser unfairly to simply ‘get rid of the problem.’ For example, the employer may fire an individual for making racial slurs, when a more appropriate action might be mandatory human rights training and a suspension. The union would then grieve the excessive discipline.

### **WHAT IF THE EMPLOYER DISCIPLINES BOTH PARTIES?**

If management has put off becoming involved until things have gotten way out of hand, they might just dismiss both parties to try to make the problem go away. You need to absolutely insist on a full and fair investigation, and a full and fair resolution. Grieve “failure to provide a harassment-free workplace,” and grieve the discipline (if inappropriate). Specify a remedy, and provide details if the remedy requires a systemic solution (such as anti-harassment training for all workers and supervisors, negotiation of a joint workplace harassment policy).

### **WHEN TO GRIEVE DISCIPLINE**

It is our responsibility to ensure that the alleged harasser, as well as the complainant, receives due process. Use your judgement: if the discipline is inappropriate, or if the complaint has not been substantiated, grieve it.



However, if the investigation evidence is conclusive, and if management appropriately disciplines a harasser, the union may decide not to file (or decide to withdraw) the grievance – as we do in other instances.

The member has the right to appeal this decision to the local. If the member loses their appeal, they have the right to proceed to the next stage of appeal: the Unifor National Executive Board (NEB). The written decision of the National President or the NEB would, if also appealed, be put before the Public Review Board. The PRB can hear an appeal on a grievance only where fraud, discrimination, or collusion is alleged. The Public Review Board consists of nationally recognized citizens outside the labour movement, whose decisions are final and binding. The member also has the right to file a complaint with the appropriate provincial or federal Labour Board, alleging that the union has breached its duty of fair representation. At this point, documentation of the case becomes especially important in demonstrating that the right process was indeed followed.

## **IN ALL CASES**

Whether the harassment complaint is substantiated or not, the union should negotiate with the employer to:

- work with the union to provide mandatory anti-harassment training to all workers (on employer time);
- introduce remedies to improve the workplace environment (for instance, increase vigilance in removing pin-ups, graffiti);



- agree to negotiate a joint Workplace Harassment Policy (if there isn't one in place).

**Remember to send the Harassment Complaint Form and Investigation Report (including the resolution) to Unifor, President's Office.**

## **WHAT HAPPENS AFTER THE INVESTIGATION?**

Like other grievances, workplace harassment complaints can change the workplace. Many of these changes are positive and can include: training for all workers, a greater understanding among members and supervisors of the effects of their actions, or appropriate discipline for harassers.

## **CAN THE WORKPLACE ENVIRONMENT RETURN TO NORMAL?**

For the person who made the complaint, things don't always 'go back to normal'. The union leadership need to ensure that the complainant is not subject to further harassment or isolation from other co-workers. By demonstrating your own commitment to ending workplace harassment, and by immediately squashing rumours and confronting backlash, you can help prevent a poisoned work environment.

Conflict and crises provide key learning moments. The way a union handles a harassment complaint will teach members (complainants, respondents, bystanders), and the employer, a lot about what the union stands for. When we make it clear to the complainant that we take their issues seriously, when



we handle the investigation process with fairness, when we ensure due process and confidentiality, and when our decisions are governed by our commitment to building greater equality, dignity and respect in the workplace, then we increase the odds that the lessons learned will be positive and will build solidarity in the union. Harassment divides workers. We need solutions that bring workers together, united in our commitment to defend all of our members, their right to a harassment-free workplace and their right to fair representation. At the end of the day, we need to build confidence in our union; we need to know – and our members need to know - that we did the right thing and we did it the right way.

## **STRATEGIES TO PREVENT WORKPLACE HARASSMENT**

- Negotiate anti-harassment training for everyone in the workplace.
- Post the Unifor Workplace Harassment Policy, the joint policy and the employer policy, in visible places, and in the languages used in the workplace.
- Interrupt racist, sexist, homophobic, transphobic, ableist, anti-Muslim, and other slurs/offensive jokes.
- Deal with harassment immediately.
- Do monthly audits of your workplace. Report graffiti, pin-ups, etc., to management – it is their responsibility to maintain a harassment-free workplace.





