

Domestic violence

and the workplace

CUPE Equality
September 2015

| A bargaining guide

Emergency contacts, if you or a friend need help

If you are concerned for your own or someone else's immediate safety, call 911.

If you or a friend need help, call a 24-hour domestic violence help line in your area.

Sheltersafe.ca provides a clickable map of shelters across Canada, including their phone numbers for around-the-clock support.

Shelters offer counseling and referral as well as a safe place to stay. They can help our members develop a safety plan for themselves and their children. Unions and employers can call on shelter workers for advice and training on domestic violence at work. You do not need to stay at a shelter to access shelter services.

This document is for local union officers, bargaining committee members and other activists who want to prevent domestic violence at work and support members who face domestic violence.

It covers:

- The definition of domestic violence and how it's a workplace issue.
- How the union can negotiate protections regarding domestic violence related to the workplace.
- Examples of collective agreement language.
- A checklist for workplace policy and collective agreement language.

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What is domestic violence?

Domestic violence is any form of violence between intimate partners. The violence can be physical, sexual, emotional, or psychological abuse, including financial control, stalking and harassment. It occurs between mixed or same-sex intimate partners, who may or may not be married, common law, or living together. It can also continue to happen after a relationship has ended. It can be a single act of violence, or a number of acts that form a pattern of abuse.

Domestic violence affects both men and women, but the vast majority of abusers are men and victims women. Men abusing women partners tend to carry out more extreme, prolonged and systematic acts of violence. Women marginalized by poverty, racism, homophobia, transphobia and ableism face the greatest risk.

Domestic violence reaches into the workplace, with serious consequences (C.N. Wathen, J.C.D. MacGregor, and B.J. MacQuarrie 2014). The “workplace” is broadly defined; it includes functions and locations related to the workplace, such as conferences, training sessions, social gatherings, work travel, work email, a client’s home or other work-related situations.

Many union members are victims or survivors of domestic violence. Unions have an important role in supporting members, challenging domestic violence and ensuring employers live up to their obligations. One way we can do this is by negotiating collective agreement language on domestic violence.

Domestic violence is against the law and may also be covered by your collective agreement. Depending on where you work and the form of violence, it might be illegal or prohibited under:

- the collective agreement
- employer policies
- human rights laws
- occupational health and safety laws
- employment standards laws
- labour relations laws
- workers compensation laws
- criminal law (Department of Justice Canada 2015)

By law employers must provide a work environment that is free from harassment and violence, including domestic violence. Employers cannot guarantee that no harassment or violence will occur, but they must:

- Do everything they reasonably can to prevent harassment/violence, and not ignore the signs;
- When they learn of incidents or risk of harm, protect workers, investigate, and follow up.

Ontario's *Occupational Health and Safety Act* explicitly requires employers to address domestic violence. In other provinces, domestic violence is not specifically mentioned in occupational health laws but is covered as a form of workplace violence.

Laws and rules on domestic violence, harassment and workplace violence differ by jurisdiction and change over time. Talk to your servicing representative for current information.

This document focuses on bargaining protections and interventions on domestic violence related to the workplace.

How is domestic violence a workplace issue?

Domestic violence seriously affects the work lives and workplaces of victims and abusers (PreVAIL Preventing Violence Across the Lifespan Research Network 2014).

- One out of three women have experienced domestic violence, and for the majority, it follows them to work.
- For victims, employment can provide income security, physical safety, self-esteem, social connectedness and mental respite, and it is a key pathway to leaving a violent relationship.
- Abusers may use work time or equipment to send abusive messages or otherwise plan and carry out violent acts.
- Abusers often sabotage victims' work as a way of keeping the partner economically dependent and socially isolated, for example by blocking them from getting to work and interfering with their work.
- Abusers may target their partner at the workplace, through calls, stalking, harassment, assault and other abusive behaviour. At this point, the violence and risks posed by that violence usually escalate further.
- Co-workers, users/clients and others connected with the victim's and abuser's workplaces are also at risk for injury or some other form of trauma.

