

# Sexual Harassment: You Know It's Illegal but Do You Know WHY?



Everybody knows that sex harassment is illegal. But not everybody knows *why*. The question of which law(s) gets broken when sexual harassment occurs isn't just some arcane matter that only your lawyer should care about; it's of direct and immediate relevance to HR directors to the extent it has a crucial bearing on:

- Your organization's innocence or guilt;
- Who can sue or prosecute you;
- Whether your harassment policies are subject to government inspection;
- The tribunal that hears your case;
- The potential consequences you face if found guilty of a violation.

## **The 6 Key Laws**

An employer that commits or tolerates sexual harassment directed against its employees faces potential liability under at least 6 different laws.

### **Editor's Note: It's Not Just Sex Harassment**

This analysis applies not just to sexual but all forms of workplace harassment. Possible exception: Human rights laws don't apply unless harassment is based on sex, race, religion, disability or other protected characteristic under the law. Thus, for example, while it could get you into trouble under the other laws, harassing an employee just for being a Maple Leaf fan wouldn't be a human rights violation.

### **1. Human Rights Laws**

Sex harassment may be a form of employment discrimination based on gender-, sexual orientation, transgender- and/or family status, depending on who the victim is.

Potential consequences:

- Money damages for lost wages and benefits and pain and suffering;
- Reinstatement;
- Orders to cease the discrimination and/or adopt sensitivity training, special programs or other measures to prevent recurrence.

### **2. OHS Laws**

Sex harassment is a workplace safety violation in the 9 jurisdictions (Federal,

Ontario, Alberta, Sask., Manitoba, New Brunswick, PEI, Northwest Territories and Nunavut) where OHS laws specifically require employers to protect workers from workplace harassment. Potential consequences:

- OHS fines, tickets and administrative monetary penalties;
- Stop-work and other OHS orders;
- Harassment fair grounds for OHS inspection and employee OHS complaints.

### **3. Employment Standards Laws**

Failure to provide a harassment-free workplace is also an employment/labour standards violation under Federal, Quebec, Sask. and PEI law (although recourse in PEI is via the *Human Rights Act*, as opposed to the other 3 jurisdictions where sex harassment is grounds for employment/labour standards penalties). . Potential consequences:

- ESA fines and penalties;
- Reinstatement;
- Application of ESA inspection and employee complaint mechanisms to harassment.

### **4. Collective Agreement**

Sex harassment in the workplace may violate employer prevention duties contained the collective agreement. Potential consequences:

- Employee grievances;
- Unfair labour practice claims;
- Activation of the labour arbitration and dispute resolution system.

### **5. Employment Contract**

In a non-union workplace, victims of sex harassment can sue their employer for violating an express or implied employment contract duty to furnish a harassment-free workplace. Potential consequences:

- Constructive dismissal lawsuits;
- Money damages for wrongful termination and/or infliction of mental stress.

### **6. Workers' Compensation**

Employees may be entitled to workers' comp benefits for the mental stress they suffered as a result of being sexually harassed at work. Potential consequences:

- Lost-time injury claims;
- Higher premiums;
- Activation of the return-to-work process (which is now mandatory in some provinces, including Ontario and Alberta).

### **One Final Thought**

While all these legal penalties are pretty sobering, keep in mind that most devastating consequences of sex harassment—or even the mere accusation—is the damage it can do to your organization's reputation and employee morale.

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