



a workplace for all

Bargaining Equality

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**Harassment
and Violence**

Just about anyone can be subjected to harassment and violence at work. But equality-seeking groups including women, workers of colour, Aboriginal workers, workers with disabilities, and lesbian, gay, bisexual, and transgender workers are far more likely to experience harassment and violence because of the discrimination they face in society.

Harassment is usually based on discrimination. Examples include the sexual harassment of women, racial harassment, and harassment based on disability, sexual orientation, and gender identity. CUPE members can experience harassment from management, a co-worker, or a client or user of the services they provide.

Harassment involves the use of real or perceived power and it is illegal under human rights legislation. But not all grounds of harassment are covered in each province. One example is personal harassment. Personal harassment is any unwelcome behaviour that is inappropriate, that abuses, devalues or humiliates. This kind of harassment is not one of the “protected grounds” against discrimination contained in human rights laws. Because the law does not cover personal harassment, locals need to bargain protections against it in their collective agreements and ensure that it is covered by workplace harassment policies.

Some researchers and policy-makers perceive harassment as part of a spectrum of abusive behaviours that include workplace violence and bullying. There is much overlap in the way these terms are defined. However, the one thing harassment, violence and bullying have in common is an element of aggression.

Workplace violence is usually thought of as a physical assault but it may also include threatening behaviours, verbal abuse, vandalism, rape and even murder. It is important to know that incidents of workplace harassment and violence can occur outside the work environment at business functions like conferences and meetings, at social functions related to work, and in clients’ homes.

It is well documented that workers in health care, social services, developmental services, community-based organizations, education, municipalities and public works have the highest risk of experiencing workplace violence. Risk factors for violence include working with the public, working alone, working late at night, and providing care.

CUPE locals have shown a lot of ingenuity in bargaining to combat workplace harassment and violence. That creativity is reflected in many of their collective

agreements. For example, locals have bargained language that prohibits harassment and violence in its many forms and language that refers to health and safety legislation. Many CUPE agreements provide detailed definitions of harassment and violence and step-by-step procedures for resolving grievances and disputes. There are prohibitions against harassment on the basis of union membership and activity, and prohibitions against working alone. There is language that calls for the investigation of violent incidents, support and counselling for victims, the establishment of Employee Assistance Programs, and the establishment of health and safety committees.

Locals have bargained paid leave for members to participate in education and training initiatives to tackle violence and harassment. There is language that obligates the employer to review job design and staffing levels in order to combat the systemic nature of workplace violence. Some agreements require the employer to provide members with alarms and paging systems. Other agreements explicitly recognize the right of the victim to press charges against the assailant. Some locals have even taken on domestic violence by bargaining language that requires the union and employer to develop programs to accommodate victims of domestic abuse.

Most Canadian occupational health and safety legislation requires employers to protect workers' health and safety and that includes protection from workplace violence. Regulations for the prevention of workplace violence are in force in British Columbia and Saskatchewan. Nova Scotia has developed draft regulations and some provinces, like Manitoba, have regulations on workers who work alone. But we don't have to wait for governments to address our concerns through legislation. Locals can do it at the bargaining table.

Resources:

Pride in CUPE, workshop.

Stop Harassment: A Guide for CUPE Locals, CUPE, booklet.

Saying No to Harassment, CUPE, workshop.

Violence Against Transgender and Transsexual Persons, CUPE, fact sheet.

Transphobia: A Union Issue, CUPE, fact sheet.

Domestic Violence and Women Workers of Colour, CUPE, fact sheet.

What we need to know to end violence against women with disabilities, CUPE, fact sheet.

Solidarity Against Violence, CUPE, kit.

Out to Work: Lesbian, Gay, Bisexual, Transgender and Transsexual Youth and Work, Supporting Our Youth, booklet.

Fighting Harassment & Violence

- Does your local's agreement prohibit harassment and violence?
- In the case of harassment, does it cover all the grounds listed under human rights legislation?
- Are harassment and violence defined? Does it clearly list behaviours that constitute harassment and violence?
- Does the agreement prohibit personal harassment and harassment on the basis of gender identity, and HIV/AIDS?
- Does it address situations of harassment and violence by management, co-workers, the public, and users of the services CUPE members provide?
- Does it address incidents of harassment and violence that occur outside the workplace at conferences, social functions related to work, and in clients' homes?
- Does it address domestic violence and provide assistance to victims?
- Are there suitable protections for the victim(s) of harassment and violence?
- Is there a ban on working alone, especially late at night?
- Is the employer required to review job design and staffing levels in order to combat violence?
- Is the employer required to provide members with alarms, pagers, and cell phones?
- Is there a process of investigation with timelines?
- Is there an expedited grievance procedure for the settling of harassment and violence complaints?
- Does the agreement recognize the right of the victim(s) to press formal charges with the police?

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Fighting Harassment & Violence

- Can the perpetrator(s) of harassment and/or violence be transferred or disciplined?
- Is counselling or the services of an Employee Assistance Program available to members who have experienced harassment and violence?
- Is there a Joint Health and Safety Committee?
- Is there paid leave for members to attend workshops aimed at combatting harassment and violence?

