



Harassment and Sexual Harassment in the OHSA

Employer obligations under the Occupational Health and Safety Act (OHSA)

- Employers must provide information and instruction for the process in place for workers to report harassment to an alternate person if the employer or supervisor is the alleged harasser.
- Employers must set out how they will make sure confidential information is not disclosed unless it is necessary to conduct an investigation, take corrective action, or disclose information as required by law.
- Employers must conduct an investigation that is appropriate in the circumstances. The investigation must be timely and the investigation must be objective. The investigator may not be a person with direct control over the complainant.
- Results of the investigation (a summary of the findings) and information on any corrective action shall be provided in writing by the employer to the complainant and the respondent (if the respondent is an employee).
- The employer must consult with the joint health and safety committee (JHSC) or health and safety representative in developing and maintaining its anti-harassment program.
- The employer must review the workplace harassment program annually or as needed to ensure that it adequately implements the harassment policy.

Ministry Code of Practice

The Ministry of Labour, Immigration, Training and Skills Development (MLITSD) has created a Code of Practice to help interpret the requirements for harassment. Codes of Practice are guidelines that explain how employers can comply with the OHSA requirements. The *Code of Practice to Address Workplace Harassment under Ontario's Occupational Health and Safety Act* can be found at: https://www.labour.gov.on.ca/english/hs/pubs/harassment/index.php

The seven steps that make an investigation appropriate

The Code of Practice outlines seven steps that make an investigation appropriate:

- 1. Investigations are kept confidential unless disclosure is necessary to conduct the investigation, take corrective action, or meet legal requirements. Complainants, respondents, and witnesses must be reminded not to discuss any investigation.
- 2. The investigator interviews both the complainant and the alleged harasser.
- 3. The investigator gives the alleged harasser the opportunity to respond to the specific allegations, and hear again from the complainant if necessary.
- 4. The investigator interviews all witnesses independently.
- 5. The investigator collects and reviews any relevant documents.
- 6. The investigator takes detailed notes of all interviews.
- 7. The investigator prepares a written report, setting out all steps in the investigation, the specific allegations, the responses, witness accounts, evidence gathered, and the conclusion reached. The report goes to the person responsible for action.



Ontario Human Rights Code

It is also important to know that the OHRC prohibits sexual harassment and violence, as well as harassment and violence based on a number of other prohibited grounds.

Rights to Information

Complainants and respondents are entitled to receive, in writing, investigation results and information about corrective action taken where harassment is alleged and/or has occurred. Also, employers must maintain confidentiality as much as they can unless disclosure is necessary to conduct an investigation, take corrective action, or conform to law. The requirement that investigations must be "appropriate in the circumstances" means that workers can expect fairness in the process, whether they are complainants or respondents.

Powers of MLITSD Inspectors

The OHSA also confers powers on Inspectors from the MLITSD to order that an investigation to be conducted by a third party, that the investigation report is provided in writing, and that the investigation be paid for by the employer. Inspectors can also specify the knowledge, experience, or qualifications required of the investigator.

These types of orders will likely occur where an employer's harassment policy and program are deficient.

What does the JHSC have the right to know?

The JHSC or health and safety representative has the right to be consulted (give feedback and make recommendations) regarding the development and maintenance of the workplace harassment policy and program. Investigation reports are <u>not</u> considered "reports" for the purposes of disclosure to the JHSC or the health and safety representative. However, OPSEU/SEFPO recommends that the JHSC or health and safety representative (quarterly and as part of the annual review) request anonymized information, such as: the number of investigations opened/closed; average investigation timelines; the number of investigations externally/internally handled; general information on outcomes and steps or programs implemented to prevent reoccurrence; harassment prevention controls; data about implementation; and effectiveness of the policy.

I am a health and safety representative or member of a JHSC. What should I do?

- First, read about harassment in the OHSA and the Code of Practice.
- Look at your employer's workplace harassment program and see where you think changes need to be made.
- Confer with the Local Executive Committee (LEC) and the worker members of the JHSC to develop written recommendations. Put the item on the agenda of your next JHSC meeting and discuss the OHSA amendments and your recommendations to improve the workplace harassment policy and program. If you are a health and safety representative in a smaller workplace, meet with your employer to discuss and submit your recommendations.

Use the Code of Practice as a guide to what the legislative obligations mean. Our aim is to ensure that the harassment program contains all of the elements described in the legislation; that reporting and investigating processes are clear and transparent; and that these processes reflect the principles and jurisprudence of natural justice.