

HARASSMENT QUESTION AND ANSWER

A. Introduction

Work is one of the most fundamental aspects of a person's life. When harassment or bullying occurs in the workplace it can disrupt not only that person's ability to function effectively at their job but can also have a significant impact on their personal and family life. The purpose of this question and answer is to discuss what type of civil remedies (ie. compensation) a person may be entitled to after suffering this type of unwanted conduct. However, this pamphlet is not intended to be legal advice in respect of your specific situation nor is it intended to provide you with information on any of your options pursuant to the criminal justice system.

B. Question and answer

Question 1: I want to sue my employer for harassment. Is this possible?

An employee who has been harassed or bullied in the workplace often wants to bring a law suit against either their employer or a colleague for "harassment". While this may be a possibility, whether harassment constitutes a valid claim is an open question in Alberta. With that said, as discussed below, employees experiencing this type of conduct have several other options to obtain compensation.

Question 2: What is the most common type of claim an employee will bring when they are being harassed in the workplace?

An employer owes a duty to its employees to treat them fairly, with civility, decency, and with respect and to ensure that the work environment does not become hostile, embarrassing or forbidding. An employer who fails to satisfy these duties exposes itself to an employee quitting and arguing that they have been "constructively dismissed"—the most common claim associated with workplace harassment. If an employee's constructive dismissal claim is successful, that employee is entitled to "severance". Depending on various factors including age, length of service, and position, severance could be anywhere from 1 month of pay to 24 months or more.

Question 3: While severance sounds great, the harassment has also caused me anxiety and depression. Is there a way I can get compensation for these damages as well?

Yes, depending on the facts of your case, you may have several claims to compensation in addition to severance. One of the most common claims is for aggravated damages. Specifically, when an employer terminates (or constructively dismisses) an employee in the normal course the employee will often experience distress and hurt feelings. This won't result in increased damages. With that said, both employees and employers share a mutual expectation that employers will act honestly, reasonably, and in good faith in the manner of dismissal. Where the employer fails to do so, (which will often occur where the constructive dismissal is due to harassment) the employee may be entitled to compensation for the the mental damage that results, including anxiety and depression.

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Question 4: The harassment I have experienced at work has progressed to the point where my harasser has been physical with me. Do I have a separate claim against them for this conduct?

Yes, if harassment or bullying becomes physical you may have a claim for battery: a direct intentional physical interference of another that is either harmful or offensive to a reasonable person. Examples of battery may include cutting a person's hair, spitting on a person, punching and slapping. In contrast, physical interference that is not harmful or offensive will not be a battery. For example, tapping someone on the shoulder to ask a question ordinarily wouldn't suffice.

While battery is rare in the workplace, it does happen. For example, in one case¹, the plaintiff's manager pushed her during a heated discussion. Thereafter, she claimed not only for constructive dismissal but also battery. In respect of the latter, the Court awarded her \$15,000 notwithstanding that she suffered no physical injury from the push. Further, the Court found her employer jointly and severally liable for these damages, meaning that the plaintiff could collect this amount from either her employer or the person who pushed her.

Question 5: Do I have any additional legal avenues if my harassment is based on race, religious beliefs, colour, gender, physical or mental disability, source of income, age, ancestry, place of origin, marital status, family status, or sexual orientation?

All of the legal avenues discussed above are open to you. However, if the harassment you are experiencing is due, in part, to any of the above characteristics, then you may also have a human rights claim.

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The above is intended to provide you with only general information and background on some of the possible claims you may have as a result of being harassed or bullied in the workplace. To receive an initial consultation with one of our lawyers to discuss the specific facts of your case, please call us toll free at **(844) 224-0222**.

¹ *Piresferreira v Ayotte*, 2010 ONCA 384.