

# Harassment Prevention

## An employer's guide for developing a harassment policy

2016

**PLEASE NOTE**

The original legislation should be consulted for all purposes of interpretation and application of the law.

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## Introduction

Saskatchewan workers have a right to a healthy and safe work environment, free from harassment. Employers are required to take reasonable steps to prevent and stop harassment connected to a worker's employment.

Under *The Saskatchewan Employment Act* (the Act) and *The Occupational Health and Safety Regulations, 1996* (regulations), employers are required to develop and implement a harassment policy within their workplace. This guide provides an outline to employers on how to develop a policy and the best practices to use when dealing with harassment. A sample policy and policy statement can be found in the appendices.

## What is Harassment

*The Saskatchewan Employment Act* places harassment into two categories:

1. harassment based on prohibited grounds; and
2. personal harassment.

### Harassment Based on Prohibited Grounds

Harassment based on prohibited grounds includes any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- constitutes a threat to the health or safety of the worker.

This type of harassment is prohibited in the Act and *The Saskatchewan Human Rights Code*. It also extends to sexual harassment which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Sexual harassment may include:

- a direct or implied threat of reprisal for refusing to comply with a sexually-oriented request;
- unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, attire, sex or sexual orientation;
- displaying pornographic or sexually explicit pictures or materials;
- unwelcome physical contact;
- unwelcome invitations or requests, direct or indirect, to engage in behavior of a sexual nature; or
- refusing to work with or have contact with workers because of their sex, gender or sexual orientation.

**Note:** Certain types of conduct, such as displaying a poster or making comments that are overheard by another worker, are not specifically directed at one individual, but can be considered harassment based on prohibited grounds.

## Personal Harassment

Personal harassment includes any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects a worker's psychological or physical well being;
- the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated; and
- constitute a threat to the health and safety of a worker.

Personal harassment is sometimes referred to as bullying.

Personal harassment typically involves repeated occurrences. A single incident may also constitute personal harassment if it is serious or severe and is shown to have a lasting harmful effect on a worker.

Personal harassment may include:

- verbal or written abuse or threats;
- insulting, derogatory or degrading comments, jokes or gestures;
- personal ridicule or malicious gossip;
- unjustifiable interference with another's work or work sabotage;
- refusing to work or co-operate with others; or
- interference with or vandalizing personal property.

All incidents of inappropriate conduct should be appropriately addressed to ensure that the workplace remains respectful and free of harassment.

## What is Not Harassment

Day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes and disciplinary action are not considered harassment even if they sometimes involve unpleasant consequences. Managerial actions must be carried out in a manner that is reasonable and not abusive.

Other situations that do not constitute harassment include:

- physical contact necessary for the performance of the work using accepted industry standards;
- conduct which all parties agree is inoffensive or welcome; or
- disagreements in the workplace that are not based on one of the prohibited grounds.

Harassment can exist even when there is no intention to harass or offend. Every person must take care to ensure his or her conduct is not offensive to others.

## Purpose of Harassment Legislation

*The Saskatchewan Employment Act* protects workers from workplace harassment that may affect their health and safety. Unlike *The Saskatchewan Human Rights Code*, the Act does not contain provisions to provide compensation to workers who have been harassed.

The Act and regulations require employers to:

- prevent harassment;
- stop harassment when it does occur; and
- develop and implement a harassment policy.

## Employer's Legal Duties

Every employer has a legal obligation to ensure, as much as reasonably practicable, that workers are not exposed to harassment with respect to any matter or circumstance arising out of employment.

This duty extends to:

- incidents that occur at the workplace or during work hours;
- conduct perpetrated by another employee (i.e., co-worker or supervisor) or the employer;
- incidents that occur outside of the usual workplace or after work hours that arise out of or are connected to a worker's employment, such as a work-sponsored social event or conference; and
- conduct perpetrated by someone other than an employee, but with whom the worker is required to meet with, including clients, contractors or the public.

Section 36 of *The Occupational Health and Safety Regulations, 1996* requires all employers in Saskatchewan to develop and implement a written harassment policy.

Employers must ensure harassment policies are implemented and they are effective. Employers should look beyond what is legally required and take additional action to create a respectful working environment. This can include proactive training on topics such as respectful workplaces, diversity and conflict resolution. Employers should use effective management practices to clearly define tasks, roles and workload, and promote fairness and openness in the workplace.

## Preventing Harassment

Employers must take a proactive approach to ensure workplaces are free from harassment. Employers should create their harassment policy to deal with complaints of harassment. They should also have a harassment prevention program.

A harassment prevention program should encompass the following elements:

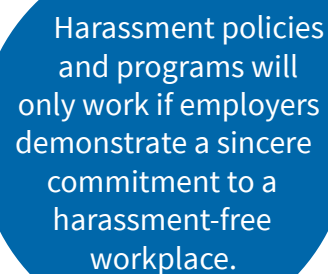
1. A clear statement of employer commitment;
2. Supervisor training and commitment; and
3. Worker training and commitment.

### A Clear Statement of Employer Commitment

Employers must clearly state to their workers that harassment will not be tolerated. They should point out they are working to ensure no worker is subjected to harassment. This commitment should be emphasized in harassment policies<sup>1</sup> and prevention programs.

An employer can also show commitment by:

- assigning employers and employees to develop and implement of the harassment policy;
- expressing at meetings the importance of a harassment-free workplace;
- developing a policy statement that reflects commitment;
- providing workers and supervisors with harassment prevention training;
- acting promptly to end any harassment and prevent its recurrence;
- reviewing the adequacy and effectiveness of the policy regularly in consultation with the Occupational Health Committee (OHC); and
- protecting workers from reprisal or retaliation for making a complaint.



Harassment policies and programs will only work if employers demonstrate a sincere commitment to a harassment-free workplace.

### Supervisor Training and Commitment

Supervisors must be appropriately trained to set good examples, be alert to problems, receive harassment complaints and protect workers from reprisal or retaliation.

