

Responding to Sexual Violence and Harassment on Campus and the Duty to Represent



When a worker experiences sexual violence and harassment on campus, they have multiple options for reporting or pursuing a complaint. These options depend on who the complainant and respondent are, where the incident took place, whether the employer is the post-secondary institution or a third-party contractor, as well as the parameters set out by your institution's policy and the health and safety or human rights legislation of your province. If you are not sure what options might apply to your situation, check with your National Representative.

The options are not all mutually exclusive. A survivor may choose to file an institutional complaint and a criminal complaint. An institutional investigation may end up being appealed through the grievance process. A survivor may opt for informal resolution, decide the process is not working, and move to a formal investigation or a human rights complaint. In some cases, however, a policy may require that one type of process be put on hold while another is pursued, such as suspending an institutional investigation while a criminal investigation takes place.

Institutional processes

Your institution's policy should ideally apply to workers as well as students, allowing workers the option of choosing to pursue a complaint under the institutional investigation process rather than forcing them to file a grievance, and preventing survivors who are both workers and students from being forced to choose one aspect of their identity. (For more on this, check out [CUPE's Guide for Post-Secondary Institutional Policies on Sexual Violence and Harassment](#).)

When students or other members of the campus community report a complaint against a CUPE member, that investigation may also take place under the institutional process.

INTERIM MEASURES AND ACCOMMODATIONS

When a disclosure or report is made of sexual violence and harassment, a university or college should immediately conduct a safety assessment and implement interim measures as necessary to ensure the safety of the survivor and the campus community.



The survivor may also request accommodations to make them feel safe, to help them cope with the aftermath, or to enable them to participate in the investigation process. Witnesses, first responders, and the respondent may also need workplace and/or academic accommodations. For more information, see CUPE's [Fact Sheet on Accommodations for Workers Impacted by Sexual Violence and Harassment](#).

The local union should support these short-term measures to protect safety and reduce barriers to healing and to full participation in the workplace. However, the local should ensure that any interim measures or accommodations are understood not to be disciplinary or evidence of guilt, are proportionate to the nature of the alleged incident(s), and are only as restrictive as required to ensure safety.

A FORMAL INVESTIGATION

A formal investigation is conducted by a trained investigator who seeks to collect enough evidence to determine whether, on balance of probabilities, the alleged incident actually occurred. This investigation is then used to determine whether the institutional policy was breached and if so, what sanctions should apply. Sanctions range from being required to participate in training, to being issued a disciplinary letter or warning, to suspension, expulsion, or dismissal.

If a member of your local union is involved in an institutional investigation as the complainant or respondent, your local union may have a legal duty to represent that member, depending on your collective agreement. Your institution's policy cannot prevent your local from fulfilling this duty and in fact, the policy should clearly state that everyone has the right to union representation. Even if your local is not legally obligated to provide representation, the potential outcomes of retaliation, discipline, or dismissal mean that it may be in your local's best interest to provide representation to a member who requests it.

If both the complainant and the respondent are members of your local union, two separate representatives must be assigned. These two representatives should not communicate about the case for the duration of the investigation.

Disclosure: A disclosure occurs when someone reveals to another member of the community that they have been subjected to sexual violence or harassment.

Reporting: A report is a formal statement submitted under one of the official processes for investigating and responding to sexual violence and harassment.



The union should ensure that the investigation is fair and thorough, that both complainant and respondent have adequate opportunity to share their side of the story and any evidence that supports their case, and that any disciplinary measures are proportionate and respect the collective agreement.

If the union believes that the process was not fair or that the outcome does not respect the collective agreement, it can address that perception through the grievance and arbitration process.

ALTERNATIVE RESOLUTION MEASURES

In some cases, an institutional policy will allow for alternative resolutions measures to be used, such as restorative justice practices, transformative justice practices, training or counselling for the offender, or an apology from the offender to the survivor.

Your local union should be sensitive to the wishes of the survivor and the perpetrator, who must both freely consent to participate in any alternative process, but should also monitor outcomes from an alternative resolution process to ensure they respect the collective agreement.

