How Do Policies Help? A Journey Through A Typical Respectful Workplace Policy



Most Canadian jurisdictions require employers to have policies that address issues like workplace harassment, discrimination, and violence. In our investigation practice, we read many of these “respect at work” policies, and the overwhelming majority of them are clearly written to specifically comply with legislative requirements. In other words, if a statute says that the policy needs to include certain programme elements, then that information is inserted into the policy verbatim. And we understand, truly. No one wants to run afoul of the law and the penalties can be quite serious for employers without policies.[1]

But why do we have policies? Is it only because the law says so? Maybe that’s true for some organizations, but we find that most employers genuinely want to create and maintain more respectful workplaces. Policies have long been recognized as helpful tools to assist an employee who might be struggling with disrespect in their workplace. The problem though, is that a policy written strictly, or even primarily, for legal compliance, is often not helpful to an employee in their time of need.

So, let us consider what it is like for an employee to engage with their employer’s policy. We will journey along with them and see the hurdles they encounter.

Imagine that Dev has been having what he feels are disrespectful encounters with a co-worker. Dev does not know if this is “harassment,” but he knows that his organization has a “Respect at Work” policy, and he is able to call this up easily on his computer. That is already a win. We hear from some of the employees we interview that they do not know if their organization has such a policy, or they tell us that they looked but could not seem to locate a copy. Alas, after this early success, the obstacles start mounting.

Obstacle #1 – The structure of the policy does not provide easy answers.

Once Dev opens the policy, he reads the opening paragraphs that describe the purpose of the policy as well as the organization’s mission statement and commitment to ensuring that Dev works in a harassment-free workplace. The next thing he notices is that there are 4 or 5 long, single-spaced pages describing various roles and responsibilities of the different groups in the organization – what the organization is supposed to do, what the C-Suite executives are supposed to do, what managers are supposed to do, human resources, etc. Dev starts to get frustrated because none of this relates to him – he just wants to find out if what he is experiencing qualifies

as harassment, and if so, what he is supposed to do about it.

Obstacle #2 – The language of the policy is legal and technical with no illustrative examples.

Dev finally reaches a set of definitions in the policy (about 6 pages in) and finds the one for harassment. It sets out a technical, legal definition and speaks about the subjective and the objective elements. Dev still cannot tell whether the kinds of comments that his co-worker has been making would be considered harassment, and he is honestly a bit confused. There are no examples of the types of behaviours that can constitute harassment in the policy, which might have assisted Dev in recognizing the behaviour he is experiencing.

Obstacle #3 – The resolution options seem limited.

Dev nevertheless goes on to see what his options are if he is, in fact, being harassed. He sees that there is an "informal resolution" option that encourages him to speak with his co-worker and tell them he wants the comments to stop. For various reasons, Dev does not want to have that conversation.

Dev then reads that there is a "formal complaint procedure" which requires him to complete a form and submit it to the Human Resources Director, after which time there will be an "investigation." Dev does not know exactly what this entails, but he thinks it sounds like a much bigger deal than he would like. He also doesn't like the formality of having to send in a written complaint, and he has never even met the Director of HR. Dev was hoping that there might have been some option for someone to help him just have a conversation with his co-worker and resolve this issue between them, but the policy is silent on this.

Obstacle #4 – The potential repercussions seem very daunting.

While Dev is considering whether to file a formal complaint, he notices several dire-sounding paragraphs that speak to the potential sanctions, up to and including termination from employment, if his co-worker is found to have breached the policy. There are also several paragraphs about the seriousness of making a frivolous complaint. Dev still isn't sure whether the behaviour even constitutes harassment, and so he is afraid he might get into trouble if it doesn't qualify. Dev closes the policy more troubled than when he opened it, hoping that if he continues to ignore his co-worker's behaviour, things will eventually improve.

When we are asked to review policies, we find that they are often not written with the end user – the employee – in mind. When policies are unclear or inaccessible, employees reading them can feel distressed, frustrated, and unable to take advantage of the available mechanisms to resolve their issues. When an employee seeks out a policy because they are experiencing a workplace issue, it is critically important that their journey through the policy be a smooth one, as even the smallest hurdle can dissuade them from taking action. At a time when it is more important than ever to ensure that employees are able to work in a respectful environment, it might be advisable to have a fresh look at your policy from the employees' perspective.

Footnote

1. See, for example, ***Milligan v. Maczak Holdings Ltd.,*** 2023 CanLII 90442 (PE HRC), where a restaurant's lack of policies regarding sexual harassment led, in part, to a substantial award of damages for a server who had been sexually harassed.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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