

Is it Harassment? A Tool to Guide Employees

How to use this tool

This tool will serve to help you in the analysis of a situation you believe might be workplace harassment. This tool can be used as a starting point in your analysis to help you better understand what constitutes harassment under the Treasury Board policy definition. It is to be used solely as a guide to assist you in reflecting on the circumstances of your situation.

If, after reading this document, you are still unsure if your situation is harassment, please consult your manager, a departmental harassment prevention advisor, a departmental informal conflict resolution practitioner, the Employee Assistance Program or a union representative.

Each case is **unique** and should be **examined in its own context** and according to the surrounding **circumstances as a whole**. The impact on you, the complainant, should be **significant** as harassment is **serious**.

Definition of Harassment

Under the [*Policy on Harassment Prevention and Resolution*](#), harassment is defined as:

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the [*Canadian Human Rights Act*](#) (i.e. based on race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

More specifically, harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Essentially, the definition of harassment means that **more than one act or event is needed** in order to constitute harassment and that taken individually, this act or event need not constitute harassment. It is the repetition that generates the harassment. In other words, harassment consists of repeated and persistent behaviors towards an individual to torment, undermine, frustrate, or provoke a reaction from that person. It is a behavior that with persistence, pressures, frightens, intimidates, or incapacitates another person. Each behavior viewed individually may seem inoffensive; it is the synergy and repetitive characteristic of the behaviors that produce harmful effects.

However, **one single incident** can constitute harassment when it is demonstrated that it is **severe** and has a **significant and lasting impact** on the complainant.

Note 1: The legitimate and proper exercise of management's authority or responsibility does not constitute harassment.

Note 2: Sexual and physical assaults are defined by the [Criminal Code](#) and will be dealt with according to that legislation. If you have been assaulted, you should seek assistance immediately and contact the police.

Where can harassment occur?

The scope of the policy applies to employee behaviors in the workplace or at any location or any event related to work, including while:

- On travel status,
- At a conference where the attendance is sponsored by the employer,
- At employer sponsored training activities/sessions, and
- At employer sponsored events, including social events.

What criteria have to be met to establish whether there was harassment?

Harassment is serious. To substantiate harassment allegations, it must be demonstrated that, according to the balance of probability:

The respondent displayed an **improper and offensive conduct** including objectionable acts, comments or displays, or acts of intimidation or threats, or acts, comments or displays in relation to a prohibited ground of discrimination under the [Canadian Human Rights Act](#);

The behavior was **directed at** the complainant;

The complainant was **offended or harmed**, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;

The respondent **knew or reasonably ought to have known** that such behavior would cause offence or harm;

The behavior occurred in the **workplace** or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events; and

There was a **series of incidents or one severe incident** which had a lasting impact on the individual. Note that in the case of sexual harassment particularly, a single incident may be viewed to be more significant in circumstances when your relationship at work is one where the respondent has influence or power over you with regard to career advancement, performance review, absenteeism, day to day management of activities, work assignments and the carrying out of progressive disciplinary measures.

In order to make a finding of harassment, **each** of the above elements must be present. If even one of these elements cannot be proven, there will not likely be a finding of harassment.

Time limit to file a complaint

A complaint of harassment must be filed **within twelve months** of the last event of alleged harassment leading to the complaint unless there are extenuating circumstances. The information provided must be as precise and concise as possible.

Allegations can go back further in time to describe incidents or events if you can demonstrate that they are directly related to the last event of alleged harassment that led to your complaint. This is especially necessary in cases where you intend to demonstrate a pattern of events.

Examples of what constitutes harassment when repeated or one single severe event

Preventing a person from expressing himself or herself: yelling at the person; threatening; constantly interrupting that person; prohibiting the person from speaking to others.

Unwanted sexual advances which may or may not be accompanied by threats or explicit or implicit promises.

Making rude, degrading or offensive remarks.

Making gestures that seek to intimidate.

Engaging in reprisals for having made a complaint under this Policy.

Discrediting the person by spreading malicious gossip or rumors, ridiculing him/her, humiliating him/her, calling into question his/her convictions or his/her private life, shouting abuse at him/her.

Compelling the person to perform tasks that are inferior to his/her competencies that demean or belittle him/her, setting the person up for failure, name calling in private or in front of others.

Isolating the person by no longer talking to him or her, denying or ignoring his or her presence, distancing him or her from others.

Destabilizing the person by making fun of his or her beliefs, values, political and/or religious choices, and mocking his or her weak points.

Harassing a person based on a prohibited ground of discrimination (as described in [*Canadian Human Rights Act*](#) and contained in the Policy).

