

*Code of Practice to Address*

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# **Workplace Harassment Under Ontario's Occupational Health and Safety Act**

This Code of Practice to address Workplace Harassment and other resources for workplace harassment may be viewed at the [Ministry of Labour website \(Ontario.ca/labour\)](http://Ontario.ca/labour).

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# Preface

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Workplace harassment can undermine a person’s dignity. It can prevent workers from doing their jobs effectively. Workplace harassment, left unchecked, has the potential to escalate into violent behaviour. All workers are entitled to a safe and healthy workplace.

One of the primary purposes of the Occupational Health and Safety Act (OHSA) is to promote a strong Internal Responsibility System (IRS). The IRS means that everyone in the workplace has a role to play in keeping workplaces safe and healthy. Workers in the workplace who see a health and safety problem such as a hazard or contravention of the OHSA in the workplace have a duty to report the situation to their employer or a supervisor. Employers and supervisors are, in turn, required to address those situations.

The employer, typically represented by senior management, has the greatest responsibilities with respect to health and safety in the workplace. The employer is responsible for ensuring that the IRS is established, promoted, and that it functions successfully. A strong IRS is an important element of a healthy and safe culture in a workplace.

This Code of Practice to address Workplace Harassment is designed to help employers meet their obligations with respect to the workplace harassment provisions under the OHSA.

## How to use the Code of Practice

This Code of Practice to address Workplace Harassment (“Code of Practice”) is approved by the Minister of Labour under Part III.1 of the OHSA for use at all workplaces to which the OHSA applies. Compliance with the practices set out in this Code of Practice is one way in which employers can meet the legal requirements regarding workplace harassment specified under sections 32.0.1 (1)(b)(c), 32.0.1(2), 32.0.6(1) and (2), 32.0.7 and 32.0.8 (“Workplace Harassment Provisions”) of the OHSA. Determination about whether OHSA requirements have been met is made by Ministry of Labour health and safety inspectors.

This Code of Practice has four Parts. Employers may choose to adhere to one or all of the Parts of the Code of Practice. If an employer adheres with a Part of the Code of Practice, it must adhere with all of the Practice outlined under that Part to be deemed in compliance with the related workplace harassment provision. For example, if an employer adheres with Part II of the Code of Practice on the Workplace Harassment Program, it must follow the entire practice under Part II to be deemed in compliance with the workplace harassment program provisions in the OHSA referred to in Part II.

Failure to comply with all or part of the Code of Practice may not be a breach of the Workplace Harassment Provisions under the OHSA because, as noted above, the Code of Practice is just one way in which employers can meet the legal requirements regarding workplace harassment.

Each Part contains:

**General Information** – General information is for guidance only. The Practice section sets out how to comply with a provision of the Act.

**Provision(s)** – This refers to a legal requirement under the OHSA. The provisions of the OHSA are enforceable by Ministry of Labour health and safety inspectors.

**Practice** – A practice may be followed by an employer to comply with a specific Workplace Harassment Provision.

A template workplace harassment policy, workplace harassment program and investigation plan are also attached to this Code of Practice. These templates are provided as guidance material.

It is the responsibility of an employer to ensure compliance with the OHSA. If you need help in understanding specific obligations under the OHSA, you should seek legal advice.

For additional resources including the Ministry of Labour's Guideline on *Workplace Violence and Harassment: Understanding the Law*, please refer to the Ministry of Labour web-site at [ontario.ca/labour](http://ontario.ca/labour). If a worker requires more information about the worker's rights under the OHSA, the worker may contact the Ministry of Labour's Contact Centre at 1-877-202-0008 or refer to the Ministry of Labour's Fact Sheet *Being Harassed at Work?*

# Part I

## Workplace Harassment Policy

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### General information

A policy addressing workplace harassment promotes a working environment of dignity and respect and helps keep Ontario's workplaces healthy and safe.

All workers should know what workplace harassment is and how to report it. Employers should encourage workers to report workplace harassment so that appropriate action can be taken to stop unwelcome conduct.

An employer is required to prepare a workplace harassment policy under the OHSA. In addition to including the definition of workplace harassment as defined by the OHSA in its policy, an employer may include the following behaviours as examples of workplace harassment:

- offensive or intimidating comments or jokes;
- bullying or aggressive behaviour;
- displaying or circulating offensive pictures or materials;
- inappropriate staring;
- workplace sexual harassment;
- isolating or making fun of a worker because of gender identity.

