

# HR MANAGEMENT TOOLKIT

# WORKPLACE HARASSMENT AND VIOLENCE

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CHRC's HR Management tool Workplace Harassment and Violence is provided for informational purposes only, to help cultural organizations navigate incidents and claims of workplace harassment and/or workplace violence. Its content does not constitute legal advice.

If in doubt about any of the terms required in a policy or actions in dealing with an incident or complaint of workplace harassment, it is strongly recommended that you consult with a lawyer who specializes in employment law.

# Workplace Harassment and Violence

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# Workplace Harassment and Violence

“Prevent harassment before having to deal with it. Minimize risks by setting conduct expectations through policies, including a code of conduct. Understand your legal obligations. Ensure employees are aware of the organization’s zero-tolerance, stance on harassment. Cultivate a workplace culture where it’s understood that containing harassment is everyone’s responsibility.”

Laura Williams, Employment Lawyer

“Harassment and violence of any kind are unacceptable in any arts organization or workplace. Respect is the norm. Having a policy and procedure in place to address workplace harassment and violence is essential to protect arts organizations, employers and workers.”

Richard Hornsby, Chair, Cultural Human Resources Council

## **Workplace Harassment and Violence—A Growing Issue**

Workplace harassment (including sexual harassment, bullying and discriminatory harassment) and violence have become increasingly challenging and risky for organizations to navigate. Public awareness of high-profile cases, #Metoo and #Timesup movement activity, enhanced legislative protections and expanded worker entitlements have emboldened those experiencing and observing this type of workplace misconduct to bring incidents and complaints forward. Given the changes in the legal and social climate, and the rise in workplace complaints and incidents, it is critical for arts organizations—large and small, for-profit and not-for-profit—to understand how to proactively contain this type of misconduct and to ensure they are aware of their obligations. Organizations should also consider the increased legal risks present when they do not meet requirements to protect their workers, such as lawsuits, fines, and, in some jurisdictions, workers' compensation claims for psychological harm that results from workplace harassment, such as chronic mental stress.

Research and statistics compiled from Canadian workplaces confirm that workplace harassment and violence are pervasive occupational hazards. A 2017 study conducted by the Government of Canada confirmed that workplace harassment and violence remain prevalent in Canadian workplaces. When asked whether they had experienced harassment or violence in the workplace, the survey of Canadian workers indicated that 60% of workers had experienced harassment in the workplace at some point in their lives and 21% of workers had experienced violence in the workplace at some point in their lives.<sup>1</sup>

Preventing workplace harassment and violence, and managing their impact on workers and the workplace as a whole have been a key focus of provincial and territorial governments and the federal government in the last few years. With an increased focus on strengthening workers' protections against workplace harassment and violence,

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<sup>1</sup> Harassment and sexual violence in the workplace (2017). Government of Canada. <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/workplace-harassment-sexual-violence.html>

governments have been creating new laws and amending existing ones in order to ensure workers receive increasingly effective and substantive protections against workplace harassment and violence.

Generally speaking, protections from harassment and violence in the workplace exist in two different kinds of legislation in Canadian provinces and territories and at the federal level. While prohibitions on workplace violence are generally found exclusively in legislation regarding occupational health and safety, employer and worker obligations regarding workplace harassment are set out either in occupational health and safety legislation, human rights legislation, or both. Traditionally, the distinction between the two kinds of laws was that occupational health and safety legislation was intended to focus on workers' physical wellbeing (i.e. to protect workers from physical injury), while human rights legislation was intended to focus on mental wellbeing (i.e. to protect workers from injury to their dignity, feelings, and self-respect). However, as laws have been amended across provinces and territories in recent years, there has been an increasing trend to more robust protections in occupational health and safety legislation that focus on workers' mental wellbeing (i.e. protections from workplace harassment) as well as physical wellbeing (i.e. protections from workplace violence).

While there are numerous legal costs that arts organizations can face if they fail to take appropriate measures to protect workers from harassment and violence in the workplace, such as fines, there are also significant human costs to workplace harassment and violence. These costs include, but are not limited to, increased sick time use and absenteeism by workers, lower productivity, higher insurance premiums, unnecessary employee turnover, lower workplace morale, feelings of shame, guilt, isolation, increased stress, and a potential decrease in quality of work due to a combination of some or all of the above factors.

## Workplace Harassment and Violence - Definitions

Workplace harassment including sexual harassment, bullying and discriminatory harassment is typically defined as engaging in a *course of vexatious comment or conduct* that is *known or ought reasonably to be known to be unwelcome*. Under occupational health and safety legislation, the definition often includes the limitation that the comments or conduct have to be against a *worker* in a *workplace*. This definition can be broken down as follows:

- *Course*: Harassment is generally considered to be a *course* of comment or conduct, meaning that the behaviour has to be repeated and/or ongoing. However, a single incident can be severe enough to constitute harassment in certain instances.
- *Vexatious*: The misconduct in question is unwanted or unwelcome and therefore causes the target frustration, annoyance or fear.
- *Comment or conduct*: Harassment can be verbal (e.g., derogatory comments) or physical (e.g., unwanted touching), or a combination of the two.
- *Known or ought reasonably to be known to be unwelcome*: The assessment of whether harassing behaviour occurred is focused on the impact on the target of the behaviour, and not on the intention of the person commenting/acting in a potentially harassing way. If the recipient of the behaviour specifically states that the conduct is unwelcome, then this portion of the definition is met. However, the recipient does not necessarily have to specifically state that the conduct is unwelcome; it is enough for the recipient to make it clear that the behaviour was unwelcome through their own conduct or body language. Alternatively, this part of the definition is met if the behaviour in question is objectively harassing (i.e. whether a reasonable person would have recognized that his or her behaviour would be unwelcome to the recipient of the behaviour).

- *Worker*<sup>2</sup>: Occupational health and safety legislation typically limits harassment to conduct against a “worker” in a workplace. Generally, under occupational health and safety legislation, a “worker” may be a paid employee, a contractor or an unpaid learner (such as a co-op student). Significantly, the stipulation that the conduct must be against a worker means that a non-worker experiencing the behaviour (e.g., an attendee at a book launch, a volunteer, a Board member etc.) would not be protected from the harassing behaviour under this legislation. While the legislation limits who is protected from harassing behaviour, the legislation does not specify who the harassing behaviour has to come from; therefore, workers are entitled to be protected from harassment by a variety of persons in the workplace, including colleagues, supervisors, and third parties, such as an attendee at a book launch, a volunteer, or a Board member.

While protections from harassment under human rights legislation are also limited to workers, the interpretation of who qualifies as a worker under human rights legislation is significantly broader, and can include those who would be excluded from the protections under occupational health and safety legislation, such as volunteers, audience members, friends and family members of workers and other non-workers.

- *Workplace*: Any land, premises, location or thing at, upon, in or near which a worker works. This can include the office, field work sites, sets, and workplace social event locations, among others.

A variety of behaviours can constitute harassment, including but not limited to:

- verbal abuse or threats;
- unwelcome remarks, jokes, banter, innuendoes, social media posts, or taunting for any reason, including about a person's body, attire, age, marital or family

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<sup>2</sup> In this module, the term worker may be used interchangeably with “employee” and are intended to have the same meaning.

status, ethnicity or place of origin, religion, race, sexual orientation, gender identity or gender expression, disability, ancestry, colour, citizenship, creed, sex, record of offences, etc.;

- practical or "dirty" jokes which cause offence, awkwardness or embarrassment;
- stalking, leering, staring or gestures;
- display of pornographic, racist or other offensive or derogatory pictures or other material;
- condescension, intimidation or paternalism which undermines self-respect;
- unwanted physical contact such as patting, pinching, and/or brushing up against another person's body;
- cyberbullying, meaning offensive, harassing or bullying conduct communicated electronically through texts, emails and posts or comments on social media platforms;
- requests or demands for sexual favours; and/or
- physical and/or sexual assault.