#### Setting a good example

Supervisors need to be aware of their behaviour and how it influences the workplace. Showing respect for workers at all levels is critical. Supervisors should never act in a way that could be seen as disrespectful or harassing. They should never approve of others acting that way.

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<sup>1</sup>Clause 36(1)(c) of the OHS regulations requires a harassment policy to include a commitment that the employer will make every reasonable practicable effort to ensure that no worker is subjected to harassment.



### **Being alert to problems**

Supervisors need to watch for signs that harassment may be occurring. Signs of harassment may include rumours, increased absenteeism, decreased motivation, reduced job performance and increased staff turnover.

If a supervisor thinks harassment may be taking place, the supervisor must act promptly and appropriately.

Although situations will vary, appropriate action can include:

- speaking privately to the worker who is potentially being harassed to find out if he or she has experienced unwelcome behavior;
- speaking privately to the person whose conduct may be harassing to indicate that the conduct is potentially offensive;
- directing workers to remove offensive material or displays that go against the Act or harassment policy of the workplace;
- bringing serious concerns to the attention of upper management; and
- holding an awareness session on harassment.

### **Receiving harassment complaints**

Supervisors must take all complaints seriously. Workers should never be discouraged from pursuing or resolving a complaint in accordance with the harassment policy.

Those responsible for receiving harassment complaints should:

- explain the harassment policy to the complainant;
- explain the options for dealing with harassment as stated in the policy;
- advise the complainant the complaint will be kept confidential; and
- protect the complainant from reprisal or retaliation.

The complaint should be processed in accordance with the harassment policy.

### **Protecting workers from reprisal and retaliation**

Employers and supervisors need to ensure they protect the worker making a complaint from reprisal or retaliation.

This can include taking actions before the investigation is complete, such as:

- cautioning the alleged harasser about the types of behaviour that will not be tolerated;
- moving the alleged harasser to another work unit;
- moving the complainant to another work unit at the complainant's request; or
- suspending the alleged harasser with pay while waiting for a final determination.

## Worker Training and Commitment

A harassment policy must contain a statement indicating that every worker is entitled to employment free of harassment. It is important to note that the responsibility for employment free from harassment falls to everyone in the workplace. All workers have a duty to refrain from causing or participating in the harassment of another worker.

Workers need to know their rights and responsibilities. They need to understand acceptable behavior. They need to know what to do if someone is being harassed.

Workers must be assured:

- they have the right to bring harassment concerns to their employer without fear of reprisal or retaliation;
- concerns will be addressed in a confidential and professional manner; and
- action will be taken to stop harassment.

Harassment-free workplaces can be encouraged in a variety of ways. Information meetings can be held to explain about harassment. Meetings could include information on:

- what rights and responsibilities workers have under *The Saskatchewan Employment Act*;
- the types of behaviours prohibited by the harassment policy including behaviours by third parties that will not be tolerated;
- tips for creating a respectful workplace;
- the process for investigating a harassment complaint and the provisions of the policy that ensure confidentiality, due process and fairness;
- the potential consequences to an individual who causes or participates in harassment; and
- the employer's commitment to protect workers from reprisal or retaliation for making a harassment complaint.

Supervisors can also encourage awareness and commitment to harassment-free workplaces by:

- ensuring all new workers receive orientation on harassment including how harassment can damage the personal and professional lives of others;
- ensuring the people delivering the information understand the workplace harassment policy and make clear that the employer takes harassment seriously;
- including harassment information in workers' handbooks or reference brochures;
- posting the names of people designated to receive harassment complaints;
- displaying posters or other materials in highly visible locations stating the workplace is committed to being respectful and harassment-free; and
- using videos, publications and reference materials on harassment for training and orientation.

## Developing and Implementing a Harassment Policy

*The Saskatchewan Employment Act* and regulations state an employer, in consultation with the Occupational Health Committee (OHC) must develop a written harassment policy.


The policy must include:

- a definition of harassment that includes the definition in the Act;
- a statement that every worker is entitled to a harassment-free workplace;
- a commitment that the employer will make every reasonably practicable effort to ensure no worker is subjected to harassment;
- a commitment that the employer will take corrective action with a worker who subjects another worker to harassment;
- a process on how complaints can be brought to the attention of the employer;
- a statement of confidentiality;
- a reference to the harassment provisions of the Act and the worker's right to request the assistance of an Occupational Health Officer (Officer) to resolve the complaint;
- a reference to the discriminatory practices provisions of *The Saskatchewan Human Rights Code* and the worker's right to file a complaint with the Saskatchewan Human Rights Commission;
- a process on how the complainant and alleged harasser will be informed of the results of the investigation; and
- a statement that the employer's harassment policy is not intended to discourage or prevent the complainant from exercising any other legal rights.

When developing a harassment policy, employers must seek input from their OHC or OHS representative. In small workplaces that do not have an OHC or OHS representative, employers should ask workers for their input.

Some benefits of consulting the OHC or OHS representative are:

- OHC members can be a resource;
- OHC support for the policy is essential in its implementation; and
- the OHC will provide assistance in monitoring the policy.



Ask workers to review and comment on the policy before it is put into effect.

## Defining Harassment

OHS regulations require the policy to include a definition of harassment that includes the definition in the Act.

Clause 3-1(1)(l) of the Act defines harassment based on the prohibited grounds and personal harassment.

Harassment is also prohibited by *The Saskatchewan Human Rights Code* and extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome. Sexual harassment is defined separately in many effective harassment policies.

### What is Not Harassment

A policy should also include what is not considered harassment such as day-to-day management or supervisory decisions.

A harassment policy also does not extend to harassment that arises out of matters or circumstances unrelated to a worker's employment. For example, harassment that occurs during a social gathering of co-workers after work that is not sponsored by the employer is not covered. However, harassment that occurs while attending a conference or training session at the request of the employer would be covered within the policy.