Workplace sexual harassment includes unwelcome solicitation or advances from a manager, supervisor or another person who has the power to reward or punish the worker.

Employers may choose to prepare a separate policy regarding workplace harassment or they may combine it with a workplace violence policy [section 32.0.1(1)(a) of OHSA] or the occupational health and safety policy [section 25(2)(j) of OHSA]. An employer may also choose to combine its workplace harassment policy with an anti-discrimination and anti-harassment policy that addresses the protected grounds under Ontario's *Human Rights Code*.

A template Workplace Harassment Policy is attached to this Code of Practice as Schedule C.

## Provision(s)

Occupational Health and Safety Act, s. 32.0.1(1) and (2)

- (1) (b) An employer shall prepare a policy with respect to workplace harassment; and
  - (c) review the policies as often as is necessary, but at least annually.
- (2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.

## Practice

To comply with this Part of the Code of Practice, all components contained in the Practice below must be met regardless of whether the employer combines policies or not.

An employer is required to prepare a policy with respect to workplace harassment.

The workplace harassment policy must be:

- a) Prepared in writing by the employer.
- b) Posted in a conspicuous place in the workplace where it would be likely to come to workers' attention.
- c) Reviewed by the employer as often as necessary, but at least annually.
- d) Dated and signed by the highest level of management of the employer or at the workplace (e.g. President, CEO, Senior Human Resources Professional or uppermost member of management at the workplace).

The workplace harassment policy, at a minimum, must contain the following seven elements:

- 1. A statement(s) demonstrating the employer's commitment to addressing workplace harassment.
- 2. The OHS workplace harassment definition as set out below:
  - "workplace harassment" means,
    - (a) 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, or
    - (b) workplace sexual harassment;

“workplace sexual harassment” means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- (b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

Subsection 1 (4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

- 3. A statement indicating the policy applies to all workers and that it addresses workplace harassment from all sources such as customers, clients, employers, supervisors, workers and members of the public.
- 4. A statement encouraging workers to report workplace harassment to the appropriate person.
- 5. A statement the employer will investigate and deal with all complaints or incidents of workplace harassment in a fair and timely manner. The policy must specify that information about a complaint or incident will not be disclosed except to the extent necessary to protect workers, to investigate the complaint or incident, to take corrective action or as otherwise required by law.
- 6. A statement that a worker is not to be penalized for reporting an incident or participating in a workplace harassment investigation. Penalizing a worker for exercising their rights under the OHS Act is prohibited.
- 7. Information about other resources for a worker to seek help to address workplace harassment (e.g. union representative, joint health and safety committee member or health and safety representative, Human Rights Legal Support Centre or employee assistance program, as appropriate).



# Part II

## Workplace Harassment Program

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### General information

An employer must develop and maintain a written workplace harassment program to implement the workplace harassment policy under the OHSA. If there is a joint health and safety committee or health and safety representative at the workplace as required under the OHSA, the employer must consult with the committee or representative about the program.

The OHSA requires that the workplace harassment program include information about how to report incidents of workplace harassment to the employer or supervisor and to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser. Employers may also want to encourage workers to report concerns if the worker witnesses another worker being harassed.

The person who receives a workplace harassment complaint should not be under the alleged harasser's direct control. In a larger organization, the person who receives a complaint of workplace harassment may be a supervisor, human resource representative or the president so long as they are not the alleged harasser or under the direct control of the alleged harasser. The program requires an alternate person to be designated to receive a complaint or be notified of an incident if the employer or supervisor is the alleged harasser. A member of the board of directors, a consultant or another person may be considered to receive employer or supervisor related complaints of workplace harassment. Overall, it is important for workers to be able to report workplace harassment to a person who will objectively address the complaint.

The program should set out whether this person would only receive the complaint, or whether this person would be expected to carry out an investigation.

If workplace harassment is found to have occurred at the workplace, the employer may also want to set out in detail the ways in which it will address workplace harassment.

Where the harassment arises from customers, clients, patients, or the public towards a worker, the employer could deal with the incident of workplace harassment by modifying its service (such as using the telephone or email as the primary means of contact), or even, in some cases, a refusal of service depending upon the circumstances.

Where the investigation finds that harassment arises from a worker, supervisor, or other person associated with the workplace, there can be consequences for the individual (such as apologies, education, counseling, shift changes, reprimands, suspension, job transfer, or termination) depending on the employer's policy, the nature or severity of the behaviour and the circumstances. Actions may also be broader, especially where the investigation of an incident or complaint shows that workplace harassment is prevalent or commonplace. An example of action taken could be training for everyone in the workplace or in a department on what is unacceptable behaviour in the workplace.

