



Human Rights and Equity: Frequently Asked Questions

Harassment in the Workplace

This FAQ document provides members of the Ontario Nurses' Association (ONA) with general answers to commonly asked questions about harassment in the workplace. Specific advice is available from your Bargaining Unit Human Rights and Equity Representative, Bargaining Unit President or Labour Relations Officer.

What is harassment?

A person subjects another to harassment when she or he engages in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

There are two types of harassment prohibited in the workplace:

- Harassment that is based on prohibited grounds of discrimination in the Ontario *Human Rights Code*, such as sex, age, race, religion, disability and sexual orientation ("Code Harassment").
- Harassment that is not based on a prohibited ground ("Non-Code Harassment" or "Personal Harassment").

Can a single incident amount to harassment?

Harassment may involve repeated forms of unwanted behaviour, but a single incident can also amount to harassment if it is serious, extremely offensive or poisons the workplace for the victim and/or other employees.

Do I have to object to the harassment?

There is no requirement that the person who is the target of harassment object to the behaviour. As this person may be in a vulnerable situation, it may be unrealistic to expect her or him to object to the offensive treatment.

Does harassment require intent?

No, the test for harassment requires that the harasser know or ought reasonably to know that the behaviour is unwelcome.

The test considers whether "a reasonable person" in the position of the person alleging harassment would find such conduct to be unwelcome and, if so, whether "a reasonable person" in the alleged harasser's position would know that to be the case.

What is bullying?

Bullying is a form of harassment. It may be characterized as persistent behaviour that is offensive, insulting, intimidating, humiliating or abusive towards an employee or group of employees. Workplace bullying is usually intentional in nature and an attempt to exert power or control over the target. It may or may not be based on a specific personal characteristic that is a prohibited ground of discrimination in the *Human Rights Code* (e.g. sex, race or disability).

Examples of harassment include:

- Suggestive comments or body language.
- Insulting, abusive or embarrassing behaviour or comments.
- Offensive gestures, language, rumours, gossip or jokes.
- Humiliating, intimidating or demeaning criticism.
- Yelling, shouting or other physically intimidating behaviour.
- Isolation or exclusion from normal workspaces, conversations or social events.
- Circulating or displaying pornographic, racist, sexually suggestive or otherwise offensive pictures or other materials.
- Damage to or interference with personal property.
- Verbal or physical threats.
- Unwanted physical contact, ranging from an invasion of space to an assault.

The above list is not intended to be exhaustive.

All of these examples may also amount to bullying when the conduct is coupled with the inappropriate exercise of power or authority over another person. Many of the above examples of behaviour may occur through the use of internet, email or telephone/mobile phone.

Harassment does not include:

- Expressions of differing opinions.
- Friend preferences.
- Firm communication.
- Legitimate performance management or probation.
- Rudeness, unless it is extreme and repetitive.

Conduct of a manager that falls within her or his normal work function does not normally constitute harassment, for example, providing poor performance evaluations, taking disciplinary action and making work assignments.

You may be unsure whether certain behaviour amounts to harassment. Discussing the situation with an ONA representative can help in making this assessment.

My manager is critical of me in my performance appraisal and I feel bullied by her instructions to me. Does this amount to harassment?

Reviewing an employee's performance is a part of a manager's job, and a function of any performance review is to identify areas that require improvement and ways of attaining such improvement. Provided a performance review is carried out in a proper, fair and reasonable way, comments you may perceive as criticism and the instructions you receive will be unlikely to amount to harassment.

My manager sets targets for me to complete work and when I fail to complete them on time, she uses it as an opportunity to criticize me in front of colleagues. Is this bullying?

While the setting of reasonable targets which you are not able to meet is unlikely to constitute bullying, using this failure as an opportunity to criticize and denigrate your work in front of others may be a form of bullying.

What are the employer's legal obligations?

