

FEDERAL LABOUR STANDARDS – WORKPLACE SEXUAL HARASSMENT COMPLAINTS: PROCESS GUIDE (NON-UNIONIZED WORKERS)

A. What is the process for dealing with sexual harassment complaints?

If you are a **non-unionized employee** and you have a **federally regulated employer**, your employer has specific obligations if a worker reports sexual harassment at the workplace, or in an environment connected to work. **This is part of occupational health and safety under the [Canada Labour Code](#).**

Federally regulated employers include banks, airlines, and Indigenous band councils (and sometimes other Indigenous community services). To understand if you work for a federally regulated employer, you can look here: <https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html>.

Some federally regulated employees are **excluded from some or all** of these protections. Here are some examples of employees who are fully or partially excluded:

- managers
- lawyers, architects, dentists, engineers, and doctors
- bank salespeople working on commissions
- shipping employees
- railway workers
- workers onboard a ship
- truck drivers

Unionized workers are **not** covered by this guide. If you are an employee who is unionized, you should talk to your union.

If you are not working for a federally regulated employer, you will be covered by provincial occupational health and safety rules instead (please see other guides for more information).

If you are not sure whether you are covered by federal labour standards, you should get legal advice as soon as possible (options for free legal advice are included below).

1. How is sexual harassment defined in the *Canada Labour Code*?

Sexual harassment is included in the definition of “harassment and violence” in [Part II – Occupational Health & Safety](#) of the *Canada Labour Code*:

It is "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee."

2. Is my employer required to have a workplace sexual harassment policy?

Yes. The *Canada Labour Code* requires all employers **to have a policy about sexual harassment**. The policy should include:

- the employer's commitment to prevent and address workplace sexual harassment
- describe the process for making complaints and the resolution process
- describe the roles - who does what, and who can receive complaints
- emergency procedures if there is an immediate health and safety risk to a worker
- procedures to ensure privacy is protected
- a list of support measures available to workers

The Canada Labour Standards website includes an example of a complete policy here:

<https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/sample-user-guide.html>

More information is available here:

https://www.canada.ca/content/dam/canada/employment-social-development/migration/documents/assets/portfolio/docs/en/reports/labour_standards/sexual_harassment/harassment.pdf

3. How do I make a complaint to my employer?

a. Provide details of what happened

You should say what happened, when it happened, and who was involved, giving the specific facts and not opinions. For example, you might say "On Tuesday June 24, John asked me on a date, and after I said no, he continued to text me for the next few days" (facts) instead of "John is being creepy" (opinion).

b. Make your complaint in writing or verbally

You can put your complaint in writing, or you can tell your employer verbally. If you make the complaint verbally, then keep notes of what you tell your employer. Your workplace may have a specific person who handles sexual harassment complaints, and if this is the case, your supervisor will refer you to that person.

If you make your complaint verbally, your employer will write the information down.

If you make your complaint in writing, you can use the "Notice of Occurrence" form found here:

<https://www.canada.ca/content/dam/esdc-edsc/documents/programs/workplace-health-safety/harassment-violence-complaint/file/sample-notice-occurrence/sample-notice-occurrence-template-form-EN.pdf>

You do not have to use this form and it is optional.

4. When should I make a complaint to my employer?

You should make a complaint as soon as possible. If you no longer work for the employer, you have up to **three months** to make your complaint.

If you have to make a complaint more than three months after you stopped working for the employer due to trauma from the harassment, or due to a health condition, you should make sure you have evidence of the trauma or health condition. This can be a note from your doctor, nurse practitioner, or a social worker.

Seek legal advice if you are concerned about the timelines in your complaint (see **B. Where can I get help with this?**)

5. What can I expect if I make a complaint to my employer?

There are specific sexual harassment regulations under the *Canada Labour Code* that say what your employer must do if you make a complaint. The regulations are called the *Work Place Harassment and Violence Prevention Regulations*, and they can be found online here: <https://laws-lois.justice.gc.ca/PDF/SOR-2020-130.pdf>

Your employer must do these things after you make a complaint:

- **contact you within seven days** to let you know they received your complaint and to tell you about the process going forward, and make sure a formal "notice of occurrence" is filled out for your complaint
- set up a meeting with the person responsible for dealing with the complaint (chosen by the employer) to try to find a **negotiated resolution**.
 - You should get legal advice before this meeting and clarify what kind of resolution could work for you. You do not have to say yes to a resolution if it does not work for you.
- if the complaint is not resolved, the employer will offer you the chance to participate in "conciliation" which is an informal resolution, helped by a Mediator. You do not have to choose this option if it does not work for you.