The employer in the workplace harassment program may also want to address the role of other workplace parties. In a unionized workplace, the collective agreement may address the role of the union during an investigation.

It is also the employer's duty to consult with the joint health and safety committee or the health and safety representative (if any) as the employer develops and maintains the workplace harassment program.

A template Workplace Harassment Program is attached to this Code of Practice as Schedule D.

## **Provision(s)**

Occupational Health and Safety Act, s. 32.0.6 (1) and (2)

- (1) An employer shall, in consultation with the committee or a health and safety representative, if any, develop and maintain a written program to implement the policy with respect to workplace harassment required under clause 32.0.1. (1) (b).
- (2) Without limiting the generality of subsection (1), the program shall,
  - (a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
  - (b) include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;
  - (c) set out how incidents or complaints of workplace harassment will be investigated and dealt with;
  - (d) set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law;
  - (e) set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation; and
  - (f) include any prescribed elements.

## Practice

To comply with this Part of the Code of Practice, the Workplace Harassment Program must be in writing and include all components in the Practice below. It must be developed and maintained in consultation with the joint health and safety committee or health and safety representative (if one is present in the workplace).

The workplace harassment program must be in writing.

The workplace harassment program must include all of the following:

### A. Reporting

1. Measures and procedures for workers to report workplace harassment to the employer or supervisor, including specific individual(s) or position(s) so that it is clear to whom workers should report or file a complaint of workplace harassment.
2. Measures and procedures for workers to report workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser, so that it is clear to whom workers should report incidents of workplace harassment.
  - a. If the alleged harasser is a supervisor, the designated person may be a human resources representative, a department responsible for handling workplace harassment complaints, a health and safety consultant or other person designated by the employer.
  - b. If the employer is the alleged harasser, the employer must designate a person who is not under the direct control of the alleged harasser.
3. The report of the incident must include the following information:
  - a) Name(s) of the complainant(s) and contact information
  - b) Name of the alleged harasser(s), position and contact information (if known)
  - c) Names of the witness(es) (if any) or other person(s) with relevant information to provide about the incident (if any) and contact information (if known)
  - d) Details of what happened including date(s), frequency and location(s) of the alleged incident(s)
    - i. Any supporting documents the worker who complains of harassment may have in his/her possession that are relevant to the complaint
    - ii. List any documents a witness, another person or the alleged harasser may have in their possession that are relevant to the complaint.

## **B. Investigation and Handling of a Complaint**

The program must indicate:

1. The employer will ensure that an investigation appropriate in the circumstances will be conducted into complaints or incidents of workplace harassment.
2. How an incident or complaint of workplace harassment will be investigated and dealt with including any interim measures and corrective action(s) that may be taken while the complaint or incident is being investigated.
3. How an incident or complaint will be kept confidential to the extent possible. Information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless disclosure is necessary to protect workers, to investigate the complaint or incident, to take corrective action or otherwise as required by law.
4. While the investigation is on-going, the worker who has allegedly experienced harassment, the alleged harasser(s) and any witnesses will be instructed not to discuss the complaint, incident or the investigation with other workers or witnesses unless necessary to obtain advice about their rights.
5. A worker who has allegedly experienced harassment and the alleged harasser, if they are a worker of the employer, will be informed in writing of the results of the investigation and any corrective action that has been taken or that will be taken.
6. When an external person will be retained to conduct a workplace harassment investigation (for example, but not limited to, when the alleged harasser is a president, owner, high-level management or senior executive).

## **C. Record Keeping**

1. The program must indicate how the employer will keep records of all complaints or incidents of workplace harassment including:
  - a) a copy of the complaint or details about the incident;
  - b) a record of the investigation including notes;
  - c) copy of witness statements, if taken;
  - d) a copy of the investigation report, if any;
  - e) a copy of the results of the investigation that were provided to the worker who reported workplace harassment and the alleged harasser; and
  - f) a copy of any corrective action taken to address the complaint or incident of workplace harassment.

2. The documents associated with a workplace harassment complaint, incident and/or investigation must not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, take corrective action or otherwise as required by law.
3. For the OHSa purposes, records must be kept for at least one year from the conclusion of the investigation.

**Duty to consult with the joint health and safety committee or health and safety representative**

The employer must develop and maintain the written workplace harassment program in consultation with the joint health and safety committee or health and safety representative (if any).

