

WORKPLACE HARASSMENT AND VIOLENCE PREVENTION



CommeHome
WHVP Team –
Banking Industry

**BUILDING A HARASSMENT-FREE
WORKPLACE WHERE EVERYONE IS
VALUED AND TREATED WITH
RESPECT**

Legislative Piece

The Act to amend the Canada Labour Code (CLC) also known as Bill C-65, received Royal Assent in October 2018. The Act introduces multiple amendments to the Canada Labour Code including sexual harassment and sexual violence, to strengthen the existing framework for harassment and violence prevention. The amendments to the Canada Labour Code came into force on January 1, 2021 alongside with the new Workplace Harassment and Violence Prevention Regulations (herein referred to as “the Regulations”)^{1,2}.

The main changes included:

- Addition of references to sexual harassment and sexual violence in the workplace to the Canada Labour code.
- Updates to Occupational Health and Safety Act (Part II of the Canada Labour code) to include information on health and safety matters, employer and employee duties and new harassment and violence prevention requirements.
- Information governing the practical application of Part II of the Canada Labour Code detailed in the Workplace harassment and violence prevention regulations.

The workplace harassment and violence prevention regulations (the regulations) came into force on January 01st, 2021.

“The Regulations’ highlights the key elements of a workplace harassment and violence prevention policy, and the procedures that must be in place to respond to incidents of harassment and violence includes:

- timeframes for resolution to better support the complainant and alleged individual;
- confidentiality of all parties involved, including witnesses, throughout the investigation;
- protection for employees victimized by a third party (for example, an employee harassed by a client);
- the qualifications of a competent person to investigate and provide recommendations;
- employer obligations to implement corrective measures in response to the investigation report of a competent person;
- a clear outline of the existing and new roles of the workplace committee; and
- support to be provided for employees who have experienced workplace harassment and violence.

This book provides a comprehensive summary of relevant topics on harassment and violence in the workplace including the new provisions in the Canada Labour code and its practical application as noted in the workplace harassment and violence prevention regulations.

The main piece of legislation that supports workplace harassment and violence prevention is the Canada labour code.

Under Part II of the Canada Labour Code, employers must protect the health and safety of everyone in the workplace. Everyone implies both employees and non-employees (vendors, contractors, & visitors).



¹ Government of Canada publishes new regulations to prevent harassment and violence in federal workplaces. <https://www.canada.ca/en/employment-social-development/news/2020/06/government-of-canada-invites-canadian-workplaces-to-get-ready-for-new-regulations-against-harassment-and-violence.html>. Accessed on 2023—06-17.

² Work Place Harassment and Violence Prevention Regulations: SOR/2020-130. <https://canadagazette.gc.ca/rp-pr/p2/2020/2020-06-24/html/sor-dors130-eng.html>. Accessed on 2023-06-17

There are 3 key measures that should be put in place to prevent harassment and violence in the workplace. These measures include:

- *Training*
 - *Workplace harassment and violence prevention policy*
 - *Conducting a workplace assessment*
-

Background

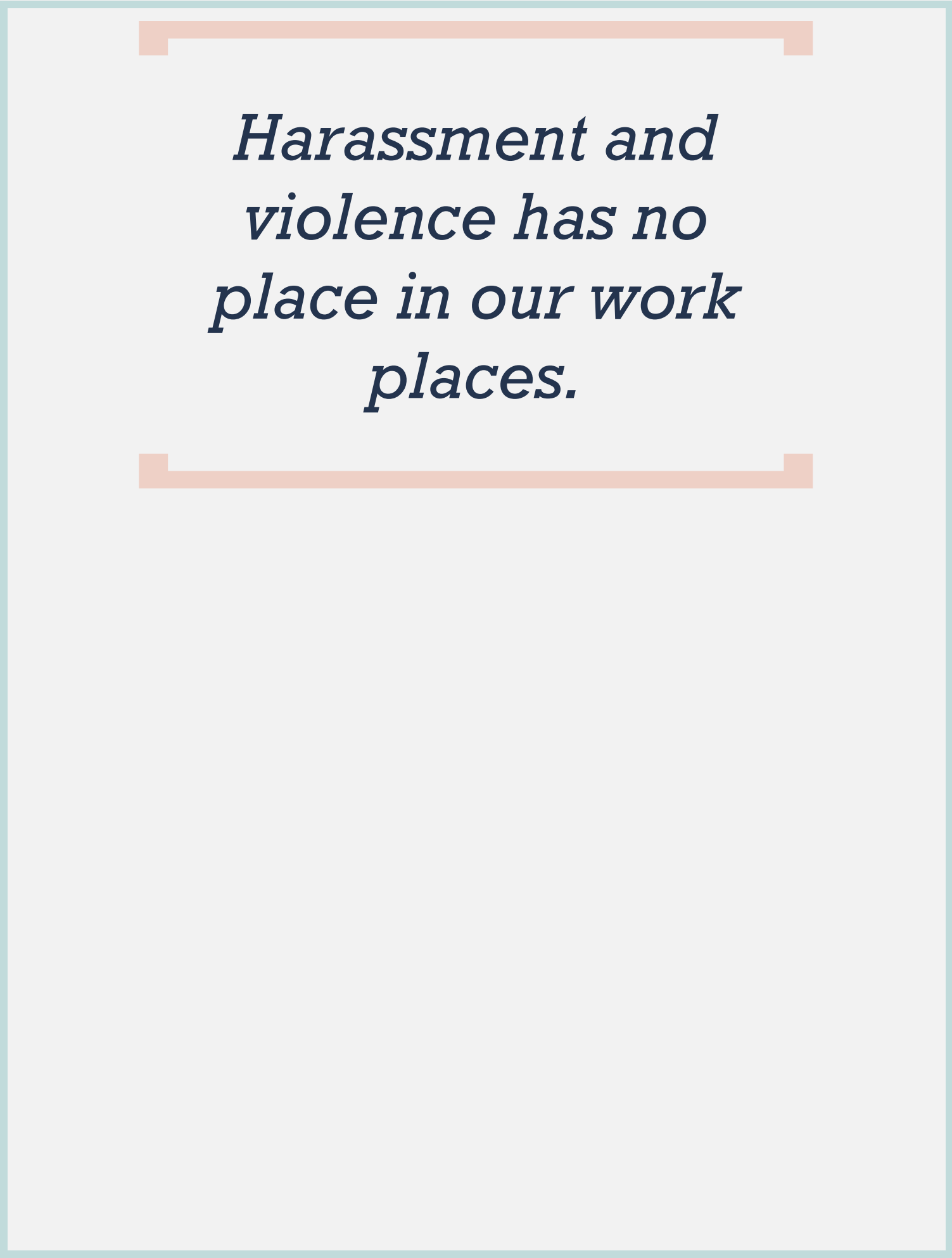
Do you know that in Canada ³:

- Nearly 1 in 2 women and roughly 3 in 10 men report ever experiencing harassment or sexual assault in the workplace.
- Among employed people, those aged 25 to 34 years report the highest rate of ever experiencing harassment or sexual assault in the workplace
- A higher proportion of those with disabilities reported experiencing harassment or sexual assault in the workplace compared to those without disabilities.
- A higher proportion of Indigenous men and women reported experiencing harassment or sexual assault in the workplace compared to non-Indigenous men.
- More racialized women than men reported ever experiencing harassment or sexual assault in the workplace. Similarly, among non-racialized people, 51% of women and 35% of men reported ever experiencing harassment or sexual assault in the workplace.
- Just over 1 in 3 immigrant women (34%) and one in five immigrant men (20%) reported ever experiencing harassment or sexual assault in the workplace. Meanwhile, 52% of Canadian-born women and 36% of Canadian-born men reported ever experiencing harassment or sexual assault in the workplace.
- 3 in 4 lesbian, gay or bisexual women and more than one in two men in this group report ever experiencing harassment or sexual assault in the workplace.

Based on the above data from the gender results framework⁴, it is obvious that more work is required to curb harassment and violence in Canadian workplaces.

³ Gender Results Framework: A new data table on workplace harassment.
<https://www150.statcan.gc.ca/n1/daily-quotidien/240212/dq240212a-eng.htm>. Released: 2024-02-12

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*Harassment and
violence has no
place in our work
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HANDBOOK
WORKPLACE HARASSMENT AND VIOLENCE
PREVENTION



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Background

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- A higher proportion of those with disabilities reported experiencing harassment or sexual assault in the workplace compared to those without disabilities.
- A higher proportion of Indigenous men and women reported experiencing harassment or sexual assault in the workplace compared to non-Indigenous men.
- More racialized women than men reported ever experiencing harassment or sexual assault in the workplace. Similarly, among non-racialized people, 51% of women and 35% of men reported ever experiencing harassment or sexual assault in the workplace.
- Just over 1 in 3 immigrant women (34%) and one in five immigrant men (20%) reported ever experiencing harassment or sexual assault in the workplace. Meanwhile, 52% of Canadian-born women and 36% of Canadian-born men reported ever experiencing harassment or sexual assault in the workplace.
- 3 in 4 lesbian, gay or bisexual women and more than one in two men in this group report ever experiencing harassment or sexual assault in the workplace.

Based on the above data from the gender results framework⁶, it is obvious that more work is required to curb harassment and violence in Canadian workplaces.

The Act to amend the Canada Labour Code (CLC) also known as Bill C-65, received Royal Assent in October 2018. The Act introduces multiple amendments to the Canada Labour Code including sexual harassment and sexual violence, to strengthen the existing framework for harassment and violence prevention. The amendments to the Canada Labour Code came into force on January 1, 2021 alongside with the new Workplace Harassment and Violence Prevention Regulations (herein referred to as “the Regulations”)^{7,8}.

The main changes included:

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- a clear outline of the existing and new roles of the workplace committee; and
- support to be provided for employees who have experienced workplace harassment and violence.

This book provides a comprehensive summary of relevant topics on harassment and violence in the workplace including the new provisions in the Canada Labour code and its practical application as noted in the workplace harassment and violence prevention regulations.

