



EMPLOYER TRAINING REFERENCE GUIDE

Key Definitions

“**Employer**” includes not-for-profit Boards and arts organizations

“**Cultural workers**” includes individuals who may be referred to as employees, self-employed artists, contractors and volunteers

“**Workplace harassment**” is typically defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

“**Workplace sexual harassment**” is defined as engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the comment or conduct is known or ought reasonably to be known to be unwelcome. Sexual harassment also involves making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

“**Discriminatory harassment**” includes harassing behaviour that involves or can be connected to a person’s characteristics which are protected by human rights legislation. This could include age, race, ethnicity, religion, gender, sexual orientation and disability, to name a few.

“**Bullying**”, which is a form of harassment, is defined as targeted behaviour against an individual with the objective to demean and disempower. Bullying can take on many forms, including cyberbullying where this offensive behaviour is perpetrated through electronic means such as email, text, or social media platforms.

Scenario One: The Rehearsal

Common Pitfalls

- Work that involves touch or contact
 - Employers often mishandle situations by failing to set expectations
 - Proactive measures can prevent situations that are susceptible to complaints
- Bystander observation of an incident
 - Observers should report incidents that could involve harassment
 - Employers often do not equip bystanders with practical means to report incidents of harassment
- Agreeing to keep a complaint confidential
 - Victims of harassment may request that a complaint be kept confidential because they are often fearful of retaliation or of losing future opportunities
 - Keeping the complaint confidential creates potential liability for the employer

Preventative Strategies and Best Practices

- Communicate boundaries and expectations up front
 - This can be achieved through contracts, codes of conduct, policies and performance discussions
 - Leverage external policies, such as those established by unions, guilds and associations



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- Implement practical means for bystanders to report observed incidents
 - This could be achieved through direct communication using written forms, electronic means or hotlines
 - Guidelines should be communicated regarding the details that bystanders should report, that is, the who, what, where and when related to an incident
 - Make bystander reporting an expectation
- Communicate that complaints and incidents of harassment cannot be maintained in confidence
 - Make it clear how individuals can bring and escalate harassment complaints
 - Ensure external complaint mechanisms are available where appropriate
 - External recourse may be particularly important for non-unionized individuals

Scenario Two: We Will ROCK You

Common Pitfalls

- Tolerance of regular misconduct by prominent individuals
 - Employers may fail to recognize that conduct could constitute harassment or bullying
 - Employers may tolerate or enable misconduct so that it becomes accepted—and expected
- What constitutes the workplace
 - Employers may not recognize that the setting where the offensive misconduct occurs is the workplace
 - For example, in this scenario, the bar where the wrap party is being held is a workplace for the performers
- Taking complaints and incidents seriously
 - Employers commonly mishandle situations by not taking a complaint or incident seriously
 - Employers may not appreciate that a social media post could constitute cyberbullying and trigger the employer's legal obligations
 - An inadequate response could increase the employer's exposures to liability

Preventative Strategies and Best Practices

- Establish conduct expectations proactively
 - Do not condone behaviours that could constitute harassment
 - Condoning misconduct can lead to serious liability for organizations
 - Leverage the reality that organizations have significant obligations to protect individuals against workplace harassment
- Consider whether a situation may be occurring in the “workplace”
 - Recall that a workplace is defined more broadly than organizations may expect
 - A workplace can include a theatre, a rehearsal space, an installation venue, a gala, after work social events involving colleagues, post-performance feedback over drinks at a bar, and so on
 - Note that even if harassing behaviour takes place outside of the workplace, employers may be able to hold cultural workers responsible for inappropriate off-duty conduct



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- Do not consider social media and cyberbullying to be beyond the scope of workplace harassment

Scenario Three: This is NOT Art

Common Pitfalls

- Liability created by third-party contractors
 - Discriminatory harassment can be committed by third parties
 - Employers can be liable for violations of human rights legislation by non-cultural workers, such as contractors
 - Employers' responsibility to protect the safety of their workers extends to protecting them from individuals who are not workers
- Condonation of misconduct by the employers
 - Inaction and apparent tolerance of the contractor's behaviour could undermine any existing employer policies
- Incidents that occur under performance or deadline pressures
 - Time pressures can lead employers to mishandle complaints or incidents of harassment

Preventative Strategies and Best Practices

- Establish conduct expectations and ensure they apply to everyone at all times
 - Organizations can leverage their responsibilities to protect individuals in the workplace to justify conduct expectations
 - Consequences for violating conduct expectations should be clearly stipulated
 - For example, it could be stipulated that violations could result in the termination of the service contract
- Do not condone behaviours that could constitute harassment
 - Contractor misconduct should be addressed immediately—even if by initially communicating that it is unacceptable and advising that it will be addressed fully at the first opportunity
- Take all possible measures to protect cultural workers from ongoing harassment risks
 - Measures should be taken to minimize the impact of the conduct, and when feasible organizations should make a full response to the incident, including conducting an investigation as may be required

Scenario Four: The Author & The Agent

Common Pitfalls

- Abuse of Power
 - Certain people who may feel that they wield power and/or influence over others may exploit others by abusing their power or authority over them



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- Reluctant reporting
 - The “victim” of any unwelcome conduct may be reluctant to complain, or assert their “rights”
- What constitutes the workplace
 - Employers may fail to recognize that a location could be considered a “workplace”

Preventative Strategies and Best Practices

- Ensure cultural workers understand their roles and responsibilities
 - Cultural workers should be encouraged to come forward with concerns and informed that they should do so because they have the responsibility to act in the best interest of their own safety and that of others
 - Employers should ensure that they practice what their policies state
- Consider how to increase reporting of incidents
 - Set expectations to ensure cultural workers understand how and to whom to report issues
 - Take measures to ensure cultural workers will be comfortable coming forward, such as engaging a third-party agency to accept complaints
- Proactively identify where issues could arise
 - For example:
 - where work requires overnight travel
 - where there may be a power imbalance between the parties working on a project
 - where cultural workers may be required to work alone or in isolation
 - where individuals may be required to meet one-on-one with people in authority

General Takeaways

- Workplace harassment has become increasingly challenging and risky for employers to navigate
 - It is critical for employers and cultural workers to understand how to proactively contain workplace harassment Work that involves touch or contact
- Employers should also strive to achieve more than mere baseline compliance
 - Ensuring safe workplaces boosts productivity and quality of projects, performances and productions
- Not making efforts to foster respectful working environments or taking workplace harassment seriously could have negative public consequences and lead to reputational harm
- Issues should be assessed on a case by case basis