



Harassment Prevention Education: OHS Requirements

June 2021 (v.2)



Training elements outline

This document outlines the topics and information that must be provided in harassment prevention training for employers or employees. Training that includes detailed and thorough information on each of these topics will satisfy the requirements of the Newfoundland and Labrador Occupational Health and Safety (OHS) Act, Section s 24.2(1) and 24.2(2).

The Digital Government and Service NL OHS Division's [Explanation Guide](#) provides more detailed information on harassment prevention regulations. Please review [Part III of the Explanation Guide](#) and the 2020 Newfoundland and Labrador OHS [Act](#) and [Regulations](#) in conjunction with this document.

Provide a definition of harassment

All training should include the definition of harassment as found in the Newfoundland and Labrador OHS Regulations Section 22(2).

“Inappropriate vexatious conduct or comment by a person to a worker that the person knew or ought to have known would cause the worker to be humiliated, offended or intimidated.”

Vexatious is defined as causing or tending to cause annoyance, frustration or worry. Synonyms include vexing, annoying, irritating, irksome, displeasing and infuriating.

Explain what constitutes harassment

Training should make it clear that all types of harassment are prohibited in the workplace. It should also provide an outline of types of harassment including:

- Harassment based on prohibited grounds (as per Human Rights Act).
- Sexual harassment (a form of harassment based on prohibited grounds).
- Personal harassment (includes bullying).

Vexatious behaviour can be intentional or unintentional. It is usually apparent as an ongoing, repeated pattern of behaviour. It can also be a one-time incident, if that incident is perceived by the recipient to be particularly vexatious.

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, color, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion and constitutes a threat to the health or safety of the worker. This type of harassment is prohibited by the Human Rights Act as well as the Occupational Health and Safety Regulations,

Sexual harassment

Harassment based on prohibited grounds also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Personal harassment

This includes the term “bullying.” It includes any inappropriate conduct, comment, display, action or gesture by a person that adversely affects a worker’s psychological or physical wellbeing and constitutes a threat to the health and safety of that person. The perpetrator knows, or ought reasonably to know, that this behaviour would cause the person to be offended, humiliated or intimidated.

Personal harassment is a very common form of harassment in workplaces where harassment is taking place. It likely falls outside of the harassment defined as taking place based on prohibited grounds and is therefore not usually covered by Human Rights legislation.

Harassment also includes criminal harassment, commonly known as “stalking”. Section 264 of the Criminal Code makes it a crime.

Criminal Harassment (stalking) is defined as harassing behaviour including repeatedly following, communicating with or watching over one’s dwelling home.

Police should be called to investigate sexual and physical assaults, criminal harassment, uttering threats or damaging another person's property as these actions are criminal acts that are to be investigated as criminal matters. A police investigation may be taking place at the same time as a Human Rights investigation, and during OHS involvement.

The employer's harassment prevention plan is not intended to discourage a worker from exercising their rights under the Human Rights Act, 2010, the Criminal Code (Canada) or any other law of the province or of Canada.

Define "ought reasonably"

The phrase "ought reasonably" encompasses both a subjective and objective element. The phrase can be best explained by considering that even if a person is not aware that his/her behaviour is unwelcome (subjective), if a reasonable person in the same situation would have known that the behaviour was unwelcome, then that person "ought reasonably to have known" that his/her behavior was unwelcome.

Explain what is not considered harassment

Review the types of actions that do not constitute harassment.

Reasonable actions taken by an employer or supervisor while managing and directing workers are not considered harassment. This includes work assignments, scheduling, job assessment and evaluating work performance, inspecting workplaces, implementation of dress codes aimed at addressing safety considerations or to ensure adherence to business/professional attire norms, implementing health and safety measures and taking disciplinary action such as dismissing, suspending, demoting, or reprimanding with just cause. Done reasonably and fairly, these actions should not be considered workplace harassment.

Differences of opinion or minor disagreements between co-workers are also not generally considered to be workplace harassment, but can turn into harassment if not resolved. Difficult conditions of employment such as professional practice limitations, organizational changes or financial restrictions are also not considered harassment. Work related stress on its own does not constitute harassment. Managerial actions must be carried out in a manner that is reasonable and not abusive.

Actions are not considered harassment if they arise out of a relationship of mutual consent. Respectful workplace banter, interactions and behaviors that are considered the norm, such as respectful compliments on someone's outfit, would not constitute harassment unless there is a power imbalance.

Other situations not considered to be harassment include:

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

Model respectful and professional behavior

Training should touch on the role of the employer and supervisors to model respectful and professional behaviour at the workplace.