An employer's harassment policy should include a statement urging workers to ensure their comments, conduct or displays are inoffensive and appropriate.

## Procedures for Handling Harassment Complaints

Having clear procedures is important to ensure harassment complaints are dealt with in a consistent, competent, fair and effective manner.<sup>2</sup> This increases worker confidence that harassment complaints will be handled in an appropriate way.

When creating a procedure for handling concerns, employers should consult with OHC to answer the following questions:

### How can workers bring complaints to the attention of the employers?

In some workplaces, employers may state a worker should bring a harassment complaint to the immediate supervisor or, in the event of a conflict with the supervisor, any other supervisor in the workplace.

Any person designated to receive complaints must be adequately trained on:

- the importance of taking all complaints seriously and confidentially;
- the harassment policy; and
- their role in the overall process.

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<sup>2</sup> Section 36 of the OHS regulations require the harassment policy to include statements that may affect the procedure to be followed in dealing with a harassment complaint, but it does not direct the exact process to be used.

### **What are the duties of the person receiving the complaint?**

Any person designated to receive harassment complaints should:

- advise a worker on how to bring the complaint to the attention of the employer;
- not discourage or prevent a worker from seeking the assistance of an Occupational Health Officer (Officer) or from pursuing any other legal rights;
- take complaints seriously and avoid ridiculing and dismissing a worker's concerns;
- keep complaints in confidence and not disclose complaints except in accordance with the policy or as required by law; and
- carry out other duties assigned under the policy.

### **What are the different options for handling a complaint?**

Many policies give the complainant more than one option for how to proceed. Options can include:

#### Opportunity to Seek Information or Advice

Harassment policies should clearly state that workers can go to supervisors or a designated person to seek information or advice. Those who hear complaints must explain complainants' rights and provide the options available for resolving a complaint.

#### Informal Complaints Where Harasser is Not Named

Sometimes a complainant may not wish to identify the harasser or ask for direct intervention. The complainant may want only information, advice or indirect assistance in stopping the offending behaviour from continuing.

The policy should direct the person receiving this type of complaint to do the following:


- advise the complainant on the contents of the harassment policy;
- counsel the complainant, when appropriate and possible, to clearly and firmly express to the alleged harasser that the behaviour is objectionable and must stop;
- offer to indirectly intervene by arranging for all staff to attend workshops, videos and staff meetings to review the harassment policy;
- encourage the complainant to file a formal complaint where the matter poses a serious threat to the health and safety of the worker or others, is criminal in nature or where circumstances lead the supervisor to suspect intervention and educational activities cannot prevent the harassment from recurring.

#### Informal Complaints Where Harasser is Named

In some circumstances, the complainant names an alleged harasser and requests informal intervention. In this case, the complainant does not seek an admission of guilt, apology or discipline. Rather, the complainant is looking for an agreement with the alleged harasser that the offensive behavior will not continue. This agreement does not have to be in writing.

The policy should direct the person receiving this type of complaint to do the following:

- conduct separate informal discussions between the supervisor and the complainant, and between the supervisor and the alleged harasser;
- arrange a meeting, with the agreement of both parties, between the complainant and the alleged harasser that is facilitated by a trained and impartial mediator; and
- encourage the complainant to file a formal complaint where the matter poses a serious threat to the health and safety of the worker or others, is criminal in nature or where circumstances lead the supervisor to suspect informal mediation cannot prevent the harassment from recurring.



An informal agreement should not be viewed as an admission of harassment.

No formal investigation or admission is required. The policy should indicate no record of the complaint or of the agreement should be kept on either the complainant's or the alleged harasser's personnel file.

#### Making a Formal Harassment Complaint

In a formal complaint, a worker makes a written allegation of harassment against someone. This requires a formal investigation to determine if harassment has taken place. This type of complaint requires the employer to take action to stop the harassment and prevent its reoccurrence.

#### **How will the policy address a complainant's other legal rights?**

Harassment policies should address the legal rights of a complainant including:

#### The Act with Respect to Harassment

The policy must refer to certain sections of *The Saskatchewan Employment Act* and regulations on harassment, including:

- Subsection 3-8 of the Act concerning the employer's general duty;
- Subsection 3-9 of the Act concerning the worker's general duty;
- Subsection 3-35 of the Act which prohibits an employer from taking discriminatory action against a worker for seeking enforcement of the Act; and
- Section 36 of the regulations which concerns creating and implementing a harassment policy.

An employer may consider printing the full text of these sections in the policy, although it is sufficient if the policy simply makes reference to them.

### The Assistance of an Occupational Health Officer

The harassment policy must indicate a worker's right to request the assistance of an Occupational Health Officer (Officer) to resolve a harassment complaint. The person designated to receive harassment complaints should also bring this right to the attention of the complainant.

Prior to requesting the assistance of an Officer, the complainant should try and resolve the matter with their employer. If the complainant feels the employer has failed in resolving the matter, they can contact the Occupational Health and Safety Division for assistance.

If a worker requests the assistance of an Officer after the employer has attempted to resolve the matter, the Officer may investigate to determine whether the employer has complied with the legislation and has taken reasonable action.

The Officer may do the following:

- when harassment has not taken place no further action is required; however, the Officer may recommend how to resolve the matter;
- when harassment has not taken place under the Act, but has taken place under the employer's policy, the Officer will recommend the employer implement the harassment policy; or
- when harassment has taken place under the Act, and it is likely to be continued or repeated, the Officer will direct the employer to stop the harassment.

### Reference to *The Saskatchewan Human Rights Code*

The harassment policy must refer to the provisions of *The Saskatchewan Human Rights Code* respecting discriminatory practices and the worker's right to file a complaint with the Saskatchewan Human Rights Commission.

The provisions under [The Saskatchewan Human Rights Code \(www.shrc.goc.sk.ca\)](http://www.shrc.goc.sk.ca) regarding discriminatory practices in the workplaces can be found in sections 10, 16, 17, 18, 27 and 31 of *The Saskatchewan Human Rights Code*.

