

Developing a Workplace Sexual Harassment Policy & Procedures



Workplace Sexual Harassment Project

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***Disclaimer:** This document is intended to provide employers with a basic understanding of this topic.*

This is not legal advice.

If you have any questions, please contact the WSHP at the above number.

About this Guide

PEI's new Workplace Harassment Regulations¹ will come into effect on July 1, 2020, requiring every workplace to have a strategy to deal with workplace harassment. This Guide was developed by the PEI Human Rights Commission's **Workplace Sexual Harassment Project (WSHP)** to help employers develop a policy and procedures to deal with sexual harassment. There are many forms of harassment that can happen at work. Please refer to the "Guide to Workplace Harassment Regulations" (www.wcb.pe.ca/WH) for a more complete guide to general workplace harassment.

A strategy for addressing workplace harassment should make specific reference to sexual harassment. It can be a complex workplace issue to navigate however, employers can approach it with confidence when the right policy and procedures are in place *before* an incident occurs. A clear policy and procedures for reporting, investigating and resolving workplace sexual harassment is the key. This Guide is a start. The WSHP can help with education and training designed for your workplace.

1 Occupational Health and Safety Act, RSPEI 1988 c O 1.01

The Workplace Sexual Harassment Project

The PEI Human Rights Commission's *SHIFT Project* is a five-year educational project that will address workplace sexual harassment on PEI by working with employers, employees, high school students, and the general public. SHIFT is funded by the federal government. Our project partner is Community Legal Information, who provide victims of sexual harassment or sexual violence legal information, access to free legal advice from a trauma-informed lawyer and plain language legal resources for employees and bystanders.

The WSHP will help employers and others navigate the complex issue of sexual harassment. The goal is to equip employers, employees, bystanders, and the general public to respond to workplace sexual harassment with confidence and in compliance with the laws on Prince Edward Island. Employers are invited to contact the team to find out what services can be offered to each workplace. **Most services that are provided as part of the WSHP are provided at no cost.**

The *Workplace Sexual Harassment Project* is separate from the PEI Human Rights Commission's formal complaint process.

Key Definitions to Include in a Sexual Harassment Policy

Term	Definition
Sexual Harassment	<p>A form of discrimination. Any unwelcome conduct (behaviour, comment, gesture or contact) of a sexual nature that the person responsible for the conduct knows, or ought reasonably to know, could have a harmful effect on the targeted worker and/or on the working environment. It includes, but is not limited to:</p> <ul style="list-style-type: none">a) conduct that is related to an individual's sex, sexual orientation, gender identity, or gender expression andb) conduct of a sexual nature that could reasonably be thought to put sexual conditions on a person's job or employment opportunities. <p>It can be a series of repeated occurrences or one single event.</p>
Gender Harassment	<p>This is a form of sexual harassment. Jokes, stereotypes or aggression toward an individual because of their gender or the gender with which they identify are examples. The conduct does not have to be sexual.</p> <p><i>Gender Identity</i> is who you know yourself to be. That may be a woman, man, both, neither, or anywhere along the gender spectrum. It cannot be observed or measured, only reported by the individual.</p> <p><i>Gender Expression</i> is everything that we do that expresses or communicates our gender. Examples include clothing, hair style, mannerisms, way of speaking, chosen name, and preferred pronouns.</p>
Complainant	The person who reports they have been sexually harassed in the workplace.
Respondent	The person who the workplace sexual harassment complaint is made against.
Target	The person who an investigation found did experience workplace sexual harassment.
Harasser	The person who an investigation found did commit workplace sexual harassment.

“I didn't mean anything...”

Lack of intent is not a defense for sexual harassment. The effect of the behaviour on the person experiencing the harassment is what matters.



Procedures Considerations

When employers are writing procedures for handling *general* workplace harassment they should include three stages:

- 1) reporting,
- 2) investigating, and
- 3) resolving.

An example of procedures with these three steps can be found in the WCB Guide (www.wcb.pe.ca/WH).

Special considerations apply for handling matters of sexual harassment and should be guided by three key values:

- 1) Respectful Method
- 2) Informed Leadership
- 3) Restored Workplace.

You don't have to reinvent the wheel!

Check out the sample *Workplace Harassment Policy, Complaint Form, and Harassment Complaint Process* in the WCB Guide, then use the information below.

Respectful Method

Re-telling - Sharing an account of sexual harassment can be emotional and re-traumatizing. The employer's procedures should clearly state the person responsible for receiving sexual harassment reports. Complainants should only have to tell their story once; an investigation may require some repetition, but this should be minimized.

Voice - Complainants should have a voice in the procedures. Ask them immediately what they want and need, and incorporate requests that are reasonable and fair. This may include changes in working with the Respondent.

Support - Complainants should be allowed to be accompanied by a trusted support person throughout the procedures. This could be a friend, family member, other co-worker, etc. This person is to be present as a support, is not intended to speak to the situation, and should not be a potential witness.

Choice - Complainants should be able to choose between formal and informal procedures. Policies should clearly state what complainants can expect from each procedure.

Resolutions - When an investigation produces a positive finding of sexual harassment, resolutions should incorporate what the target needs to heal, rather than imposing a potentially unhelpful resolution on them. Targets should also be made aware of the corrective action that will be imposed on the harasser.



In 2018-2019, the PEI Human Rights Commission saw a

64% increase in the number of requests for sexual harassment training.

Informed Leadership

Bias - Employers, investigators, and managers should be aware of the myths associated with sexual harassment so these do not bias their response to a complaint.

Trauma-Informed - Sexual harassment can be a traumatic experience. Employers, investigators, and managers should be trained to understand how trauma impacts a complainant of sexual harassment and how they may behave during an investigation.

Barriers to Reporting - Employers, investigators, and managers should be knowledgeable about the barriers to reporting sexual harassment and how to overcome these barriers. Common barriers include: fear of not being believed, fear of retaliation, shame and stigma, and the fact that the respondent is well-known to the complainant.

Restored Workplace

Other Employees - Other employees can be impacted by such things as witnessing sexual harassment, fear of being sexually harassed, acting as a confidant for the victim, or being a supporter for the harasser. Employers should make it known to affected employees that their needs are important and will be met.

Workplace Culture - A culture of tolerating disrespect or a culture that reinforces gender stereotypes, can lead to sexual harassment. Employers should examine their workplace culture to understand what may have led to the sexual harassment. Employers should put practices in place that foster a positive and safe workplace culture, such as regular training about sexual harassment, or fostering a culture of acceptance and inclusion for all gender identities and forms of gender expression. The WSHP offers free workplace training designed for each workplace.

The Harasser - The corrective action imposed on the harasser will depend on the severity of the sexual harassment. Constructive action should be considered when a harasser takes responsibility for their behaviour and workplace relationships can be restored. Examples could be attending sexual harassment training with the PEI Human Rights Commission or another appropriate educational entity, writing a sincere apology letter to the target, or helping the target pay for counselling, if needed.

More Resources

SHIFT at the PEI Human Rights Commission
www.peihumanrights.ca

PEI Workers' Compensation Board
www.wcb.pe.ca/WH

The RISE program at Community Legal Information
Legal resources for victims of sexual harassment and violence
www.legalinfopei.ca

Just the Beginning...

Creating policies and procedures is one step towards having a respectful workplace environment.

Implementing policies and procedures, and **training** managers and employees to recognize and respond to sexual harassment are the next steps.

SHIFT can help employers by using an industry-specific approach to training and education, with most **services provided at no cost**.

Contact us at 902-368-4180 or wshp@peihumanrights.ca to learn more about how we can help.