

Sexual Violence in the Workplace

Filing complaints for adults who have experienced sexual violence at work

At work, **Dana**'s co-worker sends Dana suggestive emails and texts. Dana asks their co-worker to stop but the co-worker continues to send these messages. This co-worker also touches Dana's back, shoulders and arms, or brushes up close to them while at work. This makes Dana uncomfortable.

If you have experienced sexual violence at work like Dana, you are not alone. **You have options.**

You have a right to feel safe at work. Employers have a legal responsibility to maintain a workplace that is free of harassment and violence.

The bottom line: harassment and violence in the workplace are against the law.

Produced in collaboration with:



This tip sheet describes legal responses to sexual violence. It does not cover all responses available to those who have experienced sexual violence. Read on for more info on organizations that can provide support. The other tip sheets in this series are available at: www.cplea.ca/sexual-violence/

1 © 2021 You should *NOT* rely on this publication for legal advice. It provides general information on Alberta law only.

The Laws

The *Alberta Human Rights Act* and Alberta's occupational health and safety (OHS) laws prohibit sexual violence in the workplace.

If you are experiencing sexual violence or harassment at work, you should report the behaviour to a supervisor. Your workplace may have an internal process for dealing with complaints, such as a workplace policy or collective agreement (if you are in a union). If your employer does not have a process, or you are not happy with how they dealt with your complaint, there are other options. You may be able to make a human rights complaint or an occupational health and safety complaint. How you respond depends on the situation and the outcome you want.

“If I am a temporary foreign worker, how will making a complaint affect my status?”

If you have a temporary foreign worker status in Canada, this is likely tied to you having a job with your employer. If this is the case, know that the rights described in this resource still apply to you. You can make a human rights complaint or an occupational health and safety complaint.

If you are experiencing abuse at work, you may be eligible for an **open work permit for vulnerable workers**. This work permit lets you work for almost any employer in Canada. This is a temporary solution because it has an expiry date and cannot be renewed. The purpose of this work permit is to give you time to find another job and apply for a new work permit.

For more information, visit: <http://bit.ly/3rCCb2D>

If you are a federally-regulated employee, the *Canadian Human Rights Act* and the *Canada Labour Code* apply to you instead of the Alberta laws. Federally-regulated employees include those working for the federal government, Canadian chartered banks, interprovincial transportation companies, television and radio broadcasters, and First Nations administrations.

Alberta Human Rights Act

The *Alberta Human Rights Act* prohibits discrimination at work (and in other situations) based on certain protected grounds. The Alberta Human Rights Commission deals with human rights complaints in Alberta.

Protected Grounds in Alberta

- Race
- Religious beliefs
- Colour
- Gender
- Gender identity
- Gender expression
- Physical and mental disability
- Age
- Ancestry
- Place of origin
- Marital status
- Source of income
- Family status
- Sexual orientation

To make a complaint, you must connect the discrimination to a negative effect. Negative effects include:

- not getting a job
- the terms and conditions of your employment being negatively changed (such as reduced pay, not being promoted, being forced to work in unsafe work conditions or a toxic work environment)
- being denied access to benefits
- being denied a leave or accommodation
- being forced to quit your job because of the discrimination
- your employer terminating you because you made a complaint

Discrimination at work relates to the whole employment process, from recruitment and promotions to termination. For a complaint related to your workplace, your complaint will be against your employer or potential employer. An employer can be liable for failing to create a safe work environment.

Sexual Harassment

Sexual harassment is a form of discrimination. It is any unwanted or unwelcome behaviour that is sexual in nature and negatively affects you. Sexual harassment can range from mild to very severe.

Examples of sexual harassment include:

- Looking at you or touching you inappropriately
- Comments or teasing that are sexual in nature
- Unwanted physical contact or closeness
- Unwanted sexual requests or demands
- Jokes about gender or sexual orientation
- Talk about sexual activities
- Suggestive photos or drawings

The person causing harm does not have to be your boss or someone in a position of authority over you. They could be a co-worker, client, customer or student.

You can file a complaint with the Alberta Human Rights Commission if someone is sexually harassing you, including at work, and you experience a negative effect.

EXAMPLES

You have an interview for a new job. The interviewer says you are perfect for the position based on your education and experience. The interviewer then comments that you are attractive and must have lots of suitors pursuing you. You respond that you prefer to keep your private life separate from your professional life. The interviewer abruptly ends the interview. You do not get the job.

Your supervisor makes comments about your appearance and tells sexual jokes at work. You tell your supervisor their behaviour makes you uncomfortable. Your supervisor's behaviour continues and they are hostile towards you. You are up for a promotion. Your supervisor is on the committee making the decision. You do not get the promotion. Your co-worker tells you it is because you asked your supervisor to stop their behaviour.

Your co-worker makes comments to you about being gay. You ask your co-worker to stop but they do not listen. You report this behaviour to your supervisor. Your supervisor does nothing to stop the behaviour. The behaviour gets worse and worse. You decide to quit your job because the work environment is toxic.

Alberta Occupational Health & Safety Laws

Occupational health and safety (OHS) laws in Alberta set out rules that everyone on a work site must follow. This includes workers, employers, suppliers, owners and contractors. Employers have an obligation to create a safe workplace free of harassment and violence. The definitions of harassment and violence include sexual harassment and sexual violence.

Sexual harassment and violence can be a workplace hazard. Employers have an obligation to prevent and investigate **workplace hazards**. Employers should have violence and harassment prevention policies in place that include a process for dealing with complaints.

Sometimes **domestic violence** spills over into the workplace, even if you do not work with the person causing harm. Your employer must take reasonable steps to protect you and other workers from domestic violence on the work site.