LANGUAGE

CUPE Local 2424 (Support Staff Association) and Carleton University, Ottawa

48.03 Personal Harassment

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Harassment can be either psychological or physical or it can be a combination of both. It is any behaviour, whether deliberate or negligent, which denies individuals their dignity and respect, is offensive, embarrassing or humiliating to the individual and adversely affects the working environment.

CUPE Local 500 and the City of Winnipeg

Article 3 – Respectful Workplace

3-1 The City and the Union jointly affirm that every employee in the Civic Service shall be entitled to a respectful workplace. The environment must be free of behaviours such as discrimination, harassment, disruptive workplace conflict and disrespectful behaviour. The principal of fair treatment is a fundamental one and both the City and the Union will not condone any improper behaviour on the part of any person which would jeopardize an employee's dignity and well being or undermine work relationships and productivity. In addition, the parties agree that a respectful workplace includes a safe and healthy workplace as defined by the *Manitoba Workplace Safety and Health Act*.

3-2 Definitions

Although disrespectful behaviour, disruptive workplace conflict and harassment can be defined, in practice they overlap. The following definitions, although not all inclusive, have been designed to accommodate the different types of concerns that may arise.

- a) Disrespectful behaviour is improper behaviour that is unwelcome and inappropriate in the workplace. It may happen once or continue over time. It can include:
- rude comments and swearing as well as spreading unfounded or misinformed rumours that damage people's reputations;

- actions that invade privacy or personal property or unwelcome gestures; and
 - display or distribution of printed or electronic material that offends.
- b) A disruptive workplace conflict is defined as an ongoing dispute or communication breakdown between two or more individuals that impacts their ability to work productively and cooperatively in the workplace.
- c) Harassment is any behaviour that demeans, humiliates or embarrasses a person, and that a reasonable person should have known would be unwelcome. It includes:
- verbal abuse;
 - actions such as touching or pushing;
 - comments such as jokes and name calling;
 - displays such as posters and cartoons; or
 - abuses of power such as threats or coercion.

It may be a single incident or continue over time.

- d) The *Manitoba Human Rights Code* prohibits harassment and discrimination related to the following characteristics: ancestry, race, ethnic or national origin, nationality, political belief, religion, family status, sex, including pregnancy, age, marital status, sexual orientation, source of income, and physical or mental disability.

The parties agree that there shall be no discrimination or harassment as defined by the *Manitoba Human Rights Code*. The parties further agree that there shall be no discrimination or harassment on the basis of place of residence and membership or activity in the Union.

- 3-3 If the Respectful Workplace Article is not being followed, the process outlined in the Letter of Understanding Re: Respectful Workplace will apply.

CUPE Local 500 and the City of Winnipeg (Letter of Understanding)

Respectful Workplace

1. Introduction

Keeping in mind the principles of a respectful workplace as outlined in Article 3, issues shall be addressed quickly and thoroughly. At any time, all individuals shall have the right to Union representation. Individuals have the right at any time, to file a grievance under Article 31 or to file a Manitoba Human Rights Commission complaint.

2. Process

If Article 3 – Respectful Workplace has been violated, the following will apply:

Directly to Step 3

Depending on the nature of the incident, Management or the Union has the right to proceed directly to Step 3. All matters involving violence will proceed directly to Step 3. Most other situations will begin at Step 1.

Step 1 – Resolving the Problem on Your Own

Keeping in mind the principles of a respectful workplace, attempt to resolve the problem directly with the other party by:

- Raising the issue with the other party in a timely manner.
- Discussing the problem with them openly in an attempt to resolve the issue.
- Asking them to stop the offending behaviour.

If you want support or assistance in approaching the person, you may consult your supervisor, Union Steward, co-worker or Departmental Human Resource Representative.

If the issue involves your immediate Supervisor, you may contact the Departmental Human Resource Representative or your Union Representative. Discussions or resolutions in this Step are considered to be “without prejudice” to either party and will not be used by the parties at subsequent stages of this process or at other proceedings under Article 3.

If for any reason you are unable to approach the other person, or after approaching them, you do not feel the problem has been resolved, proceed to Step 2.

Step 2 – Problem Solving

Report the issue to your immediate Supervisor. You may request the help of a Union Representative if you wish. As soon as possible, the Supervisor will conduct an assessment and attempt to resolve the issue in a problem solving and educational manner. If unresolved, proceed to Step 3.

Step 3 – Resolution of Issue

The immediate Supervisor or the Union Representative or the employee shall report the issue to the Manager or designate. The Manager, or designate, in cooperation with the Departmental Human Resource Representative shall attempt to resolve the issue. Failing satisfactory resolution at this stage, individuals may exercise their rights under Article 31 – Grievances.

3. Communications and Follow-up

Management will inform all parties of the progress of the issue during the course of its resolution. When the matter is resolved, Management will notify the parties of its resolution as soon as possible and will quickly follow up with action required to restore and maintain a respectful workplace.

