

Psychological Harassment at a Glance¹

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The Act respecting labour standards and the sections related to psychological harassment

- Provisions in the *Act respecting labour standards*:
 - A definition of psychological harassment (s. 81.18);
 - Employer obligations (s. 81.19):
 - Article **81.19**: “Every employee has a right to a work environment free from psychological harassment. Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.”
 - * Since January 1, 2019, the employer has an obligation to adopt and make available to its employees a prevention and complaint processing policy. This policy must include, “in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.”
 - A grievance “must be filed **within two years of the last incidence**” (s. 123.7).



Psychological harassment according to the Act respecting labour standards (s. 81.18)

- “[V]exatious behaviour [...]”;
- [R]epeated [...] conduct, verbal comments, actions or gestures[;]
- [H]ostile or unwanted conduct, verbal comments, actions or gestures[;]
- [Behaviour] that affects an employee’s dignity or psychological or physical integrity[; and]
- [Behaviour] that results in a harmful work environment for the employee.

For greater certainty, psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature.

* A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.”



The five criteria listed in the definition of psychological harassment

The definition in the *Act respecting labour standards* contains five criteria that must be met to conclude that a situation consists of psychological harassment. The first three relate to characteristics of harassment, and the last two relate to its consequences. Below are the criteria and several questions and answers to facilitate understanding.

1. VEXATIOUS BEHAVIOUR

- Vexatious behaviour is demeaning, offensive or abusive and affects a person's dignity and causes torment.
- It is outside the realm of what a reasonable person believes to be acceptable at work.
 - The reasonable person test allows for analyzing situations in an objective manner. Would a reasonable, objective person who is well-informed of all of the circumstances and placed in the same situation conclude that harassment took place?
- Vexatious behaviour is assessed from the perspective of the person who experiences it, without taking into consideration the intentions of the person perpetrating the behaviour. The perpetrator's malicious intent does not have to be proven.
- Assessments must look at the nature, intensity and repetition of unwanted gestures and the impact these have on the victim.

2. REPEATED BEHAVIOUR

- If viewed as isolated incidents, the gestures may seem benign. However, their accumulation may constitute harassment.

Q Can a single incident constitute harassment?

- Yes, in this case, the harmful effects of the severity of the gesture must be lasting for the victim.
 - Example: An action leads to reasonable fear about the deterioration of working conditions or direct or implied threats. In both cases, the incident may have lasting harmful effects.
 - In this case once again, the relevant perspective is that of a reasonable, objective person who is well-informed and placed in the same circumstances. Would such a person conclude harassment has taken place?
- Accordingly, the more serious the behaviour, the less it would need to be repeated to be seen as harassment, and vice versa.

3. HOSTILE OR UNWANTED BEHAVIOUR

- The conduct, words, gestures, and actions must be perceived as hostile or unwanted.
 - Hostility is not necessarily blatant, and it is not imperative for the behaviour to be aggressive for it to qualify as hostile. Hostility can be defined as the conduct of a person acting as an adversary.
 - Viewed as isolated incidents, acts may seem benign; however, their accumulation may constitute harassment.

Q If the person never expressed disapproval or refusal, can it be a situation of harassment?

- To conclude that alleged conduct, verbal comments, gestures, or actions are unwanted, the victim does not necessarily have to express refusal.
- “Unwanted” makes reference to all of the vexatious behaviour.
- The allegations must objectively qualify as “unwanted.”

4. AN AFFRONT TO DIGNITY OR PHYSICAL OR PSYCHOLOGICAL INTEGRITY

- Human dignity:
 - Refers to the concepts of self-respect and self-esteem.
 - Dignity is affected when a person is marginalized, ignored, and undervalued.
- The negative impact of the harassment may affect the person on two levels:
 1. Effects on dignity: feeling personally or professionally belittled, undervalued, or denigrated; and
 2. Effects on integrity: harassment can also lead to the deterioration of physical or psychological health.

Effects on dignity and effects on integrity are two concepts that are closely linked to the harmful effects of the behaviour on the person experiencing the harassment. This inseparable link is relevant in cases of both isolated and repeated incidents.

Q Are effects on integrity needed to conclude that a situation consists of harassment?

- No. There can also be harassment if there are effects on dignity. It must be shown that there are effects on either dignity or integrity.

5. A HARMFUL WORK ENVIRONMENT

- Another criterion involves a damaging environment that causes harm and negatively affects the person experiencing the harassment:
 - A negative, unpleasant work environment.
 - The work atmosphere created by the deviant behaviour can lead to the isolation of the victim.