### Reference to Other Legal Rights

The harassment policy must include a statement that it is not intended to discourage the complainant from exercising any other legal rights.

People in supervisory or management positions, as well as those investigating and resolving complaints, should know it is not appropriate to discourage a complainant from exercising any legal rights.

## Workplace Formal Complaints and Investigations

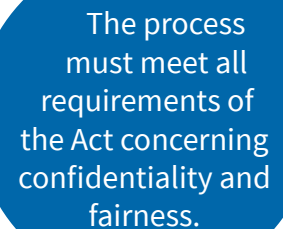
Harassment policies should include all options for handling complaints. Workers who feel they have experienced harassment may make a formal complaint.

Creating a process to receive and investigate formal complaints in a consistent, fair and effective manner is critical. Complaints should:

- be made in writing and include the complainant's signature;
- include a form to gather all basic relevant information (see sample formal complaint form on next page); and
- outline who will investigate and how the investigation will be conducted.

Once a complaint has been made, an initial assessment must occur to determine whether it falls within the policy's definition of harassment. If it is not covered under the policy, complainants should be advised of their right to seek the assistance of an Occupational Health Officer.

If the conduct falls within the scope of the policy, it must be determined if immediate action is required to protect the complainant or others while they wait for the investigation to conclude.



The process must meet all requirements of the Act concerning confidentiality and fairness.



# Sample Employer Formal Harassment Complaint Form

## Complainant Information:

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Work Unit: \_\_\_\_\_ Job Title \_\_\_\_\_

Supervisor's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

## Witness Information

List names of possible witnesses.

Name	Position	Contact Phone Number

## Information about the individual(s) you feel has/have harassed you:

Name of person(s) against whom this complaint is made :

Date of incident (dd/mm/yyyy): \_\_\_\_\_

**In your opinion is the harassment based on any of the following?** Check the boxes that apply to your situation.

Sexual Orientation

Religion

Sex

Nationality

Disability

Age

Place of Origin

Family Status

Creed

Physical Weight/Height

Colour

Race

Marital Status

Ancestry

None of the Above

**If not based on any of the above grounds, is the harassment based on either of the following:**

a) Repeated incidents that have caused you to be humiliated or intimidated.      Yes      No

OR

b) A single serious incident that has had a lasting harmful effect on you.      Yes      No

**In your own words, describe the conduct, comments or display you found objectionable. Give details of date and location of the incident(s) that is/are the basis of your complaint.**

**What type of resolution do you seek? (e.g., supervisor to direct or counsel person to correct conduct; facilitated meeting with alleged harasser; apology; workshops or training sessions; mediations; or other.)**

## Declaration

I hereby confirm the statement(s) contained in this complaint are true to the best of my knowledge. I understand a copy of this complaint will be provided to the alleged harasser for the purpose of investigating this complaint.

Signature: \_\_\_\_\_ Date (dd/mm/yyyy): \_\_\_\_\_

I acknowledge receipt of this complaint.

Supervisor's Signature: \_\_\_\_\_ Date (dd/mm/yyyy): \_\_\_\_\_

## Confidentiality

An employer must not disclose the names of the complainant or the alleged harasser except when necessary to investigate or take corrective action or where required by law. A statement to this effect must appear in the harassment policy.

The policy should also set out how confidentiality will be maintained at every stage of the process. This may include:

- giving direction about who will be informed of a complaint at each stage of the process;
- describing the training and instructions given to people designated to receive or facilitate the resolution of complaints; and
- stating who will have access to the results of the investigation.

Other practices that help to maintain confidentiality include:

- advising both the complainant and the alleged harasser during the initial stages of the process to keep the matter in confidence;
- interviewing only witnesses necessary for the investigation;
- advising witnesses not to discuss the investigation or their statement;
- ensuring others who participate in the process, including shop stewards, mediators, supervisors and management, commit to keep the process confidential; and
- describing during the initial stages of the complaint process who will have access to the results of the investigation.

## Fairness

Harassment policies should set out guidelines or procedures that ensure the process will be fair and appear fair.

The policy should address:

**Bias** - the complainant and alleged harasser should be assured that the people who receive, investigate or take action on the complaint are not biased.

**Legal or Union Counsel** - both parties have the right to legal or union counsel during the investigation process.

**Right to be Informed** - each person should be fully informed of the harassment process as well as their rights under the Act and *The Saskatchewan Human Rights Code*.

**Full Answer and Defense** - the alleged harasser must be informed of the complaint in a manner sufficient to entitle him or her to present a full defense.

Where an investigation is required, the alleged harasser is usually entitled to receive a copy of the written complaint. Sometimes a written complaint can contain unnecessarily insulting or embarrassing opinions or statements about the alleged harasser. Such statements may cause hard feelings and interfere with achieving a mediated resolution.

It is good practice when a written complaint is made to:

- inform the complainant that a copy of the written complaint may be provided to the alleged harasser;
- have the supervisor offer assistance to the complainant in completing a written complaint to avoid including unnecessarily insulting or embarrassing opinions or statements about the alleged harasser; and
- where an investigation is not required, avoid giving the alleged harasser a copy of a written complaint. Instead, have the supervisor provide a verbal or written summary.

### **Credibility of Witness Evidence**

A fair investigation process should ensure the evidence used to make an assessment is credible. Investigators should be trained in investigative practices, including:

- interviewing witnesses separately;
- taking signed written statements from witnesses and providing them time to review their statements and confirm accuracy;
- avoiding hearsay and instructing witnesses to describe only what they personally know or witnessed;
- consider witness bias; and
- avoiding witness intimidation by advising witnesses their statements will not be shared with either the complainant or the alleged harasser except as required by law, or to the extent necessary (i.e., a summary) to allow the alleged harasser to make a full defense.