Examples of what does not constitute harassment

Normal exercise of management's right to manage such as the day-to-day management of operations, performance at work or absenteeism, the assignment of tasks, reference checks, and the application of progressive discipline, up to and including termination, constitute the legitimate exercise of management's authority. (Note. While exercising the normal managerial

functions is not harassment, how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment.)

Workplace conflict, does not constitute harassment but could turn into harassment if no steps are taken to resolve the conflict.

Work related stress in itself does not constitute harassment, but the accumulation of stress factors may increase the risk of harassment.

Difficult conditions of employment, professional constraints, and organizational changes.

A single or isolated incident such as an inappropriate remark or having an abrupt manner.

A social relationship welcomed by both individuals.

Friendly gestures among co-workers such as a pat on the back.

For more detailed information on what may or may not constitute harassment, refer to [Annexes A and B](#).

To help frame the situation, ask yourself:

What was the context in which the incident(s) took place?

Was the behavior improper?

Was the behavior directed at me?

Was I offended by the behavior?

Did the incident occur within the scope of the Policy?

Was this the first incident or is it a series of incidents?

What is my work relationship with this individual?

Are individuals doing things, saying things to make me feel uncomfortable?

Would a reasonable person well informed of all the circumstances and finding himself or herself in the same situation as yours view the conduct as unwelcome or offensive? The behavior in question is not only assessed by the impact or effect on yourself, but it is also assessed against a reasonably objective standard.

Did the behavior exceed the reasonable and usual limits of interaction in the workplace? Would a reasonable person be offended or harmed by this conduct?

As I describe and evaluate my work environment, are there other factors contributing to the situation (level of stress, workload, professional constraints, etc.)?

Am I being singled out and treated differently than my colleagues, being given the “silent treatment”?

Is the incident related to my work performance?

Am I being criticized regularly even though my standards have not changed and my performance has always been satisfactory or better?

Am I being blamed for mistakes I believe are not my fault?

What impact(s) and/or consequences did this incident(s) have on me?

- Physically?
- Emotionally?
- Professionally?

Are the working relationships different from any I have previously experienced?

Are individuals putting me at risk in some way?

How would this behavior be perceived by other work colleagues?

Are there other factors in my life that could impact on my reaction to this event?

Is this usual behavior for the individual? Are there any personal or professional circumstances that are contributing to his/her behavior?

Have I spoken to the individual and tried to clarify the situation? Have I informed him/her of the impact the situation has had on me?

Have I asked him/her to stop the behavior?

Has the other person expressed regrets and stopped or has the behavior continued?

Have I considered resolving the situation through informal means of conflict resolution, such as a facilitated discussion, coaching or mediation?

If I choose to file a complaint, will it be done in good faith, characterized by the intention to honestly inform?

Poisoned work environment

A poisoned work environment refers to a workplace in which comments or behaviors create a hostile or offensive environment for individuals or groups and negatively affects communication and productivity. These activities (e.g., yelling at no one in particular; pounding a desk in frustration) are not necessarily directed at anyone in particular.

All employees are expected to act towards other individuals professionally and respectfully and to speak out against unacceptable behaviors in the workplace in a skillful and sensitive manner. As the improper conduct is not directed at anyone in particular, as per the definition of harassment, a witness may not

file a harassment complaint. Witnessing offensive behavior towards others in the workplace does not constitute harassment for that witness. However, the situation should be reported to the supervisor or to the manager at the next level and prompt action is expected to be taken. All managers are expected to intervene promptly when they become aware of improper or offensive conduct even when no complaint has been made.

However, please note that a behavior not directed at any one identifiable person becomes harassment only when it relates to a prohibited ground of discrimination (such as displaying sexually explicit material or telling racist or religious jokes).

If you believe you have been harassed

If you believe that you have been harassed, you are encouraged to make it known to the other person as soon as possible in an attempt to resolve the problem. The earlier the problem is addressed and discussed, the better the chance of it being resolved and the inappropriate behavior stopped.

If the problem is not resolved, or if you feel you cannot speak directly to the other person, you should notify your supervisor, or the manager at the next level.

In order to take the next steps to resolve this situation, you can also seek advice/support from:

- a departmental Informal Conflict Resolution practitioner
- a departmental Human Resources Branch
- a union representative
- a departmental Harassment Prevention advisor
- a Labor Relations advisor
- the Employee Assistance Program
- Other departmental resource person (Elder, Ombudsman)

For more information, please refer to the [Policy on Harassment Prevention and Resolution](#), the [Directive on the Harassment Complaint Process](#) and the [Treasury Board Secretariat website](#) for related tools and guides.