

# Isolating Harassment Victims to Prevent Reprisal May Actually Be Reprisal: Glenn Commandments



Workplace harassment is as old as work itself. It even comes up in the Bible. One early victim was Joseph, son of Jacob, wearer of the coat of many colors. The story goes that while working in Egypt, Joseph caught the eye of his overseer's wife. After he spurned her advances, she falsely told her husband that Joseph tried to rape her. Joseph ended up getting fired and thrown in jail.

## **From Under-Reaction to Over-Reaction**

For millennia, countless harassment victims have experienced similar ordeals. Like Joseph, most of them just kept their mouths shut. Those brazen enough to complain were ignored or tarred as troublemakers. Wide recognition of workplace harassment as a societal problem and laws to prevent it didn't come until the late twentieth century. While vitally necessary, these developments also caused panic and overreaction. Instead of ignoring harassment complaints, many employers began to assume they were true. The all-too-often result was to rush to judgment and unjust punishment of the accused.

## **Modern Harassment Response Protocols**

Employers have become a lot better at handling harassment allegations. Today's OHS laws require companies to establish policies and procedures for responding to harassment complaints based on two vital elements: thorough and fair investigation and support for the accuser. **The objective:** Clear the deck so that the investigation can proceed while protecting the accused from having to deal with or suffer any reprisal from the accused until the investigation concludes. The problem is that separating the accuser from the accused may itself be a form of reprisal, even if that's not the intention.

### **The *Atkinson* Case**

Consider this case from Alberta involving an executive administrative assistant who clashed with her boss over the company's failure to post an OHS inspector's order.

After chiding the assistant for sharing his email containing confidential information, the boss stopped copying her on emails. A month later, the assistant accused the boss of harassment. The company launched an investigation and took steps to keep her away from the boss, including moving her out of her office and assigning her to a special project.

Although intended for her own protection, the assistant felt like she was being sent to Siberia for complaining about harassment (and the company's failure to post the OHS order). So, she filed an OHS "Discriminatory Action Complaint." The government investigator dismissed the complaint, finding that the company had non-retaliatory reasons for its actions.

But the assistant won on appeal. While normally reluctant to second-guess an OHS investigator's findings, the Alberta Labour Relations Board ruled that the investigator in this case overlooked evidence that the company acted with mixed motives. In addition to wanting to protect the assistant, the company was also concerned about her sharing confidential information contained in the boss' email.

Violation of confidentiality may be a legitimate, non-retaliatory basis for discipline. The problem was that the assistant needed access to that particular confidential information to determine whether an OHS officer had issued an order that the company was required to post. She then needed to share that information to assert her right to ask the company to comply with its OHS duties. So, restricting her access and punishing her for sharing confidential information was, in fact, retaliatory in this situation. And one motive is enough to constitute illegal retaliation, even if it's not the only motive [[Atkinson v Calgary Board of Education](#), 2025 AB0HSAB 24 (CanLII), October 30, 2025].

## Drawing the Line Between Protection and Punishment

Isolating employees who complain about harassment pending the results of the investigation can protect them from reprisal. It may even be common practice. The moral of *Atkinson* is that these measures might themselves constitute acts of reprisal. Even if that's your intent, the employee you're seeking to protect might perceive these actions as punishment and file an OHS reprisal claim. And, as *Atkinson* illustrates, they might have a valid case, especially when the company acts with mixed motives.

**Bottom Line:** While it's important to support harassment victims and get them away from their alleged harassers, be careful not to punish victims in the process. Protective actions that may constitute reprisal include:

- Moving employees to a different office or location.
- Making them work from home.
- Removing them from work projects.
- Taking away their computers, tools, or equipment.
- Barring their access to company emails, calendars, intranets, and business information.
- Uninviting them from meetings.