

THE PROFESSIONAL INSTITUTE OF
THE PUBLIC SERVICE OF CANADA



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Pocket Guide on
Harassment

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Pocket Guide on Harassment

Other Useful Documents:

Guide for Members

Membership Benefits pamphlet

Your Union at Your Service (CD-ROM)

Professional Institute By-Laws and Regulations

Professional Institute Policy Manual

Manual for Elected Officials

Pocket Guide for Elected Officials

Steward Manual

Pocket Guide for Stewards

Mentorship Guide for Stewards

Pocket Guide on Consultation

Pocket Guide on Occupational Safety and Health

Pocket Guide to Employment Equity

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Introduction

Employees have a basic right to work in an environment that is free of harassment. According to the Treasury Board of Canada, harassment in the workplace is unacceptable and will not be tolerated. Treasury Board further states that all persons working for the public service, whether or not they are employees, should enjoy a harassment-free workplace.

Everyone in the workplace is expected to act towards others in a respectful and professional manner. If they do not act this way, there may be grounds for harassment complaints.

A harassment complaint is a serious matter that should be dealt with promptly and in a confidential manner. It is therefore in everyone's best interest to resolve harassment situations as early as possible.

What is harassment?

Harassment is generally described as any improper conduct directed at someone, that the person finds offensive and harmful and that a reasonable person would view as unwelcome, offensive or harmful.

Harassment can be any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, or any act of intimidation or threat.

Harassment also includes those grounds prohibited under the *Canadian Human Rights Act*, namely race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or pardoned conviction.

Here are some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:

- Was the behaviour unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Was it a single or one-time incident?
- Was it a series of incidents over a period of time?

It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is prohibited under the *Canadian Human Rights Act*.

Examples of what constitutes harassment can be found in Treasury Board Secretariat Policy on the prevention and Resolution of Harassment in the Workplace. While this is not an exhaustive list, we hope it will help clarify what is meant by "harassment".

What generally constitutes harassment?

- Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the 11 grounds prohibited under the *Canadian Human Rights Act*.
- Serious or repeated rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs, insults or demeaning jokes.
- Taunting about a person's clothes, accent, physical disabilities or characteristics, religious

beliefs or sexual orientation including derogatory comments or jokes.

- Repeated behaviour or comments that sets an employee apart from others, on the basis of the person's gender or other differences.
- Repeatedly singling out an employee for meaningless or demeaning jobs that are not part of their normal duties.
- Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.
- Unwelcome sexual attention or contact or comments, sexual innuendos or gestures, social invitations, with sexual overtones or flirting, with a subordinate.

What may constitute harassment?

- Criticizing an employee in public.
- Exclusion from group activities or assignments.
- Factual statements damaging to a person's reputation.
- Close proximity that intrudes upon a person's "space" and makes that person feel uncomfortable.
- Making sexually suggestive or racially insensitive remarks.
- Physical contact such as touching or pinching.

What does not generally constitute harassment?

- A single or isolated incident such as an inappropriate remark or abrupt manner that does not recur once an individual is made aware that the behaviour is considered offensive.
- Allocating work.
- Following-up on work absences.
- Requiring performance to job standards.
- Taking disciplinary measures.
- Requiring adherence to established dress code.
- Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
- Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.
- Necessary proximity or contact required to execute a task.
- A social relationship welcomed by both individuals.
- Appropriate, supportive and friendly gestures among co-workers such as a pat on the back.

Physical and sexual assaults are covered by the Criminal Code and in such cases the police should be contacted.

What should members do to avoid harassment?

PIPSC Members are expected to act towards other individuals professionally and respectfully.

What should management do to prevent harassment?

Managers are expected to lead by example and to act respectfully in dealings with employees and other persons.

Inform their employees of the policy on harassment and to remind them of its contents as deemed necessary.

Ensure that employees have access to learning opportunities on the prevention and resolution of harassment in the workplace.

Intervene promptly to address harassment situations and use appropriate measures to resolve the problem in a timely fashion.

What to do if you are harassed?

Members who believe they have been treated in an improper and offensive manner should follow the following procedures:

- If possible, make your disapproval or unease known as soon as possible to the person who offended you, in an attempt to resolve the situation.
- If this doesn't work or if you are unable to speak directly with that person, talk to your supervisor or someone else in authority.
- If all else fails, make a formal complaint. (The complaint process is explained further).