Employers should use effective management practices to clearly define tasks, roles and workload, and promote fairness and openness in the workplace. This will also lend itself to avoiding harassment complaints being made where regular managerial tasks are being undertaken.

Employers could 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 could also consider implementing CSA Standard CSA-Z1003 - Psychological Health and Safety in the Workplace.

Provide examples of unacceptable behaviours

Examples of harassing behaviours:

- Emotional, psychological abuse.
- Coercion or discrimination.
- Aggressive/abusive behaviour (verbally or in writing).
- Unreasonable demands and undue persistence.
- Purposely preventing someone from performing their work duties.
- Disruptive behaviour.
- Remarks, jokes or gossip that humiliates or embarrasses someone, even when unintentional

Training should include examples of unacceptable workplace behaviours that constitute harassment. This could be achieved using case studies and group discussion.

Provide overview of related legislation

Training should include a basic overview of the Newfoundland and Labrador OHS Act and Regulations as they relate to harassment and violence.

An overview can include (but not be limited to) the following points:

- OHS Act and Regulations are enforced by the OHS Division of Service NL.
- Officers may visit any provincially regulated workplace at any time without notice to perform an inspection.
- Officers will require production of documents and to speak to employees individually.
- In January 2020, the Regulations were amended to include harassment prevention requirements in the workplace.

Explain role of OHS Officers

Include a review of the role of Service NL OHS Officers in the enforcement of the Newfoundland and Labrador OHS Act and Regulations, specifically with regards to harassment prevention.

OHS Officers assess the employer's compliance with workplace harassment prevention regulations during inspections and respond to complaints in relation to harassment. They enforce legislative requirements where contraventions to the OHS legislation are identified.

An OHS Officer will also follow up with an employer to ensure the employer is compliant with the legislation. The OHS Officer will ensure that an employer implements their Harassment Prevention Plan. In the case of a complaint, it is the responsibility of the employer to investigate allegations of harassment at their workplace. If the OHS Division receives a complaint, the OHS Officer may order the employer to perform the investigation, or to have a third-party investigation performed. OHS Officers will not investigate the allegation of harassment itself, as that is the responsibility of the employer.

Employer's responsibility is to provide a healthy and safe workplace

Training should touch on the "employer's general duty" (Section 4 of the OHS Act) to ensure, where it is reasonably practicable, the health, safety and welfare of their workers, including protecting them from harassment by any party while the workers are performing duties related to work. Other specific duties are also listed in the Act. A copy of the Newfoundland and Labrador

OHS Act and Regulations is required to be accessible at the workplace. Employers should already be familiar with the general and specific duties of employers, supervisors and workers according to the Act and Regulations.

Developing a harassment prevention plan

Review the requirements of a harassment prevention plan

Employer training must include a review of the requirements of a harassment prevention plan. The Newfoundland and Labrador OHS Regulations, Section 24.1(1), states that an employer shall develop, implement and maintain a written harassment prevention plan in consultation with the OHS committee, worker representative or workplace health and safety designate.

Participants of the training must be provided with information on the elements that are required in a harassment prevention plan as outlined in Section 24.1(2) of the Newfoundland and Labrador OHS Regulations.

A harassment prevention plan must include the statements on commitment, obligations and responsibilities of employers, supervisors and workers as outlined in the harassment prevention OHS Regulations. It should also include procedures for reporting incidents of harassment, responding to complaints and providing notification of investigation results. Employers are also required to develop procedures for accessing an external third party to whom to report harassment allegations, for instances where an employer or supervisor is the “alleged harasser” (also referred to as the “respondent”).

Employees must be informed about the location and contents of the harassment prevention plan and what to expect.

Review employer responsibility

Harassment prevention

As much as is reasonably practicable, employers have the legal obligation to ensure 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.
- Conduct perpetrated by someone other than an employee, but with whom the worker

is required to meet, including clients, contractors or the public.

- 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.

Employer responsibilities include:

- Develop, implement and maintain a harassment prevention plan.
- Maintain confidentiality.
- Set out procedures for workers to report instances of harassment, including the procedure to report instances to an external, third party, where the employer or the supervisor is the respondent.
- Participate in training relating to harassment prevention.
- Provide training to employees regarding harassment prevention and details of the employer's harassment prevention plan.
- Set out the procedures to be followed after a complaint of workplace harassment is received.
- Set out the manner in which a complaint is investigated.
- Set out the procedures regarding notification of results of investigations and any actions to be taken as a result of an investigation.
- Protect workers from retaliation and provide support to workers when workplace harassment occurs.
- Make the harassment prevention plan accessible to all workers in the workplace.
- Review the harassment prevention plan as necessary but at least annually.
- Investigate complaints of workplace harassment, or obtain the services of a third party investigator where necessary.
- Pay for any expenses relating to an investigation by an impartial third party

A complaint can be made against an employer, supervisor or worker for violation of OHS legislation. The new provisions require the employer to deal with the complaint internally, following the procedures set out in their own Harassment Prevention Plan.

