

Best Practices for Responding to Complaints of Bullying and Harassment

AKBLG 2022 CONVENTION

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Agenda

Topics for our discussion today:

- WorkSafe Requirements;
- Human Rights Code;
- Employer Risks;
- Employer Obligations; and
- Best Practices.

WorkSafe BC

- WorkSafe BC is the regulatory body responsible for investigating workplace harassment
- Employer's statutory duty to provide a safe workplace includes protecting employees from harassment
- Bullying and harassment can cause mental disorders (depression, anxiety, stress related illnesses)
- Employees can make claims based on bullying and harassment
- Conduct of elected officials towards employees falls within scope of WorkSafe requirements

WorkSafe BC

- Requires employers to:
 - Take all reasonable steps in the circumstances to ensure the health and safety of workers;
 - Take steps to prevent or minimize bullying and harassment;
 - Develop procedures to report incidents or make complaints; and
 - Develop procedures for investigations



Types of Harassment

- Different types of workplace harassment:
 - Discriminatory Harassment
 - Personal Harassment
- Risks for employers where allegations of harassment
- Can overlap in same set of circumstances

Definition of Harassment

Definition of Harassment (WorkSafe BC):

Includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated

Examples: insults, name calling, vandalism, spreading rumours

Review definition in B&H/RWP Policy

Definition of Harassment

- Bullying and harassment does not include:
 - Expressing differences of opinion
 - Offering constructive feedback, guidance, or advice about work-related behaviour
 - Reasonable action taken by a supervisor relating to the management and direction of employees
- One instance of misconduct generally not considered bullying or harassment unless serious

Personal Harassment

- Personal harassment is harassment that is not related to any prohibited grounds in the *Human Rights Code*
- Addressed by employer policies and WorkSafe
- Legal obligation to take reasonable steps to prevent workplace bullying and harassment
- Employer has obligation to ensure a physically safe and bullying/harassment-free workplace

Human Rights Code: Discrimination

- Section 13: No discrimination in employment because of certain characteristics
- Discrimination is defined in the *Code*:
 - Generally includes the idea of harming someone in connection with certain characteristics
- Only grounds that are listed in the *Code* are protected (ie, disability, gender, race, marital and family status, religion, etc.)
- Does not require intent of harm

Protected Groups/Characteristics

Indigenous identity	Marital status
Race	Physical or mental disability
Colour	Sex
Ancestry	Sexual Orientation
Place of origin	Gender identity or expression
Political belief	Age
Religion	Conviction
Family status	Conviction of a criminal or summary conviction offence that is unrelated to the employment

More to come?

Employer Risks

- If bullying/harassment takes place in your workplace...
 - Litigation (complaint to the Human Rights Tribunal, or grievance)
 - Complaint (to WorkSafe or under the workplace policies)
 - Stress leave or sick leave
 - Lost productivity

Employer Risks

- If bullying/harassment takes place in your workplace cont. ...
 - Damage to organizational reputation
 - High turnover
 - Difficulties recruiting qualified candidates
 - Personal harm to employees

Employer Risks

- **Workers' Compensation Appeal Tribunal Decision A2001884:**
 - Employee complained to HR that colleague was too critical
 - Examples included public criticism of her work
 - Criticisms intensified after employee promoted
 - Internal mediation attempted
 - Employee went on stress leave
 - Third party investigator found no bullying
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Employer Risks

- **WCAT Decision A2001884 cont.:**
 - Worker diagnosed with mental disorder
 - Board found a pattern of behaviour
 - Also found some significant events that were humiliating
 - Public criticism of her work
 - Berating the worker for being late
 - Found to be harassment because conduct escalated over years

Employer Obligations

- Create a policy statement
- Draft and implement procedures for
 - Reporting incidents
 - Investigating complaints
 - Corrective actions
 - Record keeping
- Train employees and elected officials

Employer Obligations

- ***Baraty v. Wellons Canada Corp, 2019 BCSC 33:***
 - Employer owes duty to treat employees “fairly, with civility, respect and dignity”
 - Employer has duty “to see that the work atmosphere is conducive to the well being of its employees”
 - Where workplace becomes intolerable, employee can quit and claim constructive dismissal

Employer Obligations

- ***Baraty v. Wellons Canada Corp***, cont.:
 - Constructive dismissal claim based on an intolerable work environment
 - Employee claimed work environment intolerable because of bullying and harassment by supervisor
 - Allegation that employer failed to properly deal with workplace conflict
 - Court confirmed that employer has obligation to ensure work environment does not become so “hostile, embarrassing or forbidding” as to make continued employment intolerable

Best Practices

- Review applicable policies:
 - Workplace policies (ie, anti-bullying and harassment, respectful workplace, employee code of conduct)
 - Council Code of Conduct
- Review legislative requirements
- Determine whether discriminatory or personal harassment

Best Practices

- Consider whether alleged conduct, if true, constitutes bullying and harassment
- Consider whether informal or other resolution process appropriate
- Review procedural requirements in applicable policies
- Determine who is responsible for making decisions in relation to responding to a complaint