We need to challenge the view that domestic violence is a private matter. Many still believe domestic violence has nothing to do with the workplace. In fact, employers often inadvertently blame and even terminate the victim in response to the disruptions caused by the abuser. The union must remind employers of the seriousness of domestic violence as a workplace issue and their legal obligations.

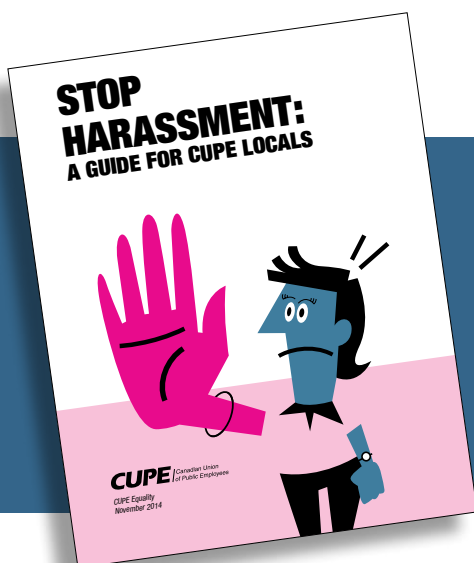
How can domestic violence be addressed in the collective agreement?

Collective agreement language on domestic violence can vary significantly from a general reference to specific protections.

Domestic violence at or through the workplace is also covered by anti-discrimination, harassment and violence language in the collective agreement. Most collective agreements have an anti-discrimination clause; many have language that prohibits harassment and violence related to the workplace. Domestic violence falls under that language if it occurs at the workplace or at functions and locations related to the workplace, whether or not it is specifically listed. Naming domestic violence in those clauses will help raise awareness, build members' trust and make it easier to pursue a grievance.

Many collective agreements have language in other areas that relate to domestic violence, such as health and safety and duty to accommodate.

This section describes ways to get specific provisions on domestic violence into your collective agreement, with examples from CUPE agreements.



The CUPE publication “Stop harassment: A guide for CUPE locals” provides a checklist for anti-harassment policies and collective agreement language (Canadian Union of Public Employees 2014). CUPE’s guideline on preventing violence and harassment in the workplace includes a similar tool.

1

Include domestic violence as an example of the types of violence covered by contract language on workplace violence.

For example:

**Local 2462-00 and Community
Living Espanola
Expiry March 31, 2014
Letter of Understanding Re:
Workplace Safety and Violence**

The Employer and the Union agree that within sixty (60) days from the ratification date of this Agreement the Joint Occupational Health and Safety Committee will meet to jointly review the Employee Safety Manual re: workplace safety and violence.

The policies and procedures referred to above will form part of the Employer's Health and Safety Policy. Written policies will be provided to each employee.

The policies and procedures will include but not be limited to:

"Violence" means the attempted, threatened or actual conduct of any person that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that persons, including employees, supported individuals or members of the public are at risk of injury. Violence includes the application of force, threats with or without weapons, severe verbal abuse and persistent sexual or racial harassment.

Workplace violence

CUPE defines workplace violence as any incident in which an employee is threatened, assaulted or abused, causing physical or psychological harm. This includes threats, attempted or actual assault, application of force, verbal abuse or harassment.

Workplace is broadly defined. Violence and harassment can occur at functions and locations related to the workplace, such as conferences, training sessions, social gatherings, work travel, work email, a client's home or other work-related situations.

The perpetrator or target can be:

- A supervisor, manager, board member or other employer representative.
- A co-worker.
- A client, patient, student or parent.
- A contractor, community member or other visitor or member of the public coming into the worksite.
- One person or a number of people.

For more information, see CUPE's preventing violence and harassment in the workplace guideline.

It also includes incidents of domestic violence entering the workplace, stalking, personal harassment, psychological harassment, bullying or any other behaviour that abuses, devalues or humiliates.

