

A GUIDE TO
WORKPLACE HARASSMENT
INVESTIGATIONS



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Introduction

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

Employees and employers share a responsibility to ensure that their workplaces are free of harassment. In Saskatchewan, employers are required to implement a written policy to prevent harassment in the workplace and to take action to stop harassment if it is occurring.

The legal framework for employers to prevent and respond to workplace harassment is based in common law, legislation, regulations, collective agreements (where applicable) and employer policy. Taken together, they typically form a comprehensive framework for employers and employees to respond to circumstances that may constitute workplace harassment.

The Saskatchewan Employment Act establish the legislative framework for understanding what constitutes harassment in the workplace. It also establishes the responsibilities of employers to ensure reasonable steps are taken to prevent and stop harassment that arises out of, or is connected to, a worker's employment. Where the employer has knowledge of alleged harassment, the employer must take steps to respond and can be found liable for failing to take steps to investigate or otherwise respond.

Three categories of prohibited activity are described in the legislation. The first 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.

Secondly, the legislation includes protection against sexual harassment.



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When a complaint is made by an employee, the employer must ensure that the steps in their policy are followed and the complaint is responded to

The Act also protects workers against personal harassment that is not based on any of the prohibited grounds described above. 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: and
- the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated.

Day-to-day management or supervisory actions do not fall within the definition of personal harassment. The Occupational Health and Safety Branch of the Ministry of Labour provides the following activities as examples: decisions regarding work assignments, job assessments and evaluations, workplace inspections, implementation of appropriate dress codes and disciplinary actions.

Every employer is required under the Act to ensure that, as is reasonably practicable, their employees are protected from harassment in their workplace and from any harassment that arises out of their employment. Each Saskatchewan employer must have a written harassment policy. In addition the employer must ensure the policy is implemented and is effective. In some cases, where the employer is federally regulated, the Canada Labour Code and the Canadian Human Rights Code apply.

When an employee makes a complaint, the employer must ensure that the steps in their policy are followed and the complaint is responded to. One option for the employer is to engage an external investigator to review the complaint and determine whether the complaint is grounded and whether the actions complained of constitute harassment.



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When to engage in an external review

The decision to engage in an external review should be guided by the employer's policy and can be informed by a number of factors:

An external reviewer will provide an increased level of objectivity

1. A formal written complaint has been made against a named person, alleging harassment. If the employer's policy provides for informal or internal attempts to resolve the issue before a formal complaint and investigation occurs, these steps should be taken. The formal complaint and investigation may occur after, should the informal steps not resolve the issue.
2. An external reviewer will provide an increased level of objectivity. Circumstances that may warrant the bringing in an external reviewer include situations where the investigation may be subject to another process like a grievance, the employer has undertaken steps to resolve the matter internally and has been unsuccessful or where there has been a pattern of conduct that causes the employer concern.
3. The employer does not have the internal capacity to undertake a harassment investigation.
4. Complexity of the complaint might also suggest that the situation warrants an external review. Complexity could involve multiple incidents in the complaint, incidents that occur over a long period, multiple complainants, multiple respondents, multiple witnesses, or a combination of these factors.
5. In cases of serious allegations like sexual harassment, the employer should always conduct an external investigation.



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Rules of Natural Justice

The principles of natural justice will guide any investigation:

1. Those alleged to have committed harassment are assumed innocent unless and until sufficient evidence indicates otherwise. The burden of proof is based on a balance of probabilities and rests on the individual making the complaint. In other words, the complainant has to prove on a balance of probabilities that the allegations occurred. Generally, the balance of probabilities means that the actions complained of are more likely to have occurred than not.
2. Full disclosure of the details of the complaint and the response is provided to the complainant and respondent. The respondent has a right to see the complaint against him or her. Both the complainant and respondent have a right to read and approve their own statements.
3. Witness statements (other than those of the complainant or respondent) may be disclosed to the complainant or respondent, depending on the circumstances of the complaint. The employer's policy usually guides the disclosure of witness information, including their identity.
4. Redirect interviews will be held as necessary with the complainant and respondent if further information is required.
5. Both complainant and respondent are allowed to have representation throughout the process. Representation may be legal counsel, a union representative or another individual as directed by the employer's policy.