## Workplace Sexual Harassment

Women are disproportionately victims of sexual harassment in the workplace. A 2014 study of Canadian workers found that 43% of female employees had experienced sexual harassment at work at some point of their working lives, and were almost four times more likely to experience workplace sexual harassment than male employees. Additionally, the study found that Canadian workers who are victims of workplace sexual harassment are not coming forward and reporting it to their employers. Four out of every five employees who experienced workplace sexual harassment never reported the issue to their employer. The most common reasons those surveyed said they did not report the workplace sexual harassment included that they felt the issue was too minor, they did not think their employer would respond well to the complaint and they were embarrassed by what had happened.<sup>3</sup>

Workplace sexual harassment is defined as engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the comment or conduct is known or ought reasonably to be known to be unwelcome, or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome. Workplace sexual harassment can take the form of:

- differential treatment of employees or co-workers;
- verbal or written comments, jokes, teasing, and/or other communication of a sexual nature;
- demeaning language based on gender or sexual preference;
- graphic comments about an individual's body;
- use of sexually degrading words to describe an individual;
- display of sexually suggestive objects and/or pictures in the workplace;

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<sup>3</sup> Three-in-ten Canadian say they've been sexually harassed at work, but very few have reported this to their employers (2014). Angus Reid Institute. <http://angusreid.org/wp-content/uploads/2014/12/2014.12.05-Sexual-Harassment-at-work.pdf>

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- foul or obscene language and/or gestures;
- unwelcome or unwanted sexual advances, including but not limited to patting, pinching, brushing up against, hugging, cornering, kissing, fondling, or any other similar physical contact or written solicitation normally considered unacceptable by another individual;
- unwanted physical contact such as patting, pinching, and/or brushing up against another person's body;
- a promise of better treatment in return for sexual favours; and/or,
- indirect or expressed threats for refusal of a sexual request.

**Example:** Kalinda and Leo find themselves working closely together, alone, on their parts in their opera company's upcoming performance. On one occasion, Leo repeatedly leans close to Kalinda, and touches her leg as they discuss their positioning. Kalinda moves away every time, but does not explicitly tell him to stop. At a subsequent rehearsal, while Kalinda is leaning over the libretto and writing notes, Leo comes up behind her and runs his hands over her shoulders and down her arms.

Because the definitions of both harassment and sexual harassment in the workplace are centered on the idea of unwelcome behaviour, it is important to understand that courteous, mutually respectful, non-coercive interactions that are acceptable to both or all parties involved are not considered to be harassment or sexual harassment.

**Example:** As she is leaving the vernissage, Lois bids her event organizer, Clark, goodbye, and gives him a hug, which he welcomes and returns in an amiable manner.

Further, it is important to understand that not all unwelcome comments or conduct will necessarily constitute workplace harassment. For example, it is possible that an employee may find that reasonable behaviour of a member of management that is part

of a normal work function is unwelcome because it inconveniences the employee or is unpleasant to the employee. However, such behaviour would not normally be considered workplace harassment (e.g., changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, implementation of dress codes, progressive discipline, etc.).

**Example:** Juan's supervisor, Sergio, gives him an unfavourable performance review because Juan has been taking excessive breaks and has consistently failed to fulfill the responsibilities of his position.

## Bullying as Harassment

One of the types of harassment that has been receiving increasing attention in workplaces is bullying. Bullying is defined as targeted behaviour with the objective to demean and disempower. Bullying can take many forms, from overt behaviours such as yelling, rudeness and physical intimidation to subtle forms such as ignoring someone and/or excluding them from social situations and meetings.

**Example:** Gunther's manager, Carla, is condescending and dismissive of his ideas at team programming meetings. She publicly mocks him in front of his colleagues and is generally rude, aggressive, and belittling.

While a worker can be singled out by others for bullying behaviour for a variety of reasons, some of these reasons may be discriminatory under human rights legislation as members of a protected group are often easier to target (e.g., a female employee in a predominantly male environment, a member of a visible minority, an employee with a disability, etc.).

**Example:** Jim has clinical depression, and his colleagues consider him a "downer". When birthdays in the small theatre company where he works are celebrated, his birthday is the only one not celebrated. His work backstage requires significant collaboration with colleagues but they don't respond to his requests for input in a timely way.

## Discriminatory Harassment

Human rights legislation prohibits discrimination against people based on a protected ground, in a protected social area, such as employment. When harassing behaviour occurs because of a person's characteristics that fall within the protected grounds set out in human rights legislation, such as age, race, ethnicity, religion, sex (gender), sexual orientation, and disability, to name a few, the behaviour constitutes discriminatory harassment.

**Example:** A co-worker repeatedly makes jokes about Tiana's accent.

## Workplace Violence

Workplace violence is typically defined as physical force, an attempt to use physical force, or a threat of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker. Workplace violence can be perpetrated by strangers, by guests or by colleagues. Similarly, domestic violence can become a workplace issue if the perpetrator of the domestic violence comes to the workplace to harm the worker, which could put others in the workplace also in harm's way. Workplace violence includes, but is not limited to:

- harming or threatening to harm any employee or member of the public;
- damaging or threatening to damage the property of the organization or any employee or member of the public;
- possessing a dangerous weapon; and/or
- stalking an employee.

**Example:** Karl informs his supervisor, Stella, that his ex-partner, Jean-Sebastien, has been leaving him threatening voicemail messages, and has been waiting for him after work in the office parking lot.

## Early Warning Signs

While in some jurisdictions employers (including Boards of Directors in not-for-profit arts organizations) are required to address only *complaints* of workplace harassment or violence, in others, such as Ontario, employers are required to investigate and respond to both incidents and complaints. While complaints are easy to identify, incidents may be somewhat harder, because it may be difficult for employers to determine whether what they heard happened or observed first-hand is workplace harassment or violence, or a sign of this type of misconduct due to the subtleties of some behaviours.

The requirement to address incidents aside, addressing workplace harassment and violence early is beneficial to large and small organizations because a proactive approach can help minimise the myriad of negative effects that can result from these types of workplace misconduct. Some early warning signs for organizations to look out for include:

- rumours and gossip;
- discord within a team or between particular workers where there was none before;
- increased absenteeism;
- a worker avoiding interactions with another; or
- a worker avoiding looking at or meeting another's eyes during a meeting, rehearsal, etc.

Acting on early warning signs can successfully diffuse situations that have the potential to escalate. Also, occasionally, there could be circumstances where misunderstood or unintended conduct could be resolved informally through communication between the parties, and informal resolution of issues should be encouraged within a workplace where the conduct may constitute a misunderstanding, to the extent appropriate. For example, there could be an employee who has the habit of speaking in close proximity to others, which to some may feel like an invasion of their personal space. In this context,

individuals who experience uncomfortable or offensive interactions could be encouraged, and supported, in communicating to the offender that the behaviour should stop. Support in this context could mean having someone in authority in the workplace facilitating a discussion between the employees to assist with resolving the issue.

It should be noted that informal resolution is only appropriate where the parties are willing and participate in resolution efforts voluntarily. If the misunderstanding involves a reporting relationship, where an imbalance of power in the relationship could impact the voluntary participation of a party, informal resolution efforts may not be appropriate. Further, where the alleged misconduct is serious or if the allegations – taken to be true – would constitute harassment, not taking the steps to investigate as required by legislation, could result in an employer failing to meet its legislated obligations. If the employer wants to encourage or facilitate informal resolution, it should do so cautiously and ensure that, if informal resolution efforts are unsuccessful and the behaviours persist or escalate, that the formal complaints process under the employer's policies – including investigating – is engaged.