2

Include domestic violence among the eligible grounds for taking sick leave or another form of paid leave.

For example:

Locals 3447-00 and 3447-01 and Bruce Grey Catholic District School Board

Expiry August 31, 2012

14:08 Emergency Leave

Any member of the Unit may apply for an emergency leave, without pay, for up to ten (10) days per year in accordance with the Employment Standards Act. Written application to the Manager of Human Resources shall be made in advance whenever possible.

An employee shall be granted a leave of absence without loss of pay but with deduction from sick leave credit, in crisis situations, which include, but are not limited to the hospitalization of family members, fire or violence within the home. Crisis shall be interpreted to mean a time of grave danger.

3

Negotiate stand-alone language that recognizes domestic violence as an important workplace concern and requires follow up such as training, referrals and accommodation.

For example:

Local 79-00 and The City of Toronto

Expiry December 31, 2011

Letter of Intent, Domestic Violence

Local 79 and the City acknowledge that domestic violence is a significant social problem that affects the health and well-being of employees.

Local 79 and the City agree to establish and implement within 90 days of ratification a jointly developed program to accommodate employees who are victims of domestic violence as follows:

- i) The parties agree to the joint development of a work plan to deal with issues related to communication, education and training of Stewards and Supervisory personnel as identified in the Summary of Agreed to Items dated July 9, 2004.
- ii) The parties agree to the joint development of a pamphlet and other communication materials related to resources and supports regarding Domestic violence to be distributed to employees.
- iii) The City agrees to provide the Union with copies of all materials to be posted on Union bulletin boards and/or distributed to employees.
- iv) The City agrees to investigate the establishment of web-links and/or a website related to the domestic violence on the City's Intranet and to report its findings to the joint committee within ninety (90) days of ratification.
- v) The City agrees that staff who are victims of domestic violence may utilize the City's Intranet and/or Internet sites to obtain and access information related to this issue.
- vi) The parties agree to joint Labour/Management training and to incorporate into existing training programs for supervisors and management staff information related to domestic violence to increase awareness, how it may impact the workplace and the resources available to deal with this issue.

- vii) The Union will provide training to stewards regarding resources and information related to domestic violence.
- viii) The City agrees that requests for sick leave, vacation, lieu time and any other paid leaves of absence submitted by employees in order for them to deal with issues related to domestic violence shall not be unreasonably denied.
- ix) The City agrees that requests for unpaid leaves of absence submitted by employees in order to deal with issues related to domestic violence shall not be unreasonably denied.
- x) The City agrees that consideration will be given when issues related to work performance could be directly attributed to issues of domestic violence. Any remedial action to be taken by Management may be held in abeyance for an agreed to time frame. The Union agrees that it will not raise issues related to timeliness when the City takes this action.

4

Get occupational health and safety law on domestic violence written into the collective agreement.

For example:

Local 799-01 and The City of Quinte West*

Expiry December 31, 2014

22.07 Domestic Violence

If the Employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the Employer shall take every precaution reasonable in the circumstances for the protection of the worker (OHS Act S. 32.0.4)

* *The same language is in the collective agreement between CUPE Local 229 and Sodexho Canada at Queen's University. The text is drawn directly from the Ontario Occupational Health and Safety Act.*

5

Negotiate unpaid leave and protection from penalties related to work attendance or performance for workers experiencing domestic violence.

For example:

Example #1

Local 4078-00 and Air Transat*

Expiry October 31, 2015

13.07 Domestic violence

The Company agrees to recognize that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. For that reason, the Company and the Union agree once there is verification confirmed by a written note by a recognized professional (i.e. doctor, lawyer, registered counselor), an employee who is in an abusive or violent situation will not be subject to discipline if the absence or performance can be linked to the abusive or violent situation. Absences which are not covered by sick leave or disability insurance will be granted as absent with permission without pay not to exceed 30 calendar days. Requests submitted under the terms of this Article will be treated as confidential by the Company and are subject to the terms of Article 16.04. Furthermore, the employee must inform the Company of his absence in accordance with the terms of Article 16.01.