Workplace options

INDIVIDUAL OR GROUP GRIEVANCE

Whether or not your collective agreement has specific language on sexual violence and harassment, your employer has a legal obligation to provide a safe workplace. This means that an individual grievance may be filed in cases where a union member is subject to sexual violence or harassment in the workplace or in the course of performing their work. Your local union may also choose to file a group grievance in situations where there are multiple people who have experienced sexual violence or harassment or where you feel the employer has not done enough to prevent violence or harassment from occurring in the workplace.

If the alleged offender is a member of a union, the union has a legal duty to represent them throughout the grievance and disciplinary process. However, the member has an obligation to ask for the representation of their union.

If both the complainant and the respondent are members of your local union, two separate representatives must be assigned. These two representatives should not communicate about the case for the duration of the grievance.

The union should ensure that the grievance process is fair and thorough and follows any requirements set out by the collective agreement, that both complainant and respondent have adequate opportunity to share their side of the story and any evidence that supports their case, and that any disciplinary measures are proportionate and respect the collective agreement.





Union representatives should be aware that many survivors find the adversarial process of a grievance to be re-traumatizing and be willing to take steps to reduce the impact on the complainant while ensuring that the respondent still receives a fair process.

WORKPLACE HEALTH AND SAFETY INVESTIGATION

In some jurisdictions, occupational health and safety legislation requires that when an employer becomes aware of an incident of sexual violence and harassment in the workplace, that incident must be reported and investigated.

This investigation must conform to the standards set out by the relevant legislation. For instance, in some jurisdictions, a health and safety investigation must be conducted jointly by management and labour.

The union should ensure that the investigation is fair and thorough, that both complainant and respondent have adequate opportunity to share their side of the story and any evidence that supports their case, and that any disciplinary measures are proportionate and respect the collective agreement.

Internal union procedures

TRIAL PROCEDURE

Incidents of sexual violence and harassment that occur between members of the same union while engaged in union business may also be dealt with through the internal union procedure. CUPE has a trial procedure which allows for complaints of discrimination or harassment on the basis of sex, gender identity, gender expression, or sexual orientation to be dealt with in a fair and impartial manner. Complaints alleging discrimination or harassment may be resolved through mediation, a trial, or trauma-informed adjudication. For more information, see [Appendix F of the CUPE Constitution](#).

External options

COMPLAINT TO A PROFESSIONAL REGULATORY BODY

In some cases, the person alleged to have caused harm may be subject to a professional regulating body. This could include medical or nursing faculty with clinical appointments, faculty in professional schools such as law, architecture, engineering, accounting, or social work, or staff working in areas such as human resources or child care.

In some cases, a survivor may choose to file a complaint with a regulatory body regarding the conduct of a person in a regulated profession. In other cases, a university or college, as the employer, may be legally required to report an incident of sexual violence or harassment to the regulatory body.





In cases where the survivor is a union member, the local union should be prepared to offer support to the extent possible during the reporting and investigation process.

HUMAN RIGHTS COMPLAINT

Because human rights legislation protects against discrimination on the basis of sex, gender identity, and gender expression, a survivor may be able to file a complaint with the relevant provincial Human Rights Commission or Tribunal. Unlike an institutional investigation, which can only order disciplinary measures for the alleged offender, a Human Rights tribunal can order financial compensation for damages, including lost income, emotional suffering, and loss of dignity.

In some jurisdictions, you are required to try to resolve things through a grievance or a workplace investigation before filing a complaint with the Human Rights Commission or Tribunal. In others, it is the survivor's choice whether to try and resolve things internally or to proceed immediately to filing a human rights complaint.

CRIMINAL COMPLAINT

A survivor may choose to report an incident to the police as a criminal complaint. A local union does not have a representation role to play in a police investigation, but they may be interviewed or required to turn over records or evidence. In order for police to demand evidence from a local union, they must provide a subpoena. In this instance, the local should immediately seek legal advice. Contact your National Representative to help you access legal advice.

In cases where the respondent is a local union member, the member should seek external legal advice. The union cannot advise on criminal matters.



This information is provided for educational purposes only and does not constitute legal advice. For further information and assistance, please contact your National Representative.