What to do if you are accused of harassment?

- If someone informs you that your conduct is offensive, take it seriously and attempt to resolve the problem with that person.
- Your supervisor, the person designated by your department or organization, or your union representative can provide help or guidance.

What are the recourse mechanisms?

Over time, employers have adopted internal policies on the prevention and resolution of harassment in the workplace. Such policies usually include the possibility of filing a formal harassment complaint as a recourse mechanism. Another possible recourse mechanism is filing a grievance. Grievances against any form of harassment can be filed. All PIPSC collective agreements with Treasury Board include a specific clause against sexual harassment at work. Other employers have agreed to a more generic harassment clause in their collective agreement with PIPSC that stipulates that members have the right to work in an environment free from any form of harassment.

THE COMPLAINT PROCESS

Early Problem Resolution

An allegation of harassment is serious, therefore every effort should be made to resolve the problem early with open communication and in a co-operative manner. Using problem resolution mechanisms such as counselling can help resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary.

The person who feels offended by the actions of another person is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.

If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated by their department/organization to provide information on harassment, in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

The Formal Complaint Process

This complaint process applies to federal public service employees; however, other employers may have similar processes.

PIPSC members who believe they have been harassed may report the incident to their supervisor/manager, or, if necessary, to another appropriate manager who will address the situation and take appropriate action.

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with the delegated manager. All steps should be completed without undue delay.

When dealing with complaints, requirements of the *Official Languages Act* must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

The complainant submits a complaint in writing to the delegated manager, or to the next person in the hierarchy if the delegated manager is the subject of the complaint, within the prescribed deadlines (usually one year of the alleged harassment leading to the complaint).

The complaint must include

- the nature of the allegations
- the name of the respondent
- the relationship of the respondent to the complainant (e.g., supervisor, colleague);
- the date and a description of the incident(s)
- the names of witnesses (if applicable)

The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated manager screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- must be filed within one year of the alleged harassment leading to the complaint, unless there are extenuating circumstances; and
- must include the information noted in Step 1.

If these criteria are met, the delegated manager informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations.

If these criteria are not met, the delegated manager informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated manager suggests other means of resolving the issue.

Step 3 - Review of the complaint

Once the complaint has been acknowledged, the delegated manager reviews the complaint and if necessary, seeks additional information to determine if the allegations are related to harassment.

If the delegated manager concludes that the complaint is not related to harassment, he or she informs the complainant and the respondent in writing. The delegated manager re-directs the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

If the allegations are related to harassment, the delegated manager determines what efforts have been made to resolve the problem, identifies immediate avenues of resolution if any, and takes appropriate action.

Step 4 - Mediation

If the harassment complaint remains unresolved, the delegated manager must offer mediation. If the parties agree to mediation, the delegated manager obtains mediation services.

Step 5 - Investigation

If mediation has not resolved the complaint, or if mediation was not undertaken, the delegated manager launches an investigation and notifies all involved parties. The investigator must provide the delegated manager with a written report that includes his or her findings and conclusions.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.

If the delegated manager is satisfied that he or she has all the facts and that the parties have been heard, he or she may decide not to undertake an investigation and to provide a decision.

Step 6 - Decision

The delegated manager reviews all the relevant information and decides what action to take. He or she then informs the parties in writing of the outcome of the investigation and ensures that corrective and/or disciplinary measures are taken, if warranted.

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, members have the right to file a complaint with the Canadian Human Rights Commission.

If the complaint is founded, the complainant should be informed verbally whether corrective or disciplinary measures will be taken as a result of the complaint.

If the conclusion is that the complaint is frivolous or made in bad faith, respondent(s) will be informed verbally whether corrective or disciplinary measures will be taken.

A PIPSC member who is not satisfied with the outcome of the investigation and with management's decision, should contact the PIPSC Regional Office to discuss the possibility of filing a grievance against the harassment investigation process, conclusion and measures.

What should be expected of complainants, respondents and witnesses?

- Provide information as required
- Co-operate in the complaint process if and when called upon to do so.
- Limit the discussion of the complaint to those who need to know.
- Review their statement as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.

The parties may also have with them, during meetings and interviews related to the resolution of the complaint, a person of their choice who has agreed to accompany them and who is not a party to the process (usually a union representative).

Complainants and respondents should be able to review a copy of the draft report.