## **Mutual Obligations**

Although organizations are responsible for protecting their workers from harassment by managers, colleagues, or third parties, the responsibility for limiting occurrences of workplace harassment and violence does not rest solely with the employer. Generally, occupational health and safety legislation that prohibits workplace harassment and requires organizations to take reasonable precautions to protect their workers also requires workers to participate in creating and maintaining a workplace free of harassment and violence. Workplace policies should clearly inform workers that they are responsible for not engaging in harassing or violent behaviour and for reporting incidents of harassment or violence that may occur.

Where unions have bargaining rights for employees in a workplace, the employer should not overlook engaging the union in efforts to mitigate risks of harassment. The employer may have contractual obligations to involve the union in the context of a harassment or violence issues in the workplace. For example, the collective agreement may provide employees with the right to union representation in the context of an investigation process. Further, many unions have programs designed to educate their members on what protections they should expect against workplace harassment and violence in the workplace and how to respond and report when incidents occur. In some workplace contexts, the union may also play an active role in ensuring the investigation process is conducted fairly. In this regard, it serves employers to work collaboratively with the unions they may be in a contractual relationship with towards addressing incidents of harassment in the workplace and mitigating risks of harassment persisting. That said, the employer must ensure it meets its legislative obligations to take positive steps to address risks of harassment and violence, and that it could be held liable if it fails to do so.

## Reporting

Organizations should put into place clear procedures for reporting workplace harassment and/or violence. Workers should be made aware of to whom they should report complaints or incidents of workplace harassment or violence (e.g., the Executive Director or General Manager). Organizations should also designate a second person or position to whom workers should report complaints or incidents if the primary person designated is the alleged harasser (e.g., to a Board member). This “backup” person or position cannot be subordinate to the alleged harasser as they would be unable to effectively investigate the incident or complaint of harassment.

Organizations should consider measures to encourage bystanders to report observed incidents of harassment in the workplace. Some organizations use measures such as reporting hotlines, which facilitate the anonymous reporting of incidents. While this may prove effective in encouraging the reporting of incidents where workers may not be comfortable raising issues that involve co-workers, very specific reporting guidelines should be put in place to ensure that anonymous reporting of incidents provides adequate information for the organization to conduct an investigation into the circumstances related to the reported incident.

Some organizations may find that they cannot effectively triage a complaint of harassment, particularly when the complaint is against a member of senior management, such as the Artistic Director. In those cases, organizations should consider using an external resource to triage complaints, such as an independent consultant.

Unionized employees may choose to inform their union representative of allegations related to harassment instead of directly reporting to the employer. In this case, protocols should be established and, perhaps, recognized in the workplace policies regarding how the employer and union will cooperate to ensure that the employer gains a full understanding of the complaint and/or incident. This will be necessary for the employer to meet its obligations to protect employees against harassment and to investigate to the extent appropriate in the circumstances.

## Investigation

A complaint of harassment or violence should be investigated. In some Canadian provinces, employers have to properly investigate incidents as well as complaints of workplace harassment. This means that if the person allegedly experiencing harassment does not complain but the organization learns that it is happening, or if the person specifically says that they do not want the issue investigated, the organization still must investigate.

The purpose of an investigation is to

- determine what happened in relation to a complaint or incident
- ensure the individual being harassed is protected
- minimize risks of harassment persisting or escalating
- provide, through its findings, a basis for imposing discipline or taking other corrective action, if necessary
- prevent litigation or provide a defence if litigation is commenced.

A workplace investigation is a fact-finding mission. The investigator collects information related to a specific complaint or incident. Not every investigation will be the same, even if they are all conducted by or for the same employer because an appropriate investigation depends on the complaint or incident, and on each particular workplace. Generally, the investigator will interview relevant parties, collect documents, and then set out his or her findings of fact in a report, which is provided to the decision-maker.

Investigations can be internal or external. The choice, like other details of the investigation, depends on both the kind of behaviour that allegedly occurred and the workplace in question. If the organization has experience investigating harassment and if the complaint seems relatively straightforward, an internal investigation may be appropriate because of its lower cost and generally more informal character. However, where the alleged inappropriate conduct seems more serious, or the alleged harasser is

a senior member of the organization, bringing in an external investigator may be the better choice.

If done correctly, a workplace investigation will create a paper trail of the response to an incident or complaint and the reason for a particular action (e.g., decision to discipline, terminate, or do nothing in response to the investigation findings). Because of this, a proper investigation can limit risks for an organization.

## **Investigation Procedure**

Even though every investigation will be different, there are three general stages that each workplace investigation should have. The stages will apply to organizations of all sizes. However, not all organizations will be held to the same standard with regards to whether a particular investigation was conducted properly. Generally, organisations are responsible for ensuring that an investigation conducted is appropriate in the circumstances. Consequently, a small organization likely will not be held to as high a standard as a large one. Further, in a small organization the investigation likely will be less involved as it likely will engage fewer participants in the process. Not every incident or complaint will require the same kind of investigation. Harassment and violence investigations often become complex, so organizations should consider hiring an external investigator if they do not have internal investigation expertise or time to conduct the investigation.

### Preparation

Before beginning the investigation, review and assess the complaint. Talk to the person who made the complaint—the complainant. What kind of issue is it? How complicated is it likely to get? Identify the scope and objectives of the investigation. What is the investigation supposed to determine, and how many people absolutely need to be involved so that all the necessary information is gathered? Consider also whether there is any relevant legislation that sets out requirements for conducting the investigation. Also, for unionized employees, consider whether the collective agreement provides any

rights of representation during the process. For example, is there a right or requirement for union representation during investigation meetings?

At this stage, decide whether to use an internal investigator or whether hiring an external investigator is more appropriate in the circumstances (e.g., if there is no internal experience with investigations or if there is nobody in the workplace other than the complainant and the respondent to the complaint (and perhaps others who report to the respondent) who can conduct the investigation). Ideally, interviews should be conducted by two people—one to ask questions, and the other responsible for taking notes. In smaller organizations where dedicating two people to conduct the investigation process could be challenging or not possible, consider hiring an external investigator. The reason for this suggestion is documenting what was said by a participant (complainant, respondent or witness) in the investigation process is critical as you will need to rely on this information (evidence) to determine whether the allegations occurred “on a balance of probabilities”, meaning they are more likely than not to have happened. Unless specifically trained, most people find listening and accurately recording notes difficult, which is why either ensuring there is a note-taker or engaging an external investigator may be necessary.

Having the investigation conducted by an external party could also be necessary where the parties in the workplace have close relationships or reporting relationships and it could be asserted that the investigation is tainted by bias. Be aware that, in some situations, there may not be any relevant witnesses other than the complainant and the respondent. However, in these cases where there are no witnesses to support a party’s version of events, it is very difficult for an investigator to justify why they believe one version of the story over the other. This may be another reason to engage a third-party investigator, which should be skilled in assessing the credibility of those participating in the investigation process.

Most organizations are concerned about hiring an external investigator because of the cost. If the investigation does not involve many people and the issues are contained (which is more likely in smaller organizations), the cost of hiring an external investigator is invariably far less than the costs, and consequences, of not properly conducting an investigation that complies with an organization's legal obligations.

While preparing to begin the investigation, consider whether the complainant should be transferred within the workplace during the investigation, if that is an option within your organization, and where the transfer would not be seen as a punitive response to the complainant bringing the complaint forward. This may be key, for example, if the complainant is claiming that he or she is being harassed by his or her direct supervisor. In smaller organisations where transferring the complainant or respondent may not be possible, it may be necessary to place one of the employees (typically the respondent) on a paid administrative suspension while the investigation is ongoing. Placing the respondent on a non-disciplinary suspension (meaning, the leave does not involve a loss of compensation and is not considered discipline) may be particularly necessary if there is a risk of continued harassment or retaliation, to the complainant or others, while the investigation is being conducted.