Sexual harassment and violence can also be a form of **discrimination**. Discrimination means you suffered a negative consequence, such as retaliation, intimidation, loss of job, demotion, etc. You are protected from discriminatory action when you are performing certain protected activities. Section 35 of the *Occupational Health and Safety Act* lists these protected activities.

SEXUAL HARASSMENT CAN BE A CRIME

Sometimes sexual harassment at work is also a criminal offence. Criminal harassment is conduct that causes you to reasonably fear for your safety or the safety of anyone you know. It includes:

- someone following you from place to place
- someone repeatedly communicating, directly or indirectly, with you or someone you know
- someone watching your house, workplace or some other place where you are
- someone threatening you or a member of your family

For more information about criminal offences, see the tip sheet in this series called **Reporting Sexual Violence to Police**.

Making a Human Rights Complaint

You must file your complaint within one year of the event. If the harassment is ongoing, you must file within one year of the latest event.

How to file a complaint

- 1 Phone the Alberta Human Rights Commission's confidential inquiry line to discuss your concerns.** The Commission will let you know if the *Alberta Human Rights Act* covers your concerns or not.
- 2 Complete the Human Rights Complaint Form.** It is available on the Commission's website.
- 3 Mail, fax or drop off your completed form at the appropriate office.**

After you file a complaint

- 1 The Alberta Human Rights Commission will review your complaint.** They will not accept your complaint if it does not fall within the mandate of the *Alberta Human Rights Act*. This does not mean you did not experience sexual violence. It simply means the Commission is not the right place to deal with it.
- 2 If the Commission accepts your complaint, it forwards a copy to the other party (the respondent) – your employer or potential employer.** The respondent can respond to your complaint. A human rights officer will decide if your complaint should go to conciliation or investigation.
- 3 Conciliation is not a trial - it is a voluntary process to help you and the respondent resolve the complaint.** About 90% of complaints go to conciliation, with a high success rate.

During an investigation, the human rights officer gathers information from you and the respondent and then makes a recommendation.

During both processes, the human rights officer will help you both understand the issue and common resolutions. The respondent does not have to acknowledge that they have done anything wrong. The respondent may agree to pay you wages or income lost or expenses you incurred because of the discrimination (if applicable). The respondent may also agree to pay you general damages (money for injuries to dignity, feelings and self-respect). In exchange for money, you usually must agree not to take any further legal action against the respondent.

- 4 If conciliation or an investigation is not successful in resolving the complaint, the human rights officer will prepare a memo to the Director of the Commission.** The Director can dismiss your case if you refuse a reasonable settlement offer or if the Director decides your case does not have merit. You can appeal the Director's decision in writing within 30 days. The Director can also refer your complaint to a tribunal. A **tribunal** is a panel of one or three members who will hear evidence and decide your case. A tribunal is an administrative process, not a court process.
- 5 You must prove to the tribunal on a balance of probabilities that your experience meets the legal test for discrimination.** Balance of probabilities means the tribunal believes the event occurred more likely than not. If you are successful in proving your case to the tribunal, it can award you general damages, or order the respondent to pay you any wages or income lost or expenses incurred because of the discrimination. It can also order the respondent to stop the discriminatory behaviour, such as by changing a workplace policy to deal with future discriminatory acts.
- 6 If your claim is not successful, this does not mean you were not sexually harassed.** It only means the tribunal does not have enough evidence to meet the legal test for sexual harassment.
- 7 The whole process can take anywhere from a year to several years from the date you file a complaint due to the high number of complaints the Commission deals with.**

*Remember,
you and the
respondent
can settle
the issue at
any time in
the process.*

How to contact the Alberta Human Rights Commission

If you live in Red Deer or south of Red Deer, contact the Southern Regional Office in Calgary at 403.297.6571.

If you live north of Red Deer, contact the Northern Regional Office in Edmonton at 780.427.7661.

For more information, visit www.albertahumanrights.ab.ca

The **Workers' Resource Centre** provides free help to Alberta workers, including with human rights complaints. Visit helpwrc.org for more information.

Making an Occupational Health & Safety Complaint

You can report workplace hazards and discriminatory actions to Alberta Occupational Health and Safety.

You can file a complaint in two ways:

1. Call the OHS Contact Centre toll-free at 1.866.415.8690.
2. File a complaint online (only for non-urgent situations where there is no immediate danger) at: <https://bit.ly/31qJNdv>

You do not have to be an employee to file a complaint. Anyone can do so. You can also choose to remain anonymous when filing a complaint.

An OHS officer will investigate the situation, make a decision and write a report. The officer will give a copy of the report to you and your employer. OHS can order your employer to make changes, such as create or change their workplace policies. OHS can also penalize your employer through fines and prison sentences. OHS cannot order your employer to pay you pain and suffering damages.

For more information on Alberta Occupational Health and Safety, visit: <http://bit.ly/3cTvNQu>

YOU ARE NOT ALONE. There are support services available to help you. These include counselling services, and support before, during and after the legal process.

To connect with supports in your area:

- Call or text **Alberta's One Line for Sexual Violence** (1.866.403.8000)
- Call the **Canadian Human Trafficking Hotline** (1.833.900.1010) or chat live at: www.canadianhumantraffickinghotline.ca
- Call or text **Alberta 211** (2-1-1) or chat live at www.ab.211.ca
- See a list of sexual assault centres across Alberta at aasas.ca/get-help

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Sexual Assault Centre of Edmonton

SACE supports children, youth, and adults who have experienced sexual abuse or assault, and educates the public about sexual violence.

www.sace.ca

Elizabeth Fry Northern Alberta

EFry supports women and girls who are or may be at risk of becoming criminalized.

www.efrynorthernalberta.com

Centre for Public Legal Education Alberta

CPLA makes the law understandable for Albertans by providing reliable and free legal information.

www.cplea.ca