** The same language (except the last sentence) is in the collective agreement between Local 4092 and Air Canada, expiry March 31, 2015.*

The union should not agree to a requirement that workers provide a written note or other proof of domestic violence. If the employer insists on proof, at minimum include “intake worker from a women’s shelter or other crisis service” in the list of “recognized professionals.”

Example #2**Local 2484-15 and Ferncliff Day Care and After School Group*****Expiry March 31, 2017****22.12 Domestic Violence**

The Employer agrees to recognize that employees sometimes face situations of violence or abuse in their personal lives that may affect their attendance or performance at work. For that reason, the Employer agrees that an employee who is in an abusive or violent situation will not be subject to discipline if the absence or performance issue can be linked to the abusive or violent situation. Absences, which are not covered by sick leave or disability insurance, will be granted as absent with permission without pay not to exceed two (2) months.

**A number of other sub-units of Local 2484 have similar language in the collective agreement.*

What have other unions bargained on domestic violence?

Unifor negotiated a Women's Advocate program (Unifor 2014) and now has over 300 women's advocates in workplaces across the country. The employer pays for training and office space for specialized union representatives who help women experiencing harassment or violence at work or in their personal lives. The advocates offer non-judgmental and confidential support, explain workplace and community options and help the member navigate those systems. Advocates are trained to recognize signs of abuse, make referrals and work with the employer on a safety plan. Women facing violence are five times more likely to speak to someone they know, so peer advocates are key.

Unions in Australia have negotiated paid domestic violence leave (ranging from two to 20 days), protection from adverse action, and flexible work arrangements in collective agreements covering 1.6 million workers, including the entire public sector (Baird, McFerran, and Wright 2014). UNISON, CUPE's sister union in the United Kingdom, has also negotiated special paid leave in a number of contracts (UNISON 2014).

The Yukon Teachers' Association has five days of paid leave for domestic violence victims in its contract with the Yukon government ("Collective Agreement between The Government of Yukon and The Yukon Teachers' Association, Expiry June 30, 2015.")

A victim/survivor needs paid leave in order to flee an abusive relationship and get safely settled. She may need to find a new home, get a place at a shelter, arrange child care or school for her children, get legal advice and go to court, open a new bank account and seek medical help and counseling – all of which take a considerable amount of time as well as money.

Privacy and confidentiality

Employers should disclose information only on a “need to know” basis to protect confidentiality while ensuring worker safety. Victims are often reluctant to disclose because of the stigma associated with domestic violence and the fear of gossip, not being believed, job loss and other negative outcomes. Perpetrators are often skilled at hiding and rationalizing their abusive behaviour; privacy arguments are often used to cover up violence that occurs in intimate relationships. Inquiries must be done carefully, balancing safety and privacy.

Everyone must disclose information when there is a clear threat to safety. The union should ensure that employers provide mechanisms for workers to report incidents and risks of domestic violence. The union and employer should not disclose more personal information than is reasonably necessary to protect workers from injury. Information should be shared:

- in emergency situations
- for threat assessment
- for safety planning
- for the effective implementation of protective orders

In these cases, privacy and confidentiality should be maintained to the extent possible. This means sharing only reasonably necessary information and only with those who need to know. All personal information concerning domestic violence should be kept confidential and no information should be kept on the employee’s personnel file without their express written permission.

What else can the union do, outside of bargaining?

See CUPE resources on harassment (Stop harassment: A guide for CUPE locals) and violence (CUPE Violence Prevention kit) to learn about concrete steps union representatives can take when a member comes to the union with concerns or the union learns of a domestic violence incident or hazard some other way.

Resources specific to domestic violence can be found at Western University's makeitourbusiness.com and the University of New South Wales' Safe at Home Safe at Work website (dvandwork.unsw.edu.au).