- Negotiate employment equity to prevent discriminatory hiring and job “ghettos” which create conditions for workplace harassment.
- Limit speed-up, excessive overtime and repetitive, difficult, hazardous working conditions. All of these contribute to workplace stress which in turn creates conditions for workplace harassment and undermines solidarity between workers.



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## **SECTION 16:**

### **GUIDELINES AND RESOURCES**

The guidelines listed below will help you to conduct fair and complete investigations into cases of workplace harassment.

#### **GENERAL GUIDELINES FOR CONDUCTING INTERVIEWS**

##### **PREPARE IN ADVANCE.**

- Think through the purpose of the interview.
- Think about how long the interview might take and make sure that you won't be interrupted (for example, by telephone calls).
- Be sure that you choose an interview space that is both private, and accessible to people with disabilities.
- Have a copy of the Unifor harassment policy with you to give to the person being interviewed.
- Have paper, pens, tissue and water available.
- Be prepared to refer the complainant to community support/counseling services if they want help.

##### **OPEN THE INTERVIEW.**

Welcome the individual, introduce yourself. Explain that your role is to investigate and to uphold the union's policy on workplace harassment.

- If the person you are interviewing is from an equity seeking group, honour their request to have a co-worker present as a supporter (supporters must not interfere in the interview process).
- Invite honest and frank conversation.
- Reassure the interviewee by explaining the process of investigation.
- Emphasize the importance of keeping the investigation confidential, and state your commitment to confidentiality.
- Listen to their account of the problem.
- Take notes.

#### **DURING THE INTERVIEW.**

- Guide the interview with open-ended questions (who, what, why, when, where, how), not leading questions.
- Ask consistent questions of each witness.
- Recognize your own bias and do not let it enter into the interview.
- Do not add to any hostility.
- Try to bring some direction and calm to the (already emotional) situation.
- Focus on the situation at hand, not on your general knowledge about human rights.
- Only discuss relevant issues.
- Re-state information so that they can correct or clarify your understanding.
- Listen actively but also allow silence.
- Don't interrupt.
- Don't be judgmental.

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## CONCLUDE THE INTERVIEW.

- Summarize what you have heard them say.
- Ask them to read over their statement and sign it.
- Invite them to return if needed.
- Thank them for coming.

## FOLLOW-UP.

- Read over your own notes, adding what's missing (see *General Guidelines for Record-keeping*).
- Go on to the next step in the investigation (outlined in this pocket guide and your collective agreement if you have a joint policy).
- Be available for follow-up with interviewees.
- Maintain confidentiality.

## GENERAL GUIDELINES FOR RECORD-KEEPING

- Start taking notes as soon as you hear about the complaint. Write down what the complaint is about and when it first came to your attention. You should also write down the date that it was brought to management's attention.
- Hand write notes during the interviews. Write down all factual information (including dates, times, and places). If something seems especially important to the person you're interviewing, write it down. Even if it doesn't make sense to you, it could be important. If you can record someone's actual words, do so. Put it in quotation marks.
- Your notes should stay focused on descriptions of what allegedly happened. They should be specific.

Avoid writing down general or sweeping statements and opinions (yours or anyone else's).

- Use your notes to keep track of all the steps that are taken during the investigation. For example, write down the date, time, and place that you initially set up an interview with the alleged harasser.
- Keep a record of everyone's name who is mentioned during the investigation – you may need to interview them later as witnesses.
- If you are working with another investigator, one of you should focus on taking notes during the interviews. After each interview, you should both re-read the notes, and initial them.
- Review your notes regularly. Include reminders for yourself in your notes. If your notes don't make sense, it means you have more follow-up work to do. Highlight any missing pieces and clarify inconsistencies. Write summaries after each interview, but keep your original notes.
- Your notes are mainly for you – to help you keep track and keep on track. But they could be used in a formal proceeding. They will show that the union responded to the complaint and conducted a full and fair investigation. They will also be a record of management's response.
- Keep your notes focused and clear. Don't write down anything that is unrelated to the interview.
- Never destroy your notes.



