

# Is Preventing Workplace Harassment an OHS Duty?



We all understand that harassment is bad and that when it's based on race, religion, gender, sexual preference, disability, etc., it becomes a form of employment discrimination banned by the human rights laws. What's less well understood is how harassment is regulated under OHS laws. Thanks to recent legal trends, workplace harassment under OHS laws is becoming a pretty important issue across the country.

## **What the OHS Laws Require**

As with the duty to protect employees from violence, the duty to protect workers from harassment is now an obligation under the OHS laws of all jurisdictions. Where do the laws say this? There are 2 possibilities:

**Specific Duty Jurisdictions:** The OHS laws of at least 3 provinces—Manitoba, Ontario and Saskatchewan—specifically require employers to take steps to assess and minimize the risk of harassment in the workplace. Manitoba defines “harassment” more narrowly than Saskatchewan as “any objectionable conduct, comment or display by a person that:

- Is directed at a worker in a workplace;
- Is made on the basis of race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, political belief, political association or political activity, marital status, family status, source of income, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- Creates a risk to the health of the worker.

Saskatchewan also includes such conduct in its definition of harassment but goes further to include conduct that:

- Adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and
- Constitutes a threat to the health or safety of the worker.

**General Duty Jurisdictions:** The remaining 11 jurisdictions—Fed, AB, BC, NB, NL, NT, NS, NU, PE, QC and YT—don't specifically address workplace harassment in their OHS laws. But as with workplace violence, the "general duty clause" in each of these jurisdiction's OHS laws likely requires employers to protect their workers from workplace harassment.

Québec, of course, is slightly different. It *does* impose a specific duty to address workplace harassment, including violence, on employers but not in labour standards rather than its OHS law. *An act respecting labour standards* requires employers to prevent "workplace psychological harassment," defined as including unwanted conduct, verbal comments, actions or gestures that affect a worker's "physical integrity." This requirement applies to not only non-physical acts of harassment but also more extreme forms of harassment, such as physical violence.