CHAPTER 1: INTRODUCTION TO HARASSMENT AND VIOLENCE

In this chapter, we will discuss the definition of harassment and violence as specified in the Canada labour code as well as, some examples of harassment and violence, relationship between some forms of discrimination and harassment/violence, domestic violence, factors contributing to workplace harassment and violence, and the consequences of harassment and violence in the workplace.



What is harassment and violence

Part II of the Canada labour code, defines harassment and violence behaviour as “any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment” (<https://laws-lois.justice.gc.ca/eng/acts/L-2/section-122.html>. Accessed on 2023-06-17).

1.1 Harassment and violence in the workplace

It is important to clarify the meaning of harassment and violence in the workplace.

According to the Canada Labour Code [122(1)], the work place is where an employee is engaged to work for their employer. Thus, the workplace can include:

- The building provided by your employer
- Third-party locations authorized by your employer
- One’s place of residence; as approved by your employer to work remotely from home.

Therefore, wherever you work as approved by your employer is your workplace; implying workplace harassment can occur in a premise controlled by your employer and in other work locations that are not under the direct control of your employer.

Some examples of harassment and violence include⁹

- aggressive or threatening behaviour, including verbal threats or abuse
- physical assault
- spreading malicious rumours or gossip about an individual or a group
- persistently criticizing, undermining, belittling, demeaning or ridiculing someone
- swearing at someone or using inappropriate language towards them
- using the Internet to harass, threaten or maliciously embarrass someone
- using the Internet to make sexual threats, or to harass or exploit someone sexually
- abusing authority by publicly ridiculing or disciplining a subordinate
- abusing authority by soliciting a sexual or romantic relationship from a subordinate, or making social invitations with sexual overtones to a subordinate
- making abusive or derogatory remarks or jokes about someone’s gender, gender identity or gender expression, sex, or sexual orientation (for example, homophobic remarks)
- sexual touching (for example, patting, pinching, caressing, kissing, fondling)
- sexual invitations or requests in return for a promise of a reward (such as a promotion)

⁹ https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention.html#Examples_of_harassment

- displaying offensive posters, cartoons or images of a sexual nature
- sending inappropriate electronic communications (for example, sexually explicit emails)
- domestic violence (also called intimate partner violence, domestic abuse or relationship abuse) is a workplace hazard when it occurs in the workplace, it puts the targeted worker at risk and may pose a threat to coworkers

1.2.1 Reasonable management actions

It is important to stress at this point in the course that employees and staff should not get confused between workplace harassment/violence and reasonable management actions that are part of the normal workplace environment. Differences in opinion between co-workers and those in leadership positions are not considered harassment or violence.

For example, supervisors can take the following measures as long as they act respectfully, professionally and in good faith:

- directly supervise employees, including setting out performance expectations and providing constructive feedback about work performance
- take measures to correct performance deficiencies, such as placing an employee on a performance improvement plan
- take reasonable disciplinary actions
- assign work, and direct how and when it should be done
- request updates or status reports
- approve or deny time off
- request medical documents to support absence from work

1.2.2 Forms of discrimination and relationship to harassment and violence

There is a relationship between prohibited grounds of discrimination noted in the *Canadian Human Rights Act* and harassment and violence in the workplace.

According to the *Canadian Human Rights Act (CHRA)*, race, age, nationality, ethnicity, religion, sex, sexual orientation, colour, gender identity or expression, marital status, genetic characteristics, disability and conviction for an offence for which pardon has been granted or a record of suspension has been ordered, is considered prohibited grounds. As noted earlier, some of the negative behaviours involving harassment and violence may include these prohibited grounds of discrimination.

For example, harassing an employee in the workplace because of their gender identity or expression could be considered a form of workplace harassment.

It is worth noting that section 123.1 of the Canada labour code notes that “For greater certainty, nothing in this part shall be construed so as to abrogate or derogate from the rights provided for under the “Canadian Human Rights Act”.

Thus, you are still entitled to the protections and redress process provided by the CHRA when you file a notice of occurrence of harassment and violence in the workplace regarding any prohibited grounds of discrimination.

1.2.3 Forms of harassment and violence vs criminal acts

Similar to domestic violence that may eventually make its way to the workplace, some events of harassment and violence in the workplace are under the *Criminal Code of Canada*. For example,

- making death threats
- sharing intimate photos on social media or through the internet
- committing voyeurism or exhibitionism
- threatening to damage property
- committing physical or sexual assault
- committing vandalism
- asserting power through physical aggression
- criminal harassment (stalking)

For any emergency related to health or safety, including those related to a criminal act, please call the emergency number provided by your organization or contact your local police immediately. Also submit a notice of occurrence to the person (designated recipient) or the work department that is responsible for receiving and resolving events of harassment and violence in the workplace.

1.2.4 Why are events of harassment and violence not often reported in the workplace

There are several reasons why events of harassment and violence in the workplace may not be reported by victims. This includes:

- Victims being afraid of reprisal, retaliation, or retribution
- Lack of support from management
- Belief that what they have experienced does not substantiate a complaint

1.2.5 Domestic violence

Domestic violence sometimes referred to as intimate partner violence, is a form of physical, sexual, or psychological harm by a current or former partner, spouse or family member. When an employee experienced domestic violence in an office or while performing work activities away from the office, such an event or occurrence is covered by the *Workplace Harassment and Violence Prevention Regulations*.

Some examples of domestic violence covered by the *Workplace Harassment and Violence Prevention Regulations* include:

- Your family member harassing you in the workplace

- Your spouse sending a threatening email to your boss
- Your former partner spreading false information about you
- Your family member throwing a rock through your office window

Support for employees dealing with domestic violence

Employees dealing with domestic violence covered by the Workplace Harassment and Violence Prevention Regulations can contact a mental health support expert, their supervisors for support, and also reach out to their designated recipient or department responsible for harassment and violence prevention.

You can also use the following link to find family violence resources and services in your area.

<https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/services.html>

1.2.6 Factors contributing to workplace harassment and violence

To determine the specific risk factors that can contribute to harassment and violence in your place of work, an assessment of the workplace should be conducted by your employer. There are multiple factors that can contribute to harassment and violence in the workplace. These factors include:

1. Client exposure and interaction: If your work requires interacting with clients, you may be exposed to harassment and violence at work stemming from:
 - Clients that are frustrated with system or services you offered
 - Clients that have a history of violence
 - Clients with an emotional, mental or psychological disorder
 - Clients that are under the influence of alcohol or drugs
 - Clients that are homophobic, transphobic, racist or sexist
2. Your work environment: Your work environment or its design may augment your risk of harassment or violence occurring.
3. The workplace culture and your work activity.
4. Your assigned role and responsibilities at work.
5. External factors such as the influence and interference from family members, spouse or partner.
6. Other psychological factors.

1.2.7 Consequences of harassment and violence

Workplace harassment and violence comes with a huge personal and organizational cost. It goes without saying that the cost may be higher if the perpetrator of harassment and violence in the workplace holds a position of authority. Some examples of associated cost of harassment and violence in the workplace may include:

- Increased stress
- Decrease in productivity

- Difficulties in retaining staff and loss of key employees
- Increased absenteeism
- Poor public image
- A toxic work environment
- Injuries including physical, emotional or psychological trauma
- Increased worker's compensation cost
- Increased in disability insurance claims

CHAPTER 2: CHANGES IN HARASSMENT AND VIOLENCE LEGISLATION

This chapter contains key information related to changes in the harassment and violence legislation including Bill C-65; an Act to amend the Canada Labour Code (CLC) that received Royal Assent in October 2018. In addition, the chapter also discusses the amendments to the Canada Labour Code and the workplace harassment and violence prevention regulations, that came into force on January 1st 2021. The chapter also delves into relevant statistics on harassment and sexual harassment in the workplace and how this relates to age, sex, gender, disability, immigrant status, racialized people, indigenous people and sexual orientation.



The main piece of legislation that supports workplace harassment and violence prevention is the Canada labour code.

Bill C-65; an Act to amend the Canada Labour Code (CLC) received Royal Assent in October 2018. The Act introduces multiple amendments to the Canada Labour Code including sexual harassment and sexual violence, so as to strengthen the existing framework for harassment and violence prevention. The amendments to the Canada Labour Code came into force on January 1, 2021 alongside with the new Workplace Harassment and Violence Prevention Regulations (herein referred to as “the Regulations”)^{10,11}.

The main changes included:

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- support to be provided for employees who have experienced workplace harassment and violence.

2.1 Sexual Harassment

Sexual harassment includes a range of actions from mild transgressions to sexual abuse or assault. Sexual harassment is not limited to unwanted sexual advances but includes any physical, verbal, or visual behaviors related to sex, gender, or sexual orientation that are unwelcome.



The labor rights and responsibilities of federally regulated employers and employees are defined by the Canada Labor Code. A few examples of federally regulated businesses and industries are:

- Banks
- Marine, Shipping, Ferry, and Port Services
- Air Transportation
- Railway and Road Transportation
- Canals, Pipelines, Tunnels, and Bridges
- Telephone and Cable Services
- Radio and Television Broadcasting
- Grain Elevators, Feed, and Seed Mills
- Uranium Mining and Processing

The Canadian Labor Code establishes that every employee has a right to employment free from sexual harassment. It further requires that employers take positive action to prevent sexual harassment in the workplace.

The Canada Labor Code defines sexual harassment as “any conduct, comment, gesture, or contact of a sexual nature that is likely to cause offence or humiliation to an employee; or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.”

Every employer, after consulting with employees or their representatives must issue a policy on sexual harassment. At minimum, the policy should include:

- A definition of sexual harassment that is substantially the same as the one in the Canada Labor Code.
- A statement to the fact that every employee is entitled to employment free of sexual harassment.
- A statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment.
- A statement to the effect that the employer will take disciplinary measures against any person under his or her direction who subjects any employee to sexual harassment.
- A statement explaining how complaints of sexual harassment may be brought to the attention of the employer.
- A statement to the effect that the employer will not disclose the name of the complainant, or the circumstances related to the complaint to any person unless disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation to the complaint.
- A statement informing employees of their right to make a complaint under the Canadian human Rights Act.