## UNIFOR EDUCATION PROGRAMS

Don't be overwhelmed. Talk to your bargaining committee about negotiating the **3-day Unifor Workplace Harassment Investigator Training**. You can also take the Unifor week-long Human Rights course (the National Union pays half the cost — the other half could be the best investment your local makes this year! Contact Unifor's Human Rights Department or your Unifor National Representative for details).

Ideally all of our collective agreements would include a provision for anti-harassment training during work hours for all employees. Unifor has produced a 1/2 day and a full day **“Building Respectful Workplaces”** course for exactly that purpose. If your agreement does not yet include training, management may be most likely to agree to the training when an issue arises, or as part of an overall workplace resolution. Talk with your bargaining committee about getting this commitment in place and contact Unifor's Human Rights Department or your Unifor National Representative.



## **An excerpt from the UNIFOR HARASSMENT POLICY**

The role of the local union is crucial in combating harassment. If a worker believes that he or she is being harassed at work and wants help, the incident must be brought to the immediate attention of the unit chairperson and the local union president.

The experience of harassment can be overwhelming for the victim. People often react with shock, humiliation and intense anger. Therefore, the victim of harassment may not always feel comfortable going through the normal channels for resolving such a problem.

Because of the sensitive and personal nature of harassment complaints, especially racial and sexual harassment; the victim may prefer initially to seek other assistance. This could be any local union elected person or official, including a workplace women's advocate, member of the women's committee, human rights committee and employment equity committee. This person could assist the harassment victim in bringing the incident(s) to the attention of the top local union leadership.

The local union president and the unit chairperson must contact the UNIFOR national representative, and if necessary, they will meet with a senior company representative(s) to carry out an investigation. The issue must be handled with confidentiality, and is to be resolved within 10 working days of notifying the unit chairperson and local union president. An extension to the ten day time limit may be granted with written request to the National President's office.

The national representative must notify the UNIFOR national human rights department about the complaint and its resolution.

Any resolution of harassment complaint must reflect the serious nature of such acts, and send a clear signal that they will not be tolerated.

**CONFIDENTIALITY MUST BE RESPECTED  
THROUGHOUT THE PROCESS.**





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**CONFIDENTIAL:** This form must be kept confidential and stored in a locked cabinet.

Where the occurrence took place:     Workplace         Union event

Name of the Workplace or Union event:

\_\_\_\_\_

Date & Time of the Occurrence:

\_\_\_\_\_

Name: \_\_\_\_\_ Local Union: \_\_\_\_\_

Applicant's description of what happened: (Who? What? Where? When? Any witnesses present? Please use other pages if necessary.)

\_\_\_\_\_  
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Why is it harassment? Listed below are the prohibited grounds of discrimination, as outlined in the UNIFOR Harassment Policy. Check which one applies (it can be more than one):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Sex                     | <input type="checkbox"/> Activism & participation in the union | <input type="checkbox"/> Race   |
| <input type="checkbox"/> Colour                  | <input type="checkbox"/> Political affiliation                 | <input type="checkbox"/> Religion                                       |
| <input type="checkbox"/> Place of origin         | <input type="checkbox"/> Marital status                        | <input type="checkbox"/> Sexual orientation                             |
| <input type="checkbox"/> Gender identity         |  | <input type="checkbox"/> Gender expression                              |
| <input type="checkbox"/> Family status           |  | <input type="checkbox"/> Disability                                     |
| <input type="checkbox"/> Age                     |  | <input type="checkbox"/> Conviction for which a pardon has been granted |
| <input type="checkbox"/> Social & economic class |  | <input type="checkbox"/> Language                                       |
| <input type="checkbox"/> Creed                   |  |   |
| <input type="checkbox"/> Ethnic origin           |  |   |



---

If it is non-code "Bullying & Personal" harassment, please describe:

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What do you wish to see as a Resolution?