6. Complaint Investigation

You can choose to ask the employer to investigate the complaint, and if you do, they have to hire an independent investigator. The investigator should be a qualified, neutral third party and the investigator must be assigned **within 60 days** of when you asked for an investigation. The investigator will interview the complainant and witnesses, and review documents. They will provide a report to the employer with recommendations. The report must protect the identity of involved people.

The investigator must provide a copy of the report to you, the complainant, to the employer, and to a health and safety representative or workplace safety committee.

7. What are the possible outcomes of an investigation?

The investigator's report will include recommendations to resolve the complaint, if they determine that there is good evidence and reasons are supported.

It is not automatic that the employer will implement all the recommendations in the investigator's report. The employer must work with the health and safety representative or workplace safety committee to determine which recommendations from the report will be implemented.

8. How long does this process take?

The employer must make sure the whole process is completed **within one year** of receiving the complaint.

The employer must give the complainant and the respondent monthly status updates.

9. What if I disagree with the investigator's conclusions?

If you read the report and disagree with the way it was conducted or the conclusions, you should seek legal advice as soon as possible to understand your options (see below).

10. Will this process give me monetary compensation for being sexually harassed?

No. These are occupational health and safety rules, and their purpose is to make sure employers follow proper processes to prevent and respond to sexual harassment. They do not provide compensation for the complainant. If you wish to seek compensation, you should get legal advice on the options, which could include a human rights complaint, civil claim, or workers' compensation claim (information on how to get free legal advice is included below).

11. What if I make a sexual harassment complaint, and the employer does not do what they are required to do?

First, speak to your supervisor or the person at your workplace who deals with sexual harassment complaints. Let them know you think the *Work Place Harassment and Violence Prevention Regulations* were not followed. You may wish to put this in writing.

If this does not resolve the matter, you can **register an Occupational Health and Safety complaint**. The "Complaint Registration" form is available here:

<https://catalogue.servicecanada.gc.ca/content/EForms/en/Detail.html?Form=LAB1060>

You will need detailed information about your original complaint to fill in this form. You should also get legal advice (see below).

12. What if I am punished for filing a complaint?

Under the *Canada Labour Code*, the employer is not allowed to punish you for filing a complaint. This is called **reprisal**. If you are punished, you can file a **reprisal complaint** with the [Canada Industrial Relations Board](#) (CIRB). Specifically, you can make a reprisal complaint if your employer has done any of the following:

- fired you, laid you off, demoted you, suspended you, disciplined you, or otherwise punished you as a result of because you:
 - made a complaint about sexual harassment, hours, wages, vacations, leave, holidays, or other protections in [Part III](#) of the *Canada Labour Code*
 - provided information to an inspector, adjudicator, Board member, or other federal labour officer
 - testified under a hearing or investigation
 - have exercised or tried to exercise rights under the *Canada Labour Code* concerning sexual harassment, hours, wages, vacations, leave, holidays, or other protections in [Part III](#) of the *Canada Labour Code*
- If an employer **threatens** to punish you in these ways, you can also make a reprisal complaint.

You have to make a reprisal complaint **within 90 days** from the day you first knew about the employer's actions.

If your reprisal complaint is successful, the CIRB can [order](#) the employer to do the following:

- allow you to return to your job or reinstate you
- pay you what you would have earned if the employer had not punished you
- any other others the CIRB thinks are fair

The forms for filing a reprisal complaint can be found here under "Occupational Health and Safety" at

<https://www.cirb-ccri.gc.ca/en/resources/section-147-reprisal-complaint-canada>.

More information on CIRB Health and Safety – Reprisal Complaints can be found here: <https://www.cirb-ccri.gc.ca/en/about-appeals-applications-complaints/health-safety-reprisal-complaints>.

B. Where can I get more help with this?

Detailed process guides on other topics are available at: [Stand Informed Resources](#).

You can get free legal advice at:

Law Students’ Legal Advice Program (LSLAP)

This program provides free legal advice and representation (by supervised law students) in the Lower Mainland.

Call: 604-822-5791

Website: <https://www.lslap.bc.ca>

Access Pro Bono

This program provides free summary advice from a lawyer, as well as several other legal assistance programs.

Call: 604-878-7400 or 1-877-762-6664

Email: appointments@accessprobono.ca

Website: <https://accessprobono.ca>

You can also **find advocates** across BC by using PovNet’s “Find an Advocate” Tool, available online: <https://www.povnet.org/find-an-advocate>.

Resources

Sexual Harassment: Overview (Government of Canada):

<https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention.html>

Canada Labour Code Complaint Process:

<https://www.canada.ca/en/employment-social-development/services/labour-standards/reports/filing-complaint.html>

Work Place Harassment and Violence Prevention Regulations: <https://laws-lois.justice.gc.ca/PDF/SOR-2020-130.pdf>