

Respect in the Workplace:

What's Acceptable and Legal at UNBC

Mitch Guitard, CUPE National Representative

Adriana Wills, Legal Counsel

June 21, 2013

Employment is Regulated: Examples

1. *Human Rights Code*
2. *Workers' Compensation Act*
3. *Employment Standards Act*
4. *Labour Relations Code of B.C.*
5. *Collective Agreement*
6. *UNBC Policies*

Some Workplace Behaviour is Regulated

- Discrimination & Harassment
 - Personal and/or Human Rights
- When regulated → legal obligation to not discriminate or harass
- Where regulated? *Human Rights Code; Workers' Compensation Act; Collective Agreement* and UNBC Policies

Purposes of the *Human Rights Code* of BC

- a) To foster a society in which there are no impediments to a full and free participation in the economic, social, political and cultural life.

Purposes of the *Human Rights Code* of BC

- b) To promote a climate of understanding and mutual respect where all are equal in dignity and rights.
- c) To prevent discrimination prohibited by this *Code*.

Purposes of the Code

- d) To identify and eliminate persistent patterns of inequality.
- e) To provide a means of redress for those persons who are discriminated against contrary to this *Code*.

**Status of
*Human
Rights Code***

Quasi-Constitutional

To be given broad and liberal effect consistent with its purposes and objectives

Discrimination in Employment

- Sec. 13(1) A person must not
 - a) Refuse to employ or refuse to continue to employ, or
 - b) Discriminate against a person regarding employment or any term of condition of employment because of race, colour, ancestry, place of origin, religion, age, sex, sexual orientation, marital status, family status, physical disability, mental disability, or a criminal conviction which is unrelated to the employment.

Definitions of Discrimination

- Not defined by the *Code*

“...an act of differential treatment based on a bias, preconceived idea or preference.”

“...making a difference in treatment or favour of a class on a categorical basis.”

Harassment - Definitions

To worry and impede by repeated raids

To exhaust and fatigue

To annoy continually

Definition from WorkSafe BC Policy

- “Bullying/Harassment”
 - a) Includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known that would cause that worker to be humiliated or intimidated, but
 - b) Excludes any reasonable action...relating the management...

Example of a Collective Agreement Definition

“...**deliberate** gestures, comments, questions, representation, or other behaviours that **ought reasonably to be known** to be **unwelcome** by the recipient and which **serve no legitimate work-related purpose**”

Harassment – Human Rights

- Based on one of the prohibited grounds
- If the harassing behaviour is based on race, sex, etc. it is contrary to the *Code*
- Creates “offensive and hostile” work environment

Harassment - Personal

- Harassing behaviour meets the definition of harassment but is not based on one of the protected grounds;
- Creates an “offensive and hostile” work environment;
- May be contrary to *Workers’ Compensation Act* and justify claims for compensation;
- May be contrary to Employment Agreement.

Examples of Harassment

- Bullying, coercion
- Actual or threatened physical assault
- Verbal assault (yelling, screaming)
- Taunting, ostracizing, name-calling
- “Teasing”, ridiculing or “hassling”
- Gossiping
- Can be delivered face to face; through email or social media or indirectly

Exclusions from Harassment

- Legitimate exercise of management rights or decisions including:
 - Reorganizations and consequences
 - Performance evaluations
 - Performance / Behaviour management
 - Imposition of consequences, i.e. discipline

Other Exclusions

- Trivial misstatements
- Petty acts / rudeness
- Workplace foolishness

If harassment → lack of intent is not a defense.

Applying the Definition

What is
unwelcome?

Would reasonable person be offended?

Do I think this behaviour would be
unwelcome?

Express objection to conduct not
required

Ask yourself questions before acting

Applying the Definition

- Harassment may be found based on a single or repeated action
- Generally need course of conduct
- For single instance to amount to harassment, action must be severe or significant

Examples from Arbitrations

- Gossiping
 - New Brunswick case
 - “Rumour spreading” caught by Policy
 - Employee terminated for repeating rumour about co-workers
 - 5 month suspension substituted

Examples from Arbitrations

- Annoying, irritating, harassing co-workers
 - BC case of Arbitrator Chertkow
 - Grievor a welder
 - Constant troubling of co-workers
 - Last incidents:
 - Pounded on steel tank with co-workers present
 - Discharge upheld due to failure to correct over extended time.

Examples from Arbitrations

- Physical confinement
 - Manitoba case
 - Discharge of housekeeping aide
 - Locked co-worker in closet
 - Called co-worker a “mushroom”
 - Wrote “fat mushroom” on shoes
 - Discharge upheld

UNBC Policy - Objectives

- To encourage courteous, and respectful behaviour;
- To eliminate harassment from workplace;
- To encourage quick and effective resolution of conflicts, differences and issues;
- To comply with *Workers' Compensation Act*.

Scope of Policy

- Applies to:
 - All employees of UNBC, including executive;
 - Protects from harassment and bullying in the course of employment from all sources: co-workers, supervisors/managers, students, contractors, visitors, etc.

Procedures for Resolution

- Informal:
 - Direct approach
 - Assistance of Supervisor, Manager, Dean or Chair
 - Mediation
- Both complainant and respondent have a right to union or other representation.

Procedures for Resolution

- Where informal processes fail or complainant does not want formal process → **FORMAL**
 - Written complaint – RIWP Advisor
 - Must comply with timelines
 - Investigation
 - Written report

Other Policy Issues

- Consequences of findings may be subject to grievance or appeal to President;
- No retaliation for making complaint
- No vexatious, frivolous or malicious complaints
- Confidentiality

Summary: Rights

- Employees are entitled to attend work in an atmosphere of dignity and respect;
- Employees are entitled to a workplace free of harassing, bullying or discriminatory behaviour.

Summary: Responsibilities

- Treat everyone with courtesy and respect;
- Do not focus or make a decision based on person's sex, age, religion, etc. (prohibited grounds);
- Do not make negative, demeaning or humiliating comments;
- Do not use body language or tone of voice which is dismissive, rude, accusatory.

Summary: Responsibilities

- Stay away from practical jokes which could create embarrassment or awkwardness
- Do not post or display offensive materials
- Do not engage in gossip
- Limit email use to work issues
- Be careful of use of social media to post information about co-workers, etc.

Respect in the Workplace:

What's Acceptable and Legal at UNBC

Mitch Guitard, CUPE National Representative

Adriana Wills, Legal Counsel

June 21, 2013