They will be informed in writing of the outcome of the investigation and will receive a copy of the final report.

What is expected of management during a complaint investigation?

- Treat complainants without fear of embarrassment or reprisal
- Be impartial in any complaint process in which they are involved.
- Apply the established steps in the complaint process.

- Ensure that both complainants and respondents have access to support and advice during any resolution process associated with the complaint.
- Separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;
- Ensure that corrective and/or disciplinary measures are taken, where warranted.
- Ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure.
- Ensure that parties are provided with the information to which they are entitled.

What is the grievance process?

Filing a grievance could be an alternative to going the “harassment complaint” route. One of the advantages of the grievance process over the formal complaint route is that you are not at the mercy of the investigator’s approach to your complaint. (Which witnesses will he/she decide to interview? How will he/she assess the facts and evidence brought before him/her?) With the grievance, you and your union representative have more control over the way you build your case.

Under your collective agreement, as with the complaint mechanism, you can elect to set aside the formal process while you are engaging in informal discussions with management.

Depending on the wording of your collective agreement your grievance may, or may not open you the door to a third party adjudicator.

Unfortunately in the collective agreements between PIPSC and Treasury Board, the employer has limited the reference to harassment to sexual harassment only. Other non Treasury Board employers have agreed to language which encompasses all forms of harassment. More general language in your collective agreement may make it possible for your grievance to be heard by an adjudicator. Under the *Public Service Labour Relations Act*, an adjudicator has jurisdiction to consider a grievance alleging a breach of one of the 11 grounds of discrimination found under the *Canadian Human Rights Act*. Unfortunately, personal harassment, which is one of the most common form of harassment, is not one of the 11 grounds of discrimination under the Canadian Human Rights Act. As such, an adjudicator would not have jurisdiction to consider a grievance alleging personal harassment.

If you are considering filing a grievance here is what you should do.

The wording of an harassment grievance requires the help of an experienced wordsmith. As a first step, contact your PIPSC regional office to seek advice, assistance and representation from an Employment Relations Officer.

Proceed rapidly: under most collective agreements you only have 25 working days¹ from the time the incident leading to the grievance occurred to file it. Document all the facts: times, dates, witnesses.... If you want to be physically separated from the alleged harassor, make sure to stipulate that in the corrective measures you are seeking.

¹ Under Regulation 68 of the Public Service Labour Relations Board (PSLRB), the grievor has 35 calendar days to file a grievance. However, timelines outlined in the collective agreements have precedence over the PSLRB regulations. Check your collective agreement!

Who can help the victims?

Many employers have put in place programs whereby members can obtain confidential assistance or short-term counseling to help them resolve their problems. These programs are called Employee Assistance Programs (EAP). Members that have been harassed and feel they need emotional assistance or support in dealing with the situation should be referred to their EAP provider.

Every employer wants his employees to perform well. To do this, employees must be in good health, both physically and emotionally. Unfortunately, life has a nasty habit of getting in the way. EAP programs offer professional help for employees facing a health crisis, emotional problems, personal problems or are suffering from professional burnout.

What can PIPSC stewards do?

Harassment is a serious matter and should not be tolerated in any circumstance. Stewards are encouraged to be vigilant and report potential harassment situations to management in an effort to defuse situations before they turn into full-fledged complaints.

Should the need arise, stewards should encourage members who are victims of harassment to file a grievance or a complaint and try to resolve the issue. Stewards should also help in the development of means to eradicate harassment, be it publicity campaigns or special events.

If there are harassment committees in your workplace, get involved. Sit on those committees and provide a strong voice for the Institute. If there are such committees, please advise the PIPSC Steward Coordinator of the names of the PIPSC representatives so our database can be kept up-to-date.

Finally, the Institute is currently developing a training module on harassment. We strongly encourage all stewards to take this training as soon as it becomes available. The PIPSC training calendar is posted on the Steward page of the PIPSC Web site.

Conclusion

Fighting harassment at work can be a daunting challenge. Whether you are unsure of the course of action to take or whether you are considering recommending mediation, the filing of a grievance or formal complaint, contact your PIPSC regional office. Our Employment Relations Officers will provide you with the assistance required to ensure that the proper steps are taken to resolve the issue. They will also provide you with assistance on the wording of the grievance or complaint.

In time, we will attain a harassment-free workplace for all.