In Canada, there is no automatic right to administratively suspend a worker, even if there is a workplace investigation ongoing that would benefit from the worker's absence. Make sure that, if a worker should be suspended, the worker's employment contract or agreement includes a clause providing the employer with the right to impose a suspension in certain circumstances.

Inform the person who is alleged to have harassed the complainant and has to respond to those allegations—the respondent—of the complaint so that they are not blindsided and so that they have a full and fair chance to respond when fact-gathering occurs.

Fact-gathering

This stage is where what is generally thought of as investigating takes place. If there is a relevant workplace policy or piece of legislation that sets out investigation requirements, conduct the investigation according to those requirements.

Establishing the investigation process will vary depending on the specific circumstances, however, it usually makes sense to interview the complainant first and then any relevant witnesses. This will allow you to create a summary of the allegations. Maintain confidentiality, as appropriate, and/or as required by legislation. Disclose to the witnesses only the information necessary to make the interview meaningful.

Provide the summary of the allegations to the respondent ahead of their investigation interview so that the respondent has a chance to consider the allegations and is prepared to respond. The allegations should be provided to the respondent at least one day before their interview meeting, so that he or she has a fair chance to consider the allegations and prepare a response. Interview the respondent and ensure that he or she is given a full and fair opportunity to respond to the allegations. Take notes during the interviews (ideally with the assistance of a note-taker), and create witness statements for the complainant, witnesses, and respondent to review and confirm the content of their interview. This means having the witness verify that the notes taken during the investigation meeting (i.e. their statement) reflects what was discussed, that is the witness's responses to the questions asked.

Collect and review relevant documents. For example, witnesses may have emails, texts or social media posts that support their recollection of events, or they may have taken notes about what happened so that they can recall more accurately. Identify missing information, witnesses or evidence. If necessary, conduct follow-up interviews or gather additional documents, as required.

### Reporting and Decision-making

Using the information collected at the fact-gathering stage, the investigator should make findings of fact, including an assessment of the credibility of the witnesses where there are conflicting versions of events. Prepare an investigation report that outlines factual findings, keeping in mind that the investigation report could be disclosed as part of a future legal proceeding. The report does not have to be particularly formal, and can be drafted in bullet points. However, it should set out what the allegations are, who was interviewed, a summary of the evidence given by each witness, what those conducting the investigation found actually happened and (if there are contradicting stories) why those conducting the investigation prefer one version of events over the other (e.g., one witness seems more credible, one witness's version of events is corroborated or supported by others, etc.). Deliver the investigation report to the decision-makers (e.g., to the Executive Director/CEO or to the Organization's Board of Directors) for any decisions to be made to address the findings.

Inform the parties of the outcome of the investigation in writing (e.g., harassment has/has not occurred). Generally, there is no need to provide the complete investigation report to the parties at this stage.

If the complaint or incident is substantiated, address the negative impact of the incident on the complainant, discipline the respondent as appropriate, and take steps to prevent future wrongful acts. These steps could include actions such as revisions to policies, workplace training, and/or coaching for the respondent.

If the complaint or incident is unsubstantiated (meaning if it is found not likely to have happened), provide the parties with an explanation of how this conclusion was reached.

Consider whether rehabilitation of the relationship between the parties and/or the parties and decision-makers is necessary. This could involve ensuring that a party who is vindicated of the alleged wrongdoing is supported in returning to the workplace.

## Common Pitfalls

Workplace investigations are tricky to navigate, and harassment investigations have an even higher level of complexity. Most investigation errors centre on prejudging the outcome, not taking the complainant's allegations seriously or not giving the respondent of the investigation a full and fair chance to respond to the allegations. Do not dismiss any allegation of harassment without an investigation. As outlined above, not every investigation needs to be formal or extensive. However, whenever a claim of harassment is made, an investigation appropriate in the circumstances should be conducted. Give the respondent a full and fair chance to respond. This means not prejudging the outcome and deciding to discipline before the fact-finding is complete. This also means giving the respondent a summary of the allegations in advance so that he or she can prepare a response and is not blindsided.

## After the Investigation

Employers' attempts to appropriately address the rise in workplace harassment complaints and incident reports have resulted in an increasing number of workplace investigations being conducted. However, what most organizations do not consider or adequately prepare for is the destabilizing impact an investigation can have on morale, engagement, and workplace culture. Potential impacts include lost productivity (and increased gossiping and rumours), decreased performance, absenteeism, destabilization of the team, individuals acting out, and decreased worker engagement.

Once the investigation is complete, managers should implement a comprehensive workplace restoration process to repair any damage that may have resulted. The most appropriate strategy will differ based on contextual factors such as the nature of the workplace and investigation at issue. However, there are six proactive steps organizations should consider:

- *Take pre-emptive measures to prevent incidents/complaints:* There are situations and practices within working environments that, if addressed proactively, can help prevent inappropriate behaviours from occurring. For example, where work requires touching (such as intimate acting scenes, dance rehearsals/performances, stunt work) the

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employer can address expected boundaries related to the required contact in advance by having frank discussions with the parties or by communicating guidelines in writing.

- *Develop a communications plan:* Outline confidentiality requirements to workers directly involved in the investigation. Inform the rest of your team (those who are not involved directly with the investigation) that the investigation is underway. Discourage rumour-mongering. Reiterate that an investigation is not a predetermination of guilt.
- *Focus on team wellness:* Deploy your Employee Assistance Program or other existing coverage/support, if applicable, immediately to help manage the psychological impact on your staff and other workers.
- *Revise your leadership strategy:* If a manager is the respondent in an investigation and potentially placed on administrative leave, other managers may need to be brought in to lead a team, at least in the short term.
- *Monitor team performance:* Continually assess an affected team's performance, monitor for potential escalation of conflict, harassment or violence, and address such behaviour quickly and appropriately. If the investigation is complex and lengthy, organizations should consider scheduling team update meetings to keep rumours and gossip in check, as well as to implement additional performance monitoring to understand what, if any, negative effects have occurred/are occurring.
- *Take restorative action:* Once the investigation is over, answer lingering questions workers may have. Consider providing training and/or coaching to reiterate workplace expectations, rebuild relationships and/or restore leadership authority.

## **Discipline**

A harassment or violence in the workplace policy should make it clear that any worker found to have engaged in harassing or violent behaviour will be subject to progressive discipline, up to and including termination of employment. However, while discipline should be applied where harassing or violent behaviour has occurred, organizations should be careful not to decide on discipline before the investigation has concluded and findings have been reached regarding whether any wrongdoing took place—do not prejudge a situation based merely on allegations.

Furthermore, given the serious nature of harassment and violence allegations, including the impact they may have on the person who is alleged to have behaved in an inappropriate manner, organizations should clearly state that frivolous complaints made for improper purposes will result in discipline of the complainant.

## **Confidentiality and Reprisal**

Only a small percentage of harassment that occurs in a workplace is reported. Part of the reason is the stigma that is still attached to making complaints of harassment or violence in the workplace, such as a fear of not being believed and accused of trying to destroy someone's career. Another reason for the underreporting of these kinds of improper behaviours is fear of retaliation, especially when the person engaging in the harassing or violent behaviour is a superior in the workplace.

Generally, legislation that protects workers' rights, such as the occupational health and safety and human rights legislation that includes harassment and violence protections, also includes protections from employers that try to prevent a worker from exercising their rights, such as by making a complaint. Workers and employers should know that workers cannot be punished for exercising their rights. Any efforts made to suppress a worker's complaints about treatment in the workplace that could be considered harassment could result in "reprisal complaint" which, if successful, could result in additional cost and liability for the employer.