In addition to dealing with specific incidents and hazards, the union should train its officers and stewards to recognize the signs of domestic violence and challenge inappropriate behaviour. Invite a local shelter or crisis line worker to provide training. The Centre for Research & Education on Violence Against Women & Children at Western University offers training for employers and workers/unions. CUPE offers a module on workplace violence that covers domestic violence as well as workshops on harassment and health & safety, where domestic violence can also be addressed. Check out cupe.ca for more info.

Establish an internal (union) anti-harassment policy, code of conduct and equality statement to promote a harassment-free union environment. Refer to CUPE's national Code of Conduct and Equality Statement. Again, check out cupe.ca for more info.

Write articles for your website or newsletter about domestic violence and the workplace, members' rights, and ways to support co-workers.

Team up with local community groups fighting domestic violence. For example, invite a speaker to a union event, sponsor a community event, or organize a joint action.

The union's actions on domestic violence send an important message. Members can be reluctant to come forward with concerns. Members who trust the union to challenge domestic violence and advocate for victims are more likely to come forward.

If the victim and the perpetrator are both members

The union and employer have particular responsibilities when both the victim and the perpetrator of domestic abuse are in the same workplace.

In addition to taking action with the employee who is perpetrating the abuse, the employer may need to:

- ensure that the victim and perpetrator do not come into contact in the workplace; and,
- prevent the perpetrator from using their position or work resources to get information on the victim, including whereabouts.

This response may include a change of duties for one or both employees or withdrawing the perpetrator's access to certain offices or equipment.

The union may also need to take certain steps. As part of employer investigations where two members are involved, for example, the union should:

- assign different union representatives for the complainant and respondent; and,
- establish a "firewall" between them, ensuring that the two representatives do not communicate about the complaint.



Checklist for domestic violence at work contract language or policy

Your collective agreement language and employer policy on domestic violence should at minimum:

- Define domestic violence. Domestic violence is any form of violence between intimate partners. The violence can be physical, sexual, emotional, or psychological abuse, including financial control, stalking and harassment. It occurs between mixed or same-sex intimate partners, who may or may not be married, common law, or living together. It can also continue to happen after a relationship has ended. It can be a single act of violence, or a number of acts that form a pattern of abuse.
- State the employer's responsibility to provide a workplace free of harassment and violence, including domestic violence. Refer to relevant health and safety, human rights and other legal obligations.
- State how the employer will prevent and address domestic violence related to the workplace, for example the employer will:
 - provide a harassment and violence-free work environment;
 - eliminate the hazards and control the risk factors for domestic violence related to the workplace;
 - identify and train contact persons, including a management representative and union representative;
 - treat all complaints seriously and handle communication in a sensitive and confidential manner;
 - deal with concerns immediately, whether or not a formal complaint has been made;

- provide a fair, timely and effective process for investigating and resolving incidents and concerns;
 - encourage the reporting of unsafe situations;
 - conduct health and safety risk assessments and implement safety plans as required, working with specialists such as shelter or crisis line providers;
 - provide workers who are targets of domestic violence with schedule and workload flexibility, a leave of absence, an advance of pay and other accommodations;
 - provide affected workers with independent, confidential, paid counseling and referrals to appropriate services;
 - protect employees from adverse action on the basis of their disclosure, experience or perceived experience of domestic violence;
 - commit to not disciplining or otherwise penalizing an employee whose absences or performance are related to domestic violence;
 - challenge abusive behavior of perpetrators and offer them referral to treatment and other resources;
 - inform the union, for example by sending the union all investigation reports;
 - train supervisors and workers to recognize warning signs and risk factors and be able to respond safely and effectively, on an ongoing basis; and,
 - inform supervisors and workers of the policy statement and/or contract language and steps taken.
- Require an annual review of the policy and its implementation.

Beyond the basic protections and interventions listed above, the union can negotiate paid leave (as Australian unions have negotiated, p. 15) and employer-paid, union-appointed and trained women’s advocates (such as Unifor’s Women’s Advocates).

Ask your servicing representative for clarification and further advice.

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