

Harassment: when do you cross the line?

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My supervisor is constantly on my case. I feel threatened, intimidated and harassed. Is there anything under the collective agreement to protect me from this treatment?



Article 39 of the agreement provides that employees have a right to work in an environment free from harassment. In a situation where there is a case of harassment, the union can bring a grievance under Article 39. If the union is successful, the employer will be required to take actions necessary to bring the harassment to an end.

What kind of behaviour constitutes harassment for which the union can bring a grievance on my behalf?

Generally speaking, harassment is the abusive, unfair or demeaning treatment of a person or group of persons that unreasonably interferes with a person's or group's status or performance or creates a hostile or intimidating working or educational environment when:

- i) such treatment abuses the power that one person holds over another or misuses authority; or
- ii) such treatment has the effect or purpose of seriously threatening or intimidating a person.

What are some specific examples of behaviour that may constitute harassment prohibited under Article 39 of the agreement?

Examples of personal harassment could include, but are not limited to:

- threats, bullying, coercion
- actual or threatened physical assault
- verbal assault, taunting or ostracizing
- malicious gestures or actions

that create(s) a poisoned work environment as described above.

What if the harassment I am experiencing is at the hands of a co-worker and not a supervisor? Can the union still file a grievance?

If the union agrees that the co-worker's behaviour constitutes harassment, a grievance can still be filed. Employers who permit their employees to be harassed in the workplace are 'vicariously liable' for the conduct of the 'harassing employee.'

My co-workers and I are always laughing and joking at work. We sometimes call each other names. I don't want someone to file a grievance regarding my own behaviour. Am I protected?

While you should use common sense and take care that your comments are not thoughtless and insensitive, not every act that causes a person some form of anxiety can be labelled as harassment. Harassment is a serious matter. Harassment complaints should not be made in a context where the harm, by an objective standard, is fleeting.

My supervisor is constantly scrutinizing my work and overrules decisions I make. Could her actions constitute harassment under Article 39?

Unless there is some evidence that the supervisor is acting with malice or for an improper purpose with an intent to harm you, it is not likely that her behaviour constitutes harassment. There is a distinction between the legitimate exercise of supervisory authority and conduct which will constitute personal harassment. The employer must have done something beyond exercising his or her right to supervise and direct the workplace before harassment can be found to have occurred.

Yesterday I lost my temper with my supervisor in front of some colleagues. My supervisor then lost her temper and raised her voice in anger at me. Can I file a harassment grievance?

It is highly unlikely, given your contribution to the tone of the discussion, that an arbitrator would find that the supervisor's comments constituted harassment towards you. Even if the supervisor is found to have raised her voice in anger, it is unlikely that her reaction would constitute harassment given your conduct at the time.

Summary:

Given the wording of Article 39 of the collective agreement and the state of law on personal harassment, harassment may be found if there is evidence of abusive, unfair or demeaning conduct which had the effect of unreasonably interfering with a member's performance or creating a hostile or intimidating working environment, as long as:

- 1) it was not mere "workplace foolishness";
- 2) the conduct to which the member took offence was something beyond the legitimate exercise of supervisory authority; and
- 3) the member did not provoke the conduct by insolent and disrespectful behaviour. 

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