

## Member's Quarterly

Spring 2020 Edition

### Feature

# Power: The Key to Understanding Workplace Harassment

*Harassment isn't just about hurt feelings*



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**W**e're hearing a lot about harassment lately and many managers walk on eggshells, worried that a wrong choice of words or a forceful action in the workplace will lead to harassment complaints. Too often harassment has become weaponized — a useful accusation and a lurking threat to be wielded against managers and co-workers if one does not get one's way.

Part of the problem is the way we write our respectful workplace policies. Such policies typically begin by saying that harassment is "unwelcome behaviour that is known or should reasonably be known to be unwelcome." If this definition were left as it stands, virtually any unpleasant workplace experience would be harassment.

The right to work without harassment is NOT a guarantee of perpetual happiness. Not every micro-aggression is harassment. Labour arbitrator Heather Laing said it well in an oft-quoted 1995 decision <British Columbia and B.C.G.E.U., (1995) 49 L.A.C. (4th) 193 (Laing)>:

"I do not think that every act of workplace foolishness was intended to be captured by the word 'harassment.' This is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. It should not be trivialized, cheapened or devalued by using it as a loose label to cover petty acts or foolish words, where the harm, by any objective standard, is fleeting. Nor should it be used where there is no intent to be harmful in any way, unless there has been a heedless disregard for the rights of another person and it can be fairly said "you should have known better."

Harassment policies generally add illustrative lists of behaviours, with lines like "Harassment can include hurtful or demeaning comments and gestures, isolating or shunning behaviours, etc., etc. etc." As a result, many harassment complaints tell the story of what happened and then attach the appropriate label from the list of harassment examples in the applicable policy, for example: "On this date, I entered the meeting room and my manager did not greet me, thereby shunning me. Later the same day he said that I was late for the meeting which was a hurtful and demeaning comment."

### It's time to get clear about harassment.

True harassment is about power and domination. The harasser seeks to alter the social order of the workplace, asserting domination over their victim. You have to look for the power dynamic.

A moment's rudeness may hurt without constituting harassment. Take the following example. An employee reacts to a co-worker's suggestion in a meeting by saying "That's stupid". Perhaps that's harsh, but you're overlooking a bunch of possible outcomes. Without a doubt, the comment is hurtful and the person who said it should be taken aside and coached in respectful communication. But the comment does not establish harassment, even though it is objectively hurtful and unwelcome.

Now, if the same employee repeatedly directs the same sort of comment towards the co-worker, there is a probability that the employee is not merely guilty of "petty acts or foolish words," but is trying to diminish the co-worker's status in the workplace. Then we'd have harassment.

Repeated conduct is not essential to harassment. A single act can make the power dynamic obvious. Imagine, for example, that the employee had said, "That's stupid. I can't believe they gave you that job.

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It's breathtakingly dumb." The whole tone of the statement shows that the speaker is trying to diminish the co-worker. It's harassment.

Focusing on the power dynamic is particularly helpful when managers are accused of harassment. Managers are expressly authorized to use power for certain purposes, so merely being upset that a manager used their power isn't instant harassment. Let's say that a manager has a duty to assess the work of employees in an attempt to constantly improve their performance. If that manager compels an employee to attend a performance evaluation and then gives a negative and therefore hurtful performance appraisal, the manager has used their power and it has caused hurt yet it is not automatically harassment.

In these "abuse of authority" cases, look at whether the use of power was necessary to carry out a job duty in good faith. Was the power or authority being used for the purpose for which it was given in the first place? In the example of the hurtful performance review, ask whether the manager was genuinely trying to improve performance but chose the words poorly. If so, there is no harassment. However, if it is clear that the manager was really trying to get the employee to quit, the power was not being used in good faith to improve performance. You then have abuse of authority harassment.

Always remember that harassment isn't just about hurt feelings. It's about power.

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