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Harassment at Workplace: Does your collective agreement include a joint workplace harassment policy?     Yes     No

If YES, follow the procedure outlined in your collective agreement.

If NO, this form must go to either the Unit Chairperson – so that s/he can arrange for an Investigation, or to the person already designated by the Union to investigate Workplace Harassment Complaints.

At Union Events: if the complaint has not been resolved informally, this form must go the national Anti-Harassment Coordinator at the National Office.

I understand that this statement accurately reflects the description of the occurrence.

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Information: \_\_\_\_\_

File # \_\_\_\_\_





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INVESTIGATOR'S REPORT  
(ATTACH ADDITIONAL PAGES WHERE NECESSARY)

Investigator(s): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Position in the union: \_\_\_\_\_

Summary of allegation and complainant's statement: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of alleged harasser's statement: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of witnesses statements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of findings: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of proposed resolve: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of resolution: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date reported to Unit Chairperson: \_\_\_\_\_ Signature: \_\_\_\_\_

Date reported to Local Union President: \_\_\_\_\_ Name: \_\_\_\_\_

Date reported to UNIFOR National Representative: \_\_\_\_\_ Name: \_\_\_\_\_

This complaint form was completed by:

Printed Name: \_\_\_\_\_ Position in the union: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## WORKPLACE HARASSMENT MODEL LANGUAGE

### WORKPLACE HARASSMENT - BASIC

The Company and Unifor are committed to providing a workplace free of harassment, bullying and violence. This procedure applies to all complaints of harassment that take place at this workplace. The workplace is defined as any company facility and function including but not limited to areas such as offices, shop floors, rest rooms, cafeterias, lockers, conference rooms and parking lots.

**Harassment is defined** as a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome, that denies individual dignity and respect on the basis of the grounds such as: sex, race, creed, colour, religion, ethnic origin, place of origin, sexual orientation, political affiliation, gender identity, gender expression, marital status, family status, disability, conviction for which a pardon has been granted, age, social and economic class, activism and participation in the union, or language and any other prohibited ground, as stated in the provincial/federal Human Rights Code by any person, in particular, by management, customer, client and/or co-worker, whether verbal or physical, on a single or repeated basis, which humiliates, insults or degrades. All employees are expected to treat others with courtesy and consideration and to discourage harassment.

“Unwelcome” or “unwanted” in this context means any actions which the harasser knows, or ought

reasonably to know, are not desired by the victim of the harassment.

Harassment may take many forms: verbal, physical or psychological. It may involve a threat or an implied threat, it may be that acceptance of harassment is perceived to be condition of employment. The following examples constitute harassment, but are not meant to cover all potential incidents:

- Unwelcome remarks, jokes, innuendos, gestures or taunting about a person's body, disability, attire or gender, racial or ethnic backgrounds, colour, place of birth, sexual orientation, citizenship or ancestry;
- Practical jokes, pushing, shoving, etc., which cause awkwardness or embarrassment;
- Posting or circulation of offensive photos or visual materials;
- Refusal to work or converse with an employee because of their racial background or gender, etc.
- Unwanted physical conduct such as touching, patting, pinching, etc.
- Condescension or paternalism which undermines self-respect;
- Backlash or retaliation for the lodging of a complaint or for participation in an investigation.

***Bullying and personal harassment*** – Bullying and personal harassment are defined as deliberate actions, mobbing, offensive, malicious and/or cruel behaviour with the aim to humiliate, intimidate, undermine, or destroy the character or confidence of an individual or group of individuals. Bullying and personal harassment

may include an abuse of power by one person or group over another that degrades an individual. Bullying behaviour is often persistent and part of a pattern, but it can also occur as a single incident. It is usually carried out by an individual, who ought reasonably to have known that her/his actions are unwelcome or unwanted. It can also be an aspect of group behaviour. The policy includes any member in any type of relationship, for example domestic, intimate, common law partnerships.

