

How to Achieve a Respectful, Harassment-Free Workplace

By Anna Abbott and Andrea York



The overwhelming number of reports of #metoo cases, including several high-profile and public accusations of sexual harassment and assault in the workplace across industries in Canada, is causing many employers to take stock in the preparedness and awareness in their own organizations.

Recent news reports indicate that the alleged harassment is often in relation to a historic pattern of inappropriate conduct, having taken place many years ago and over a number of years. Not only can a public accusation of a senior employee be devastating to an employer's public persona, it can also carry significant liability, both civil and regulatory. While the past conduct cannot be undone, there are a number of best practices that employers can proactively take to protect themselves and their employees going forward.

PROMOTE A CULTURE OF RESPECT

A workplace culture that turns a blind eye to sexual harassment is detrimental to the health and safety of employees. The cultural shift in Canada over the last decade has led to increased regulatory requirements for workplace violence and harassment policies, and recognition that allowing inappropriate behaviour related to sexual harassment can lead to serious health consequences.

Across Canada, there are human rights laws prohibiting workplace discrimination and harassment on various protected grounds. In addition, in September 2016, the

Ontario government amended its occupational health and safety legislation to expressly include sexual harassment as a form of workplace harassment. The amendments also augmented employers' obligations to ensure that appropriate investigations are conducted where there is an incident or complaint of harassment, including sexual harassment, and require that employers inform the parties, in writing, of the investigation's outcome and any corrective action taken. Other provinces, and the federal government, are following suit.

If a culture-change is needed at your workplace, it needs to come from the top down. The most senior executives need to be involved in fostering a change in attitude and a heightened awareness around these issues.

The changes ought to be communicated in a way that encourages people to come forward or to speak out when they witness harassment of, or demeaning conduct toward, others. Removing any stigma or fear of reprisal from reporting is essential.

POLICY REVIEW AND TRAINING ARE KEY

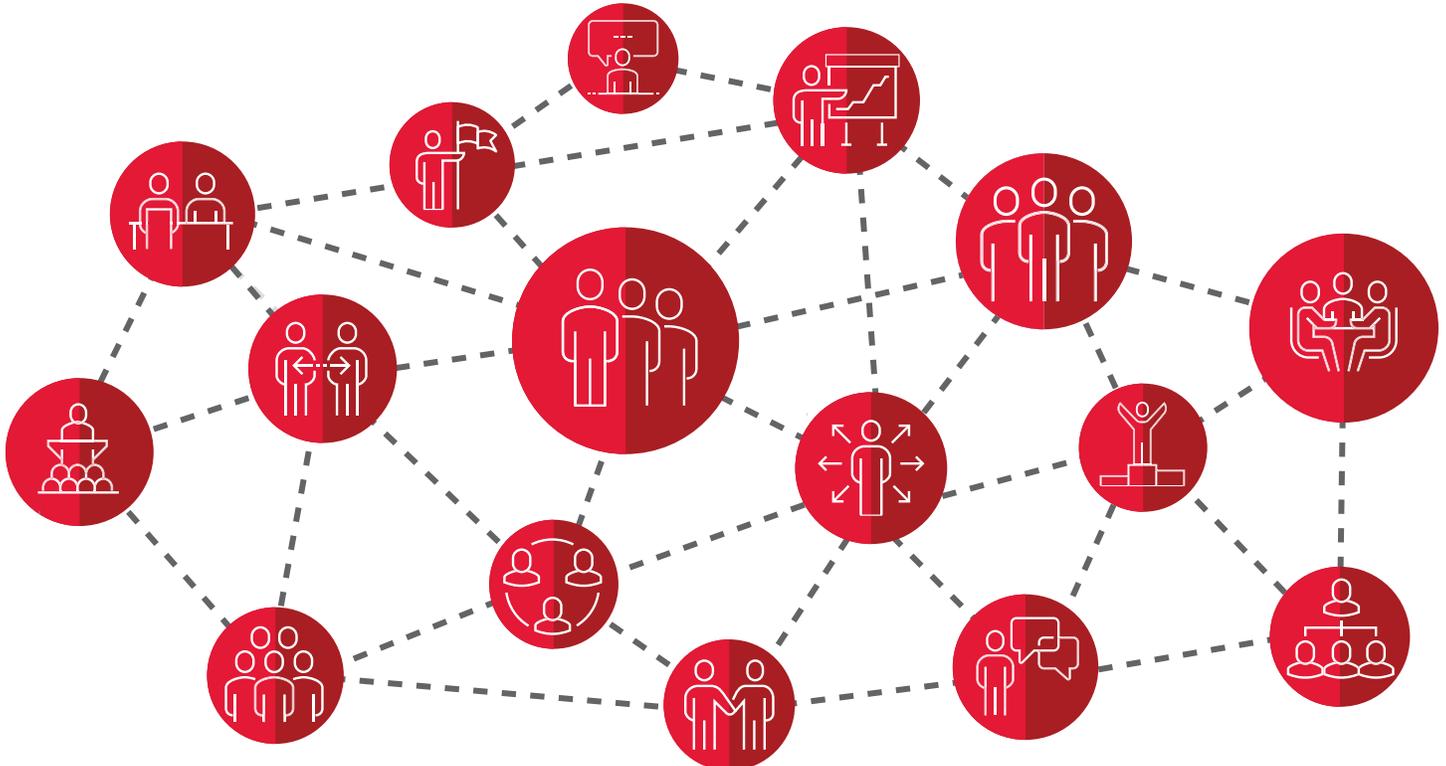


Simply having a generic workplace violence and harassment policy hidden behind several menus on the company intranet is not sufficient to prevent inappropriate workplace behaviour or to clearly prepare your employees to manage any workplace incident or complaint.