Both complainant and respondent are allowed to have representation throughout the process



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Investigation Principles

D.C. Strategic Management (DCSM) will conduct an investigation consistent with the employer's policy. The following principles will be adhered to:

1. The investigation will be thorough, objective and as timely as possible. To the extent practical, investigators will speak to all witnesses necessary.
2. The primary role of the investigators is to uncover and corroborate facts in an objective manner. In forming conclusions, the investigators will take into account credibility of all witnesses.
3. Interviews will be conducted as soon as possible in locations that will not compromise the investigation. Interviews will be held at locations away from the workplace.
4. Two investigators will be present at all interviews, one as the lead interviewer and one as a secondary interviewer and note-taker. Interviews are not typically audio recorded. Detailed notes are taken and are provided to the interviewee for verification.

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Investigation Process

DCSM will undertake the following steps in conducting an investigation:

1. Provide the employer with a mandate letter outlining the principles, scope and process of the investigation.
2. Confirm that proper authorities have been notified of the process, including unions where appropriate.
3. DCSM will strongly advise all parties that they are expected to uphold full confidentiality and not discuss the facts of the case with others.
4. At the start of the interview process, the investigator will state his or her mandate, including:
 - the nature of the investigation process;
 - a description of the relevant policies, legislation and collective agreement provisions;
 - a description of the rules of natural justice;
 - general timelines; and
 - interview expectations, including co-operation, confidentiality and the fact that all comments are “on-the-record.”
5. A list of witnesses will be established and interviews arranged. Additional witness interviews will be added to the interview list as they are identified throughout the process.
6. Upon conclusion of the interviews, the investigators will provide a final report to the employer. The report will include an overview of the complaint, a summary of statements, findings of fact and a conclusion as to whether harassment occurred.
7. All statements will accompany the final report. Any relevant documents relied on for the investigators’ conclusions will accompany the report.

Two investigators will be present at all interviews, one as the lead interviewer and one as a secondary interviewer and note-taker



About us

D.C. Strategic Management is a management consulting firm based in Regina, Saskatchewan, specializing in strategy development and implementation, organizational development, including workplace investigations, and strategic communications. Past clients include post-secondary institutions, the federal government, trade unions, health authorities, regulatory bodies and the not-for-profit sector. A team of two experienced investigators conducts workplace investigations: Bonnie Durnford and Rob Cunningham.

Bonnie Durnford

Partner, DCSM

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Bonnie is a highly experienced manager with over 21 years of experience in public sector organizations, seven years as a Deputy Minister and three years as an Assistant Deputy Minister. She has proven ability in workplace harassment investigation, and management of large organizations.

Education

2015 – Coaching Skills, Queen’s University

2013 – Investigation Training, Law Society of Saskatchewan

2008 – Workplace Investigator Training, Hill Advisory Services

1982 – Member of the Saskatchewan Bar
(currently non-practicing)

1981 – Bachelor of Laws (LL.B.), University of Saskatchewan

1978 – Bachelor of Arts, Great Distinction, University of Regina (Campion College)



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Rob Cunningham

Partner, DCSM

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Rob is experienced at managing large organizations and dealing with difficult issues. Rob has over 13 years experience in the public sector as an Assistant Deputy Minister. Areas of proven expertise include workplace harassment investigations, management of large organizations and strategic communication and issues management.

Education

2015 – Coaching Skills, Queen’s University

2013 – Investigation Training, Law Society of Saskatchewan

2008 – Workplace Investigator Training, Hill Advisory Services

1997 – Master of Arts (Sociology: History of Federal Aboriginal Policy), University of Saskatchewan

1997 – Introduction to Mediation, Saskatchewan Justice

1996 – Resolving Conflict Constructively, Saskatchewan Justice

1990 – Bachelor of Arts (Sociology), High Honours, University of Saskatchewan



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