Some examples of bullying and personal harassment include using any form of media in verbal communication and/or in psychological manipulation but are not limited to:

- Abusive and offensive language;
- Insults;
- Teasing; or
- Spreading rumour and innuendo
- Unfair blame for mistakes;
- Deliberate exclusion;
- Practical jokes;
- Belittling or disregarding opinions or suggestions; or
- Public criticism

### **JOINT PROCESS:**

The Company and Unifor agree to form a **Joint Building a Respectful Workplace Committee** whose function shall be to investigate complaints and help create a respectful workplace. This committee will comprise of equal number of representatives (2)



selected by the employer and by the union. At least one (1) member of this committee from each side must be a woman. The parties agree that the representatives are required to be independent and not responsible for disciplinary decision making.

All committee members (and any subsequent committee members) shall receive the agreed to Unifor Workplace Harassment Investigation Training and any agreed to or needed refresher or advanced training courses.

All employees must receive Unifor's half-day Building a Respectful Workplace training by (a specific date). All new employees will receive this training as well. Additionally, all union representatives and members of management shall receive three-day "Building a Respectful Workplace Leadership" training.

The Company agrees to be responsible for all course costs including Unifor's facilitator(s), any travel costs, materials etc.

The Company and Unifor agree to the following process for investigating any complaints of harassment, discrimination and bullying.

**FILING A COMPLAINT:**

If an employee believes he/she has been harassed and/or discriminated against there are specific actions that may be taken to put a stop to it:

- Request a stop of the unwanted behaviour;
- Inform the individual that is doing the harassing or the discriminating against you that the behaviour is unwanted and unwelcome;



- Seek assistance from any union representative;
- Document the events, complete with times, dates, location, witnesses and details;
- Report the incident to the Joint Building a Respectful Workplace Committee.

However, it is also understood that some victims of discrimination or harassment are reluctant to confront their harasser, or they may fear reprisals, lack of support from their work group, or disbelief by their supervisor or others. In this event, the victim may seek assistance by reporting the incident directly to any Union representative or any Union member of the Joint Building a Respectful Workplace Committee before taking the complaint to this committee in writing. If the employee believes her/his safety is in jeopardy s/he can exercise right to refuse unsafe work.

#### **INVESTIGATION:**

Upon receipt of the complaint, the contacted Union Representative/Company Official or Joint Building a Respectful Workplace Committee will immediately inform their Union or Company counterpart and together they will then interview the employee and advise the employee if the complaint can be resolved **immediately** and informally or if the complaint should be formalized in writing. Properly completed copies of this complaint will be forwarded to the agreed upon Joint Building a Respectful Workplace Committee. The Respondent will be provided with sufficient details of the allegations, either verbally or in writing, to formulate an appropriate response to those allegations and give their version of events.



A formal investigation of the complaint will then begin by the Joint Building a Respectful Workplace Committee as follows:

- The Joint Building a Respectful Workplace Committee determines any preliminary matters. This committee will appoint at least one (1) representative selected by the employer and at least one (1) representative selected by the union from the trained committee members each side have available to conduct investigations. The committee must meet to begin their investigation as soon as possible but no later than five (5) working days after receiving the written complaint. All investigation meetings and or work shall be done on company paid time.
- Any employee who is to appear before such committee may request to have an independent union representative or member present as a witness for them during any part of the investigation they are part of.
- Where the Complainant is a woman and the complaint involves sexual harassment or gender discrimination, the Joint Investigation Committee will include at least one woman from each side.
- The issue must be handled with utmost confidentiality, and is to be resolved within ten (10) working days of notifying the joint committee with a complaint in writing. Once the committee has finalized their investigation, a written statement of their findings shall be given to the human resources manager for resolution. Copies of which shall be

given to the union chairperson, the applicant and the respondent. This report is confidential and must be treated as such, unless required to be produced by law or by an arbitrator. All documents related to the investigation will be stored in a secured location. A copy shall be sent to the assigned Unifor National Representative as well. The National Representative shall notify Unifor's human rights department about the complaint and its resolution.