## APPENDIX 1: Sample Policy on Workplace Harassment and Violence (Annotated)

### IMPORTANT

The examples of wording included in the Sample Policy are provided for informational purposes only, to help arts organizations consider what information should be included in a workplace harassment policy. Its content does not constitute legal advice.

Different provinces and territories have different standards and requirements when it comes to handling complaints and incidents of harassment. It is strongly recommended that organizations consult with a lawyer who specializes in employment law when formulating their own harassment policy to ensure that they are not missing requirements from their home province or territory, or committing to do more than the applicable legislation their province or territory requires.

## POLICY ON WORKPLACE HARASSMENT AND VIOLENCE

### Workplace Harassment and Discrimination

Begin the policy with a general statement about worker rights and the organization's commitment to creating and maintaining a workplace free of harassment and discrimination. This will demonstrate that the organization is aware of its obligations and committed to carrying them out. For sample wording, see below.

**[NAME OF ORGANIZATION]** (the “Organization”) upholds the right of every person to be free from harassment and discrimination of any kind including sexual harassment, bullying and discriminatory harassment in the workplace, and every worker is assured of the protection of this right.

Workers are entitled to be treated with dignity and respect and to have a work environment free from harassment and discrimination, as prescribed by **[applicable occupational health and safety and/or human rights legislation]**. This policy applies to all workers and representatives of the Organization while in the workplace, on Organization premises, or during any work-related and/or social functions.

Workers are expected to assist the Organization in its attempts to prevent and eliminate harassment in the workplace. The Organization will treat any form of harassment that occurs in the workplace seriously irrespective of the alleged harasser’s position within the Organization.

Nothing in this policy prevents an individual’s right to file a complaint with the **[adjudicative body (e.g., Ministry of Labour)]** should they feel the situation warrants such action.

### Definition

Define the terms that your policy uses. This will provide clarity regarding what sorts of behaviour are prohibited. Generally, terms such as “harassment” or “workplace harassment” will be defined in relevant legislation. Keep in mind that the particular definitions used may be different depending on the province or territory in question. For sample wording, see below.

[Applicable legislation] defines “workplace harassment” as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”

The definition of workplace harassment includes “workplace sexual harassment”. “Workplace sexual harassment” is defined as engaging in a course of vexatious comment or conduct against

a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the comment or conduct is known or ought reasonably to be known to be unwelcome, or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

### Behaviours Constituting Harassment

In addition to a definition, consider providing examples of inappropriate and prohibited behaviour. Examples add clarity and will likely convey more meaning to workers than an abstract definition alone. For sample wording, see below.

While the following is not an exhaustive list, harassment may include:

- verbal abuse or threats;
- unwelcome remarks, jokes, innuendoes or taunting for any reason, including about a person's body, attire, age, marital or family status, ethnic or place of origin, religion, race, sexual orientation, gender identity or gender expression, disability, ancestry, colour, citizenship, creed, sex, record of offences, etc.;
- practical or "dirty" jokes which cause awkwardness or embarrassment;
- stalking, leering, staring or gestures;
- display of pornographic, racist or other offensive or derogatory pictures or other material;
- condescension, intimidation or paternalism which undermines self-respect;
- unwelcome or unwanted sexual advances, including but not limited to patting, pinching, brushing up against, hugging, cornering, kissing, fondling, or any other similar physical contact or written solicitation normally considered unacceptable by another individual;
- requests or demands for sexual favours; and/or,
- physical and sexual assault.

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While the following is not an exhaustive list, sexual harassment may include:

- differential treatment of workers or co-workers etc.;
- verbal or written comments, jokes, teasing, and/or other communication of a sexual nature;
- demeaning language based on gender or sexual preference;
- graphic comments about an individual's body;
- use of sexually degrading words to describe an individual;
- display of sexually suggestive objects and/or pictures in the workplace;
- foul or obscene language and/or gestures;
- unwanted physical conduct such as patting, pinching, and/or brushing up against another person's body;
- a promise of better treatment in return for sexual favours; and/or
- indirect or expressed threats for refusal of a sexual request.

As set out above, some behaviours may or may not constitute harassment depending on the context in which they occur. In addition to defining and providing examples of what harassment may look like, clearly set out what is **not** harassment. For sample wording, see below.

Courteous, mutually respectful, non-coercive interactions which are acceptable to both parties are not considered to be harassment or sexual harassment. The Organization will not tolerate or condone sexual harassment of its workers by anyone.

This policy is not intended to limit or constrain the reasonable exercise of management functions in the workplace. Reasonable action or conduct by a member of management that is part of his or her normal work function would not normally be considered workplace harassment or sexual harassment. Examples could include changes in work assignments, scheduling, job assessment and evaluation, implementation of dress codes and progressive discipline.

## Poisoned Work Environment

Sometimes, serious harassment can create a poisoned work environment. A poisoned environment is a form of discrimination and can arise from even a single incident. It may be created by the comments or actions of any person and the comments or conduct do not have to be directed at an individual. For example, ongoing jokes and comments or derogatory statements made about a defined group in a workplace or service setting may constitute harassment or create a "poisoned environment" for members of that group by making them feel uncomfortable, threatened or unwelcome. Employers cannot condone the creation of a poisoned work environment by ignoring its existence. Because this phenomenon is related to workplace harassment, consider including a definition and prohibition in the harassment policy.

A poisoned work environment is created by persistent and serious wrongful comments or conduct that create a hostile or intolerable workplace. The comments or conduct need not be directed at a specific individual, and may be from any individual, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

Conduct that creates or contributes to the creation of a poisoned work environment will not be tolerated at the Organization and workers found to have engaged in such acts will be subject to discipline up to and including termination.

## Responsibilities of Management

Set out management responsibilities to demonstrate that the organization understands its obligations and to show workers what they can expect. For sample wording, see below.

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The Organization will:

- promote a workplace that is free of harassment and sexual harassment;
- develop and maintain a written workplace policy and program with respect to workplace harassment and sexual harassment in compliance with the **[applicable legislation]**;
- provide workers with information and instruction regarding the workplace policy and program with respect to workplace harassment and sexual harassment including appropriate steps to be taken and investigation procedures;
- take every reasonable precaution for the protection of the workers;
- ensure workers understand who to contact regarding concerns about the policy or when to report an incident;
- ensure the workplace is free from discrimination and harassment including, sexual harassment, bullying and discriminatory harassment;
- respond appropriately to complaints brought to their attention;
- respect the confidentiality and sensitivity of such issues to the extent possible;
- document all information and investigation results;
- conduct an investigation into allegations of harassment or sexual harassment; and,
- take action if witnessing harassment or sexual harassment or elements of a poisoned work environment.

### Responsibilities of Workers

As set out above, the responsibility to create and maintain a harassment-free workplace is shared between the employer and the workers. Set out expectations of worker conduct in the policy. For sample wording, see below.

Workers must:

- comply with this policy by avoiding any behaviour or conduct that could reasonably be interpreted as a violation of this policy;
- report any instances of discrimination, harassment or sexual harassment; and
- maintain a work environment free from discrimination and harassment including sexual harassment, bullying and discriminatory harassment.

Procedure for Making a Harassment-Related or Sexual Harassment-Related Complaint

Set out the procedure for making a harassment complaint. Make sure to include an option for workers to make a formal complaint to someone else if the person in the first designated position is the alleged harasser. This second person cannot report to the person who may be the alleged harasser. For sample wording, see below.

The Organization will investigate and act expeditiously and firmly in dealing with persons harassing others. Complaints regarding harassment may be directed to the **[POSITION]**, in writing if possible.