### **Unnecessary Delay**

Employers should ensure there is no unnecessary delay between receiving the complaint, conducting the investigation, preparing the investigation report and taking action.

### **Taking Action**

Investigations will lead to a decision on whether harassment occurred or not and whether the complaint was made in good or bad faith.

### No Harassment

When an investigation finds harassment has not taken place and the complaint was made in good faith, both the complainant and the alleged harasser should be informed. The complainant should be advised of the right to request an Occupational Health Officer or to lodge a complaint with The Saskatchewan Human Rights Commission.

Employers should ensure they do not question the sincerity with which a complaint is made unless there is persuasive evidence.

When harassment has not taken place and a complaint has been made in bad faith, an employer should take action to discipline the worker who made the complaint. Where appropriate, an employer may also inform other people involved with the investigation that harassment was found not to have taken place. This action may be necessary where the reputation of the alleged harasser may be negatively affected.

Bad faith refers to a claim of harassment when the complainant knows the allegations are not true.

Bad faith complaints have a serious negative effect in the workplace.

### Harassment Took Place

Employers must take corrective action with any person who harasses another in the workplace. When an investigation determines that harassment has taken place, employers need to decide what they will do to stop, prevent and deter harassment.

Options may include action against people in the workplace and third parties.

The employer must ensure:

- the action stops harassment and prevents its recurrence;
- the action protects the complainant or others from reprisal;
- the action protects the privacy of the complainant and the harasser as much as possible;
- the action does not violate the collective agreement or any worker's employment contract; and
- any discipline imposed is appropriate.

Employers should not fail to stop harassment because they fear the trouble and expense. An employer's action will be defensible if it is based on a fair and competent investigation.

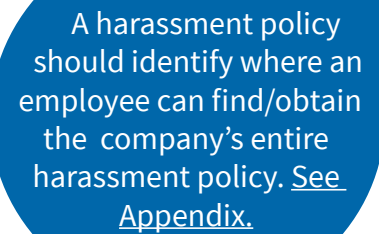
The harassment policy does not have to describe the exact actions employers need to take in particular situations. Creating a rigid policy will limit the choice of actions. It is good practice, however, to list the types of actions employers may take. It demonstrates the employer's commitment and can strengthen workers' commitment to a harassment-free workplace.

## Implementing a Harassment Policy

Once employers have developed a harassment policy, they need to share it with their workers and implement it.

A few ways employers can share and implement their harassment policy include:

- hosting an all-staff information meeting to explain and answer questions about the new policy and its implementation;
- having supervisors review the policy with new workers as part of orientation;
- training all people designated to receive, investigate or resolve complaints;
- posting a list on the company bulletin board of all people designated to receive complaints;
- posting a company harassment policy statement that is visible to all staff and the public; and
- ensuring all managers, supervisors, directors and officers set a good example.



A harassment policy should identify where an employee can find/obtain the company's entire harassment policy. [See Appendix.](#)

## Appendix: Sample Harassment Policies for Saskatchewan Workplaces

Sample A and B represent two sample harassment policies. Employers must design a harassment policy that best reflects the needs of their organization.

### Sample A: Harassment Policy for Saskatchewan Workplace

#### Statement of Commitment

Every worker is entitled to employment free of harassment. Employer's Name is committed to a harassment-free workplace where everyone is treated with dignity and respect.

Or

Every worker is entitled to employment free of harassment. Employer's Name is committed to ensuring a productive work environment where the dignity and worth of every person is respected. Workplace harassment will not be tolerated and Employer's Name will take all reasonable steps to prevent harassment and stop it if it occurs.

#### Definition of Harassment

This harassment policy covers the following:

##### Harassment Based on Prohibited Grounds

This includes any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- constitutes a threat to the health or safety of the worker.

This type of harassment is prohibited in *The Saskatchewan Employment Act* (the Act) and *The Saskatchewan Human Rights Code*.

It also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or welcome.

Sexual harassment may include:

- a direct or implied threat of reprisal for refusing to comply with a sexually-oriented request;
- unwelcome remarks, jokes, innuendos, propositions or taunting about a person's body, attire, sex or sexual orientation;
- displaying pornographic or sexually explicit pictures or materials;

- unwelcome physical contact;
- unwelcome invitations or requests, direct or indirect, to engage in behavior of a sexual nature; or
- refusing to work with or have contact with workers because of their sex, gender or sexual orientation.

### **Personal Harassment**

This includes any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects a worker's psychological or physical well-being; and
- the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated.

Personal harassment must involve repeated conduct or a single, serious incident that causes a lasting harmful effect on the worker. All incidents of inappropriate conduct should be appropriately addressed to ensure that the workplace remains respectful and free of harassment.

Personal harassment may include:

- verbal or written abuse or threats;
- insulting, derogatory or degrading comments, jokes or gestures;
- personal ridicule or malicious gossip;
- unjustifiable interference with another's work or work sabotage;
- refusing to work or co-operate with others; or
- interference with or vandalizing personal property.

### **What is Not Harassment**

This harassment policy does not extend or apply to day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes and disciplinary action. These actions are not harassment, even if they sometimes involve unpleasant consequences. Managerial actions must be carried out in a manner that is reasonable and not abusive.

The policy also does not extend to harassment that arises out of circumstances unrelated to the worker's employment. For example, harassment is not covered if it occurs during a social gathering of co-workers that is not sponsored by the employer. However, harassment that occurs while attending a conference or training session at the request of the employer is covered.

Other situations that do not constitute harassment include:

- physical contact necessary for the performance of the work using accepted industry standards;



- conduct which all parties agree is inoffensive or welcome; or
- conflict or disagreements in the workplace, where the conflict or disagreement is not based on one of the prohibited grounds.

Harassment can exist even where there is no intention to harass or offend another. Every person must take care to ensure his or her conduct is not offensive to another.

## Employer's Commitment

          Employer's Name           and its managers and supervisors will take all complaints of harassment seriously. We are committed to implementing this policy and to ensuring it is effective in preventing and stopping harassment, as well as creating a productive and respectful workplace.