- The committee shall not be used to determine discipline in any way but rather that remains the exclusive function of the company. Any discipline implemented by the company that is based on the report shall be done as per the existing practices and collective agreement including the right to grieve and arbitrate any such discipline.

**If the matter remains unresolved** because the joint committee cannot reach a consensus, the complaint will be inserted into the last step of the grievance procedure for resolution. In the event that the complaint is not resolved by the parties at the last step of the grievance procedure, the union may refer the matter to arbitration in accordance with the provisions of the collective agreement.

The parties agree that this procedure is an alternative complaint mechanism and as such, complaints should not be pursued through both the grievance procedure and the Human Rights Complaint Procedure. However, the parties acknowledge the right of individuals to file a complaint with the appropriate Federal/Provincial bodies and to seek redress. Note that



these federal/provincial bodies have specific timeframes as to when the complaint must be filed. When a complaint is filed under this procedure, it should be noted that statutory time limits are not extended. However the grievance procedure is put in abeyance/suspended until the joint workplace harassment process is completed.

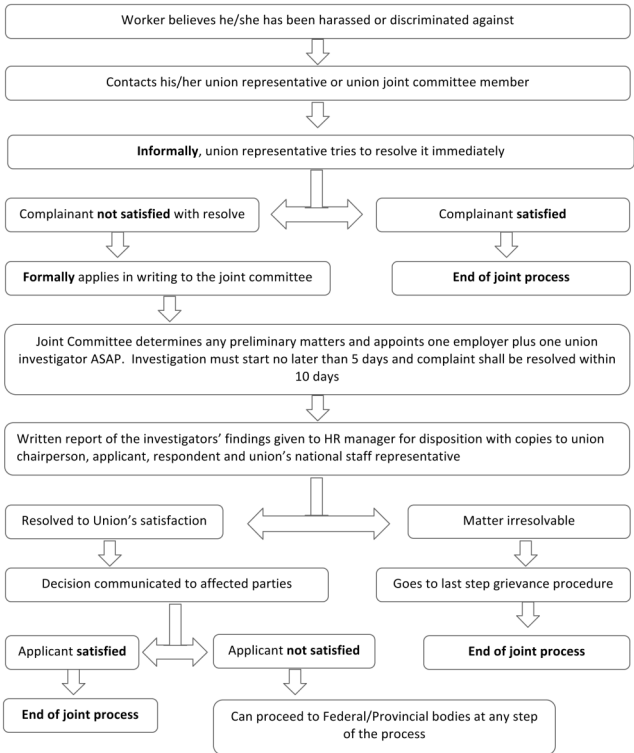
The pursuit of frivolous allegations through the Human Rights Complaint Procedure has a detrimental effect on the spirit and intent for which this policy was rightfully developed and should be discouraged.

**UNIFOR**

205 Placer Court  
Toronto, ON M2H 3H9  
(416) 497-4110  
1-800-268-5763



# WORKPLACE HARASSMENT JOINT PROCESS CHART





## OVERVIEW OF HEALTH AND SAFETY LEGISLATION ON HARASSMENT AND VIOLENCE PREVENTION

Thanks to dedicated lobby efforts by our unions, other unions and community advocates, important new amendments and regulations were added to occupational health and safety legislation in Canada. Generally speaking, they name harassment and violence as hazards to the health and safety of the worker and mandate employers to take proactive measures to prevent workplace harassment and violence.