The provincial legislation covers employees that do not work for a federally regulated employer. Provincial and territorial human rights laws mirror the Canadian Human Rights Act and uphold similar principles. They safeguard individuals from discrimination in various settings, including restaurants, stores, schools, housing, and most workplaces. Provincial and territorial human rights laws are not discussed in this manual.

2.1.2 Historical antecedents of sexual harassment

According to Statistics Canada’s 2024 Gender Result Framework ¹², nearly 1 in 2 women and roughly 3 in 10 men report ever experiencing harassment or sexual assault in the workplace. Also, 31% of men and 47% of women reported ever experiencing some form of harassment or sexual assault in the workplace.

Below is a summary of the findings from Statistics Canada’s 2024 Gender Result Framework

¹² Gender Results Framework: A new data table on workplace harassment.

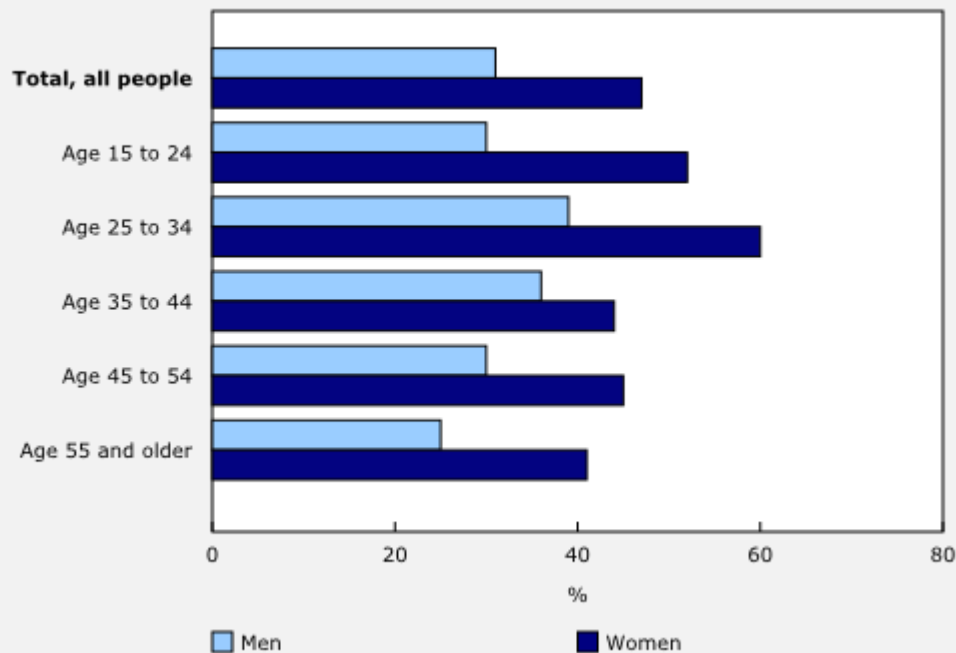
<https://www150.statcan.gc.ca/n1/daily-quotidien/240212/dq240212a-eng.htm>. Released: 2024-02-12

2.1.3 Harassment and sexual harassment by gender

Data from the Statistics Canada’s 2024 Gender Result Framework suggest, sexualized behaviours and sexual assault are common in the workplace. In fact, a large proportion of women (44%) reported ever experiencing inappropriate sexualized behaviours in a workplace setting, followed by discriminatory behaviours (20%) and sexual assault (13%). A considerable proportion of men also reported ever experiencing inappropriate sexualized behaviours (29%), as well as discriminatory behaviours (9%) and sexual assault (3%) in the workplace.

2.1.4 Harassment and sexual harassment by age group

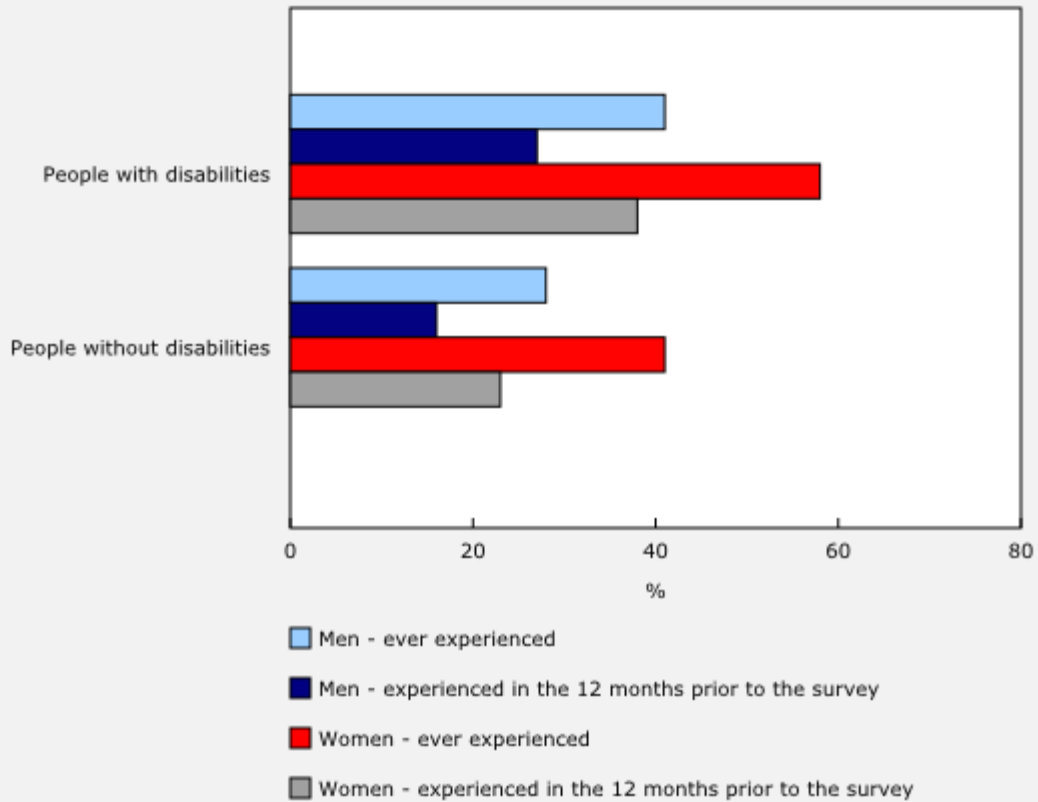
Among employed people, those aged 25 to 34 years report the highest rate of ever experiencing harassment or sexual assault in the workplace.



2.1.5 Harassment and sexual harassment vs disability status

Among those with disabilities, data from statistics Canada suggests 58% of women and 41% of men reported ever experiencing harassment or sexual assault in the workplace. Meanwhile, 41% of women and 28% of men without disabilities reported experiencing harassment or sexual assault in the workplace. People with disabilities may face additional challenges in the workplace, including limitations in participation in the workplace, and higher rates of harassment or sexual assault within and outside the workplace.

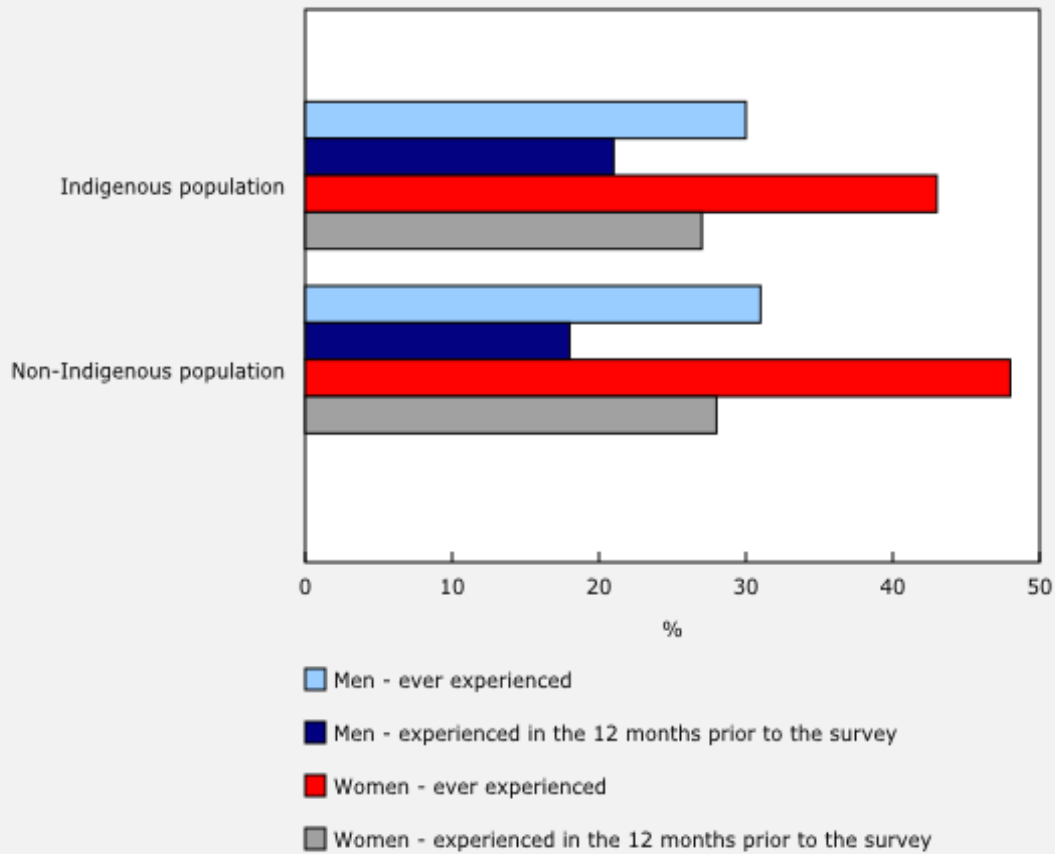
The proportion of employees who reported experiencing workplace harassment or sexual assault in the workplace, by gender and disability status in Canada is shown below.