Notification of results and corrective actions

Employers are responsible to follow the procedures in their Harassment Prevention Plan, which outline how the notification of results and corrective actions will be provided to the parties involved in the complaint. Training should include a general overview of the range of corrective and disciplinary actions that might be considered, and that these relate with (and should not contradict) other disciplinary procedures which the employer already has in place, if any.

Providing access to external third parties

Employers are required to develop procedures for an employee to make a complaint to an external third party for instances where an employer or supervisor is the respondent.

These procedures must be included in the employer's harassment prevention plan and be readily available to all staff so that, in cases where these circumstances exist, the complainant is aware of, and can follow, the process.

An external provider should be someone who is not a direct report for an employee (e.g. supervisor, manager, lead hand). The person or organization should operate either separately from, or outside of, the work or business unit where the complaint originated and where the respondents work so that an impartial response to the report can take place.

In some organizations, this may be a person internal to the organization, but who, due to the size of the organization, is outside of many work units (e.g. Human Resources in a large, multi-location retailer). Where this is not possible due to the division of work or the size of an organization, the party must be truly external to the immediate organization. Some examples of types of external organizations which provide harassment investigation services include (but are not limited to) a legal firm, a human resources firm, a professional association or a company that specializes in receiving and dealing with harassment reports.

Provide access to education and training

Section 24.2(2) of the Newfoundland and Labrador OHS Regulations requires all employees to be trained on the topic of harassment prevention in the workplace. This training should include coverage of the same basic information provided to employer representatives (as per Section 24.2(1)). In addition, training should include information about the employer's own harassment prevention plan.

Employees should:

- Be able to locate the plan at any time.
- Understand what information it includes and how it pertains to them as an employee.
- Know who is responsible for the plan's maintenance and how it will be implemented (especially where there are multi-employer work sites).
- Know what the role of the union will be (where applicable).
- Know what kind of support to expect for any worker (including management) in the organization both during and after an investigation into an allegation.
- Know how to make a harassment complaint (to whom, using what method), and what to expect once a complaint has been submitted.
- Know how to report harassment and bullying should they witness it at the worksite, and what to expect once a report has been submitted.
- Be provided with information on their own legal obligations in the workplace where harassment prevention is concerned.

Maintaining confidentiality

Employers must address how they will maintain the confidentiality of all parties involved. This includes stating in their harassment prevention plan that any information obtained relating to workplace harassment, including personal information, will not be disclosed unless it is necessary for the purpose of an investigation, corrective action relating to the complaint or where required by law. It must also state the employer's responsibility to protect the confidentiality of information obtained in the course of conducting a risk assessment or investigation.

Personal information is defined as information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Supervisor and worker responsibilities

Apply the harassment prevention plan, and comply with it

Supervisors play an important and specific role in OHS at any workplace. Supervisors should be made aware of this role, including the requirement to protect the health and safety of employees, and to prevent harassment in the workplace. To successfully implement a harassment prevention plan, supervisors must set an example with their own behavior and address poor behaviour in others in a timely and respectful manner. The harassment prevention plan is specifically required by the OHS Regulations to include a statement that supervisors have an obligation to apply the organization's harassment prevention plan.

All workers (including supervisors) must:

- Take reasonable care not to engage in bullying or workplace harassment.
- Report observations or experiences of bullying and workplace harassment.
- Comply with the harassment prevention plan.
- Participate in harassment prevention training.

As per the Newfoundland and Labrador OHS Regulations Section 24.1(2)(c)(ii), workers are required to report observations or experiences of bullying and workplace harassment. A reporting procedure shall be included in the employer's harassment prevention plan.

Provide resources

Training should provide resources in harassment prevention where possible.

Examples of topics for resources:

- How to develop a [harassment prevention plan](#).
- How to develop strategies for restoration of the workplace post-harassment investigation.
- Worker/Supervisor/Employer (individual) support after an incident and after/during an investigation.
- Applicable websites/organizations.
- Helpline contact information.
- Mental health.
- Employee assistance program.
- NL OHS [Act and Regulations](#)
- NL OHS [Explanation Guide](#)

If you need more information on how to develop a Harassment Prevention Plan, please contact WorkplaceNL at 1.800.563.9000 or info@workplacnl.ca.