

***Harassment & Discriminatory Action  
Prevention Unit  
Legal Affairs Branch  
Occupational Health and Safety Division  
Saskatoon, Saskatchewan***

# **Workplace Harassment & *The Saskatchewan Employment Act***

# The Menu

- Legislative Background/History
- New Legislative Definition of Harassment
- What is Reasonable Managerial Action
- Bullies, Victims and the Effects
- Duties
- Discriminatory Action
- Appeals

# Why Occupational Health & Safety?

- Harassment is a workplace health & safety issue
- Saskatchewan has had anti-harassment legislation based on prohibited grounds since 1993
- The Act provides minimum standards for workplace health & safety

# Harassment

- The Act & regulations require employers to:
  - ✓ Prevent harassment
  - ✓ Stop harassment when it occurs
  - ✓ Develop & implement a policy that complies with regulation 36

# Prohibited Grounds

- In 2007, the definition of harassment expanded to include ‘personal harassment’
  - ✓ Personal harassment is ‘*bullying*’
  - ✓ The new, expanded part of the definition for harassment is not retroactive
  - ✓ Saskatchewan’s model is similar to Quebec’s model
- How does the definition read now?

# Prohibited Grounds

- 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
  - ✓ Constitutes a threat to the health or safety of the worker

# Prohibited Grounds

- One incident is enough to form the basis of a complaint
- It must be established the harassment arose out of the worker's employment
- It is not restricted to conduct that occurred at the place of employment or was perpetrated by other employees



# Prohibited Grounds

- The display of a poster or comments overheard by a worker, but not directed towards a worker, also fit the definition
- Reasonable managerial actions are not harassment

# Personal Harassment

- 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 reasonably to know would cause a worker to be humiliated or intimidated
  - ✓ Constitutes a threat to the health & safety of the worker

# Personal Harassment Includes

- Verbal or written abuse or threats
- Insulting, derogatory or degrading comments, jokes or gestures
- Personal ridicule or malicious gossip
- Work sabotage
- Refusing to work or co-operate with others
- Interference with or vandalism of personal property
- Unwelcome physical contact

# Harassment Is

- Mistreatment perpetrated by another employee  
e.g., supervisor to worker; worker to worker; worker to supervisor
- Mistreatment perpetrated by someone, other than an employee, with whom the worker is required to work  
e.g., clients, the public

# What is Bullying?

- Bullying, is the act of intentionally causing harm to others through:
  - ✓ Verbal harassment
  - ✓ Physical assault, or other more subtle methods of coercion such as manipulation
- Bullies poison their work environment with low morale, fear, anger & depression



# Bullies

- Workplace bullying includes: verbal, nonverbal, psychological abuse & humiliation
- It is characterized by:
  - ✓ Repetition
  - ✓ Duration
  - ✓ Escalation
  - ✓ Power disparity
  - ✓ Intent

# Common Bullying Tactics

- Falsely accuses victim of errors
- Silent treatment
- Creates rules 'on the fly'
- Disregards quality work
- Criticizes constantly
- Sets different standards for the victim
- Uses confidential information to humiliate the victim
- Makes unrealistic demands
- Ignores, overrules, isolates & excludes the victim



# Victims

- Victims of bullying can suffer from:
  - ✓ Long-term emotional problems (loneliness, depression)
  - ✓ Physical problems (stress, anxiety, weakened immune system)
  - ✓ Behavioral problems ( loss of confidence, missing work, isolation)
  - ✓ Academic problems (poor concentration)
- At work bullying causes less productivity, an increase in absenteeism & disgruntled employees

# Victims

- Victims' personal relationships suffer from the unhealthy work relationship leading to:
  - ✓ Marital pressure caused by the victim's anxiety & anger
  - ✓ Loss of friends as the victim obsesses about the situation
  - ✓ = more loss

# What to Do?

- The victim needs to:
  - ✓ Address their concerns with the perpetrator
  - ✓ Let the perpetrator know the behavior is not acceptable & it should stop
- If the behavior continues, the victim should bring the harassment to the attention of their employer/supervisor
- The employer will explain the resolution options

# Types of Conflict at Work

- Whether you like it or not, you are going to face conflicts at work
- Ask yourself - Is this harassment or a personality conflict?
- These two are often confused

# Types of Conflict at Work

- Interdependence Conflicts –input and output
- Differences in Style- A vs B personality types
- Differences in Background/Gender
- Differences in Leadership- Leaders have different styles
- Differences in Personality-fueled by emotion and perceptions about somebody else's motives and character.

# Diversity at Work

- Cultural diversity has become the norm in Saskatchewan
- The workplace is a significant segment of our society where cultural differences are established
- At work, strong leadership is needed to ensure diversity is understood & embraced as a good thing

# Harassment is NOT

- Any reasonable action taken by an employer or supervisor relating to the management and direction of the employer's workers or the place or employment.