The consultation must provide an opportunity for the joint health and safety committee or health and safety representative (if any) to provide feedback, whether orally or in writing, on the program and the feedback must be considered by the employer.

# Part III

## Employer's Duties Concerning Workplace Harassment

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### General information

To protect a worker from workplace harassment, it is important that an employer ensure that an investigation is conducted into incidents and complaints of workplace harassment. The investigation must be appropriate in the circumstances.

An employer must ensure an investigation is conducted into workplace harassment, whether a worker has formally or informally made a complaint or the employer is otherwise aware of an incident(s) (for example, if a supervisor witnessed it or learned about it from a third party).

The investigation must be objective. The person conducting the investigation, whether internal or external to the workplace, must not be directly involved in the incident or complaint, and must not be under the direct control of the alleged harasser. This person should have knowledge of how to conduct an investigation appropriate in the circumstances.

Some matters will not require a lengthy investigation (for example, where a bar patron is harassing staff or if there is a complaint that does not, on its face, pertain to workplace harassment). Other situations, such as those involving allegations of sexual harassment by a co-worker over a period of time, may be more complex. The parties to the complaint should be updated periodically on the status of the investigation.

An Investigation Template is attached to this Code of Practice as Schedule E.

### Provision(s)

Occupational Health and Safety Act, s. 32.0.7 (1)(a), (b) and (c)

- (1) To protect a worker from workplace harassment, an employer shall ensure that,
  - (a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
  - (b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;

- (c) the program developed under section 32.0.6 is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the policy with respect to workplace harassment required under clause 32.0.1 (1) (b);

## **Practice**

To comply with this Part of the Code of Practice, the employer must follow all of the requirements listed below.

### **(a) Appropriate investigation**

An employer must ensure an investigation appropriate in the circumstances is conducted when:

- a. the employer or a supervisor becomes aware of an incident of workplace harassment by the worker who allegedly experienced it or another worker; or
- b. a complaint, whether in writing or verbal, of workplace harassment is made to the employer, supervisor or the employer's designated person.

An investigation must be completed within 90 calendar days or less unless there are extenuating circumstances warranting a longer investigation (e.g. more than five witnesses, key witness unavailable due to illness).

The supervisor, manager or person conducting the investigation must not be the alleged harasser and must not be under the direct control of the alleged harasser. The person must be able to conduct an objective investigation. The supervisor, manager or designated person conducting the investigation on behalf of the employer must, at a minimum, complete the following seven steps to an investigation:

- 1) The investigator must ensure the investigation is kept confidential and identifying information is not disclosed unless necessary to conduct the investigation or as required by law. The investigator must remind the worker who allegedly experienced workplace harassment, the alleged harasser(s) and any witnesses of any confidentiality requirements under the employer's workplace harassment program.
- 2) The investigator must thoroughly interview both the worker who has allegedly experienced workplace harassment and the alleged harasser(s), if the alleged harasser(s) is a worker of the employer. If the alleged harasser is not a worker of the employer, the investigator must make reasonable efforts to interview the alleged harasser, if the alleged harasser is known to the employer.
- 3) The alleged harasser(s) must be given the opportunity to respond to the specific allegations raised by the worker. In some circumstances, the worker who has allegedly experienced workplace harassment should be given a reasonable opportunity to reply.

- 4) The investigator must separately interview any relevant witnesses employed by the employer who may be identified by either the worker who has allegedly experienced workplace harassment, the alleged harasser(s) or as necessary to conduct a thorough investigation. The investigator must make reasonable efforts to interview any relevant witnesses who are not employed by the employer if there are any identified by either the worker who has allegedly experienced workplace harassment, the alleged harasser(s) or as necessary to conduct a thorough investigation.
- 5) The investigator must collect and review any relevant documents.
- 6) The investigator must take appropriate notes and statements during interviews with the worker who has allegedly experienced workplace harassment, the alleged harasser and any witnesses.
- 7) The investigator must prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the worker claiming harassment, the response from the alleged harasser, the evidence of any witnesses and the evidence gathered. The report must set out findings of fact and come to a conclusion about whether workplace harassment was found or not. The report must be provided to the employer, supervisor or designated person to take appropriate action.

#### **(b) Results of the investigation**

The employer must ensure that the results of the investigation and any corrective action are provided to the worker who allegedly experienced workplace harassment and the alleged harasser, if they are a worker of the employer, in writing.

The results of the investigation are not the same as the investigation report. The results of the investigation are a summary of the findings of the investigation. The results must be communicated in writing within ten (10) calendar days of the investigation being concluded to the worker who has experienced the alleged harassment.