If a worker believes that he or she is being harassed, the worker should take one or both of the following steps:

1. If comfortable doing so, the worker should tell the harasser to stop. The worker should firmly state that the behaviour is objectionable, unwelcome, and must stop immediately. The worker should also keep a written record of the incident, along with the steps taken to stop it. If the activity or behaviour does not stop after the person has been confronted, or if the worker does not feel comfortable confronting the person, then the worker should follow the procedure as outlined in step 2.
2. The worker should discuss the incident with the **[POSITION]** or, where the alleged harasser or sexual harasser is the **[POSITION]**, the worker should discuss the incident with **[POSITION THAT DOES NOT REPORT TO THAT ALLEGED HARASSER]**. During this initial meeting, the worker should complete a written complaint with or without the assistance of the person receiving the complaint.

### Investigation Process

Set out the procedure for a harassment investigation that includes expectations and process. This will help workers and internal investigators. For sample wording, see below.

The Organization will ensure a full, fair, and appropriate investigation is conducted into each incident or allegation of discrimination or harassment that it becomes aware of. Investigations will be carried out according to the following guidelines:

- all investigations will be conducted promptly;
- all those directly involved, and witnesses will be spoken with;
- notes/statements will be prepared during each interview, reviewed by the person(s) being interviewed and signed for accuracy;
- records or other documents relevant to the incident being investigated (this may include work schedules, complaints and observation notes, and may involve taking pictures of the scene) will be reviewed;
- relevant employment agreement language and/or Organization policies/procedures will be reviewed;
- a final summary/report of the investigation will be prepared; and,
- the allegedly and/or actually harassed worker and the alleged and/or actual harasser will be informed separately in writing of the results of the investigation and any corrective action taken as a result of the findings of the investigation.

The Organization will investigate the complaint diligently and confidentially to the maximum extent possible. In addition, any negative employment consequences which are found to have resulted from the harassment or sexual harassment will be rectified as much as and as soon as possible.

Progressive Discipline

Make sure that workers are aware that violations of the workplace harassment policy will result in discipline. For sample wording, see below.

Any worker found to have engaged in conduct that violates this policy will be subject to progressive discipline, up to and including termination of employment or contract. Because allegations of harassment are very serious, frivolous complaints found to have been made for improper purposes will result in progressive discipline of the complainant, up to and including termination of employment or contract.

If any worker receives a complaint of harassment or is otherwise aware of, or informed of a harassing situation, he or she must inform the **[POSITION]** immediately.

Confidentiality

Reiterate that care will be taken to preserve confidentiality, but do not promise to do more than your legal obligations allow. In some instances, the investigation report and other information about the workplace investigation and the complaint that led to it may need to be disclosed. For sample wording, see below.

Workers should feel secure in knowing that their concerns will be handled as discreetly and sensitively as possible. Identifying information about any individuals involved in the harassment allegation will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or as otherwise required by law.

Reprisals

Reassure workers that retaliation against them for complaining, reporting incidents, or participating in a workplace investigation is absolutely prohibited. For sample wording, see below.

This policy strictly prohibits reprisals against a worker because he or she has brought forward a concern or has provided information regarding a concern under this policy. Any worker who commits or threatens reprisal against another worker for following this policy in good faith may be subject to progressive discipline, up to and including termination of employment or contract.

Workers are encouraged to assist the Organization in its efforts to prevent and eliminate harassment and sexual harassment in the workplace by treating their co-workers with courtesy and respect at all times during their employment. The Organization, in turn, will do its best to deal with complaints that may arise in a fair and objective manner. Any breach of this policy will result in progressive discipline up to and including termination of employment.

**Workplace Violence**

The workplace violence portion of the policy should convey similar information to the workplace harassment portion, including a policy statement, definitions, examples, obligations, and procedure. For further information, refer to the annotations in the Workplace Harassment section above. For sample wording, see below.

The health and safety of our workers is critical. Priority is given to protecting our workers and our audiences/volunteers from violence and/or intimidating behaviours. Such conduct interferes with everyone's ability to perform their job and is not in keeping with the Organization's philosophy of trust and mutual respect.

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The Organization's workers are entitled to have a work environment free from violence and intimidating behaviours as prescribed by the **[applicable legislation]**. This policy applies to all workers and representatives of our Organization while in the workplace, on Organization premises, and during any other work-related or work-related social functions.

Workers are expected to assist the Organization in its attempts to prevent and eliminate violence in the workplace. The Organization will react seriously and severely to any form of violence that occurs in the workplace, irrespective of the alleged offender's position within the Organization.

Nothing in this policy prevents an individual's right to file a complaint with the Ministry of Labour **[or other appropriate body identified in the relevant legislation]** should they feel the situation warrants such action.

### Definition

"Workplace violence" is defined as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker; and
- a statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

### Forms of Workplace Violence

- Violence by Strangers (e.g., gala attendees, the public, etc.)
  - Usually enters the place of work on the pretense of being a guest.
  - Commits robbery or another violent act.
- Violence by Guests (e.g., a donor, a friend or family member of a worker, etc.)
  - May be an expected or unexpected situation.
- Violence by Co-workers

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- Could include current worker and Manager, former worker and Manager, a prospective worker, and may occur at or outside of work (e.g., at an after-work social event, an awards gala, a retreat, etc.)
- Domestic Violence
  - Occurs when a worker has a personal dispute with a spouse, partner, relative or friend and the spouse, partner, relative or friend comes to the Organization to harass, threaten, injure or kill the worker.

### Behaviours Constituting Workplace Violence

While not an exhaustive list, workplace violence may include the following acts:

- harming, bullying or threatening to harm any worker or member of the public (e.g., an audience member, a customer, a friend or family member of an employee who is visiting the workplace, a volunteer, etc.);
- damaging or threatening to damage the property of the Organization or any worker or member of the public (e.g., an audience member, a customer, a friend or family member of an employee who is visiting the workplace, a volunteer, etc.);
- possessing a dangerous weapon or incendiary device; and/or
- engaging in stalking behaviour with respect to any worker.

### Responsibilities of Management

Management must:

- promote a non-violent workplace;
- provide Employees with information and instruction regarding the workplace policy and program with respect to workplace violence including appropriate steps to be taken and investigation procedures;
- take every reasonable precaution for the protection of Employees;
- inform workers of potential risk situations;
- ensure workers understand who to contact regarding concerns about the policy or when to report an incident;
- model behaviour that helps support a positive work environment;
- ensure the workplace is free from violence;
- respond to complaints brought to their attention promptly and appropriately;

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- respect the confidentiality and sensitivity of such issues to the extent possible;
- document all information and investigation results;
- request that executive-level management conduct an investigation into allegations of violent situations; and/or,
- conduct a Risk Assessment and advise the Organization, and other entities/persons as mandated by legislation, of the results of the Risk Assessment.

### Responsibilities of Workers

#### Workers must:

- comply with this policy by avoiding any behaviour or conduct that could reasonably be interpreted as a violation of this policy;
- maintain a work environment free from violence and/or intimidation;
- participate in training or information sessions as provided by the Organization;
- call 911 if the situation warrants it and they find a peer or themselves in immediate danger;
- exercise their right to refuse work if workplace violence is likely to endanger that worker; and,
- co-operate with authorities and investigators.

### Process for Making Violence-Related Complaints

If workers have witnessed or experienced conduct which they believe to be inconsistent with this policy, they have a responsibility to:

- call 911 if the situation warrants it and they find themselves or others in immediate danger;
- make the behaviour/actions known to the **[POSITION]** immediately. In the case of a complaint regarding the **[POSITION]**, the **[POSITION THAT DOES NOT REPORT TO THAT POSITION]**; and,
- participate in the preparation of an incident report outlining the action/behaviour with the **[POSITION]** (or the **[POSITION THAT DOES NOT REPORT TO THAT POSITION]**) including the dates, times, nature of the action/behaviour, and witnesses (if any).