2.1.6 Harassment and sexual harassment experience by Indigenous people

Furthermore, among Indigenous people, rates of those who ever experienced harassment or sexual assault in the workplace were 43% among women and 30% among men, whereas 48% of non-Indigenous women and 31% of non-Indigenous men reported ever experiencing harassment or sexual assault in the workplace.

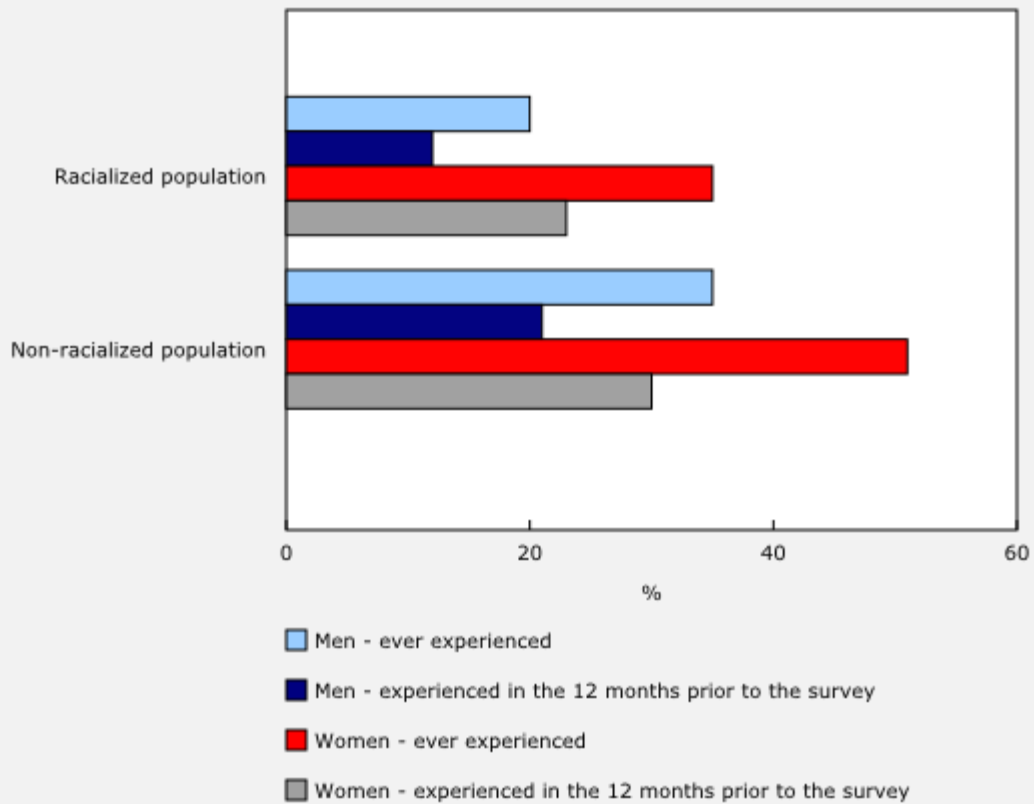
The proportion of employees who reported experiencing workplace harassment or sexual assault in the workplace, by gender and racialized group in Canada is shown below.



2.1.7 Harassment and sexual harassment experienced racialized people

Among racialized women, 35% reported ever experiencing harassment or sexual assault in the workplace, whereas 20% of racialized men reported ever experiencing harassment or sexual assault in the workplace. Among non-racialized people, 51% of women and 35% of men reported ever experiencing harassment or sexual assault in the workplace.

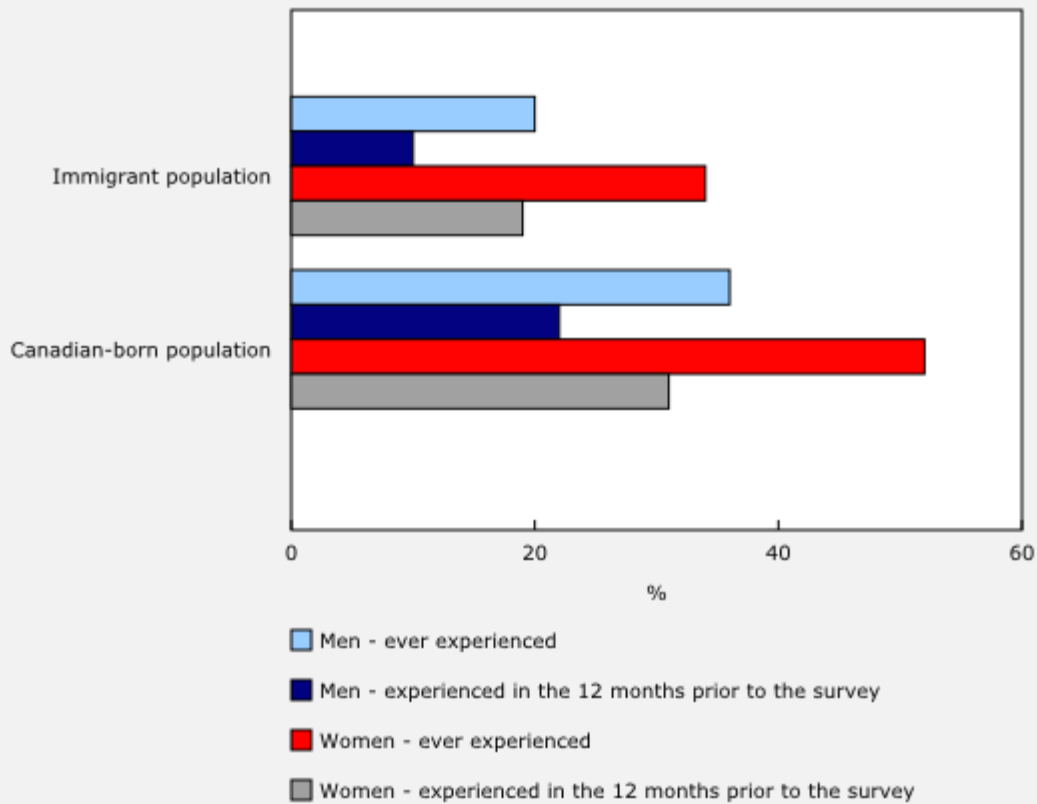
Proportion of employees who reported experiencing workplace harassment or sexual assault in the workplace, by gender and racialized group in Canada is shown below.



2.1.8 Harassment and sexual harassment vs immigration status.

Also, just over one in three immigrant women (34%) and one in five immigrant men (20%) reported ever experiencing harassment or sexual assault in the workplace. Meanwhile, 52% of Canadian-born women and 36% of Canadian-born men reported ever experiencing harassment or sexual assault in the workplace.

The proportion of employees who reported experiencing workplace harassment or sexual assault in the workplace, by gender and immigrant status is provided below.

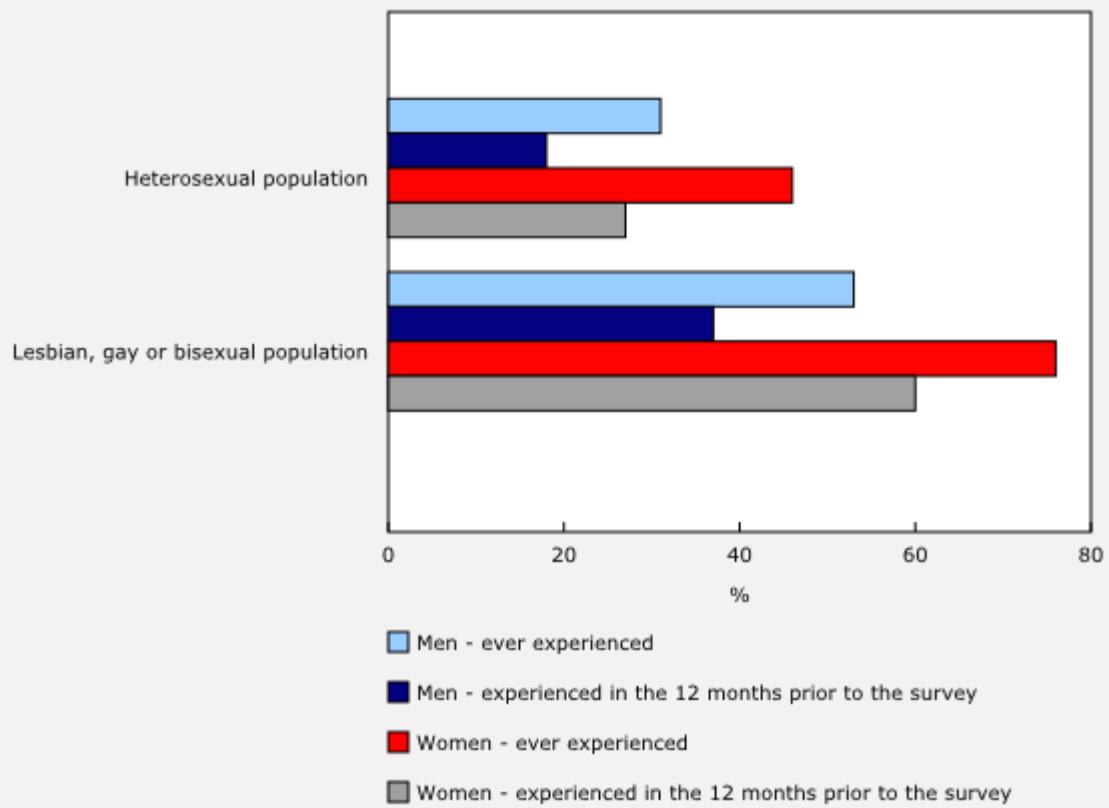


2.1.9 Harassment and sexual harassment vs sexual orientation

Likewise, 3 in 4 lesbian, gay or bisexual women and more than one in two men in this group report ever experiencing harassment or sexual assault in the workplace.