The employer must also ensure that any corrective action taken, if any (or to be taken) is communicated to the worker who allegedly experienced workplace harassment and the alleged harasser(s), if the alleged harasser is a worker of the employer. The amount of information provided about the corrective action will depend on the circumstances but must indicate what steps the employer has taken or will take to prevent a similar incident of workplace harassment if workplace harassment was found. The corrective action, if any, must be communicated in writing within ten (10) calendar days of the investigation being concluded.

#### **(c) Review the workplace harassment program**

The employer must ensure its workplace harassment program is reviewed annually or when any gaps or deficiencies in its program are identified as a result of an investigation.



# **Part IV**

## **Providing Information and Instruction on a Workplace Harassment Policy and Program**

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### **General information**

Providing information and instruction to workers on the employer's workplace harassment policy and program, including how to report workplace harassment, is an important step to help protect workers.

The employer must provide information and instruction on what conduct is considered workplace harassment, including workplace sexual harassment. Providing training assists workers in knowing what conduct is unwelcome in the workplace.

Supervisors also need to receive specific instruction and information on how to recognize and handle a workplace harassment incident so that workplace harassment does not go unaddressed. Workplace harassment that is not addressed may escalate into workplace violence.

Documentation of the information and instruction provided to workers should be kept by the employer for at least one year.

### **Provision(s)**

Occupational Health and Safety Act, s. 32.0.8

An employer shall provide a worker with,

- (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment;

### **Practice**

To comply with this Part of the Code of Practice, an employer must provide all workers with information and instruction on the contents of the employer's workplace harassment policy and program. Workers must be instructed on:

- what conduct is considered workplace harassment, including workplace sexual harassment, and how to recognize it;
- how and to whom to report an incident of workplace harassment;

- how the employer will investigate and deal with an incident or complaint of workplace harassment; and
- how the employer will report the results of the investigation to the worker who allegedly experienced workplace harassment and the alleged harasser, if the alleged harasser is a worker of the employer.

**All workers**, as defined by the OHSA, must be provided with information and instruction on the contents of the employer's workplace harassment policy and program including, but not limited to, regular workers, new hires, contract, casual, temporary, part-time and student workers.

If there are substantial changes to the policy or program, the employer must ensure that workers are informed of the changes and instruction must be provided.

Workers must receive information and instruction in a manner and language that they would reasonably understand.

**Supervisors and managers** must be provided with additional information and instruction, on how to recognize workplace harassment and how to handle a complaint of workplace harassment.

**Investigators** whether a manager, supervisor, human resource representative or a person designated by the employer, must receive information and instruction on how to conduct an investigation appropriate in the circumstances, including not to disclose identifying information unless it is necessary to conduct the investigation, take corrective action or otherwise required by law.

**Joint health and safety committee or health and safety representatives (if any)** must receive information and instruction on the employer's workplace harassment program including how to help a worker report an incident of workplace harassment and resources available to a worker who has allegedly experienced harassment.

# Schedule A – Workplace Harassment Provisions under the OHSA

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## Definition

Section 1 (1):

“workplace harassment” means,

- (a) 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, or
- (b) workplace sexual harassment;

“workplace sexual harassment” means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
  - (b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;
- (4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

## Policy

32.0.1 (1) An employer shall,

- (b) prepare a policy with respect to workplace harassment; and
  - (c) review the policies as often as is necessary, but at least annually.
- (2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.
- (3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.

## Program, harassment

32.0.6 (1) An employer shall, in consultation with the committee or a health and safety representative, if any, develop and maintain a written program to implement the policy with respect to workplace harassment required under clause 32.0.1 (1) (b).

- (2) Without limiting the generality of subsection (1), the program shall,
- (a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
  - (b) include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;
  - (c) set out how incidents or complaints of workplace harassment will be investigated and dealt with;
  - (d) set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law;
  - (e) set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation; and
  - (f) include any prescribed elements.

### **Employer duties**

- 32.0.7 (1) To protect a worker from workplace harassment, an employer shall ensure that,
- (a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
  - (b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;
  - (c) the program developed under section 32.0.6 is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the policy with respect to workplace harassment required under clause 32.0.1 (1) (b); and
  - (d) such other duties as may be prescribed are carried out.

### **Results of investigation not a report**

- (2) The results of an investigation under clause (1) (a), and any report created in the course of or for the purposes of the investigation, are not a report respecting occupational health and safety for the purposes of subsection 25 (2).

