Harassment in the Workplace

In accordance with our Statement of Beliefs, the Ontario Nurses’ Association (ONA) believes it is the right of all members to work in an environment that promotes dignity and respect for everyone.

The employer is ultimately responsible for maintaining a harassment-free environment – this covers all forms of harassment and not just Ontario Human Rights Code violations. The vast majority of ONA collective agreements prohibit harassment based on prohibited grounds under the Code and also personal harassment unrelated to any of the prohibited grounds.

Personal harassment is prohibited under the “Anti-Discrimination” or “No-Discrimination” clause (Article 3.03 of the Hospital Central Collective Agreement and Article 4 of the Central Nursing Homes Template). Although there is no explicit reference to “personal harassment,” personal harassment is an implicit term in the clause that prohibits “discrimination…on the basis of any other factor that is not pertinent to the employment relationship.” The courts have recognized that “harassment” is a form of “discrimination,” therefore it can be argued harassment based on any factor not pertinent to the employment relationship is prohibited by the collective agreement.

The Ontario Health and Safety Act (OHSA) also addresses the issues of violence and harassment in the workplace. Workplace harassment is defined in s.1 of the Act as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.” This definition is broad enough to include both Code and Non-Code harassment, often referred to as bullying or psychological harassment.

ONA Policy 16.28 can be invoked when a member believes another member has harassed or discriminated against her/him during union business or activities. This includes personal harassment and bullying.

How Can Members Address Harassment in the Workplace?

A. Employer Policies

Members are strongly encouraged to utilize any employer policy or program dealing with personal harassment by another staff member. If an employer does not currently have such a policy, it should be encouraged to develop one (i.e., at an Employer-Association meeting).

Article 3.03 (d) of the Hospital Central Collective Agreement states, “The parties recommend and encourage any employee who may have a harassment or discrimination complaint to follow the complaints process as set out in the employer’s harassment policies and process.”

Article 4.04 (c) of the central Nursing Home language specifies, “An employee who believes she has been harassed, contrary to this provision, shall be encouraged by both parties to follow the Employer’s policy on harassment and process. Failing resolution, an employee may follow the process set out in the Complaint, Grievance and Arbitration procedure in Article 8 of the collective agreement. The employee shall be encouraged by both parties to exhaust these processes prior to filing a complaint with the Ontario Human Rights Commission.”
Other ONA collective agreements contain a similar provision.

In some cases ONA may recommend certain mediators/facilitators the employer may want to use to try to resolve such personal conflicts between staff. Such a mediator/facilitator should be paid for by the employer. Members should have a union representative present when attending any meeting with the employer pertaining to a personal harassment complaint.

B. Grievance Procedure
1. Members are to file grievances in the following situations:
   A. If the employer fails to investigate complaints of harassment in the workplace in a timely or effective manner then grievances are to be filed immediately.
   B. If the employer investigates the complaint in a timely manner but fails to take appropriate steps to address the harassing behaviour, grievances are to be filed immediately.
   C. Grievances are also to be filed if a member is disciplined without just cause because of alleged harassment against another staff member (i.e. if the member was innocent or the punishment was too severe).
2. Grievances are to cite the management rights clause and any relevant harassment provisions in the collective agreement. The grievance is also to reference a breach of the OHSA.
3. If a member is unwilling to file a complaint out of fear of retribution, ONA is to meet with her/him to provide support and recommend filing a grievance to begin dialogue with the employer.
4. Members and witnesses are to complete ONA’s “Questionnaire: Non-Code Harassment” and provide to the Labour Relations Officer (LRO). The questionnaire can be found in the Executive Section of ONA’s website at www.ona.org.
5. Grievances may be held in abeyance if the employer is taking appropriate steps to address the complaint. If the employer, however, fails to take appropriate steps to end the harassment in a reasonable period of time, grievances are to be advanced to arbitration if there is merit in proceeding forward. Grievances that are lacking sufficient documentation to assess the merits will not be advanced to arbitration.
6. ONA may appoint separate Bargaining Unit representatives and/or separate LROs to assist members involved in the grievance process.

In the above scenarios, ONA can be faced with having to represent two members who are in conflict with each other. ONA would have to assess the merits of the grievance(s) before deciding whether to pursue such grievance(s) through the arbitration process. In order to make this determination, ONA has in the past employed a neutral investigator (i.e., an LRO from another District Service Team).

C. Ministry of Labour
If the employer does not take steps to implement its own internal policies in an effective or timely manner, ONA will consider making a complaint to the Ministry of Labour (MOL) that the employer has breached the OHSA for the deficiency of its harassment policy and program. ONA recognizes that harassment in the workplace is a concern and is directly related to workplace stress and workload – conditions ONA is attempting to improve through collective bargaining and political lobbying. For maximum benefit to our membership, ONA has designated our current resources into administering the collective agreement and to resolving harassment that occurs during union business or activities via Policy 16.28.