

Recourse Routes

The following is a list and brief overview of the avenues available to unions and their members to assert their rights in the workplace. This document briefly reviews the following:

- Grievances;
- Staffing complaints in the federal public service;
- Human rights complaints; and
- Workplace violence and harassment

This document is for informational purposes only and does not constitute legal advice.

Grievances

Almost everything in the employment relationship is grievable. However, there are certain limitations on what can be referred to an arbitrator or labour board and some matters have their own recourse mechanism outside of the traditional collective agreement framework. Examples of grievable and arbitrable matters include:

- Disputes over interpreting or applying the collective agreement, such as leave or benefits;
- Discipline;
- Discrimination (including harassment);
- Demotion, suspension, or termination for reasons other than discipline;
- Classification, except where the legislation provides otherwise (covered below);
- Management rules, policies, or practices not expressly covered in the collective agreement; and
- Staffing, except where legislation provides otherwise (covered below).



There are three types of grievances:

- **Individual grievances:** The grievance concerns an individual member's right(s) and the remedy is typically limited to that individual;
- **Group grievances:** This is appropriate where multiple members have the same type of dispute with their employer. The grievance is limited to the right(s) at issue the remedy is typically limited to the members who have signed the grievance form; and
- **Policy or union grievances:** This is a grievance filed directly by the union to challenge the employer's conduct, action, or decision, such as a dispute over the interpretation of the collective agreement. The union can request a remedy for itself and/or its members. To play it safe, file a group grievance as well or obtain the employer's written agreement beforehand to extend the requested relief to the members if the grievance is successful.

Remember to include the following in every grievance form:

- Details of the events giving rise to the grievance;
- The applicable articles of the collective agreement and any relevant legislation. Be specific. End the list by stating "all other relevant articles of the collective agreement and all other relevant legislation"; and
- Detail the remedy sought. End the request by stating "and to be made whole".

Staffing in the Federal Public Service

To challenge a staffing decision in the federal public service, one must file a staffing complaint under the *Public Service Employment Act* with the Federal Public Sector Labour Relations and Employment Board. This includes staffing complaints involving an allegation of discrimination.



Human Rights Complaints

A human rights complaint is always an appropriate recourse mechanism where discrimination is alleged, except for discrimination on the basis of membership or activity in the union. Human rights tribunals tend to have more expertise in the subject matter than arbitrators and labour boards. They also tend to be more open-minded in terms remedies.

It is important that the member file both a human rights complaint and a grievance in order to protect their rights. Arbitrators and labour boards normally have jurisdiction over discrimination claims but there are limited circumstances where the human rights tribunal might be able to hear the claim. If an arbitrator or labour board deals with all human rights issues that would have been in the human rights complaint, the human rights commission will likely not deal with the same issues.

Workplace Violence and Harassment

Workplace violence and harassment clauses may be found in the collective agreement, as well as labour codes/Acts.

In the federal jurisdiction, the *Workplace Harassment and Violence Prevention Regulations* is applicable. These regulations apply to all federally-regulated employees. To trigger one's rights under the Regulations, an employee must file a notice of occurrence with an employer's designated recipient. Each notice must include:

- a) the name of the principal party and the responding party, if known;
- b) the date of the occurrence; and
- c) a detailed description of the occurrence.

The next step is for the employee and the employer to try resolving the matter themselves, with or without the assistance of a conciliator. If that fails, the employer must appoint someone to investigate the matter. The investigator provides a report at the end of the investigation. Each report includes:

- a) a general description of the occurrence;
- b) their conclusions, including those related to the circumstances in the workplace that contributed to the occurrence; and



- c) their recommendations to eliminate or minimize the risk of a similar occurrence.

It is important to remember that the purpose of the Regulations is to *prevent* workplace violence and harassment from occurring in the future. It does not remedy past wrongs in the same way as a grievance. The only remedy is the report and the implemented recommendations. Therefore, filing a grievance alongside a complaint under the Regulations is recommended, provided the matter is grievable. An example would be if a member is harassed based on a prohibited ground of discrimination.

Note: If a member is forced out of the workplace, keep in mind that you may need to discuss routes related to compensation such as taking sick leave, workers' compensation, disability insurance, and employment insurance.