## **Information and instruction, harassment**

32.0.8 An employer shall provide a worker with,

- (a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment; and
- (b) any other prescribed information.

## **Order for workplace harassment investigation**

55.3 (1) An inspector may in writing order an employer to cause an investigation described in clause 32.0.7 (1) (a) to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person.

## **Report**

(2) A report described in subsection (1) is not a report respecting occupational health and safety for the purposes of subsection 25 (2).

# Schedule B – Key Definitions under the OHSA

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“**employer**” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

“**supervisor**” means a person who has charge of a workplace or authority over a worker;

“**worker**” means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

1. A person who performs work or supplies services for monetary compensation.
2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
4. A person who receives training from an employer, but who, under the *Employment Standards Act, 2000*, is not an employee for the purposes of that Act because the conditions set out in subsection 1 (2) of that Act have been met.
5. Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation;

“**workplace**” means any land, premises, location or thing at, upon, in or near which a worker works;

“**workplace harassment**” means,

- (a) 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, or
- (b) workplace sexual harassment;

“**workplace sexual harassment**” means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or

(b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

**Subsection 1 (4)** A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

# Schedule C – Sample Workplace Harassment Policy

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<insert employer name> is committed to providing a work environment in which all workers are treated with respect and dignity. Workplace harassment will not be tolerated from any person in the workplace (including customers, clients, other employers, supervisors, workers and members of the public, as applicable).

**Workplace harassment** means 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 or workplace sexual harassment. **Workplace sexual harassment** means:

- a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

Reasonable action taken by the employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

Workers are encouraged to report any incidents of workplace harassment to the appropriate person. (Employer may specify the person or department to report any incident(s) of workplace harassment.)

Management will investigate and deal with all complaints or incidents of workplace harassment in a fair, respectful and timely manner. Information provided about an incident or about a complaint will not be disclosed except as necessary to protect workers, to investigate the complaint or incident, to take corrective action or as otherwise required by law.

Managers, supervisors and workers are expected to adhere to this policy, and will be held responsible by the employer for not following it. Workers are not to be penalized or disciplined for reporting an incident or for participating in an investigation involving workplace harassment.

If a worker needs further assistance, he or she may contact <insert union (if any), JHSC or health and safety representative (if any), Human Rights Legal Support Centre or employee assistance program if available>.

Signed or Approved by: <highest level of management of the employer or at the workplace>

Date: \_\_\_\_\_



# Schedule D – Sample Workplace Harassment Program

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**This workplace harassment program is a sample. Employers may want to modify their program to meet the needs of the workplace. The program must be developed in consultation with the joint health and safety committee and health and safety representative (if any).**

*<insert employer name>* is committed to providing a work environment in which all workers are treated with respect and dignity. Workplace harassment will not be tolerated from any person in the workplace *(including customers, clients, other employers, supervisors, workers, and members of the public, as applicable)*.

The workplace harassment program applies to all workers including managers, supervisors, temporary employees, students and subcontractors.

## 1. Workplace Harassment

Workplace harassment means 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 or workplace sexual harassment. *(employer may want to insert examples)*

Workplace sexual harassment means:

- a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

Reasonable action taken by the employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment. *(employer may want to insert examples e.g. scheduling, annual performance review)*

## 2. Reporting Workplace Harassment

### a. How to Report Workplace Harassment

Workers can report incidents or complaints of workplace harassment verbally or in writing. When submitting a written complaint, please use the workplace harassment complaint form (see attached). When reporting verbally, the reporting contact, along with the worker complaining of harassment, will fill out the complaint form.

The report of the incident should include the following information:

- i. Name(s) of the worker who has allegedly experienced workplace harassment and contact information
- ii. Name of the alleged harasser(s), position and contact information (if known)
- iii. Names of the witness(es) (if any) or other person(s) with relevant information to provide about the incident (if any) and contact information (if known)
- iv. Details of what happened including date(s), frequency and location(s) of the alleged incident(s)
  - a. Any supporting documents the worker who complains of harassment may have in his/her possession that are relevant to the complaint.
  - b. List any documents a witness, another person or the alleged harasser may have in their possession that are relevant to the complaint.

b. Who to Report Workplace Harassment To

An incident or a complaint of workplace harassment should be reported as soon as possible after experiencing or witnessing an incident. This allows the incident to be investigated in a timely manner.

