

Harassment and sexual harassment

Guidelines under *The Human Rights Code* (Manitoba)

Introduction

This guideline provides employers, unions, landlords and service providers with information about harassment and sexual harassment under Manitoba's human rights laws.

What is *The Human Rights Code*?

The Human Rights Code ("*The Code*") is Manitoba's human rights law and is administered by The Manitoba Human Rights Commission. *The Code* protects groups and individuals from unreasonable discrimination.

The Code has special status and in most cases overrides other laws in Manitoba. Following the requirements of a building code, collective agreement or health and safety or labour law does not justify discrimination.

The Code prohibits discrimination in a number of activities, including any aspect of employment (paid and unpaid work), condominium or rental housing, contracts, and public services such as retail services, schools and hospitals. Protected grounds (referred to as "characteristics" in *The Code*) are:

- ancestry (including colour and perceived race);
- nationality or national origin;
- religion or creed;
- ethnic background or origin;
- age;
- sex (including gender-determined characteristics such as pregnancy);
- gender identity;
- sexual orientation;
- marital or family status;
- source of income;
- political belief;
- physical or mental disability; and
- social disadvantage.

What is harassment?

Harassment is abusive and unwelcome behaviour that degrades, demeans, humiliates, or embarrasses a person. It is a form of discrimination when it is based on one of the protected grounds (ancestry, sex, religion etc). The person experiencing the harassment may have informed the harasser the behaviour is unwelcome or the behaviour may be deemed unwelcome if a reasonable person in those circumstances would view it that way.

It can take many forms:

- verbal behaviour (comments, innuendo, jokes, threats)
- gestures and other non-verbal behaviour (touching or unnecessary physical contact)
- visual forms of harassment (posters, videos)
- physical behaviour (pushing, shoving)
- electronic harassment (emails, text messages, displaying graphic images)

Harassment often occurs in the workplace. It can take place in the workplace itself, or outside of the workplace in a situation that is in some way connected to work (for example, during delivery trips, off-site meetings, workplace parties, business trips). Appropriate performance reviews, counselling, or discipline by a supervisor or manager is not harassment.

Who is responsible for harassment?

Employers (including senior managers), landlords and service providers are responsible for providing a harassment free environment. These individuals must not harass others and must ensure those around them are protected from harassment. If these individuals are made aware of a concern of harassment, they must take reasonable steps to investigate the concern and stop the harassment. This includes harassment of a current or prospective employee, co-worker, client or customer.

Telling the person harassed to take their concerns to the police is not sufficient to deal with a concern of harassment.

Is bullying harassment under *The Code*?

Although "bullying" is not covered by *The Code*, if the bullying behaviour is based on one of the protected grounds such as religion, sex, disability, ethnic background, or sexual orientation, a human rights complaint may be filed under harassment.

What is sexual harassment?

Sexual harassment is harassment based on sex or creating or permitting a sexualized or sexually charged, negative work atmosphere. Sexual harassment usually occurs where there is a power imbalance between the people involved.

Sexual harassment includes offensive or humiliating behaviour that is related to a person's sex, or behaviour that could reasonably be seen as putting conditions on a person's job or employment, housing or service opportunities. For example, questions and discussions about a person's sexual life; persisting in asking for a date after having been refused; writing sexually suggestive letters or notes, persistent "jokes" or reference to sex or sexual topics or displaying derogatory pictures, cartoons or other images, may all be forms of harassment.

Sexual harassment is defined in *The Code* as a series of objectionable and unwelcome sexual solicitations or advances or a sexual solicitation or advance made by a person in an authority, if that person should reasonably have known that their behaviour would be unwelcome or retaliating against someone for rejecting a sexual solicitation or advance.

What are some of the effects of sexual harassment in the workplace?

Sexual harassment can create a poisoned or hostile environment, which can impact everyone in the workplace or environment even if they are not themselves the direct target of the harassment. For example, an employee constantly subjected to harassment may take sick leave due to stress or become less capable to perform his or her duties satisfactorily. Co-workers who have had to witness the continual harassment may also find this stressful.

For an employer, a failure to prevent harassment is not only a contravention of *The Code*, it can result in the loss of productivity, loss of business, high staff turnover and damage to reputation.

What can you do if you are harassed?

It is your responsibility to inform someone in authority of the harassment.

Sometimes victims of harassment are reluctant to take any action against the harasser. They are afraid of losing a job, being denied a service, or suffering some other form of reprisal or retaliation. Others try to ignore the harassment, hoping that it will stop.

While it is not your responsibility to stop the harassment, there are several things that you can do:

- If you can, make it clear to the harasser that his or her behaviour is unwelcome
- Keep a record of the incidents including a description of unwanted behaviour, times, places and witnesses
- Report the incident(s) to management as soon as possible
- If your employer has a harassment policy, notify the appropriate person identified in the policy
- If your workplace is covered by a collective agreement, you may choose to contact your union for advice and assistance

If management fails to take prompt and effective action regarding your concern, then you may wish to contact The Manitoba Human Rights Commission for information or to file a complaint.

What should your employer, landlord or service provider do?

When informed of a concern of harassment, you should:

- Advise the victim that the complaint will be taken seriously and treated as confidentially as possible
- Assess whether immediate steps need to be taken to ensure the victim and the harasser do not have to interact further
- Investigate the allegation promptly by talking to the individuals involved as well as witnesses who might have information about the incident(s)
- If the allegation is substantiated, take steps to ensure the harassment stops, such as taking disciplinary action, developing an anti-harassment policy and procedure and/or educating some or all those in the workplace
- Communicate your conclusion to the victim and advise what steps you are taking to provide a harassment free workplace
- Monitor or check in with the individuals involved after a reasonable period of time

Ignoring observed or reported incidences of sexual harassment, or failing to take prompt and effective action (even if the person complaining of the harassment says they don't want any action taken) could result in a human rights complaint filed against you.

Remedies available to those who experience harassment

The purpose of *The Code* is not to punish the harasser or the organization for failing to take steps to stop the harassment but rather, to provide a remedy for the victim of the harassment and to prevent future harassment. There is usually a specific remedy for injury to the victim's dignity and self respect. Remedies can include any or all of the following:

- a) Letter of apology
- b) Declaration from the organization committing itself to future compliance with *The Code*
- c) New workplace policies, which are visible to all employees
- c) Compensation for lost wages if the victim lost or left his or her job as a result of harassment
- d) Compensation for injury to dignity, feelings and self respect

Who can I call?

For further information on these guidelines or *The Human Rights Code*, please contact the Manitoba Human Rights Commission office in your area. This guideline and more information can be found on the Manitoba Human Rights Commission's website. Also find out more about seminars on reasonable accommodation and other human rights topics

Winnipeg: 7th Floor - 175 Hargrave Street
Winnipeg, MB R3C 3R8
Phone: 204-945-3007 -

Brandon: Rm. 341 - 340 Ninth Street
Brandon, MB R7A 6C2
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Le présent guide est également disponible en français.

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