Manifestations of psychological harassment

- **Stopping individuals from expressing themselves.**
Constantly interrupting individuals, criticizing their work and private lives, or prohibiting them from speaking to others.
- **Isolating individuals.**
No longer speaking to, withholding information from, or misleading individuals, assigning them a workstation that is far from others, prohibiting others from speaking to such individuals, or denying their presence.
- **Bringing individuals into disrepute.**
Badmouthing individuals, starting rumours about them, ridiculing them (imitating how they walk, their voice, their gestures, etc.), putting them down, humiliating them, evaluating them unfairly using malicious words and expressions, embarrassing them, using abusive language toward them, or sexually harassing them.
- **Discrediting individuals.**
Giving individuals dirty looks, making innuendos, sending messages that make them feel that they are not valued in our eyes (without telling them so directly), giving them demeaning, useless tasks that are below their skill levels, impeding them, circulating rumours about them, denigrating their work in front of others, etc.
- **Unsettling individuals.**
Calling into question their abilities, mocking their tastes or convictions, or making malicious innuendos.
- **Threatening or assaulting individuals.**
Screaming, shoving, or breaking the personal effects of such individuals.



Other forms of harassment at work²

- **Mobbing:**
A series of hostile remarks and behaviour expressed or engaged in over a fairly long period of time by one or more persons directed at another person (the victim).
- **Sexual harassment:**
“[B]ehaviour characterized by repeated and unsolicited sexually connotative remarks, acts or gestures that could undermine the dignity or the physical or psychological integrity of the individual or lead to unfavorable working conditions.”
- **Discriminatory harassment:**
 - “[B]ehaviour characterized by repeated and unsolicited words [...] or gestures of a vexatious or contemptuous nature, [toward an individual or group of individuals], based on any of the grounds enumerated in [section] 10 of [Quebec’s] *Charter of Human Rights and Freedoms*.”
 - The grounds enumerated in section 10 of the Charter are “race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.”
- **Abuse of power or authority:**
“Abuse of authority is a form of harassment [...] that occurs when an individual misuses the power and authority inherent in his or her position to endanger a person’s job, undermine the person’s performance of that job, threaten the person’s economic livelihood, or [interfere with] the person’s career [in any other way]. It includes intimidation, threats, blackmail and coercion.”



What psychological harassment is not

INTERPERSONAL CONFLICTS IN THE WORKPLACE

Workplaces are no different than other environments—conflicts can arise. By itself, a conflict does not constitute psychological harassment. Conflicts involve a symmetrical relationship between individuals. In a conflict, criticism is stated in a clear manner and comes from all those involved in the conflict. Each of these individuals tries to retain control. If they are well managed, conflicts can lead to the development and improvement of certain work methods.

However, as the saying goes, “the longer we wait, the worse it will get,” which could definitely be true in the case of conflicts. Until a conflict is resolved, it tends to escalate, and the individuals involved may try to find new allies to take their sides. At this point in time, the situation may shift and become a case of harassment; one of the individuals can denigrate, insult, or criticize the work of another person involved in the conflict, or even start rumours about such a person. When they are not well managed, conflicts can also become situations that lead to violence and harassment.

WORK-RELATED STRESS

Stress may be triggered by any aspect of our environment that requires an action. It is our body’s response to such a situation. This reaction is normal and essential for our survival. A workplace with multiple sources of stress can be a breeding ground for situations of violence and harassment.

Such sources of stress can include work overload, little authority to make decisions, lack of support or acknowledgement, poorly defined roles, incomplete or ambiguous communication, etc. Unlike stress, which is only destructive in excess, harassment is destructive by nature.³

STANDARD MANAGEMENT RIGHTS

If employers or managers exercise their management rights, it does not constitute harassment, even though it may lead to employees feeling uneasy. Day-to-day management of discipline, work performance, and absenteeism, assignment of work, applying graduated disciplinary measures, and even termination are integral elements of legitimate management rights. The employer thus has quite wide-ranging freedom to act, ensure that work procedures are complied with, and ensure that a reasonable amount of work is being carried out, as long as the employer acts in a respectful manner, as long as the employer’s interventions are made based on duties and not based on the person, and as long as the employer does not exercise these management rights in an abusive, unreasonable, or discriminatory manner. Finally, it is important to note that management rights also include the right for managers to make mistakes.

DIFFICULT WORKING CONDITIONS AND PROFESSIONAL CONSTRAINTS

Some working conditions may seem difficult and have negative consequences on the health of workers without constituting harassment. The following elements do not constitute psychological harassment: difficult working conditions and professional constraints (e.g., work overload) and organizational changes (e.g., modified duties), when they are based on economic, technological, or organizational considerations and when they do not affect staff members in an arbitrary manner.

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1. This document was inspired by the following document prepared by the CNESST on section 81.18 of the *Act respecting labour standards*: Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNEEST). 2016. "Interpretation Guide (Section 81.18 of the *Act respecting labour standards*)." <https://www.cnt.gouv.qc.ca/en/interpretation-guide/part-i/act-respecting-labour-standards/labour-standards-sect-391-to-97/psychological-harassment-sect-8118-to-8120/8118/index.html>.
 2. From the CSN's *Kit for the Prevention of Violence and Harassment at Work*.
 3. Hirigoyen, Marie-France. 2001. *Malaise dans le travail. Harcèlement moral: Démêler le vrai du faux* [Unease at work. Psychological Harassment: Disentangling truth from fiction]. Paris: Éditions La Découverte and Syros.