This commitment includes:

### Informing all persons in the workplace of their rights and obligations

- A copy of the harassment policy will be provided to all workers.
- A copy of the harassment policy will be posted on the company bulletin board.
- The company's policy statement on harassment will be posted in each work area in a location that is visible to all staff and the public.

### Training all persons in implementing the harassment policy

- An information meeting will be held with all staff to answer questions about the new policy.
- Supervisors will review the policy with new workers as part of their orientation.
- People designated to receive, investigate or resolve complaints will be trained in their roles and responsibilities.
- All           Employer's Name           managers, directors, officers, and supervisors will be asked to set a good example and help foster a respectful workplace.
- A list of people designated to receive complaints shall be posted on the company bulletin board.

### Assigning responsibility for implementing this policy

- Employer's Name           will designate number people who may receive harassment complaints and assist in facilitating their resolution.
- Employer's Name           shall designate number people who will investigate harassment complaints.
- Employer's Name           will designate all unit managers authorized to take corrective action in accordance with this policy.

### Protecting workers trying to prevent or stop harassment

- Harassment complaints and investigations will be held in the strictest of confidence except where disclosure is necessary to investigate the complaint, take corrective action

or required by law.

- Action will be taken to prevent reprisal against people who make a harassment complaint in good faith, which may mean informing complainants and alleged harassers of this commitment.

### **Promptly taking action necessary to stop and prevent harassment**

- Appropriate action, sufficient to ensure the harassment stops and does not happen again, will be taken against people who are or were engaged in, or participated, in harassment.
- When necessary, customers, contractors or other visitors will be informed certain conduct will not be tolerated.

### **Ensuring the policy remains current**

- The effectiveness of the policy will be reviewed in consultation with the Occupational Health Committee every number years.

## **Employee's Duty**

In accordance with Part III of *The Saskatchewan Employment Act*, all workers, including managers and supervisors employed by Employer's Name shall refrain from causing or participating in the harassment of another worker, and co-operate with any person investigating harassment complaints.

## **Complaint Procedure**

This policy sets out three types of complaint procedures that may be used following instances of harassment.

### **1. No Alleged Harasser Named and Informal Resolution Sought**

Step 1: An individual reports an incident or concern.

Step 2: The person receiving the complaint reviews the procedures with the complainant and informs the unit manager.

Step 3: The unit manager takes action to address the complaint.

Such action may include:

- having staff meetings to discuss and review the policy; or
- providing workshops or resource materials on the prevention of harassment such as videos, brochures and guides.

The unit manager informs the complainant of the action that will be taken to address the concern.

Confidentiality: Employer's Name, or anyone acting on behalf of the company, should not disclose the complainant's name or other identifying information to any person. However, in certain circumstances, the complainant may agree to release identifying information to implement the harassment policy, the resolution process or the resolution itself.

## **2. Alleged Harasser Named - Informal Resolution or Mediation Sought**

Step 1: An individual reports an incident or concern. The complaint should be in writing in a form consistent with the harassment complaint form attached to this policy.

Where an informal resolution is sought, the complainant should indicate the type of resolution sought such as an apology, supervisory counselling, a facilitated meeting with the alleged harasser, workshops or training sessions and mediation.

Step 2: The person receiving the complaint reviews the procedures with the complainant and informs the unit manager. Where it is alleged the unit manager is involved in the harassment, the person receiving the complaint refers the matter to another manager. The person receiving the complaint will also meet privately with the alleged harasser to review the complaint and determine whether there is agreement on a resolution or resolution process.

Step 3: Where there is agreement on the resolution or resolution process, the person receiving the complaint informs the unit manager of the agreement and facilitates the agreed upon resolution or process.

Step 4: The complainant is informed a formal complaint procedure is possible if the complainant, the alleged harasser or the unit manager do not agree or if the process does not resolve the matter to the complainant's satisfaction.

Step 5: Where the complainant and alleged harasser agree to a resolution, the unit manager follows up with the complainant to ensure the resolution was effective in stopping and preventing further harassment. Where the complainant indicates the harassment has not ended, the unit manager counsels the complainant to pursue an alternate resolution process, including a formal investigation.

Confidentiality: \_\_\_\_\_ *Employer's Name* \_\_\_\_\_, or anyone acting on behalf of the company, should not disclose the complainant's or alleged harasser's name or other identifying information. In certain circumstances, the complainant and alleged harasser may agree to release identifying information to implement the harassment policy, the resolution process, or the resolution itself.

## **3. Alleged Harasser Named - Investigation Required**

Step 1: An individual reports an incident or concern. The complaint should be in writing and contain:

- the name, job title and contact information of the complainant;
- the name of the alleged harasser;
- description of the conduct considered objectionable, including dates and locations of events;
- the names and contact information of any possible witnesses;
- description of the basis of the alleged harassment, such as the prohibited grounds;
- the remedy sought;

- any other information or material the complainant considered relevant; and
- the signature of the complainant and the date.

Step 2: The person receiving the complaint reviews the procedures with the complainant and provides a written copy to the unit manager. Where it is alleged that the unit manager is involved in the harassment, the complaint is referred to another manager. The person receiving the complaint also provides a copy of the written complaint to the alleged harasser and reviews the procedures with the alleged harasser.

Step 3: The person receiving the complaint, the unit manager and other relevant parties such as human resource managers, review the complaint and determine whether conduct falls within the harassment policy. The group will decide whether there are appropriate resolution options, other than an investigation, acceptable to the complainant and the alleged harasser. This group will conduct the investigation if one is required.

Step 4: When an investigation is required, the unit manager appoints an investigator or investigation team.

Investigators will be trained in conducting an investigation in accordance with this policy and will have no apparent bias or interest in the outcome. Alternatively, the investigator will be chosen from a list of investigators approved by Employer's Name, the union, the OHC co-chair or the workplace representative.