# Harassment is NOT

- At work, employers must manage & supervise workers
- Reasonable managerial action is not harassment, even if it involves unpleasant consequences



# Examples of Reasonable Action

- Work assignments
- Appraisals of performance & attendance
- Progressive discipline
- Training
- Supervision
- Establishing deadlines
- Establishing dress codes & hygiene standards

# Examples of Reasonable Action

- Enforcing occupational health & safety standards



# Duties

- Role of Employer
- Role of Worker
- Role of OHS Division

# Employers Must

- Take action to prevent & stop harassment
- Fulfill their legal duty under section 3-8(d) of the Act
- Develop & implement a harassment policy that meets the requirements of regulation 36

# Harassment

- Covers incidents that occur at work & during work hours
- Extends to incidents that happen outside the usual workplace or work hours, but are connected to, or arise out of the worker's employment  
e.g., work sponsored social event, conference



# Employers' Legal Duty

- Section 3-8(d) of the Act:

Every employer shall ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the worker's employment.

# The Worker

- Under the Act, section 3-10(b), workers have a duty to refrain from causing or participating in harassment





# How to Meet this Duty

- Commit to preventing and stopping harassment
- Train workers, supervisors & managers about harassment prevention
- Use the harassment policy & be consistent and timely
- Document training & complaints

# Regulation 36

- An employer, must, in consultation with the OHC or employee representative, develop & implement a harassment policy
- The policy must be posted & readily available to workers
- Employers must implement effective policies to prevent & end harassment when it occurs
- Actions include:
  - ✓ Preventative measures
  - ✓ Investigating complaints fairly
  - ✓ Stopping harassment when it occurs

# Violence

- 37(1) In this section, ‘violence’ means the attempted, threatened or actual conduct of a person that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that the worker is at risk of injury.

- **Section 3 of the SEA states:**
- *3-21(1) An employer at a prescribed place of employment where violent situations*
- *have occurred or may reasonably be expected to occur shall develop and implement a*
- *policy statement to deal with potentially violent situations after consultation with:*
  - *– the occupational health committee;*
  - *– the occupational health and safety representative; or*
  - *– the workers where there is no occupational health committee and no occupational health and safety representative.*

- Incidents of violence include attempted or actual assaults or any threatening statement or behaviour towards a worker made by any person, which gives the worker reasonable cause to believe that he or she is at risk of injury.
- The regulation covers the conduct of everyone at the place of employment, including the public, customers, employers, supervisors, managers and co-workers.
- Incidents of violence may occur at the place of employment, at a worksite or in other work-related areas.

# Prescribed places of employment

- (a) services provided by health care facilities mentioned in sub-clauses 468(b)(i) to (v) and (xii);
- (b) pharmaceutical-dispensing services;
- (c) education services;
- (d) police services;
- (e) corrections services;
- (f) other law enforcement services;
- (g) security services;
- (h) crisis counseling and intervention services;
- (i) retail sales in establishments that are open between the hours of 11:00 p.m. and 6:00 a.m.;
- (j) financial services;
- (k) the sale of alcoholic beverages or the provision of premises for the consumption of alcoholic beverages;
- (l) taxi services
- (m) transit services.

# OHS

- Officers enforce the OHS legislation, educate & inform workplaces
- Anti-harassment legislation applies only to workers as defined in the Act
- OHS has jurisdiction over Saskatchewan's non-federal workplaces

# Reporting Harassment

- Workers can contact OHS to report they are being harassed
- Employers can contact OHS for assistance
- Depending on the situation, an informal or formal process may be used



# Informal Process

- An Officer can provide information or coaching
- An informal complaint can be anonymous
- Informal steps might include:
  - ✓ Meeting with the various people involved to see if the concerns can be resolved without a formal investigation

# Formal Process

- OHS issues a Harassment Questionnaire
- The worker fills the questionnaire with a description of the events that occurred, witnesses etc.
- In the event of a formal investigation, confidentiality is important, but the complainant cannot remain anonymous

# Enforcement Measures

- In writing, an occupational health officer will direct the employer to:
  - ✓ Develop & implement a harassment policy that meets the requirements of regulation 36
  - ✓ Require the employer to investigate the complaint
  - ✓ Require the employer to ensure the worker is not exposed to harassment

# Protection from Reprisals

- The Act, section 3-35, forbids **discriminatory action** (e.g., discipline, termination, suspension) for victims who raise health & safety concerns or seek enforcement
- Workers who raise harassment concerns & witnesses who give information during investigations are also protected

# Protection from Reprisals

- When it happens, employers are asked to provide 'good & sufficient other reasons' for discriminatory action
- If an occupational health officer determines the employer has taken a discriminatory action, the officer may order reinstatement & payment of lost wages

# Appeals

- An officer's written decision may be appealed to the Special Adjudicator who is independent of the Ministry
- The Special Adjudicator can use mediation or other dispute resolution techniques to assist the parties with a settlement

# Need Help?

- A worker needing help or information can go to their:
  - ✓ Supervisor,
  - ✓ Human Resource Branch
  - ✓ Occupational Health Committee
  - ✓ Local Union official Human Rights Commission
  - ✓ The Employee & Family Assistance Program Occupational Health and Safety
  - ✓ Workers Advocate
  - ✓ Immigration Integrity Unit
  - ✓ The police

# Questions?



# Contact Us

Harassment & Discriminatory Action Prevention Unit

Occupational Health and Safety

Ministry of Labour Relations & Workplace Safety

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