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### Removal of a Person from the Workplace

Any person who makes substantial threats, exhibits threatening behaviour, or engages in violent acts against workers, visitors, audiences, or other individuals while in the Organization's workplace shall be removed from the premises as quickly as safety permits, and shall remain off the premises pending the outcome of an investigation.

Employees are not to remove individuals from the premises themselves. Assistance must be requested from the Police.

### Investigation Process

When investigations into complaints are conducted, they will be carried out according to the following guidelines:

- All those directly involved, including the alleged offender and witnesses, will be spoken to within 48 hours of the incident by the **[POSITION]**. In the case of the **[POSITION]** being the alleged offender, the **[POSITION THAT DOES NOT REPORT TO THAT ALLEGED HARASSER]** will speak with the parties.
- Notes/statements will be prepared during each interview and reviewed by the person(s) being interviewed and signed for accuracy.
- Records or other documents relevant to the incident being investigated (this may include safety reports, incident reports, work schedules, injury reports, complaints and observation notes and may involve taking pictures of the scene) will be reviewed.
- Relevant employment agreement or contract language and/or Organization policies/procedures will be reviewed.

### Corrective Action

Any worker found to have engaged in conduct that violates this Policy will be subject to progressive discipline, up to and including termination of employment or contract. Because allegations of acts of violence are very serious, frivolous complaints found to have been made for improper purposes will result in progressive discipline of the complainant.

## Confidentiality

Workers should feel secure in knowing that their concerns will be handled discreetly and sensitively.

As such, worker issues will usually remain between the worker and the **[POSITION]**. On occasion, however, an investigation may require consulting with another worker in order to ensure an appropriate resolution.

## Reprisals

This policy strictly prohibits reprisals against a worker because he or she has brought forward a concern or has provided information regarding a concern under this policy. Any worker who commits or threatens reprisal against another worker for following this, or any Organization policy in good faith, may be subject to discipline, up to and including dismissal for cause.

## Domestic Violence

( In certain provinces and territories, employers are required to address domestic violence in the workplace. For sample wording, see below. )

Any form of violence, including domestic violence, will not be tolerated by the Organization.

Should the Organization become aware, directly or indirectly, that a worker is or has been subject to domestic violence, the Organization as an Employer must act. This could be as a result of the worker telling the Organization directly or through hearing indirectly that domestic violence is affecting a worker. If a worker admits that he or she is subject to domestic violence but refuses help, the law still requires the Organization to act. We cannot accept a refusal for assistance as a discharge of our obligations to protect our workers.

Similarly, if the Organization becomes aware that a worker is a perpetrator of domestic violence, we will act accordingly.

### Reporting

As all workers of the Organization have a shared responsibility to ensure the health and well-being of one another, any worker who is aware of a domestic violence situation or a potential domestic violence situation affecting a co-worker has a responsibility to report it to the **[POSITION]** or anyone in a managerial position with whom he or she is most comfortable disclosing it to.

Workers are responsible for notifying management of any threats which they have witnessed, received, or have been told that another person has witnessed or received including those related to partner violence. Even without an actual threat, workers should also report any behaviour they have witnessed which they regard as threatening or violent.

Workers are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behaviour and the person or persons who were threatened or were the focus of the threatening behaviour.

Like any immediate threat of any form of violence, workers of the Organization should call 911 if the situation warrants it and they find a peer or themselves in immediate danger.

### Confidentiality

To the extent possible, information pertaining to details of a worker who is a victim of domestic violence will be shared on a need-to-know basis only. However, it must be recognized that in certain situations, the Organization may need to provide some information to certain individuals to fulfill our responsibility to protect our workers. In all cases possible, the victim will be informed of whom must be made aware of the situation and why.

## **APPENDIX 2: Fact Sheet on Legislation and Other Resources**

### **Alberta**

The *Occupational Health and Safety Act* prohibits workplace harassment and violence ([http://www.qp.alberta.ca/1266.cfm?page=O02P1.cfm&leg\\_type=Acts&isbncIn=9780779800865&display=html](http://www.qp.alberta.ca/1266.cfm?page=O02P1.cfm&leg_type=Acts&isbncIn=9780779800865&display=html)).

The *Occupational Health and Safety Code* governs workplace harassment and violence prevention, investigation and training (<http://www.qp.alberta.ca/documents/OHS/OHS.pdf>).

The *Occupational Health and Safety Code Explanation Guide* explains the rules set out in the *Occupational Health and Safety Code* in plain, easy-to-understand language (<https://ohs-pubstore.labour.alberta.ca/li001>).

The *Workers' Compensation Act* governs compensation regarding post-traumatic stress disorder (<http://www.qp.alberta.ca/documents/Acts/W15.pdf>).

The *Alberta Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace ([http://www.qp.alberta.ca/1266.cfm?page=A25P5.cfm&leg\\_type=Acts&isbncIn=9780779744060](http://www.qp.alberta.ca/1266.cfm?page=A25P5.cfm&leg_type=Acts&isbncIn=9780779744060)).

The Alberta Human Rights Commission published an information sheet entitled “Harassment as a Form of Discrimination” ([https://www.albertahumanrights.ab.ca/publications/bulletins\\_sheets\\_booklets/sheets/hr\\_and\\_employment/Pages/harassment.aspx](https://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/sheets/hr_and_employment/Pages/harassment.aspx)).

### **British Columbia**

WorkSafe BC is the organization that is mandated to oversee British Columbia’s workers’ compensation and that publishes materials regarding harassment and violence in the workplace.

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- WorkSafe BC Information sheet on workplace bullying and harassment:  
(<https://www.worksafebc.com/en/health-safety/hazards-exposures/bullying-harassment>).
- WorkSafe BC Information sheet on workplace violence:  
(<https://www.worksafebc.com/en/health-safety/hazards-exposures/violence>).
- WorkSafe BC guide to the Occupational Health and Safety Regulation:  
(<https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation>).

The *Workers' Compensation Act* governs compensation regarding mental disorders "predominantly caused by a significant work-related stressor"  
([http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96492\\_00](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96492_00)).

The *Occupational Health and Safety Regulation* prohibits workplace harassment and violence and sets out required procedures  
([http://www.bclaws.ca/Recon/document/ID/freeside/296\\_97\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/296_97_00)).

The *Human Rights Code* prohibits discrimination and discriminatory harassment in the workplace ([http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96210\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_96210_01)).

### **Manitoba**

SAFE Work Manitoba is a public agency that publishes materials and provides courses dedicated to preventing workplace harassment and violence  
(<https://www.safemanitoba.com/Pages/default.aspx>).

The *Workplace Safety and Health Act and Regulation* prohibits workplace harassment and violence and sets out required procedures  
([http://www.gov.mb.ca/labour/safety/pdf/1\\_2016\\_wsh\\_ar\\_oc.pdf](http://www.gov.mb.ca/labour/safety/pdf/1_2016_wsh_ar_oc.pdf)).

The *Workers Compensation Act* governs compensation regarding traumatic mental stress related to workplace violence (<https://web2.gov.mb.ca/laws/statutes/ccsm/w200e.php>).

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The Workers Compensation Board of Manitoba is responsible for administering no-fault insurance for workplace accidents and/or injuries (<https://www.wcb.mb.ca/>).

The *Human Rights Code* prohibits discrimination and discriminatory harassment in the workplace (<https://web2.gov.mb.ca/laws/statutes/ccsm/h175e.php>).

### **New Brunswick**

Workplace violence and workplace harassment are not currently addressed in New Brunswick's occupational health and safety legislation, but there are consultations under way to amend this. Currently New Brunswick adheres to the federal standards in the *Canada Labour Code*.

WorkSafeNB is a crown corporation that oversees the implementation and application of New Brunswick's *Occupational Health and Safety Act; Workers' Compensation Act; Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act* (<https://www.worksafenb.ca>).

