

## OCCUPATIONAL HEALTH AND SAFETY REPORTS FOR WORKPLACE SEXUAL HARASSMENT: PROCESS GUIDE

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### A. HOW CAN A PREVENTION OFFICER HELP ME?

If there is **sexual harassment** at your **workplace**, your employer is responsible for responding to it and dealing with it appropriately to keep the workplace safe.

If your employer is not keeping the workplace safe, you can call a Prevention Officer at WorkSafeBC. The role of the Prevention Officer is to ensure your employer complies with occupational health and safety standards. The Officer will not investigate your complaint, but they will educate your employer on how to deal with the safety issue, and they can issue fines and orders if needed.

**Note:** This is different than reporting an **injury** caused by sexual harassment in the workplace. For more information on reporting **injuries** due to sexual harassment, please refer to our guide for physical injuries and mental health conditions.

### B. WHAT COUNTS AS SEXUAL HARASSMENT?

**Sexual harassment** is a workplace health and safety issue. Under British Columbia's occupational health and safety laws, "harassment" is defined as:

"Any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated."<sup>1</sup>

This includes workplace sexual harassment. Examples of workplace sexual harassment may include:

- Any unwanted comments or actions that are sexual or related to your sexuality, sexual orientation, gender, or gender identity or expression. This includes homophobic and transphobic behaviour.
- Sexual touching, leering, gestures, threats, stalking, or sharing sexual images.

### C. WHAT COUNTS AS THE WORKPLACE?

The "workplace" can be:

- i) your actual work location (for example, an office, shop or construction site);
- ii) times and places that are connected to work (for example, going for lunch with your coworkers or attending a work-related social event); or
- iii) social media related to your work, or communications from coworkers or bosses outside of work hours.

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<sup>1</sup> BC Occupational Health and Safety Policies, Policy Item P2-21-2, P2-22-1, and P2-23-2

## D. REPORTING HARASSMENT TO YOUR EMPLOYER

- As part of workplace safety, all workers have a duty to report sexual harassment to their employer if they witness or experience it.
- You can report harassment at any time; however, you should report it as soon as you can.
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## E. WHAT ARE YOUR EMPLOYER'S OBLIGATIONS?

Your employer is required to prevent and respond to workplace sexual harassment. This includes:

- Having a workplace harassment policy
- Having procedures for workers to report harassment
- Providing training to workers and managers on the policy
- Taking appropriate steps to respond to reports of harassment
- Taking appropriate steps to prevent harassment

More information about the obligations of employers can be found here:

<https://www.worksafebc.com/en/health-safety/hazards-exposures/bullying-harassment/resource-tool-kit>

## F. WHEN SHOULD I CONTACT WORKSAFE BC PREVENTION OFFICERS?

**You can contact the Prevention Officer:**

- If your employer does not have a harassment policy, or if it does not respond appropriately to complaints.
- If you have questions about what your employer's obligations are in terms of dealing with harassment.
- If there is an urgent safety issue or immediate risk to a worker.

The WorkSafeBC Prevention line is 1-888-621-7233 (1-888-621-SAFE) or 604-276-3100. You will be asked to provide a name and number. A Prevention Officer will then call you back.

More contact information for the Prevention Office, including an online question tool, can be found here: <https://www.worksafebc.com/en/contact-us/departments-and-services/health-safety-prevention>

## G. WHAT ARE THE POSSIBLE SOLUTIONS (REMEDIES) AVAILABLE THROUGH WORKSAFE BC'S PREVENTION OFFICE?

If you call the prevention office, WorkSafeBC may investigate your employer to find out if they have the **right policies and procedures** in place to prevent and address sexual harassment. The prevention officer has the ability to:

- order the employer put **policies in place** or make any other order to ensure the employer complies with the Workers Compensation Act; or
- **issue fines**, usually referred to as an "administrative penalty", against the employer.