The exact legal definition of workplace violence may vary from one jurisdiction, province or territory to another. The federal regulation, for example, says workplace violence means:

*“any action, conduct, threat, or gestures of a person toward an employee in their workplace that can reasonably be expected to cause harm, injury or illness to that employee”*

### ONTARIO

**Bill 168** came into force in Ontario on June 15, 2010. It extends the right to refuse work if a worker has reason to believe that workplace violence is likely to endanger herself or himself. There are also many new responsibilities for joint health and safety committees. For example, the joint health and safety committee must:

- take part in a hazard assessment for harassment and violence,



- review policies and procedures to make sure they are working effectively to prevent these hazards, and
- name those employer and worker representatives who will take part in investigations of refusals of work due to harassment or violence.

On the Unifor website, under **Fact Sheets** at the **Health, Safety and Environment Department**, you can find a detailed description of **Bill 168** and how best to make it work.

See also:

Occupational Health and Safety Act. R.S.O. 1990, c. O.1 Part III.0., 1, Violence and Harassment; Section 32.0.1 Policies, violence and harassment; Section 32.0.2 Program, violence; Section 32.0.3 Assessment of risks of violence; Section 32.0.4 Domestic violence; Section 32.0.5 Duties re violence; Section 32.0.6 Program, harassment; Section 32.0.7 Information and Instruction, harassment; Workplace Violence and Harassment: Understanding the Law,

[http://www.labour.gov.on.ca/english/hs/pdf/wpvh\\_gl.pdf](http://www.labour.gov.on.ca/english/hs/pdf/wpvh_gl.pdf)

## CANADA

Part 20 of Canada Health and Safety Regulations which applies to federal workers, mandates the employer to:

- develop a violence prevention policy,
- identify factors that contribute to workplace violence,
- assess the potential for violence,



- implement systematic controls,
- review the effectiveness of the measures,
- implement written emergency notification procedures,
- appoint a competent person to investigate cases of violence,
- provide information, instruction and training, and
- maintain signed records of information, instruction and training to each worker.

See also:

Canada Labour Code, Part II R.S.C. 1995, c. L-2

Part II, “Occupational Health and Safety” “Duties of Employers” - Section 124, “General duty of employer” Section 125, “Specific duties of employer” Subsection 125(z. 16)

Canada Occupational Health and Safety Regulations, SOR/86-304 - Part XX, “Violence Prevention in the Work Place”

## **ALBERTA**

Occupational Health and Safety Act, Occupational Health and Safety Code, 2009, Part 27, Violence

Section 389, Hazard assessment; Section 390, policy and procedures; Section 391, Instruction of workers; Section 392, Response to incidents

## **BRITISH COLUMBIA**

Workers Compensation Act, Occupational Health and Safety Regulation, B.C. Reg. 296/97

Part 4, General Conditions



Workplace Conduct Section 4.24 Definition; Section 4.25 Prohibition; Section 4.26 Investigation Violence in the Workplace; Section 4.27 Definition; Section 4.28 Risk assessment; Section 4.29 Procedures and policies; Section 4.30 Instruction of workers; Section 4.31 Advice to consult physician

## **MANITOBA**

Workplace Safety and Health Act, Workplace Safety and Health Regulation, Man. Reg. 217/2006

Part 9: Working Alone or in Isolation; Section 9.1 Application; Section 9.2 Risk identification; Section 9.3 Safe work procedures

Part 10: Harassment; Section 10.1 Harassment prevention policy; Section 10.2 Required statements; Section 10.3 Posting policy

Part 11: Violence in the Workplace; Section 11.1 Risk identification and assessment; Section 11.2 Duty to inform workers

See also: Manitoba Labour, Guideline for the Prevention of Harassment and Violence in the Workplace

## **NEW BRUNSWICK**

No specific legislation currently exists regarding Workplace Violence; however General Duty obligations exist under Occupational Health & Safety Legislation.