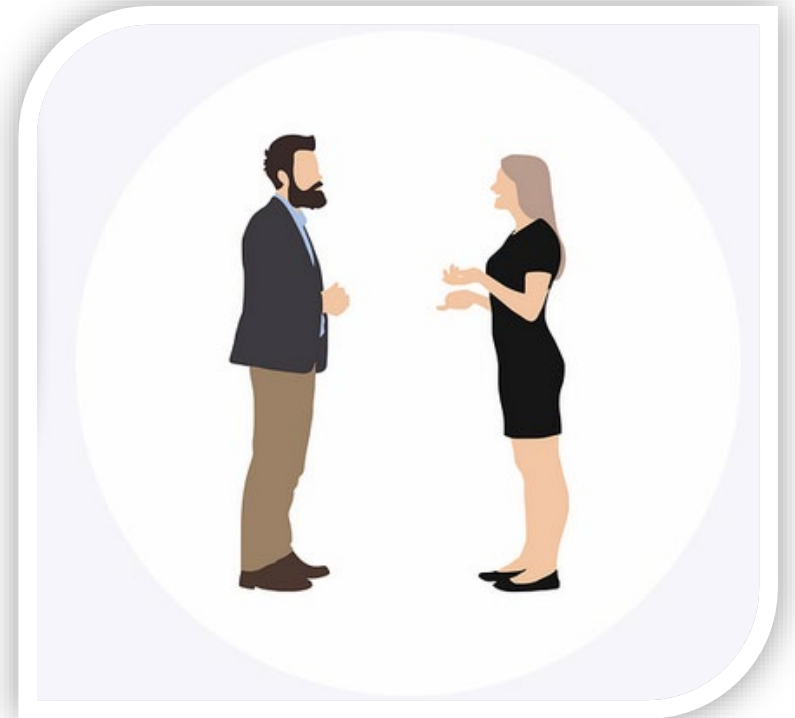
Best Practices

- Most policies have informal resolution options:
 - Informal discussion with parties
 - Facilitated conversation
 - Mediation
 - Other conflict resolution processes



Best Practices

- Decide whether formal investigation or informal process appropriate
- Factors to consider:
 - Nature of complaint
 - Discriminatory or personal harassment
 - Severity of allegations
 - Power imbalance between the parties
 - Risk of retaliation
 - Agreement of the parties



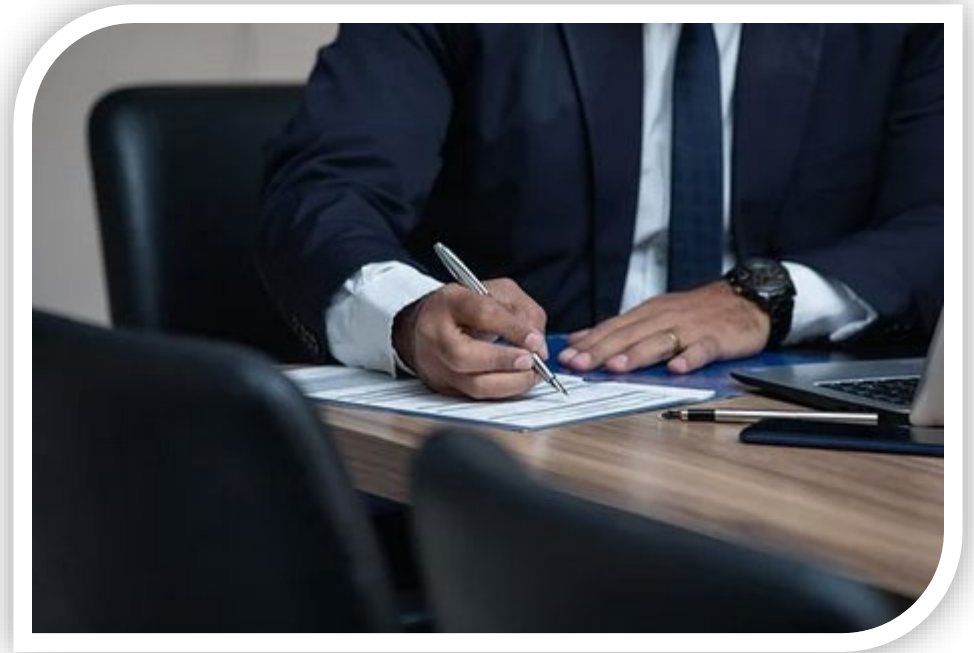
Best Practices

- Elements of a fair investigation:
 - Notice of allegations to respondent
 - Right to be heard and present evidence
 - Right to seek legal advice
 - Speedy resolution
 - Impartial investigator and decision maker



Best Practices

- Potential investigators:
 - A manager
 - A member of the human resources staff
 - An external investigator
 - A lawyer



Best Practices

Use external investigators for matters that are:

- Complicated
- Controversial
- Serious
- Large in scope
- Involve a Council member

Fair Investigations

- No specific standard
- Perfection not expected
- What is required depends on:
 - the circumstances of the case
 - the nature of the workplace
 - the employer's policies

Fair Investigations

- Provide particulars of allegations to respondent
- Provide respondent the opportunity to respond to the allegations
- Communicate representation rights and role of support person
- Keep parties apprised of the investigation process

Consequences of Flawed Investigations

- Continuation of workplace conflict
- Wrongful dismissal lawsuits
- Grievances
- Human rights complaints
- WorkSafe claims



Questions?