**Note:** The investigator will not investigate whether you were sexually harassed, make orders to stop the sexual harassment, or give you compensation (money). Please refer to our other guides for information on other options.

## H. HOW LONG DOES IT TAKE TO RESOLVE?

Prevention Officers normally respond to calls quickly, but after that, it could be long or short depending on the workplace and the how complex the issues are. There is no set timeline.

## I. WHAT IF I DON'T FEEL SAFE AT THE WORKPLACE?

If your employer is asking you to work and you don't feel safe, you have the right to refuse unsafe work. This can include working in a situation where you are at risk of sexual harassment.

Here are the steps you should take:

1. Immediately let your supervisor or manager know the work is unsafe. They must investigate, and while they are investigating, you should not be assigned to work tasks that you reported as unsafe, such as working with your harasser (although the employer may assign you temporary alternative work). If the employer does not agree or does not resolve the issue, move to step 2.
2. Tell the employer the work is still not safe and ask to have it investigated with a health and safety representative (from your workplace), a union rep (if you have one), or another worker you have selected. While this is being investigated, you should not be assigned to the unsafe work. If this does not resolve it, move to step 3.
3. Tell the employer the work is still not safe and call the WorkSafeBC Prevention office. A Prevention Officer will investigate and offer a resolution. While you are waiting for this process to happen, you should not be assigned to the unsafe work.

You can find more information here: <https://www.worksafebc.com/en/health-safety/create-manage/rights-responsibilities/refusing-unsafe-work>

## J. WHAT IF I AM PUNISHED FOR RAISING A WORKPLACE SAFETY ISSUE?

Your employer is not allowed to punish you for raising a workplace safety issue. If your employer suspends, disciplines, lays off or fires you or changes your work conditions in a negative way (or threatens to do so) because you raised a workplace safety issue or contacted WorkSafe BC, you can make a **prohibited action complaint**. A prohibited action complaint must be filed **within one year** of the employer's negative actions.

During WorkSafeBC's review of the complaint you and your employer may be asked if you want to participate in voluntary mediation. If a mediated settlement is not reached, the complaint proceeds to a written hearing stage. Then WorkSafeBC will make a decision about whether the employer's action was prohibited. Remedies may be awarded to put the worker in the same position as if the prohibited action not occurred.

**A prohibited action complaint** can provide you with the following **remedies**:

- Reinstatement if you were terminated;

- Pay you lost wages if your hours were cut;
- Stop the punishing behaviour;
- Pay expenses related to the prohibited action; or
- Other actions to be in compliance with the Act.

More information about prohibited action complaints can be found here:

<https://www.worksafebc.com/en/for-workers/just-for-you/prohibited-action-complaints>

## K. WHAT IF I DISAGREE WITH A DECISION BY PREVENTION OFFICER?

### STEP 1 – REVIEW DIVISION

- If you disagree with a decision of WorkSafeBC, in most cases you must first apply to the Review Division for a review **within 90 days of the date of the decision.**
- You can only do this if you are “directly affected” by the decision.
- If you **miss the deadline** for appealing a specific decision, you will **lose** your right to appeal. You can apply for an extension of time but there is no guarantee it will be granted, even if you have a good reason for missing the deadline.

You can find more information here: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/personal-injury-and-workplace-safety/factsheets/reviewsappeals/appeals-to-wcat-5601>

### STEP 2 – WORKERS’ COMPENSATION APPEAL TRIBUNAL (“WCAT”)

- If you disagree with the result of the Review Division then, in some cases, you can appeal it to the Workers’ Compensation Appeal Tribunal **within 30 days of the date of the Review Division’s decision.**
- Appeals for prohibited action decisions do not go through the Review Division first, they must be appealed directly to WCAT **within 90 days of the WorkSafeBC decision.**
- If you miss the deadline for appealing a specific decision, you will **lose** your right to appeal. You can apply for an extension of time but there is no guarantee it will be granted even if you have a good reason for missing the deadline.