Workplace Health, Safety and Compensation Commission of New Brunswick

<http://www.worksafenb.ca/>



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## NEWFOUNDLAND AND LABRADOR

Occupational Health and Safety Act, R.S.N.L 1990, c. O-3

Occupational Health and Safety Regulations, 2009, N.L.R. 70/09 Part III, General Duties

Section 22 Violence prevention; Section 23 Procedures and policies; Section 24 Instruction to workers

## NOVA SCOTIA

Occupational Health and Safety Act, Violence in the Workplace Regulations, N.S. Reg. 209/2007

Reference Guide to the Violence in the Workplace Regulations,

<http://www.novascotia.ca/lae/healthandsafety/docs/WorkplaceViolence-ReferenceGuide.pdf>

Violence in the Workplace Regulations for the Retail Gas Industry

<http://www.gov.ns.ca/lwd/healthandsafety/docs/violenceguide-retailgas.pdf>

Violence in the Workplace Regulations for the Taxi Industry

<http://www.gov.ns.ca/lwd/healthandsafety/docs/violenceguide-taxiindustry.pdf>

Violence in the Workplace Regulations for Convenience and Small Retail Stores

<http://www.gov.ns.ca/lwd/healthandsafety/docs/violenceguide-smallretailstores.pdf>

## **PRINCE EDWARD ISLAND**

As made under the Occupational Health and Safety Act, Occupational Health and Safety Act General Regulations, EC180/87

Part 52, Violence in the Workplace; Section 52.1 violence, defined; Section 52.2 Risk assessment of workplace; Section 52.3 Risk identified; Section 52.4 Inform workers of risk; Section 52.5 Consult Physician

## **QUEBEC**

Act respecting labour standards, R.S.Q., c. N-1.1

Division V.2, Psychological Harassment

Sections 81.18 to 81.20 Division II.1, Recourse against Psychological

Harassment; Sections 123.6 to 123.16

## **SASKATCHEWAN**

Occupational Health and Safety Act, 1993, R.S.S. 1993, c. O-1.1

Section 14

Occupational Health and Safety Regulations, 1996, R.S.S., c. O-1, r. 1

Part III, General Duties Section 36, Harassment Section 37, Violence



## MAKING USE OF HEALTH & SAFETY LEGISLATION

A few jurisdictions still do not have explicit legislation dealing with violence in the workplace, but all employers are responsible for taking every reasonable precaution to protect the health and safety of the worker. That's because there is always a "general duty provision" in any health and safety legislation.

More information on the general duty of the employer is available in **OSH Answers** at [www.ccohs.ca](http://www.ccohs.ca). OSH Answers is a service of the **Canadian Centre for Occupational Health and Safety**. CCOHS offers a comprehensive and easy-to-search compilation of the full text of Canadian health, safety and environmental legislation and critical guidelines and codes of practice from all jurisdictions. All the legislation is compiled into one convenient location and is regularly updated with new amendments highlighted.

On the CCOHS website, you'll find:

- OH&S Legislation - Due Diligence. Workplace representatives can and should always use the general duty provision. We can and must always demand our employers take whatever measures are necessary to stop harassment and violence before anyone gets harmed.
- An overview of more general duties. See the reference document Occupational Health and Safety Responsibilities of Directors, Owners, Employers, Managers and Supervisors.



- A quick reference document on Working Alone legislation, which also covers acts of violence.
- Information on how the health and safety laws are enforced (info on Canadian Governmental Occupational Health and Safety Departments [www.ccohs.ca/oshanswers/information/govt.html](http://www.ccohs.ca/oshanswers/information/govt.html)).
- At **OSH Answers on Violence in the Workplace** you can also find:
  - o Bullying in the Workplace
  - o Violence in the Workplace
  - o Violence in the Workplace - Negative Interactions
  - o Violence in the Workplace - Parking Lot Safety
  - o Violence in the Workplace - Warning Signs
  - o Violence in the Workplace - Working Late



# Notes





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# BUILDING OUR UNION



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