

Harassment and Human Rights Law

A Definition (for Educational Purposes Only)

B.C. Human Rights Clinic

BULLYING AND HARASSMENT IN HUMAN RIGHTS LAW: A DEFINITION

In British Columbia we are protected from discrimination and harassment in employment by both human rights legislation and WorkSafe legislation. The Human Rights Code and Human Rights Act protects us from discrimination and harassment due to our age (19 and over), ancestry, colour, conviction for a criminal or summary (in some cases), family status, marital status, physical or mental disability, place of origin, political belief, race, religion, sex (including pregnancy) and sexual orientation.

Bullying and harassment are essentially the same thing. There are many definitions of both.

Bullying often referred to as “Personal Harassment”, the act of intentionally causing harm to others, through verbal harassment, physical assault or other more subtle methods of coercion such as manipulation, including ignoring and isolating the person. Bullying often describes a form of harassment perpetrated by an abuser who possesses more physical and/or social power and dominance than the victim. Different pieces of legislation or legal decisions may use different definitions.

For Worksafe BC bullying “includes any inappropriate conduct or comment by a person towards a worker that the person knew or ought to have known would cause that worker to be humiliated or intimidated, but excludes any reasonable action taken by an employer or supervisor relating to the management and direction of the workers or the place of employment.”

Generally speaking ***in employment harassment*** is any unwelcome action by any person, in particular by management or a co-worker, whether verbal or physical, on a repeated basis (with the exception of physical contact which can be a single incident) which humiliates, insults or degrades due to membership in a protected group. Unwelcome or unwanted in this context means any actions which the harasser knows or reasonably ought to know are not desired by the victim of harassment.

Sexual harassment is defined as “unwelcome conduct of a sexual nature”. The term sexual harassment has come to be used to identify those kinds of sexual coercion and exploitation of women and men in a formal or structured relationship in which we have an expectation that the relationship has nothing to do with sex or sexuality. This would include any unwanted attention of a sexual nature such as remarks about appearance or personal life, offensive written or visual materials like graffiti or degrading pictures, physical contact of any kind, or sexual innuendos or demands. Also captured in the definition of sexual harassment is any expression of hatred or contempt by one gender of the other.

However, human rights law does not apply to personal harassment. If the nature of the harassment is not rooted in membership of a protected group, the victim must seek recourse in another forum, such as employment law, contract law, criminal law or through WorkSafe. The law in human rights also does not extend to the private arena. Harassment must occur in the formal structures of employment, services to the public, or housing. However protection from discrimination is extended to discriminatory publications and employment advertisements.

Maintaining a Harassment Free Environment

Stopping and Preventing Harassment

The following are mistakes that may be made by those who are responsible for stopping and preventing harassment in the workplace.

- Not consulting with a harassment advisor before taking action when aware of actual or potential harassing situations
- Dissuading the complainant from complaining about his/her situation
- Overreacting by taking action before an investigation is completed
- Not telling the alleged harasser the specific allegations
- Not providing the alleged harasser an opportunity to respond
- Asking everyone in the workplace if they have any complaints about an alleged harasser when one person has made accusations of harassment
- Interfering with the investigation
- Believing that because behaviour was accepted in the past by others that the person who now finds that behaviour to be unwelcome is going to have to put up with it in order to continue working there.

As a Manager:

1. Make your position on harassment clear to those who work in your area. Show them that you take your company policy seriously. Make harassment an agenda item for department meetings. Invite an advisor to staff meetings as a guest speaker. Take effective action to address the harassment, including communicating what steps were taken to the victim of the harassment.
2. Become a role model for others. Employees have a hard time taking a supervisor's position seriously when his/her actions contradict the policies he/she is supporting.
3. Participate in your department and office environment. This will give the staff the opportunity to become comfortable around you and will give you a chance to be aware of any possible problems or incidents.
4. Do not be afraid to approach a staff member if you suspect something is going on in the department. Many individuals feel uncomfortable going to a manager or supervisor with complaints. Seeking out problems in their early stages makes it easier to resolve them before any serious damage is done. If you hear rumours, check up on them. If your staff's behaviour or performance drastically changes, ask them about it.