**Note:** Many occupational health and safety decisions cannot be appealed to WCAT. **Please obtain legal advice for more information** (free legal advice options listed below).

## L. HOW DOES OCCUPATIONAL HEALTH AND SAFETY INTERACT WITH OTHER OPTIONS?

- If you have an injury from workplace sexual harassment (physical injury or mental health condition), you can make a claim for compensation in addition to contacting Prevention Officers. Please see our guide on making a compensation claim for physical injury or mental health condition.

- There are other legal options, like human rights, employment standards and wrongful dismissal or personal injury lawsuits that you may be able to pursue in addition to a workers' compensation claim.

You should get legal advice to help you decide which options make sense for you.

- Generally, you cannot have the same remedy twice.
  - For example - if you received two weeks' worth of payment for lost wages from the Employment Standards Branch, you cannot get those same two weeks in your prohibited action claim.
  - However, you could still claim for reinstatement of your job, or make other claims like human rights claims.

These other options can sometimes give you access to different remedies than the ones available in a workers' compensation claim. Please refer to our other process guides for various remedies to consider before deciding upon which ones are the best match for your case. We also encourage you to get legal advice.

## M. 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:**

**Workers' Advisors Office BC:** The Workers' Advisors Office (WAO) advises, assists and represents workers anywhere in BC and their dependents on workers compensation issues, including Occupational Health and Safety matters such as Prohibited Actions. The WAO is independent from WorkSafeBC and WAO's services are **free of charge**. Call: 604-335-5931 or 1-800-663-4261; Website: <http://www.gov.bc.ca/workersadvisers>

### Access Pro Bono

This program provides free summary advice (15 minutes) from a lawyer, as well as several other legal assistance programs.

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

Email: [appointments@accessprobono.ca](mailto:appointments@accessprobono.ca)

Website: <http://accessprobono.ca>

### Law Students' Legal Advice Program (LSLAP)

This program provides free legal advice and representation (by supervised law students) in the Lower Mainland for low-income people at all stages of the Employment Standards process.

Call: 604-822-5791

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

### **University of Victoria - The Law Centre**

This program provides free legal advice and representation (by supervised UVic law students) in Victoria, BC.

Call: 250-385-1221

Email: [reception@thelawcentre.ca](mailto:reception@thelawcentre.ca)

Website:

<https://www.uvic.ca/law/about/centre/services/humanrightsclinic.php>

### **Find an Advocate**

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**

### **WorkSafeBC Worker Fact Sheet on Workplace Bullying and Harassment:**

<https://www.worksafebc.com/en/resources/health-safety/information-sheets/worker-fact-sheet-workplace-bullying-and-harassment>

### **WorkSafeBC Claims Reviews and Appeal Guide:**

<https://www.worksafebc.com/en/resources/about-us/guides/claims-review-and-appeal-guide-for-workers-and-dependants?lang=en>

### **Workers Compensation Appeal Tribunal Information Guides:**

<https://www.wcat.bc.ca/home/resources/>

### **Workers Compensation Appeal Tribunal Decisions:**

[http://www.wcat.bc.ca/search/decision\\_search.aspx](http://www.wcat.bc.ca/search/decision_search.aspx)

### **WorkSafe BC's Prevention Manual is available online:**

<https://www.worksafebc.com/en/resources/law-policy/prevention-manual/prevention-manual>

The *Workers Compensation Act* is available online: <http://canlii.ca/t/984d>

Searchable Occupational Health and Safety information, including policies and regulations, is available online: <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation>

### **WorkSafeBC Claims Reviews and Appeal Guide:**

<https://www.worksafebc.com/en/resources/about-us/guides/claims-review-and-appeal-guide-for-workers-and-dependants?lang=en>

### **The Law Students' Legal Advice Program manual is available online:**

<https://www.islap.bc.ca/manual.html>