Where the complainant and the alleged harasser objects to the appointment of an investigator, on the basis of bias or conflict of interest, the unit manager will appoint another investigator.

Step 5: Investigators must act in accordance with the following guidelines:

- The investigation commences and concludes as soon as reasonably possible.
- Witnesses are interviewed separately and written witness statements are prepared.
- Witnesses are asked to review and sign their written statements.
- Witnesses are advised to keep the investigation and the identity of the complainant and alleged harasser in confidence, unless required by law to disclose them.
- The complainant and alleged harasser are entitled to legal or union counsel.
- During the investigation, both the complainant and the alleged harasser are entitled to be informed of all the allegations and allowed to respond.

This does not mean either party is entitled to see or receive copies of the complete statements. However, both are entitled to see or receive an adequate summary of the evidence to make a full response.

Step 6: Once the investigation is complete, investigators will prepare a written report setting out a summary of the evidence, a description of any conflict in the evidence, conclusions and reasons for reaching those conclusions, as well as the recommended corrective action if harassment has occurred.

The report will be delivered to the unit manager, the complainant and the alleged harasser. The report is marked confidential and delivered with the notation that it should be kept in confidence unless disclosure is required by law or is necessary to implement corrective action.

Step 7: The unit manager will then:

- Take appropriate corrective action.
- Inform the complainant and harasser of the corrective action.
- Inform the complainant of the rights to file a complaint with the Saskatchewan Occupational Health and Safety Division or The Saskatchewan Human Rights Commission.

Note: Where the corrective action is different from the action recommended in the report, the unit manager should provide reasons for not taking the investigators' recommended action.

Step 8: After corrective action has been taken, the unit manager follows up with the complainant to ensure that the corrective action was effective. If the complainant indicates harassment has not ended, or suffers reprisal, the unit manager should take additional or alternative corrective action. Further investigation may be necessary.

Confidentiality: Employer's Name, or anyone acting on behalf of the company, should not disclose the name of the complainant or the alleged harasser, nor any information that may identify them. The disclosure of such information may be necessary to conduct the investigation, implement corrective action or pursue other legal remedies.

All documents and statements obtained during the course of the investigation, including the names and copies of witness statements, should not be disclosed to any person unless required by law.

## **Taking Action to Stop and Prevent Harassment**

In taking action to stop harassment and prevent its reoccurrence, Employer's Name will be guided by the following:

### **Individual Awareness and Counselling**

People may not be aware of the effects of their behavior. In many cases, speaking to the person in private about the inappropriate behavior will help resolve a situation.

In certain instances, it may be more effective for a supervisor to speak with the offending person or to arrange and facilitate a meeting between the complainant and alleged harasser.

Complainants should not be encouraged to confront the alleged harasser if they are reluctant, if the alleged harassment is of a serious nature or if the alleged harasser denies the alleged conduct.

### **Staff Awareness and Counselling**

Standards of behavior change over the years. Some individuals or groups may not be aware behavior that was acceptable in the past, is not acceptable anymore. A staff awareness session may be helpful to correct problems based on lack of awareness. Relevant videos, lectures and facilitated group discussions may increase awareness of behaviors that are unacceptable and the reasons for the changes.

### **Interim Action**

A unit manager may have grounds to believe a complainant will be exposed to continued harassment or reprisal while waiting for the investigation or resolution process to occur. The unit manager must take immediate action to protect the worker from continued harassment or reprisal. Any interim action should respect the alleged harasser's rights based on the employment contract or collective bargaining agreement.

Considering the above-mentioned rights, the unit manager's action may include:

- cautioning the alleged harasser about the types of behavior that will not be tolerated;
- moving the alleged harasser to another work unit;
- moving the complainant to another work unit at the complainant's request; and
- suspending the alleged harasser with pay while waiting for a final determination.

### **Mediation**

Mediation offers both parties the opportunity to develop an understanding of the problem and resolve the complaint before or during the formal investigation process. The mediator facilitates separate discussions or joint meetings between the complainant and the alleged harasser.

Mediation may take place at any point in the resolution process as long as both parties agree to participate. Where the complainant and alleged harasser agree to participate in mediation, *Employer's Name* \_\_\_\_\_ shall arrange for a mediator, who is trained and independent.

### **Disciplinary Action**

An employee who has knowingly engaged or participated in the harassment of a co-worker will be disciplined. The discipline will be subject to the employee's rights under the employment contract or collective bargaining agreement.

Discipline may include reprimand, relocation, demotion, suspension or termination of employment.

The severity of discipline will depend on:

*Seriousness of the Alleged Conduct*

- whether the conduct is an offence under the criminal code;
- whether the conduct is an offence under the Act or *The Saskatchewan Human Rights Code*;
- the extent of the mental or physical injury caused to the complainant;
- whether the harasser persisted in behavior that was known to be offensive to the complainant; or
- whether the harasser abused a position of authority.

*Risk of the Harasser Continuing with Similar Harassment of the Complainant or Others*

- whether the harasser acknowledges that conduct was unacceptable and makes a commitment to refrain from future harassment;
- whether the harasser has apologized to the complainant or taken action to repair any harm; or
- whether the harasser has agreed to participate in awareness sessions, training or other recommended counselling or treatment.

### **Third-party Harassers**

This policy covers harassment connected to any matter or circumstance arising out of the worker's employment. Customers, clients, patients, contractors or their workers and others invited to the workplace could harass an employee.

\_\_\_\_\_ *Employer's Name* may have limited ability to investigate or control their conduct. However, \_\_\_\_\_ *Employer's Name* shall take reasonably practicable action to stop or reduce the risk to its workers of being harassed by third parties.

This action may include:

- posting the harassment policy in a location visible to third parties; and
- requiring certain contractors and their workers to accept and meet the terms of the harassment policy; and
- removing workers who participate in harassment.

