

Member's Quarterly

Spring 2023 Edition

Feature

Seasons Change but Workplace Harassment Remains

Employers cannot afford to turn a blind eye

Unfortunately, workplace harassment is always a hot topic. The #MeToo movement further ignited a proverbial flame that was already burning in workplaces across the country. Although workplace harassment is not new, it is nevertheless a topic worth discussing.

Workplace harassment can trigger legal obligations for employers from all avenues from human rights obligations, to health and safety obligations, to constructive dismissal claims. The risks of failing to address workplace harassment issues or turning a blind eye are numerous.

Harassment is generally defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Just because you "didn't mean it like that" or it was "just a joke", does not mean it was not harassment. Also, just because someone does not object to the behaviour, doesn't mean it is not unwelcome. Harassing behaviour often occurs repeatedly, but one instance of harassing behaviour can constitute harassment depending on the circumstances. Harassment is like a shape-shifter: it takes many forms. Yelling, spreading rumors, derogatory name calling, "cat-calling", sharing inappropriate images or GIFs, making inappropriate gestures, isolating someone, as well as manipulation and bullying can all be forms of harassment. Anything that is recognized as offensive, embarrassing, humiliating, demeaning or unwelcome, is likely harassment.

Human rights legislation prohibits not only discrimination, but harassment on the basis of certain protected characteristics including race, religion, age, disability, sexual orientation, and sex amongst others. Human rights legislation in certain jurisdictions also expressly prohibits sexual harassment.

Occupational health and safety legislation prohibits harassment and workplace violence and imposes obligations on employers to take certain steps in relation to both in order to mitigate against these health and safety risks. Occupational health and safety legislation imposes a general duty on employers to take every precaution reasonable in the circumstances to ensure the health and safety of those in the workplace, not just employees. Additionally, workplace harassment can trigger workers' compensation claims impacting employer premiums and resulting in lost time.

Another way in which workplace harassment can impact workplaces is through wrongful dismissal claims. Workplace harassment can create a "poisoned work environment", leaving the door open for claims of constructive dismissal. The change from a positive work environment to a hostile one effectively results in the employer's intention to no longer be bound by the employment agreement.

Despite all of the risk associated with workplace harassment, there are steps employers can take to protect the workplace and employees. Best practices to address workplace harassment include keeping an open mind about complaints. Take action and ask questions with a view to gathering information to assist in



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understanding the issues and addressing any inappropriate behaviour. Common mistakes in addressing workplace harassment include: failing to act on a complaint or information about harassment, or failing to act promptly, which includes an investigation into the harassment; errors in the investigation process such as failing to speak with everyone who may have information about the harassment; and failing to take steps to address the harassment and prevent future occurrences. Ensure that you have policies and procedures in place to address workplace harassment and provide clear expectations around behaviour. In addition, ensure that training is provided on the policies and procedures to employees at every level of the organization. Awareness of legal obligations and implications regarding workplace harassment can have a huge impact on the work environment and the company's bottom line.

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