Report a workplace harassment incident or complaint to *<name, position, and contact information>*. If the worker's supervisor or reporting contact is the person engaging in the workplace harassment, contact *<position or name of alternate reporting contact and contact information>*. If the employer (e.g. owner, senior executive, director) is the person engaging in the workplace harassment, contact *<position or name of alternate reporting contact and contact information>*. (Note: The person designated as the reporting contact should not be under the direct control of the alleged harasser.)

Human Resources *<or designated person>* shall be notified of the workplace harassment incident or complaint so that they can ensure an investigation is conducted that is appropriate in the circumstances. If the incident or complaint involves the owner, senior executive or *<list positions as appropriate>*, an external person qualified to conduct a workplace harassment investigation who has knowledge of the relevant workplace harassment laws will be retained to conduct the investigation.

All incidents or complaints of workplace harassment shall be kept confidential except to the extent necessary to protect workers, to investigate the complaint or incident, to take corrective action or otherwise as required by law.

### 3. Investigation

#### a. Commitment to Investigate

*<insert employer name>* will ensure that an investigation appropriate in the circumstances is conducted when the employer, human resources, a manager or supervisor becomes aware of an incident of workplace harassment or receives a complaint of workplace harassment.

#### b. Who Will Investigate

*<insert name, manager or department>* will determine who will conduct the investigation into the incident or complaint of workplace harassment. If the allegations of workplace harassment involve *<insert jobs, positions, levels or departments (e.g. senior leadership, president and above)>*, the employer will refer the investigation to an external investigator to conduct an impartial investigation.

#### c. Timing of the Investigation

The investigation must be completed in a timely manner and generally within 90 days or less unless there are extenuating circumstances (i.e. illness, complex investigation) warranting a longer investigation.

#### d. Investigation Process

The person conducting the investigation whether internal or external to the workplace will, at minimum, complete the following:

- i. The investigator must ensure the investigation is kept confidential and identifying information is not disclosed unless necessary to conduct the investigation. The investigator should remind the parties of this confidentiality obligation at the beginning of the investigation.
- ii. The investigator must thoroughly interview the worker who allegedly experienced the workplace harassment and the alleged harasser(s), if the alleged harasser is a worker of the employer. If the alleged harasser is not a worker, the investigator should make reasonable efforts to interview the alleged harasser.
- iii. The alleged harasser(s) must be given the opportunity to respond to the specific allegations raised by the worker. In some circumstances, the worker who allegedly experienced the workplace harassment should be given a reasonable opportunity to reply.
- iv. The investigator must interview any relevant witnesses employed by the employer who may be identified by either the worker who allegedly experienced the workplace harassment, the alleged harasser(s) or as necessary to conduct a thorough investigation. The investigator must make reasonable efforts to interview any relevant witnesses who are not employed by the employer if there are any identified.
- v. The investigator must collect and review any relevant documents.
- vi. The investigator must take appropriate notes and statements during interviews with the worker who allegedly experienced workplace harassment, the alleged harasser and any witnesses.

vii. The investigator must prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the worker who allegedly experienced the workplace harassment, the response from the alleged harasser, the evidence of any witnesses, and the evidence gathered. The report must set out findings of fact and come to a conclusion about whether workplace harassment was found or not.

#### e. Results of the Investigation

Within 10 days of the investigation being completed, the worker who allegedly experienced the workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed in writing of the results of the investigation and any corrective action taken or that will be taken by the employer to address workplace harassment.

#### f. Confidentiality

Information about complaints and incidents shall be kept confidential to the extent possible. Information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless disclosure is necessary to protect workers, to investigate the complaint or incident, to take corrective action or otherwise as required by law.

While the investigation is on-going, the worker who has allegedly experienced harassment, the alleged harasser(s) and any witnesses should not to discuss the incident or complaint or the investigation with each other or other workers or witnesses unless necessary to obtain advice about their rights. The investigator may discuss the investigation and disclose the incident or complaint-related information only as necessary to conduct the investigation.

All records of the investigation will be kept confidential.

#### g. Handling Complaints

<The employer must set out any interim measures that may be taken after the complaint is received and during the investigation. The employer must also set out how they might deal with the complaint of harassment if harassment is found. This may include discipline up to and including termination.>

### **4. Record Keeping**

The employer (human resources or designated person) will keep records of the investigation including:

- a) a copy of the complaint or details about the incident;
- b) a record of the investigation including notes;
- c) a copy of the investigation report (if any);

- d) a summary of the results of the investigation that was provided to the worker who allegedly experienced the workplace harassment and the alleged harasser, if a worker of the employer;
- e) a copy of any corrective action taken to address the complaint or incident of workplace harassment.