Many workplaces are now reviewing and updating their policies. If there are any concerns about conduct in certain departments or other areas in the organization, it is time to draw a line in the sand so that everyone is aware that sexual and other forms of workplace harassment will not be tolerated.

Human rights and occupational health and safety legislation requires that employers proactively educate employees and investigate harassment complaints in the workplace. A preventative and proactive sentiment should be reflected in the policy and in communications to employees.

Of course, employers should ensure that their policies are comprehensive, comply with applicable laws, are communicated to employees, and that there is proper monitoring and control in place to ensure compliance with policies. Assigning accountability for the review and management of workplace harassment policies is a step in ensuring that the policy is a living document.



Policy Checklist

While policies should be tailored to the particular workplace, there are a number of best practices when it comes to policy content:

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All policies dealing with sexual harassment should include a clear statement on company values and messaging from management that confirms this commitment.

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Ensure that the scope of the policy adequately covers all work settings, even outside of the office. Further, harassing conduct may come from clients or other individuals who are not your employees. The policy and training should provide guidelines on how to deal with these situations.

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Be cognizant of gender stereotypes when drafting policy language. Harassment can happen between same and different sexes and transgendered employees.

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Empower witnesses to step forward. For example, if a more senior employee witnesses a more junior employee being harassed, he or she should feel comfortable stepping in to alleviate the situation and reporting it afterward. Ensure all employees understand they too have a responsibility to keep the workplace harassment free.

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Ensure there are adequate reporting structures for incidents and complaints. Bear in mind that there should always be more than one contact for reporting sexual harassment so that employees can report to an alternative contact if they are not comfortable with reporting to the main contact. Ensure that contact information is clearly posted and communicated and that the contacts listed are adequately trained.

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Ensure that the policy communicates the need for confidentiality. The policy should identify circumstances when information about a complaint or an investigation may be disclosed, and should also confirm confidentiality expectations for employees during an investigation.

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Include realistic and easy to understand examples of sexual harassment.

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Summarize the investigation procedure with the objective of ensuring consistency in investigations and record keeping.

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The policy should clearly identify that reprisals against a complainant or witness for participating in an investigation is prohibited and that a breach of this obligation will result in discipline.

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The policy should also discuss the employment consequences for committing sexual or other forms of harassment.

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In Ontario, the policy must also address the employers reporting obligations to the complainant and harasser, if he/she is an employee.

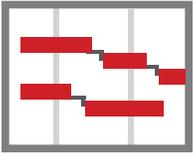
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The policy should also confirm that nothing in the policy prevents employees from seeking other external remedies, including those under applicable human rights legislation.

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CONSISTENCY WITH OTHER POLICIES



Employers also need to consider how other policies within the company intersect with the harassment policy. It is important that other policies reference the prohibitions to ensure that employees have clear guidelines and understand that respect in the workplace flows through all aspects of the business.

For example, employer electronic communication policies and bring your own device policies should clearly identify that employees have to act in line with the sexual harassment policy when using company systems and communicating with employees and customers. The policy should also identify that the company has the right to access information on company systems in order to monitor compliance or respond to an incident.

DON'T FORGET THE TRAINING



Human rights tribunals and ministries of labour expect that employers will conduct training to prevent sexual and other forms of harassment. Training must occur regularly to ensure that employees understand the policies and any updates

to policies. Acceptable behaviours and consequences for failing to comply with the policy must be communicated.

Since managers have a heightened responsibility in prevention, employers should consider holding separate management training and employee training sessions to ensure all stakeholders are aware of their rights and obligations. It is also helpful to have general training on principles of diversity and inclusion. Employers should have employees sign an acknowledgement that they have received training and have reviewed and understand the expectations set out in the policy, and maintain a record of those acknowledgements.

Again, the top-down approach is generally necessary to invoke a cultural shift.

INVESTIGATIONS



When a complaint is received, an investigation is mandatory. Employers will need to consider whether to conduct the investigation in-house or retain external investigators. If the investigation is conducted in-house, employers should ensure that the investigator has had training on proper investigation procedures and the applicable policies. Other considerations are issues such as privilege, confidentiality and impartiality when it comes to investigations. Due to vicarious liability concerns, employers should obtain advice prior to proceeding.

Complaints may also lead to police or regulatory investigations and employers should also be aware of their rights and responsibilities in these circumstances. Having a strategy for what to do if an inspector or investigator contacts your organization, or arrives at your workplace, will be particularly helpful in planning for requests for documents, investigation notes, reports and related matters.

PLAN A COMMUNICATIONS STRATEGY



It never hurts to hope for, and expect, the best, but plan for the worst. Consider your communications strategy in advance and ensure that you have contact information for legal counsel and potentially for a public relations

firm that manages complex or high-profile complaints and investigations. When an incident happens, it is important to be able to get help quickly and ensure that the process is managed properly.

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