

HARASSMENT IN THE WORKPLACE

By: Lauren M. Bernardi

Employees have the right to be free from harassment at work based on one of the protected grounds.

Harassment is any behaviour related to a protected ground that embarrasses, humiliates or demeans the recipient that the harasser knew or should have known was unwelcome. It doesn't matter whether or not the person intended to harass or offend someone else. What matters is the impact it had on the recipient.

If the recipient specifically states that the conduct is unwelcome, then the test is met. However, the recipient does not necessarily have to come right out and say "no". It is enough for the recipient to make it clear that the behaviour was unwelcome through conduct or body language.

There is also an objective test of harassment. This involves considering whether a reasonable person would have recognized that his or her behaviour would be unwelcome to the specific recipient.

Harassment includes unwelcome verbal behaviour such as racial slurs or sexual innuendoes and physical behaviour such as leering or grabbing.

If several employees joke back and forth it is not harassment if everyone consents to it. However, it is harassment if any employee feels uncomfortable with this behaviour, and the behaviour continues even after the person expresses their discomfort, or the others involved should have known that the person was uncomfortable. This type of harassment is known as a "poisoned work environment".

Sometimes an employee will be bullied or harassed by someone at work but the behaviour is not related to a protected ground of discrimination. In such a situation the behaviour is not considered harassment under the Code. However, victims of bullying may have other remedies, such as under their employer's code of conduct policy or legal remedies such as a claim for constructive dismissal or negligence.

Many organizations have internal processes for dealing with harassment complaints. If an employee has a complaint, reporting it to the employer is generally the first step. If the employer does not resolve it adequately or at all, the employee may launch a human rights complaint.

An individual who harasses someone else may be named in the harassment complaint. They may also be subject to discipline or termination by their employer.

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About Bernardi Human Resource Law

At Bernardi Human Resource Law we know that today's response to your workplace challenges can become tomorrow's precedent. We think ahead and help you make the best decisions to meet your needs both now and in the future.

Balancing your legal obligations and business objectives can be hard. We act as your trusted advisors; not simply as lawyers but as an integral part of your management team. Through our practical advice, workshops and articles, we arm you with the knowledge and tools to address rapidly changing human resource issues.

Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

Bernardi Human Resource Law: forward thinking at work™.

About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

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