In 2020, 76% of lesbian, gay or bisexual (LGB) women and 53% of LGB men reported ever experiencing harassment or sexual assault in the workplace. Meanwhile, lower proportions of heterosexual women (46%) and heterosexual men (31%) reported ever experiencing harassment or sexual assault in the workplace.

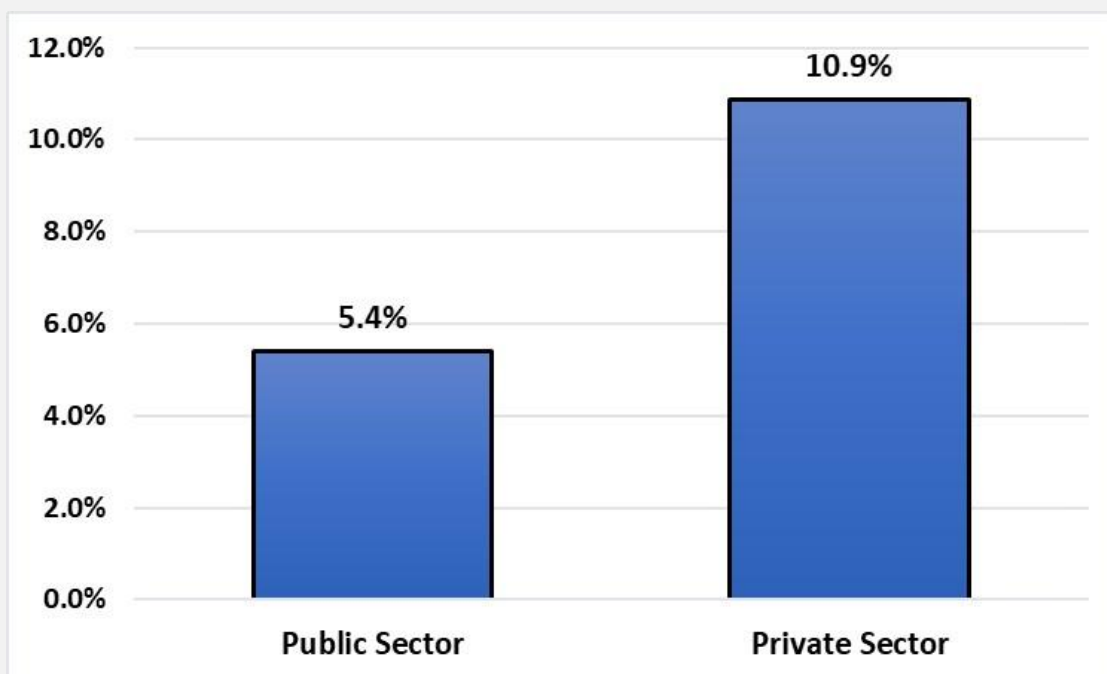
The proportion of employees who reported experiencing workplace harassment or sexual assault in the workplace, by gender and sexual orientation is provided below.



2.1.10 Public vs. private sector analysis

A report from Employment and Social Development Canada (ESDC, 2021)¹³ notes that harassment and violence occurrences were proportional between the public and private sectors. Private sector employers represented 66.3% of employees from reporting employers and reported 66.4% of all harassment and violence occurrences (3,286). The public sector, representing 33.7% of employees, reported 33.6% of all occurrences (1,664).

The chart below presents the share of occurrences involving sexual harassment in both the public and private sector. Reported sexual harassment and violence occurrences are more prevalent in the private sector as shown in the graph below.



In 2021, the following eight private sector industries reported 65.1% of all sexual harassment and violence occurrences. These industries all reported at least 10% of their total harassment and violence occurrences to be sexual in nature.

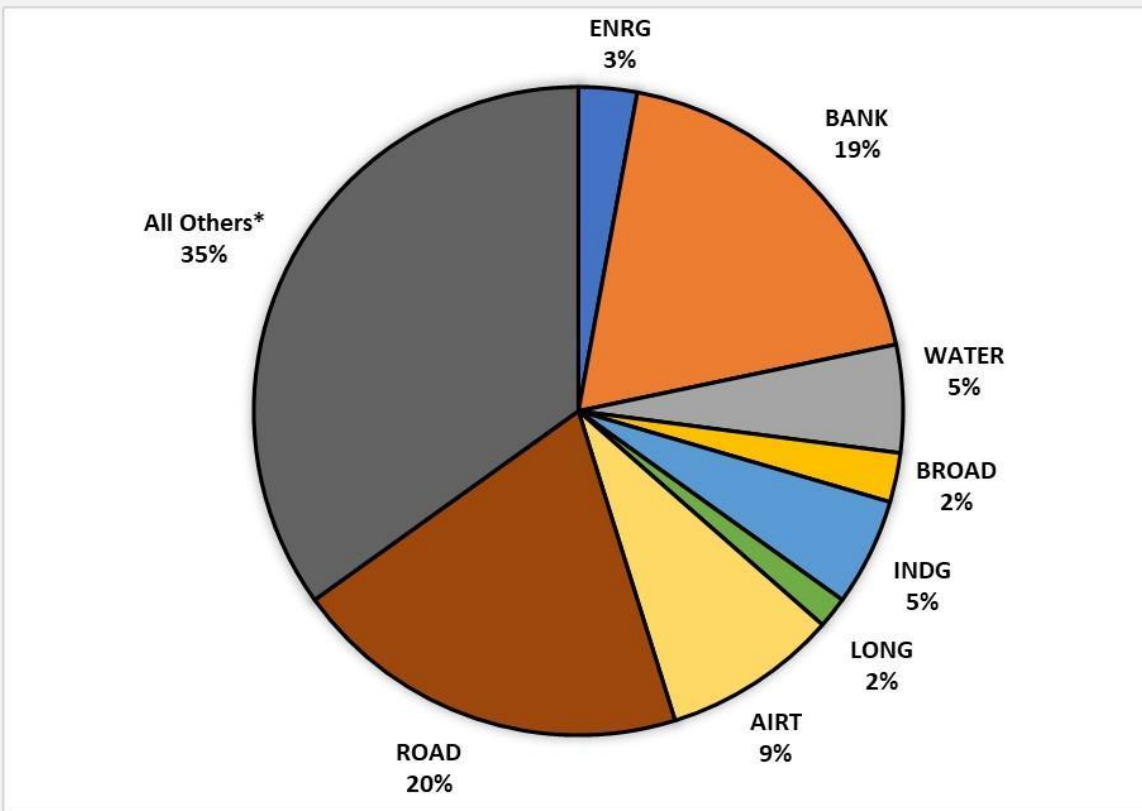
- Road Transportation
- Banking and Banks
- Air Transportation
- Indigenous, Aboriginal and First Nations
- Water Transportation (Shipping and Ferries)

¹³ 2021 annual report – Taking action against harassment and violence in work places under Canadian federal jurisdiction. <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/2021-workplace-harassment-violence.html>

- Energy, Mining and Mineral Processing
- Broadcasting (Television, Radio, and Internet)
- Longshoring, Stevedoring, Port, Harbor Operations and Pilotage

Among these 8 private sector industries, the majority of sexual harassment and violence occurrences were reported in the road transportation industry (20%) and banking industry (19%). None of the other industries reported more than 10% sexual harassment and violence occurrences.

The percentage of sexual harassment and violence occurrences by industry sector in 2021 is shown below.



2.2 Forms and Examples of sexual harassment in the workplace

Sexual harassment in the workplace can take multiple forms and may include unwelcome physical, written, verbal, non-verbal or visual conduct. We will now briefly review these different forms of sexual harassment.

Physical sexual Harassment includes any unwelcome physical conduct, such as unwanted touching, staring or other gestures. Physical harassment may also include assault or other forms of physical violence. Some examples of physical sexual harassment include:

- Grabbing your breasts
- Purposefully rubbing up against you
- Trying to kiss you without permission.
- Rubbing his or her genitals on you

Verbal form of sexual harassment

In contrast to physical sexual harassment that includes a physical action, verbal sexual harassment includes

- unwelcome insinuations, comments with sexual overtones, Sex-related jokes, insults, or requesting sexual favors,
- Using sexually explicit language,
- Unwelcome graphic comments about a person's body, made in their presence or directed toward them,
- Unwelcome and inappropriate enquiries about a person's sex life, and
- Unwelcome whistling directed at a person or group of people.

On the other hand, non-verbal forms of sexual harassment include

- unwelcome gestures,
- indecent exposure, and
- the unwelcome display of sexually explicit pictures and objects

Forms of Visual Sexual Harassment

This includes any unwelcome visual conduct, such as displaying sexually explicit images, drawings or other materials that create a hostile or offensive work environment.

Examples of Visual Sexual harassment include:

- Exposing private parts.
- Sending sexual images or videos to another person.
- Unwelcome gestures towards another person
- Staring at someone's body offensively and making the person feel uncomfortable.
- Placing a poster with information related to sexual behaviors.

Written Sexual Harassment

Written sexual harassment in the workplace: This includes any unwelcome written communications, such as emails, letters, or notes, that create a hostile or offensive work environment.

Cyber sexual harassment in the workplace

This includes any unwelcome conduct that occurs online, such as through social media platforms or email. Cyber harassment can include cyberbullying, cyberstalking, and other forms of online abuse.

Examples of Cyber Sexual harassment include:

- Posting rude, offensive, or suggestive comments online.
- Sending threatening, controlling, or lewd messages or emails
- Harassing or pressuring someone to share sexual images or engage in sexual behavior
- Using the threat of publishing sexual content to blackmail or extort someone
- Online threats of a sexual nature, such as rape threats.

- Some examples¹⁴ of behavior that can be considered sexual harassment includes:
 - asking for sex in exchange for a benefit or a favour
 - repeatedly asking for dates, and not taking “no” for an answer
 - demanding hugs
 - making unnecessary physical contact, including unwanted touching
 - using rude or insulting language or making comments toward girls and women (or boys and men)
 - calling people sex-specific derogatory names
 - making sex-related comments about a person’s physical characteristics or actions
 - saying or doing something because you think a person does not conform to sex-role stereotypes
 - posting or sharing pornography, sexual pictures or cartoons, sexually explicit graffiti, or other
 - sexual images (including online)
 - making sexual jokes
 - bragging about sexual prowess
 - bullying based on sex or gender
 - spreading sexual rumours or gossip (including online).