4. Malicious or Vexatious Complaint

Anyone filing a malicious or vexatious complaint under Article 3 may be subject to disciplinary action.

5. Review

The City and the Union agree to meet no less than twice per year to review the viability of Article 3 and this Letter of Understanding. If both parties agree, changes can be made to this Letter of Understanding prior to the expiry date of the Collective Agreement.

CUPE Local 79, Recreation Workers' Unit, and the City of Toronto

Domestic Violence Letter of Intent

The parties acknowledge that domestic violence is a significant social problem that affects the health and well-being of City employees. The parties agree to meet within three (3) months of the signing of the Memorandum of Agreement to establish and implement a jointly developed program to accommodate employees who are victims of domestic violence.

CUPE Local 379 and the Board of School Trustees, District 41, Burnaby, BC

Working Alone

- 4e) Where a school has two (2) or more employees working at the end of the afternoon or graveyard shift, it will be mandatory that the minimum number of employees required to work overtime after 8:00 p.m. shall be two (2).

23(5) Secretaries Working Alone

During the months of July and August, the secretaries in secondary schools shall not be required to work alone in the buildings.

CUPE Local 416 and the Toronto Public Library

31.07 No employee in a branch shall work alone during hours open to the public.

CUPE Local 108, Halifax Civic Workers' Union, and the Halifax Regional Municipality

Article 11 – Occupational Health and Safety

11.10 Definition of Violence

“Violence” means the attempted, threatened or actual conduct of a person that endangers the health and safety of an employee and includes a threatening statement or threatening behavior that gives an employee reasonable ground to believe that the employee is at risk of injury.

11.11 Violence Policies and Procedures

The Employer agrees to develop policies and procedures to deal with violence in the workplace. The policies will address the prevention of violence, the management of violent situations and the provision of resources, including legal assistance if necessary and support to employees who have faced violence. The policies and procedures will be part of the employees' health and safety policy, and written copies shall be provided to each employee.

The policies and procedures will include but not be limited to:

- 1) Provision of adequate information about previous violent behavior to employees;
- 2) Adequate arrangements to investigate cases where violence and assaults against employees have occurred; and
- 3) Provision for joint Union-Employer Health and Safety Committees to review the effectiveness of anti-violence policies.

11.12 Measures and Procedures to Prevent Violence to Employees

All cases where employees or the Union identify a risk of violence to the staff, the Employer shall establish and maintain measures and procedures to reduce the likelihood of incidents to the lowest possible level. It is understood that the measures and procedures are in addition to and not a replacement for a training program about dealing with violence. In developing measures and procedures to prevent violence, priority will be given to options such as job redesign, adequate staffing levels and improving the working environment before considering the need for personal protection or alarms.

11.13 Function of Workplace Union-Employer Occupational Health and Safety Committee

All incidents involving aggression or violence shall be brought to the attention of the Occupational Health and Safety Committee. The Employer agrees that the Occupational Health and Safety Committee shall concern itself with all matters relating to violence to staff including but not limited to:

1. recommending Violence in the Workplace Policy;
2. recommending measures and procedures to prevent violence to and by staff;
3. receiving and reviewing reports of violent incidents;
4. recommending and implementing violence training programs.

11.14 Training

The Employer agrees to provide training and information on the prevention of violence to staff to all employees who come into contact with potentially aggressive persons. The training program will, when practical, include opportunities for participation by Union instructors. All employees working in

areas where there is a risk of violence shall be trained with a course including but not limited to:

- causes of violence;
- factors that precipitate violence;
- recognition of warning signs;
- prevention of escalation;
- controlling and defusing aggressive situations; and
- details of the Employer's policy, measures and procedures to deal with violence and the availability of legal counsel and supportive counselling.

The Employer agrees to provide adequate time and resources for this training. The Employer shall pay each employee his/her wages as set out in the collective agreement while he/she undergoes such training or any subsequent training.

11.15 Support and Counselling

The Employer and the Union recognize that where preventative measures have failed to prevent violent incidents, counselling and support must be provided to help victims recover from such incidents.

11.16 Pressing Charges

The Employer recognizes that when an employee is threatened or assaulted at work, it is appropriate and important to lay charges against the assailant. In cases where the police are not prepared to lay charges and to prosecute the assailant(s), the Employer agrees to seriously consider the possibility of a private prosecution. If the Employer decides this is not possible, the Employer shall provide written reasons to the Union.

11.17 Alarms and Paging Systems

The Employer agrees that in all cases where there is a recognized need for personal safety the Employer shall provide alarms or paging systems that will be effective in summoning immediate aid. The Employer shall be responsible for the routine maintenance, repair and periodic testing of the alarm or paging system. All employees shall receive training about the use and reasonable care of such systems.

11.18 No Discrimination or Dismissal

The Employer agrees that there shall be no discrimination exercised or practiced with respect to any employee who is the victim of a violent incident arising while in the performance of his/her assigned work.