In accordance with the *Occupational Health and Safety Act*, employers must:

- Prepare policies with respect to workplace harassment.
- Develop and maintain programs to implement their policies.
- Provide information and instruction to workers on the contents of these policies and programs.

Workplace harassment programs must include measures and procedures for workers to report incidents of workplace harassment and set out how the employer will investigate and deal with incidents or complaints.

Under the Ontario *Human Rights Code* and the collective agreement, employers have an obligation to maintain a workplace that is free from harassment and discrimination. An employer may be held liable for any harassment or discrimination caused by their employees or agents. In some circumstances, employers can also face *Code* liability for failing to protect their employees from harassment and discrimination caused by third parties.

An employer's failure to investigate in response to a complaint of harassment or discrimination can give rise to an independent breach of the *Code*, even if the allegation of discrimination and harassment is later proven to be unfounded.

What can I do if I believe I've been harassed?

ONA recommends and encourages you to follow the complaints process as set out in your employer's harassment policies and procedures. Your ONA representative can assist you in utilizing these policies and procedures to obtain remedies.

In addition, ONA will file grievances under the collective agreement in appropriate cases.

Typically, an employer's policy provides procedures for both informal and formal resolution of a complaint. The first step may be to speak with the alleged harasser and let her or him know that you object to her or his behaviour, explain why you object and ask that she or he stop. It may be that the alleged harasser does not know what effect her or his behaviour is having on you. You should keep a factual record of what is said and done and any witnesses present.

If the behaviour continues regardless of your requests to stop, or if attempting an informal resolution is not appropriate in the first place, the next stage will be to make a formal complaint.

You will need to make sure that your written complaint is accurate and clear, including the description of the behaviour complained about, the dates of any relevant events in chronological order, and information about any witnesses to the events.

Both you and the alleged harasser, along with any relevant witnesses, will normally be interviewed as part of the investigation process. You have the right to be accompanied by an ONA representative at investigation meetings.

Keep records

Record detailed notes labeled, “made for my lawyer.” Make notes of each incident with the date, time, what happened, the names of witnesses and how it made you feel. Keep copies of any letters, memos or emails received from the harasser.

It is easy to forget details after the event and such a record will help you when seeking advice on whether to make a complaint, in formulating the complaint and in giving your account during the investigation and any subsequent arbitration hearing.

Get support

Being the target of harassment or bullying can be isolating and have a significant impact on your health. Talk to someone you trust and contact your Employee Assistance Program (EAP) provider.

What happens if I am not satisfied with the outcome of the complaints process?

You should discuss this matter with your Bargaining Unit President and Labour Relations Officer. They will be able to tell you what further action may be possible based on the facts of your case.

What can I do if a complaint of harassment is made against me?

ONA encourages you to seek advice from an ONA representative. If the person who has made the complaint against you is an ONA member, the same ONA representative consulted by that member will not be able to advise you or represent you in relation to the complaint. Different ONA representatives are necessary.

You should keep a factual record of what you say, a copy of any letter or response you write and a note of the response of the complainant. This will be useful to you if a formal complaint is subsequently made and an investigation undertaken.

You have the same right to be accompanied by an ONA representative in investigation meetings.

Where can I get more information and resources that can help?

- *Workplace Violence and Harassment: A Guide for ONA Members*, found at www.ona.org.
- *Human Rights and Equity: A Guide for ONA Members*.
- ONA presentation, “Personal Harassment and the Law” (at www.ona.org under “Human Rights and Equity/Teleconnects”).
- ONA presentation, “Bullying in the Nursing Workplace” (at www.ona.org under “Human Rights and Equity/Teleconnects”).
- Ontario *Human Rights Code*, Sections 5, 7 and 10.
- ONA collective agreement, anti-discrimination and harassment provisions.
- *Occupational Health and Safety Act*, Section 32.
- Employer’s Workplace Harassment Policy and Procedures; Human Rights Policy and Procedures.