¹⁴ Canadian Resource Centre for Victims of Crime. What to do if you are sexually harassed.
<https://crcvc.ca/wp-content/uploads/2018/03/TIP-SHEET-Sexual-harassment-CRCVC.pdf>. March
2018.

CHAPTER 3: ROLES AND RESPONSIBILITIES OF EMPLOYERS AND EMPLOYEES AS NOTED IN THE CANADA LABOUR CODE

All staff in the workplace have a role to play to prevent harassment and violence. This chapter highlights the responsibilities employers and employees have as described in the Canada Labour Code. The chapter further delves into part II of the Canada Labour Code to explore the responsibilities of employers and the Health and safety committee, as it relates to workplace harassment and violence prevention. Emphasis is placed on the resolution process for harassment and violence in the workplace as well as the composition of the health and safety committees and their responsibilities with regards to workplace harassment and violence prevention.



According to the Canada labour code, we all have a role to play in fostering and maintaining a safe workplace. We will now review the responsibilities of employers and their employees as noted in the Canada Labour Code.

3.1 Responsibilities of employees

Employees have a role to play in preventing harassment and violence in their place of work. As per the Canada Labour Code,

Employees must

- 1 **Be respectful**: They should treat everyone with respect;
- 2 **Eliminate risk factors**: They should work with their colleagues and the employer to identify, remove and prevent risk factors of workplace harassment and violence;

- 3 Adhere to procedures: They should follow the employer's procedure for reporting the occurrence of harassment and violence in the workplace;
- 4 Work cooperatively: They should cooperate with the person designated by the employer to resolve occurrence of workplace harassment and violence.

3.2 The Employer's responsibilities

Under Part II of the Canada Labour Code, employers must protect the health and safety of everyone in the workplace. Everyone implies both employees and non-employees (vendors, contractors, & visitors).

According to part II of the CLC, the employer's responsibilities are as follows:

- Investigating workplace accidents and implementing effective remedial measures.
- Proactively eliminating workplace hazards.
- Informing employees of hazards and ensuring that they receive the required detailed occupational health and safety training.
- Ensuring that employees' equipment and tools are safe and that all work is performed according to established safety procedures and practices.
- Investigating work-related physical and psychological injuries and illnesses as well as other hazardous situations.

3.3 Responsibilities of the Health and safety committees

According to part II of the Canada labour code, all workplaces must have health and safety representation.

The nature of the workplace representation required is dependent on the size of the organization's workforce. For example, organizations/companies with:

- 300+ employees will require **Policy health and safety committees**;
- 20 to 299 employees will require **Workplace health and safety committees**;
- fewer than 20 employees will require **Health and safety representatives**.

We will now examine the role of the employer as well as the composition and responsibilities of each of these workplace health and safety representations.

3.3.1 The Policy Health and Safety Committee

Role of the employer

The Policy Health and safety committee is reserved for workplaces that have more than 300 employees, and the members of the committee are to be selected according to the rules in Part II of the CLC. To learn more about these rules consult section 135.1(1) of Part II of the *Canada Labour Code*.

The members

The policy health and safety committee consist of representatives from management and employees. It also has two co-chairs: one representing the employees, the other representing the employer.

Responsibilities of the policy health and safety committee

The main responsibility of the policy health and safety committee is to address health and safety issues that cannot be effectively dealt with by individual workplace health and safety committees or representatives. The policy health and safety committee ensures consistency across all of the employer's work sites. Committee members must be from the same organization, but could be working from different work sites, or different locations or buildings.

3.3.2 Workplace Health and Safety Committee

Role of the employer

It is important to point out at this point that it is not sufficient for employers having 300+ employees to establish just the policy health and safety committee. Having established the policy health and safety committee, the Employer must ensure that, at least one workplace health and safety committee is established at every work site or building where an Employer has 20 or more employees. The members must be selected according to the rules found in section 135.1(1) in Part II of the *Canada Labour Code*.

The members

The Workplace health and safety committee consists of representatives from management and employees, with at least half of the committee members being employees who do not have managerial responsibilities. The committee is made up of at least 2 members and has also two co-chairs: one representing the employees, the other representing the employer. Committee members must work for the same organization and at the same work site or building.

The employer should help clarify and update the committee's priorities.

Responsibilities of the Workplace Health and Safety Committee

As noted in pamphlet 6B from Employment and Social Development Canada, some of the responsibilities of the Workplace Health and Safety Committee include, (refer to ESDC pamphlet 6B¹⁵):

- considering and expeditiously disposing of health and safety complaints;
- participating in the implementation and monitoring of programs for the prevention of workplace hazards;
- participating in the development, implementation and monitoring of programs to prevent workplace hazards, if there is no policy committee in the organization;

¹⁵ Pamphlet 6B: Workplace Health and Safety Committees. <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/committees.html>. Accessed on 2023-08-06

- participating in all of the inquiries, investigations, studies, and inspections pertaining to employee health and safety;
- participating in the implementation and monitoring of a program for the provision of personal protective equipment, clothing, devices, or materials, and, if there is no policy committee, participate in the development of the program;
- ensuring that adequate records are kept on work accidents, injuries and health hazards;
- co-operating with health and safety officers;
- participating in the implementation of changes that may affect occupational health and safety, including work processes and procedures, and, if there is no policy committee, participate in the planning of the implementation of those changes;
- assisting the employer in investigating and assessing the exposure of employees to hazardous substances;
- inspecting each month all or part of the workplace, so that every part of the work place is inspected at least once a year;
- participating in the development of health and safety policies and programs, if there is no policy committee.

3.3.3 Health and Safety Representatives

Role of the employer

For workplaces with fewer than 20 employees, at least one employee should be appointed as the health and safety representative at every work site or building. The appointed health and safety representative must not have managerial or supervisory responsibilities and must be selected according to the rules in Part II of the *Canada Labour Code*.

The employer should help clarify and update the priorities of the health and safety representative.

The members

Employee(s) appointed as Health and safety representatives must work for the same organization and at the same work site or building.

Responsibilities of Health and safety representatives

The responsibilities of the health and safety representatives are similar to that of the workplace health and safety committees.

3.4 Responsibilities of Managers and supervisors

Managers and supervisors play a critical role in maintaining a healthy, safe and inclusive workplace where everyone is valued for their contributions, treated with respect and supported. They interact

regularly with members of their team and should have a good understanding of behaviors that constitute harassment and violence in the workplace.

Managers and Supervisors may be involved in certain behaviors that constitute workplace harassment and violence. Being aware of these behaviors represent an important step in preventing harassment and violence in the workplace. Some examples¹⁶ of behaviors from managers and supervisors that constitute harassment and violence in the workplace include:

- aggressive or threatening behaviour from Managers and Supervisors, including verbal threats or abuse
- physically assaulting an employee
- persistently criticizing, undermining, belittling, demeaning or ridiculing employees
- swearing at employees or using inappropriate language toward them
- using the internet to harass, threaten or maliciously embarrass employees
- using the internet to make sexual threats, or to harass or exploit employees sexually
- abusing authority by publicly ridiculing or disciplining a subordinate
- abusing authority by soliciting a sexual or romantic relationship with an employee, or sending sexual invitations or requests in return for a promise of a reward (such as a promotion)

Reasonable management actions

Management including Managers and Supervisors are often involved in decision making. Thus, reasonable management actions that are part of the normal workplace environment are not considered workplace harassment and violence. Also, differences in opinion between co-workers and supervisors or executives is not considered workplace harassment and violence.

In addition, Managers and Supervisors can take the following measures as long as they act respectfully, professionally and in good faith. For example, Managers and Supervisors can:

1. directly supervise employees, including setting out performance expectations and providing constructive feedback about work performance.
2. take measures to correct performance deficiencies, such as placing an employee on a performance improvement plan.
3. take reasonable disciplinary actions.
4. assign work, and direct how and when it should be done.
5. request updates or status reports.
6. approve or deny time off.
7. request medical documents to support an absence from work.

¹⁶ https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention.html#Examples_of_harassment

Management including Managers and Supervisors are expected to have a good understanding of collective agreements and terms of conditions of employment when taking actions or making decisions that will impact employees.

3.5 The resolution process

When an incident of harassment and violence occurs in the workplace, the victim (principal party) or bystander (witness) should submit a notice of occurrence to the “designated recipient” or to the employer’s work unit or department responsible for receiving notices of occurrence specifically for harassment and violence. The notice of occurrence must contain the following information:

- The name of the principal party and the responding party (if known)
- The date of occurrence
- A detailed description of the occurrence

The chart below depicts the resolution process following a report of an incident of harassment and violence. The timeline for completing the process should not exceed one year.



Step 1: The victim (principal party) or a bystander should complete and submit a notice of occurrence.

Step 2: Negotiated resolution: Upon receiving the notice of occurrence, the designated recipient will acknowledge reception of the notice of occurrence within 7 days. The notice of occurrence is reviewed and the urgency of the situation assessed.

Next, a decision needs to be made by the parties involved. The incident is considered resolved if the principal party and the employer (or designated recipient) agree that the event does not meet the

definition of harassment and violence in the workplace. The responding party may be informed if deemed appropriate.

However, you can continue with the resolution process if at least one of the following conditions is met.

-All 3 parties (Principal party, your employer and designated recipient) agree that the occurrence meets the definition of harassment and violence;

-Your employer and designated recipient think the occurrence does not meet the definition, but you believe it meets the definition.

Step 3: Conciliation: Conciliation comes into play when either the principal party or all 3 parties agree the occurrence meets the definition of harassment and violence. Conciliation is mediated by a 3rd party. It involves mediation and alternative dispute resolution. Conciliation occurs when both parties are willing to take part and agree on who will facilitate the process. Potential conciliators include Professional mediators, Elders, Colleagues, supervisors, religious leaders etc.