Where a client or customer has been asked to stop abusing or harassing a worker and does not, workers are authorized to:

- end telephone conversations;
- politely decline service; and
- ask the customer or client to leave the workplace.

## Malicious Complaints

Where an investigation finds a complainant has knowingly made a false allegation, the complainant will be subject to appropriate discipline.

## Other Options for Complainants

Nothing in this policy prevents or discourages a worker from referring a harassment complaint to the Saskatchewan Occupational Health and Safety Division under *The Saskatchewan Employment Act* and regulations.

A worker may also file a complaint with the Saskatchewan Human Rights Commission under *The Saskatchewan Human Rights Code*.

A worker also retains the right to exercise any other legal avenues available.



# Sample Employer Formal Harassment Complaint Form

## Complainant Information:

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Work Unit: \_\_\_\_\_ Job Title \_\_\_\_\_

Supervisor's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

## Witness Information

List names of possible witnesses.

Name	Position	Contact Phone Number

## Information about the individual(s) you feel has/have harassed you:

Name of person(s) against whom this complaint is made :

Date of incident (dd/mm/yyyy): \_\_\_\_\_

**In your opinion is the harassment based on any of the following?** Check the boxes that apply to your situation.

- |                        |               |                   |
|------------------------|---------------|-------------------|
| Sexual Orientation     | Religion      | Sex               |
| Nationality            | Disability    | Age               |
| Place of Origin        | Family Status | Creed             |
| Physical Weight/Height | Colour        | Race              |
| Marital Status         | Ancestry      | None of the Above |

**If not based on any of the above grounds, is the harassment based on either of the following:**

a) Repeated incidents that have caused you to be humiliated or intimidated.      Yes      No

OR

b) A single serious incident that has had a lasting harmful effect on you.      Yes      No

**In your own words, describe the conduct, comments or display you found objectionable. Give details of date and location of the incident(s) that is/are the basis of your complaint.**

**What type of resolution do you seek? (e.g., supervisor to direct or counsel person to correct conduct; facilitated meeting with alleged harasser; apology; workshops or training sessions; mediations; or other.)**

## Declaration

I hereby confirm the statement(s) contained in this complaint are true to the best of my knowledge. I understand a copy of this complaint will be provided to the alleged harasser for the purpose of investigating this complaint.

Signature: \_\_\_\_\_ Date (dd/mm/yyyy): \_\_\_\_\_

I acknowledge receipt of this complaint.

Supervisor's Signature: \_\_\_\_\_ Date (dd/mm/yyyy): \_\_\_\_\_

## Sample B: Harassment Policy for Saskatchewan Workplaces

# Harassment Policy

## Date:

**Harassment Policy Statement for:** \_\_\_\_\_

## Statement of Commitment

Every employee is entitled to employment free of harassment. Employer's Name is committed to a harassment-free workplace where everyone is treated with dignity and respect.

## Definition of Harassment

Pursuant to 3-1(1)(l) of *The Saskatchewan Employment Act*, harassment means:

- any inappropriate conduct, comment, display, action or gesture by a person that constitutes a threat to the health or safety of the worker, and is either:
  - based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or
  - adversely affects the worker's psychological or physical well-being and that the person knows, or ought reasonably to know, would cause a worker to be humiliated or intimidated (sometimes referred to as personal harassment).

Personal harassment must involve repeated occurrences; however, a single serious incident may also constitute harassment if it is shown to have a lasting harmful effect on a worker. It does not include any reasonable action taken relating to the management of the place of employment.

Sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome, is also prohibited.

## Employer's Commitment

Employer's Name, and its managers and supervisors, will take all complaints of harassment seriously. We are committed to implementing this policy and to ensuring it is effective in preventing and stopping harassment, as well as creating a productive and respectful workplace.

## Employee's Duty

In accordance with Part III of *The Saskatchewan Employment Act*, all employees, including managers and supervisors employed by Employer's Name, shall refrain from causing or participating in the harassment of another employee, and co-operate with any person investigating harassment complaints.

*A copy of the company's full harassment policy can be found at: xxx*

## Complaint Procedure

An employee who believes that he or she has been subjected to harassment is encouraged to first clearly and firmly make known to the alleged harasser that the harassment is objectionable and must stop.

Where this cannot be done, or is unsuccessful, the employee should report the alleged harassment to the employer, or to one of the persons designated by the employer to receive complaints of harassment, namely:

_____	_____
Name	Position
_____	_____
Name	Position
_____	_____
Name	Position
_____	_____
Name	Position

Once a person designated by the employer receives a complaint, that person shall immediately bring the complaint to the attention of the employer.

The employer will discuss options to resolve the complaint with the complainant. Where the conflict cannot be promptly resolved in a matter satisfactory to the complainant, the employer will notify the alleged harasser, provide the alleged harasser with information concerning the circumstances of the complaint and undertake a confidential investigation.

Following the conclusion of the investigation, the employer will inform the complainant and the alleged harasser of the results.

Where harassment has been substantiated, the employer will take appropriate corrective action.

## Confidentiality

\_\_\_\_\_, *Employer's Name*, will not disclose the identity of the complainant or alleged harasser, except where disclosure is necessary to investigate or take disciplinary action, or where such disclosure is required by law.

## Other Options for Complaints

Nothing in this policy prevents or discourages an employee from referring a harassment to the Occupational Health and Safety Division or the Saskatchewan Human Rights Commission. An employee also retains the right to exercise any other legal avenues available.



# Harassment Prevention

## An employer's guide for developing a harassment policy

2016

For more information, please contact the Ministry of Labour Relations and Workplace Safety Occupational Health and Safety Division at:

### **Regina**

300 - 1870 Albert Street  
REGINA, CANADA S4P 4W1

Inquiry: 306-787-4496  
Toll Free: 1-800-567-7233

### **Saskatoon**

8th Floor, 122 3rd Avenue North  
SASKATOON, CANADA S7K 2H6

Inquiry: 306-933-5052  
Toll Free: 1-800-667-5023