

The ins and outs of workplace harassment

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Although it is widely recognized and unrefuted that every person has the right to work in an environment free of violence and harassment, at some point in one's career, reality may paint a different picture, as more and more employees find themselves facing incidents of violence or harassment at work.

In 2009, to address the issues of workplace violence and harassment, the Government of Ontario amended the Occupational Health and Safety Act, R.S.O. 1990, c. O.1 and imposed specific obligations on all employers to ensure a healthy work environment for all.

What do we mean by “violence in the workplace”?

In the Occupational Health and Safety Act, “workplace violence” is defined as:

- The exercise of physical force by a person against a worker, in the workplace, that causes or could cause physical injury to the worker;
- An attempt to exercise physical force against a worker, in the workplace, that could cause physical injury to the worker;
- A statement or behaviour that a worker could reasonably interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

What is harassment in the workplace?

In the Occupational Health and Safety Act, “workplace harassment” is defined as engaging in a course of vexatious comment or conduct against a worker, in a workplace; a behaviour that is known or ought reasonably to be known as unwelcome.

The Ontario *Human Rights Code* also prohibits discrimination based on protected grounds such as ethnic origin, disability, age, gender and sexual orientation. An act of discrimination in the

workplace can only be considered a *Human Rights Code* violation if based on one of the pertinent protected grounds, as stated in the Code.

The employer's responsibilities

The roles and responsibilities of the parties directly affected by violence and harassment in the workplace are described in the Occupational Health and Safety Act. Based on those roles and responsibilities, Colleges have included a clause in all administrative personnel's Employment Agreements, specifically stating that the College will take all reasonable measures to ensure the health and safety of their employees in the workplace, in accordance with the Act.

As per the Act, the employer is expected to protect the health and safety of his employees, including the obligation to take every reasonable precaution to prevent violence and harassment in the workplace. More specifically, employers must establish corporate Policies on workplace violence and harassment and evaluate such Policies at least once a year.

The employer must also provide information on the content of those Policies to the employees, including the details of the complaint reporting process, should an incident of violence or a concern of harassment arise at work. Furthermore, the employer must state in which manner the complaint will be investigated.

In all circumstances, Workplace Violence and Harassment Policies must be in the written form and posted where all employees can easily refer to them.

What should you do if you are victim of violence or harassment at work?

If you are experiencing a situation of workplace violence or harassment, consider keeping a detailed journal of the incidents (names, dates, time of occurrences). If possible, and if you are comfortable doing so, the preferred course of action is to address the offending party directly and ask that the offensive behaviour stops. If you are not at ease with approaching that individual, or if talking brings no change to the behaviour, report the incident to your employer according to the College's Policies.

To address incidents of violence and harassment in the workplace, Colleges have established internal mechanisms and processes. The Employment Agreement for administrative personnel states that when an employee believes the College has failed to respect the terms of the Employment Agreement concluded between them, such as upholding their obligations under the terms of the Occupational Health and Safety Act, the employee can submit a written request for a meeting with the College President or other designated individual in order to discuss the situation and bring the problem to resolution.

After reporting the incident to your employer, the latter must initiate the Complaint investigation and resolution process described in the established Workplace Violence and Harassment Policies.

Options are available to you if your employer fails to take corrective action after an incident of violence or harassment at work has been reported. It is important to consult a lawyer who

specializes in Employment Law as soon as possible, if you are facing such situation. A lawyer can evaluate the merits of your case, ascertain that it is well-founded and either advise you on how to informally navigate the process or help you proceed via more formal venues to rectify the situation.

What to do if you are named in a complaint?

It goes without saying that an employee should never partake in threatening or harassing behaviours towards another individual in a workplace environment.

However, it does happen and an employee could find himself named in a violence-related or harassment complaint. If this situation arises, it will be important to consult a lawyer immediately. If an investigation is launched in the interim, you will be obligated to cooperate fully with the employer's requests.

In a situation where you are named in a complaint, it is crucial that you consult your own lawyer. In certain circumstances, an employer might favour the person who has filed the complaint rather than the person named in the complaint. If so, you could find yourself alone to face a complaint that could lead to disciplinary action or the loss of your employment. It is therefore imperative that you seek your own legal counsel.

Regardless of the situation, if you are involved in an incident of workplace violence or harassment, whether as a victim or as a defendant, it is important to consult a lawyer who specializes in Employment Law as soon as possible, so that you can obtain the best legal advice for your specific situation.

If you have questions on this subject or on your own employment situation, do not hesitate to contact Raphaëlle Laframboise-Carignan or any other lawyer at the firm of Raven, Cameron, Ballantyne & Yazbeck LLP/s.r.l.