As part of conciliation, the conciliator will help both the principal and responding party discuss the issues from both their perspective and will help explore solutions that work for both parties.

It is important to note that the principal party can choose to initiate an investigation (step 4) at any point in the conciliation process.

Step 4: Investigation

An investigation is the last step of the resolution process. It can be initiated when the negotiated resolution (step 2) or conciliation (step 3) fails to resolve the issue or if the principal party (victim) requests an investigation.

The parties shall be notified by the designated recipient or your employer that an investigation is in process.

The occurrence or the event will be investigated by a selected investigator who at the end of the process, will prepare a report that includes a description of the event, conclusion and recommendation for preventing, minimizing and/or eliminating the occurrence of similar events.

The report should not reveal the identifying information of the principal and responding parties such as; name, address, date and time.

Your employer will provide a copy of the report to all parties including the health and safety committee. A list of employer and designated recipient duties to prevent harassment and violence in the workplace can be retrieved from the ESDC webpage¹⁷.

The employer should not use the findings of the investigator's report for the following:

- Monetary payment to the principal party for damages
- Replenishing sick leave
- Disciplinary measures against the responding party
- Granting of any additional paid or unpaid leave

¹⁷List of employer and designated recipient duties to prevent harassment and violence in the workplace.
<https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/employer-list.html>

CHAPTER 4: MEASURES TO PREVENT AND RESOLVE WORKPLACE HARASSMENT AND VIOLENCE

The Workplace harassment and violence prevention regulation has established a process to support employees that experienced harassment and violence in the workplace. This chapter discusses preventive measures and support for employees as well as measures to prevent workplace harassment and violence including training, workplace harassment and violence prevention policy, and workplace assessment. The chapter also discusses the importance of record keeping, record retention time, emergency procedures as well as insight on the role of bystanders in the prevention of harassment and violence in the workplace.

The process to support employees that have experienced harassment and violence in the workplace, and the measures to prevent and resolve workplace harassment and violence are documented in the *Workplace harassment and violence prevention regulation*.

You will recall that in chapter 1, we examined behaviors and risk factors that could lead to the occurrence of events of harassment and violence in the workplace. Being able to recognize these behaviors is an important step towards preventing workplace harassment and violence.

4.1 Key measures to prevent workplace harassment and violence

The workplace harassment and violence regulations ascribe to employers and their applicable partner, specific responsibilities that are aimed at reducing the risk of harassment and violence in the workplace.

The Regulations notes that *“to the extent feasible, the employer and the applicable partner must jointly develop preventive measures that lessen the risk of workplace harassment and violence without creating additional risks*. The parties must also jointly create an implementation plan for the preventive measures and implement them accordingly” [Regulations, 9].

Preventive measures that can minimize the risk of harassment and violence in the workplace may include workplace training, design and administrative practices.

There are 3 key measures that should be put in place to prevent harassment and violence in the workplace. These measures include:

1. **Training:** Training on workplace harassment and violence prevention should be mandated as a new hire and every 3 years thereafter.
2. **Workplace harassment and violence prevention policy:** Putting in place a workplace harassment and violence prevention policy which details the process, procedures, support and actions that an organization has established to prevent the occurrence of harassment and violence in the workplace.

3. Conducting a workplace assessment in order to identify risk factors and steps to prevent harassment and violence in the workplace.

Of note, it is prudent to review and update your workplace assessment and the workplace harassment and violence prevention policy, following resolution of any event involving harassment and violence in the workplace.

Key Aspects of Workplace Training



4.1.1 Training

Under the Regulations, the employer (persons delegated to fulfil the employer’s responsibilities including senior officials, directors, managers, supervisors, etc) must complete workplace harassment and violence prevention training.

Likewise, the employer should make sure that all employees and designated recipients receive proper training and that all parties are aware of their rights with respect to harassment and violence in the workplace.

The workplace harassment and violence prevention regulation also mandate the employer and the applicable partner, to jointly develop or identify the workplace harassment and violence prevention training. Together, they must review the training at least once every three years and update it whenever necessary. [Regulations, 12(1)] and 12(3)]

Additional information on training is covered in “The Regulations” under

- [CLC, 125(1)(z.161)]; [Regulations, 12(4)]
- [CLC, 125(1)(z.162)]; [Regulations, 12(6)]
- [CLC, 125(1)(z.163)]; [Regulations, 12(5)]

4.1.2 Workplace harassment and violence prevention policy

The workplace harassment and violence prevention policy highlight the employer's commitment to prevent and protect employees against harassment and violence. The policy describes the risk factors and the roles of workplace parties in relation to harassment and violence in the workplace, as well as training, the resolution process for employees, emergency procedures, reasons for conducting, reviewing and updating the workplace assessment, privacy protection for persons involved in an occurrence, available recourse for persons involved in an occurrence, support measures for employees and the contact information of persons involved in receiving complaints when the employer is non-compliant with the code or regulations.

The workplace harassment and violence prevention regulations ascribe certain responsibilities to employers and/or their applicable partners regarding the developing, reviewing and ensuring the availability of the workplace harassment and violence prevention policy. For example:

Also, the Employer and the applicable partner has a joint responsibility to develop the workplace harassment and violence prevention policy. [Regulations, 10(1)].

It is the responsibility of the employer to make available to all employees the workplace harassment and violence prevention policy [Regulations, 10(3)].

In addition, the employer and the applicable partner must review the workplace harassment and violence prevention policy at least once every three years and update it whenever necessary. [Regulations, 10(4)].

For detail information on the workplace harassment and violence prevention policy, consult the sample harassment and violence prevention user guide and a sample harassment and violence prevention policy that is available on the ESDC website^{18,19}.

4.1.3 Conducting, reviewing and updating workplace assessments

According to the Canada Labour Code, Employers must prevent workplace harassment and violence. [CLC, 125(1)(z.16)]. In addition, Employers need to make sure that everyone involved in the workplace assessment process has had the appropriate training, education or experience before participating in workplace assessments. [Regulations, 7]

Conducting workplace assessment helps an employer to identify risk factors that may contribute to harassment and violence and to devise suitable measures to prevent, reduce or eliminate risks identified from the assessment.

4.1.3.1 Responsibilities of the Employer and the applicable partner

In the previous chapter, we noted that the size of the organization (number of employees) will determine the applicable partner that needs to be established by the employer. The Applicable partner will include either:

¹⁸ Sample harassment and violence prevention user guide. <https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/sample-user-guide.html>

¹⁹ Sample harassment and violence prevention policy. <https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/sample-policy.html>

- the Policy Health and safety committee (required for 300+ employees); or
- the Workplace health and safety committees (required for 20 to 299 employees); or
- the Health and safety representatives (required for fewer than 20 employees).

Where there is no existing workplace assessment, the employer and the applicable partner must work together to develop one [Regulations, 5(1), 5(2), 5(3)]. The employer and the applicable partner are required to work together to not only update the workplace assessment when there are changes in the organization risk factors or deficiency in the effectiveness of preventive measures, but should also review the workplace assessments at least once every 3 years. A review should however be conducted when

- the responding party is not part of the organization or is a third party and not an employee; or
- when the principal party files a notice of occurrence and ends the resolution process before the notice of occurrence gets resolved. [Regulations, 6(1)]

4.1.3.2 Reviewing and updating the workplace assessment

You may be wondering at this point why it is necessary to review and update the workplace assessment. In fact, reviewing and updating the workplace assessment will enable the employer and the applicable partner to:

1. Determine if there are additional risk factors that were missed during the initial assessment and that could have led to the occurrence of the event.
2. Evaluate if the preventive measures in place can adequately minimize the risk of workplace harassment and violence.
3. Establish new preventive measures that can reduce or eliminate the risk of similar events occurring in the future.

4.1.3.3 Key tools for creating the assessment

Now let's look at the key tools that are required for creating the workplace assessment. In general, organizations are responsible for developing their own assessment tools that reflect the culture, conditions, and activities of the organizations. While there may be variations in workplace assessment tools across different organizations, we recommend that the assessment tool should at minimum address questions surrounding:

- The Prevention policy;
- The Emergency procedures;
- Training
- The resolution process
- The physical work environment
- Type of work and
- Psychological protection.

Details on each of these topics can be obtained by consulting the sample workplace harassment and violence risk assessment from the ESDC webpage²⁰.

4.2 Role of bystander intervention in preventing harassment

Bystander intervention is a concept that refers to the act of individuals witnessing a potentially harmful or risky situation and taking steps to intervene or help in some way. The term "bystander" typically describes someone who is present at the scene but is not directly involved or affected by the situation. Bystander intervention can occur in various settings, such as public spaces, workplaces, schools, or even online environments.

The main goal of bystander intervention is to prevent or address harmful behaviors, or dangerous situations before they escalate further. Intervention training encourages and prepare individuals to step up and act, rather than remaining passive observers. This proactive approach aims to create safer and more supportive communities, fostering a culture of care and responsibility among individuals.



The concept of bystander intervention has gained significant importance in the context of addressing various social issues, such as bullying, harassment, sexual assault, discrimination, and interpersonal violence. In many instances, bystanders can play a crucial role in diffusing tense situations, offering support to victims, and discouraging potential aggressors.

There are different approaches to bystander intervention, and these can include direct actions like intervening directly in the situation, seeking help from authorities or relevant individuals, or creating distractions to de-escalate the situation. Additionally, bystander intervention also involves recognizing warning signs, trusting one's instincts, and overcoming barriers that might prevent individuals from acting, such as fear of retaliation or the diffusion of responsibility.

In today's workplace, it is important for you to know what you can do when you witness an event of harassment or violence in the workplace. As an employee, you have a responsibility to help maintain and promote a harassment-free work environment.

²⁰ Sample workplace harassment and violence risk assessment tool.
https://www.canada.ca/content/dam/canada/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/Sample_Risk_assessment_EN.pdf

Becoming an active bystander means taking proactive steps to intervene in situations where you witness potentially harmful or risky behavior.