All records of the investigation will be kept confidential. The investigation documents, including this report should not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, take corrective action or otherwise as required by law.

Records will be kept for *<insert timeframe that is at least one year>*.

Date created: \_\_\_\_\_ Annual review date: \_\_\_\_\_

## **Workplace harassment complaint form**

This is an example of a complaint form for workers to report an incident or a complaint of workplace harassment. It can be modified to meet the needs of workplace.

Note: Whether the worker uses the complaint form or not, the employer is still obligated to ensure an investigation appropriate in the circumstances is conducted into an incident of workplace harassment.

**Name and contact information of worker who has allegedly experienced workplace harassment (your name):**

**Name of alleged harasser(s) and contact information, if available:**

## **Details of the Complaint of Workplace Harassment**

Please describe in as much detail as possible the bullying and harassment incident(s), including: (a) the names of the parties involved; (b) any witnesses to the incident(s); (c) the location, date and time of the incident(s); (d) details about the incident(s) (behaviour and/or words used); (e) any additional details. (Attach additional pages if required)

## **Relevant Documents/Evidence**

Attach any supporting documents, such as emails, handwritten notes, or photographs. Physical evidence, such as vandalized personal belongings, can also be submitted. If you are not able to attach documents and they are relevant to your complaint, please list the documents below. If someone else has relevant documents, please note that below.

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

# Schedule E – Investigation Template

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**This template may be used for guidance in investigating workplace harassment incidents or complaints.** It may not be appropriate for complex workplace harassment investigations. The person conducting the investigation must not have been involved in the incident or complaint of workplace harassment and must not be under the direct control of the alleged harasser. **This template is available at [ontario.ca/labour](http://ontario.ca/labour).**

Name of investigator: \_\_\_\_\_

Date of investigation: \_\_\_\_\_

**A. Background Information:** Who are the people involved? Are they workers as defined by OHSa? Who reported and when? (Attach more pages if necessary)

1. Name of person who reported workplace harassment:
2. If not the same person as above, name of person who allegedly experienced workplace harassment:
3. Date complaint/concern raised and how:
4. Name of worker(s) (complaining or possibly exposed to workplace harassment):  
Position/Department:
5. Name of respondent(s) (alleged harasser); Position/ Department:  
If not a worker – provide details:

**B. Investigation Plan:** Plan and conduct the investigation (Attach more pages if necessary):

1. Obtain the worker(s) concerns of harassment in writing, if possible. Assistance should be provided in completing the form where necessary.
2. An investigator needs to interview the worker who allegedly experienced workplace harassment and the alleged harasser (if a worker of the employer). If the alleged harasser is not a worker of the employer, the investigator should make reasonable efforts interview him or her.
3. Make a list of possible relevant witnesses. The worker who allegedly experienced workplace harassment and the alleged harasser should be asked for names of any relevant witnesses.
4. Interview relevant witnesses. Ask specific questions about what they have observed, are aware of or have personally experienced. If the witnesses are not workers of the employer, the investigator should make reasonable efforts to interview those witnesses.
5. Collect and review relevant documents from the worker, alleged harasser, witnesses and the employer.

6. Take detailed notes.
7. Keep the investigation confidential. Instruct the worker who allegedly experienced workplace harassment, the alleged harasser and witnesses not to talk to others about the investigation unless it is necessary, for instance, to obtain advice or counselling.

**C. Worker (s) Concerns/Workplace Harassment Allegations** (Attach more pages if necessary): When did the incident(s) occur? Confirm date of first incident and any subsequent behaviours or conduct. Note that recalling events of harassment can be stressful for the complainant.

Date of first incident: \_\_\_\_\_

Date of last incident: \_\_\_\_\_

Date of other incident(s): \_\_\_\_\_

**D. Alleged Harasser(s) Response:** (The alleged harasser(s) will likely need details of the allegation of harassment to be able to respond. Attach more pages if necessary)

**E. Interview Relevant Witnesses** (Attach more pages if necessary): List witnesses. Interview relevant witnesses and make notes.

**F. Collected documentation** (Attach more pages if necessary): List the documents collected for the investigation and how or from whom they were obtained.



**G. Investigation Result(s)** (Attach more pages if necessary): The investigator's summary report should set out who was interviewed, what evidence was obtained and an analysis of the evidence to determine whether workplace harassment occurred.

**Summary of key evidence:**

**Recommended Next Steps:**

**Report provided to:**