The *Workers Compensation Act* governs compensation of traumatic mental stress related to workplace violence (<http://laws.gnb.ca/en/ShowTdm/cs/W-13/>).

The *Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace (<http://www2.gnb.ca/content/gnb/en/departments/nbhrc/human-rights-act.html>).

### **Newfoundland and Labrador**

Workplace NL is responsible for administering no-fault insurance for workplace accidents and/or injuries and promotes safe and healthy workplaces (<http://www.workplacnl.ca>).

The *Occupational Health and Safety Regulations, 2012* prohibit workplace violence and sets out required procedures (<https://www.assembly.nl.ca/Legislation/sr/Regulations/rc120005.htm>).

The *Human Rights Act, 2010* prohibits discrimination and discriminatory harassment in the workplace (<https://www.assembly.nl.ca/Legislation/sr/statutes/h13-1.htm>).

### **Northwest Territories**

The *Occupational Health and Safety Regulations* prohibit workplace harassment and violence and sets out required procedures

(<https://www.justice.gov.nt.ca/en/files/legislation/safety/safety.r8.pdf?t1446244135517>).

The *Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace

(<https://www.justice.gov.nt.ca/en/files/legislation/human-rights/human-rights.a.pdf>).

### **Nova Scotia**

The *Workers Compensation Act* governs compensation regarding traumatic mental stress related to workplace violence

(<https://nslegislature.ca/sites/default/files/legc/statutes/workers%27%20compensation.pdf>).

The *Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace

(<https://nslegislature.ca/sites/default/files/legc/statutes/human%20rights.pdf>).

### **Nunavut**

The *Occupational Health and Safety Regulations* prohibits workplace harassment and violence and sets out required procedures (<https://www.canlii.org/en/nu/laws/regu/nu-reg-003-2016/latest/nu-reg-003-2016.html>).

The *Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace

([http://www.nhrt.ca/files/NHR\\_Act\\_Eng.pdf](http://www.nhrt.ca/files/NHR_Act_Eng.pdf)).

### **Ontario**

The *Occupational Health and Safety Act* prohibits workplace harassment and violence and sets out required procedures ([http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90o01\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o01_e.htm)).

The *Workplace Safety and Insurance Act* governs compensation regarding chronic mental stress related to workplace harassment (<https://www.ontario.ca/laws/statute/97w16>).

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The Workplace Safety and Insurance Board is responsible for administering no-fault insurance for workplace accidents and/or injuries (<http://www.wsib.on.ca>).

The *Human Rights Code* prohibits discrimination and discriminatory harassment in the workplace (<https://www.ontario.ca/laws/statute/90h19>).

The Ontario Ministry of Labour's Code of Practice was published to help employers meet their obligations with respect to workplace harassment (<https://www.ontario.ca/laws/statute/90h19>).

### **Prince Edward Island**

The Prince Edward Island Human Rights Commission published "Harassment and Bullying – What is Covered" to guide individuals regarding what is considered bullying or harassment as well as employee rights and employer responsibilities regarding possible instances of workplace harassment and bullying (<http://www.gov.pe.ca/humanrights/index.php3?number=1043550&lang=E>).

The *Employment Standards Act* prohibits workplace sexual harassment and sets out required procedures (<https://www.princeedwardisland.ca/sites/default/files/legislation/E-06-2-Employment%20Standards%20Act.pdf>).

The *Occupational Health and Safety Act* prohibits workplace violence and sets out required procedures (<https://www.princeedwardisland.ca/sites/default/files/legislation/O%261-01G-Occupational%20Health%20and%20Safety%20Act%20General%20Regulations.pdf>).

The *Workers Compensation Act* governs compensation of traumatic mental stress related to workplace violence (<https://www.princeedwardisland.ca/sites/default/files/legislation/W-07-1-Workers%20Compensation%20Act.pdf>).

The *Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace (<https://www.princeedwardisland.ca/sites/default/files/legislation/H-12%20-Human%20Rights%20Act.pdf>).

### **Quebec**

CNESST, a government agency that oversees employment and employee relations, published a guide to psychological harassment at work (<https://www.cnt.gouv.qc.ca/en/in-case-of/psychological-harassment-at-work/index.html>).

*An Act Respecting Labour Standards* prohibits psychological harassment in the workplace and sets out required procedures (<http://www.legisquebec.gouv.qc.ca/en/showdoc/cs/N-1.1>).

The *Charter of Human Rights and Freedoms* prohibits discrimination and discriminatory harassment in the workplace (<http://legisquebec.gouv.qc.ca/en/showdoc/cs/C-12>).

### **Saskatchewan**

The Saskatchewan government published “Bullying and Harassment in the Workplace” to guide individuals regarding what is considered bullying or harassment as well as employee rights and employer responsibilities regarding possible instances of workplace bullying and harassment (<https://www.saskatchewan.ca/business/safety-in-the-workplace/hazards-and-prevention/bullying-and-harassment-in-the-workplace>).

The *Saskatchewan Employment Act* prohibits workplace harassment and violence and sets out required procedures (<http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/S15-1.pdf>).

The *Workers’ Compensation Act, 2013* governs compensation regarding psychological injuries related to workplace violence (<http://www.qp.gov.sk.ca/documents/english/statutes/statutes/w17-11.pdf>).

*The Saskatchewan Human Rights Code* prohibits discrimination and discriminatory harassment in the workplace (<http://www.qp.gov.sk.ca/documents/english/statutes/statutes/s24-1.pdf>).

### **Yukon**

The Yukon Government Health and Safety website is designed to help employers meet their obligations respecting workplace violence (<http://www.healthandsafety.gov.yk.ca>).

The *Human Rights Act* prohibits discrimination and discriminatory harassment in the workplace ([http://www.gov.yk.ca/legislation/acts/huri\\_c.pdf](http://www.gov.yk.ca/legislation/acts/huri_c.pdf)).

**Canada (Federally Regulated Employees)**

The *Occupational Health and Safety Regulations* prohibits workplace violence and sets out required procedures (<http://laws.justice.gc.ca/eng/regulations/SOR-86-304/FullText.html>).

The *Canada Labour Code* prohibits workplace sexual harassment and sets out required procedures (<http://laws.justice.gc.ca/eng/acts/L-2/FullText.html>).

## APPENDIX 3: Checklist of Steps to Take

- Take proactive measures to prevent incidents of workplace harassment and violence.
  - Be aware of legal requirements regarding workplace harassment and violence.
  - Set clear workplace conduct expectations in workplace policies.
  - Establish a workplace policy and procedure regarding workplace harassment and violence and train workers on the workplace policy and procedure.
- Be on the lookout for early warnings signs of workplace issues (such as: increased rumours and gossip; discord in a team or between particular workers where there was none before; a worker avoiding interactions with another; and a worker avoiding looking at or meeting another's eyes at a meeting).
- If complaints of harassment or violence arise, follow the established workplace procedure.
  - Assess the complaint and consider whether an external investigator is needed.
  - If conducting the investigation:
    - Don't assume anything—be careful not to pre-judge the issue.
    - Speak with the complainant.
    - Speak with relevant witnesses.
    - Collect relevant documents.
    - Provide a summary of the allegations to the respondent.
    - Assess the evidence and come to findings.
    - Prepare an investigation report.
    - Obtain legal advice if necessary (e.g., to determine if what happened fits the legal definition of harassment).
    - Apply discipline as necessary.
    - Inform the complainant and respondent of the results of the investigation.
  - Ensure that nobody experiences reprisal for bringing a complaint or participating in the investigation.
- Implement a workplace restoration process.
  - Consider how widely to communicate the fact that the investigation has ended.
  - Consider how to bring closure regarding the investigation (e.g. have a team-wide or organization wide meeting to help stop rumour milling, hold team-building exercises; provide coaching for supervisors to reinforce conduct expectations).