As noted in the previous module, not every situation requires a confrontation approach. Moreover, it is important to consider your safety, strength, weaknesses and relationship with the offender, prior to any intervention. In general, when an event or occurrence requires you to intervene safely, remember the 5Ds.

In general, when a harassment occurs that requires an individual to safely intervene as a bystander, the principle of 5Ds could be used.

1. **Direct:** You can directly respond to the harasser by saying things like:
 - Leave them alone!
 - This unacceptable, inappropriate, and disrespectful
 - I am concerned with what I am seeing and worried about the negative impact of this type of behavior.
 - It should be noted that direct confrontation is not always comfortable but could sometimes be an effective method to stop unacceptable behavior. Before you choose direct confrontation, consider your safety. Ask yourself if direct confrontation will make the situation better or worse.

2. **Distract:** Distract means you divert the perpetrator's attention to something else with the goal of taking attention off the affected person. There are multiple ways you can distract the perpetrator. You can:
 - Engage directly with the perpetrator and/or the person being targeted.
 - Ask the perpetrator or the affected person a question that will divert attention (e.g. what the time is now or the direction to a place of interest)
 - Make a disruptive comment that interrupts the current situation and changes the tone (e.g. Hi everyone, I would like to show you the new moves I got from my dance instructor yesterday).

3. **Delegate:** Depending on the nature of an event and your own strength, you might not be able to intervene directly. In such situations, you need to get help while acknowledging that you might not have the capacity to get involved directly. To delegate means to assign responsibilities to someone else or ask for help from a third party like a supervisor, manager, human resource, work unit in charge of harassment and violence or from people around you, while you are monitoring the situation.

4. **Delay:** In some situations, it may be wise to wait until the situation calms down before approaching the victim to check if they are OK and offer support if necessary. You Check on

the victim after, show some concern by asking if they are ok, if they need any kind of support and offer them resources that are available.

5. **Disapprove:** In the workplace, there is the temptation to always try to fit in and some of your friends and colleagues would expect you to join their camp irrespective of the type of activities they are engaged in. You have the right to disapprove and refuse to join, when derogatory, degrading, abusive, and violent attitudes or behaviors are being displayed. Some examples of non-verbal behaviors that you use to demonstrate your disapproval include:
- Shake your head, or
 - Make a gesture with your hands to show your disapproval.

Remember, being an active bystander is not about putting yourself in harm's way or becoming a hero. It's about creating a culture of respect and care, where individuals look out for one another and are actively involved in preventing harm when possible.

NOTE: For a comprehensive understanding of bystander intervention, participants should explore the full *Bystander Intervention Training (WHVP 103)* course.

4.3 Emergency procedures

According to the workplace harassment and violence prevention regulations, “the employer must make emergency procedures available to all employees in their organization” [Regulations, 11(2)]

The employer and the applicable partner also have a joint responsibility to “develop emergency procedures for occurrences that pose an immediate danger or threat to the health and safety of employees”. [Regulations, 11(1)]. In addition, both “the employer and their applicable partner must jointly review the emergency procedures and update them whenever necessary”. [Regulations, 11(3)].

The emergency procedures should describe the process employees and managers need to follow during and after the occurrence of a dangerous event for example

- A bomb threat;
- A violent person in the workplace;
- A riot at or near the workplace; or
- An active shooter inside or near the workplace;

For details on what to do in each of these situations refer to your company emergency procedure.

It is also important for employers and employees to have the appropriate emergency phone numbers to contact the Security Office or local emergency services (police, fire and ambulance) in the event of

an occurrence of harassment and violence that poses an immediate danger to the health and safety of an employee.

4.4 Record keeping and reporting

The employer has specific responsibilities for recording notices of occurrence, reporting annually to the Labour Program, and reporting fatalities related to workplace harassment and violence.

An employer must keep the following health and safety records related to workplace harassment and violence:

- A copy of the workplace harassment and violence prevention policy
- A copy of the documents that form part of the initial workplace assessment
- A copy of the documents that form part of each review and update of the workplace assessment
- A record of the employer's decision and rationale for each disagreement where joint agreement between the employer and the applicable partner is required
- A record of each notice of an occurrence, including each action taken in response to the notice
- A document explaining the reasons for any delays in the resolution process (for example, a party is absent from work for more than 90 consecutive days)
- A copy of each report prepared by an investigator for a notice of an occurrence
- A copy of each annual report completed by the employer for workplace harassment and violence prevention
- A copy of each fatality report for fatalities caused by workplace harassment and violence [Regulations, 35(1)]

4.5 Record retention time

Most of the records listed above must be kept by the employer for ten years. However, the employer determines the specific retention time for the workplace harassment and violence prevention policy and the initial workplace assessment. [Regulations, 35(2)].

Chapter 5: Case Study

Some of the information included this section of the course may be disturbing to some course participants. All names, characters, businesses, places, events and incidents mentioned below are used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.

Scenario:

We all have a role to play in the prevention of harassment and violence in the workplace.

Zita is an experienced staff in Bank of Emericum. She has been in her current position for over 5 years and has successfully led multiple initiatives. She is the “go-to” person at your branch and she is widely recognized as a rising star.

Recently, a new employee “Sondri” joined your team from another department. Sondri is an immigrant from Africa with a bachelor’s degree. She hardly talks during team meetings but when she speaks, everyone is amazed at her insight and the thoughtfulness she brings to the conversation. She is very detail-oriented and her reports are impeccable. Within a few months, she became the new go-to person in your team, and your Manager - Tom Scott, and Directors began assigning high-profile tasks to Sondri and referring other staff to her for mentorship.

This rapid switch from Zita to Sondri is creating tension within your team and Zita began banding up with a few employees to challenge the work of Sondri. First, they began organizing external lunch meetings where other members of your team were invited to except Sondri. During team meetings, “Zita and her friends” will repeatedly complain about Sondri’s accent. They will ask her to repeat almost every sentence claiming they didn’t get her. In one of such meetings, Zita openly told Sondri that her accent was too heavy and un-Canadian, and that she didn’t understand her entire presentation. After one of her key presentations that was plagued with accent-related comments, Sondri overheard some of the staff saying “they don’t know why management keeps hiring people who are “mute” and “shabby” like Sondri. Some said black people like Sondri don’t belong here and others said, “is she really a female?”, if so, why is her voice so heavy and her head so big?. Zita noted “I wouldn’t be able to spot her in a room without external lighting. She is really black ! Everyone started laughing.

At the beginning, Sondri began ignoring these comments but the more she pretended to be unaware of the comments, the more “Zita and friend” kept harassing her. She couldn’t take it anymore. She became distressed and would cry at work to which some of her colleagues referred to as “crocodile tears”. She began isolating herself from work and requesting permission not to attend team/bureau meetings. She could not focus on any task and couldn’t meet any of her deadlines. A few weeks later, Sondri collapsed while at work, became unconscious and was rushed to the hospital?

Test your knowledge

1. What do you think Sondri could have done to prevent the situation?
2. What is the contribution of Zita and how could she have prevented this situation?
3. What are the contributions of other employees and how could they have prevented the situation?

4. Is there anything the Manager (Tim Scott) could have done to prevent the situation?
5. Is there anything the employer could have done to limit, minimize or prevent the occurrence of the above events?

APPENDICES

Appendix 1: Summary of employer duties under the Workplace Harassment and Violence Prevention Regulations.

Here is a summary of employer duties under the Workplace Harassment and Violence Prevention Regulations.

Subsection 5(1) and sections 8 and 9: As the employer (referred to as you hereafter), you must carry out (with the applicable partner) a workplace assessment, which involves:

- the identification of risk factors (section 8)
- the development and implementation of preventive measures (section 9)

Subsection 5(2): The employer must monitor (with the applicable partner) the accuracy of the workplace assessment and, if necessary, update it.

Subsection 5(3): The employer must review (with the applicable partner) the workplace assessment every 3 years and, if necessary, update it.

Subsection 6(1): The employer must review (with the workplace committee or the health and safety representative) and, if necessary, update the workplace assessment if:

- the responding party in a notice of an occurrence is not an employee or the employer
- the principal party chooses to end the resolution process and the occurrence is not resolved

Subsection 10(1): The employer must develop (with the applicable partner) a workplace harassment and violence prevention policy.

Subsection 10(3): The employer must make the policy available to all employees.

Subsection 10(4): The employer must review (with the applicable partner) and, if necessary, update the policy at least once every 3 years and follow any change to an element of the policy.

Subsection 11(1): The employer must develop (with the applicable partner) emergency procedures.

Subsection 11(2): The employer must make emergency procedures available to all employees.

Subsection 11(3): The employer must review (with the applicable partner) and, if necessary, update the emergency procedures after every implementation of the emergency procedures.

Subsection 12(1): The employer must develop (with the applicable partner) or identify the training on workplace harassment and violence.

Subsection 12(3): The employer must review (with the applicable partner) and, if necessary, update the training at least once every 3 years and follow any change to an element of the training.

Subsection 12(4): The employer must provide all employees with the training.

Subsection 12(5): The employer must provide the designated recipient with the training.

Subsection 12(6): The employer must ensure the employer undergoes the training.

Section 13: The employer must make available to all employees information respecting the medical, psychological or other support services that are available within their geographical area.

Subsection 30(3): The employer must provide a copy of the investigator's report to the principle party, responding party, the work place committee or health and safety representative and, if applicable, the designated recipient.

Subsection 31(1): The employer must determine (with the workplace committee or the health and safety representative) the recommendations to be implemented from the investigator's report.

Subsection 31(2): The employer must implement the recommendations in the investigator's report that have been jointly agreed to with the workplace committee or health and safety representative.

Section 35: The employer must maintain all health and safety records prescribed at section 35 of the Regulations for a period of 10 years.

Section 36: By March 1 of each year, starting in 2022, you must report to the Labour Program aggregate data on all occurrences of harassment and violence for which a notice of an occurrence was provided in the preceding calendar year.

Section 37: The employer must report to the Labour Program a death of an employee resulting from an occurrence of harassment and violence within 24 hours of becoming aware of the death.