

Victim-Focused Workplace Restoration After Harassment



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Published on www.lorman.com - October 2018

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VICTIM-FOCUSED WORKPLACE RESTORATION AFTER HARASSMENT

Written by [Tracy Bergeron Lucha](#) – 7/17/18

Restoration, in connection with forms of confirmed workplace harassment, is a buzzword we're hearing more in Ontario workplaces as the "time's up" movement makes its way across borders.

With the outcry for greater accountability we're already seeing public pressure shape the way employers are responding to workplace harassment. Former offender-focused approaches are giving way to the expectation of greater transparency, but also reparation.

In instances where the harassment is not systemic or egregious, we're seeing a swing in the desire of small business owners, executive management and in-house counsel to focus their attention on rebuilding relationships rather than severing ties and sweeping harassment under the rug.

A key focus of restoration is rebuilding trust. One of the most effective approaches is for HR to begin conversations with the harmed employee to identify specific concerns and requested accommodations.

Depending on the nature of the offending behavior, at the lowest end of the spectrum, a genuine apology from the offender may suffice. In more extreme circumstances, serious discipline or termination of the offender may be most appropriate. In the middle ground, there is room for more creative options to address restoration. These may

include mediation, education, counseling, sensitivity training, policy/program amendment and restoration agreements.

Maintenance is also important, as the employer's need to continue to restore the victim in the workplace can require ongoing support, and may include counseling and other services.

Restoration can be beneficial to both the victimized employee and the accused, as well as the workplace as a whole. Obvious benefits include:

- decreasing employee absences and disability claims;
- minimalizing lost investment;
- reducing legal disputes;
- maintaining control over the process;
- keeping the matter out of the public domain; and
- mitigating costs.

Though there is an upfront cost to employers, including from a human resources perspective and ongoing maintenance, these costs are arguably more of an investment in longer-term prevention.

Restoration of the workplace from a compliance standpoint has actually been an evolving process since the implementation of Bill 168 and more recently Bill 132. At the end of the day, truly restoring the workplace to a "harassment-free" environment requires employers to take a realistic look at their internal policies and culture. What we have observed in workplaces where there is repeated harassment are destructive roots that have enabled workplace harassment to flourish or weave into the culture.

The time's up movement has already turned the tide for employers. Those employers that lack awareness, continue to be willfully blind or otherwise fail to take an objective look at their organization and implement restorative changes to eliminate harassment will continue to encounter serious problems and a compromised workplace culture.

Employers should not be afraid of opening a genuine dialogue and taking a proactive approach to assessing culture and identifying workplace harassment. While change can be daunting, a commitment to taking steps to restore the workplace, even incrementally, will go a long way toward prevention and the eventual elimination of sources of harassment.

We regularly advise employers on how they can balance their legal duties and responsibilities to all parties while implementing creative strategies directed at targeting restoration with the focus on the complainant. These initiatives can have a positive impact on the workplace as a whole. My colleagues and I are here to answer your questions and assist with managing harassment.

If you have any comments and opinions on this blog post, please leave on my LinkedIn page at www.linkedin.com/in/tracy-bergeron-lucha-9a1a902a/or on the [Dickinson Wright Canada](#) LinkedIn page or Twitter page [@DWrightCanada](#).

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Tracy Bergeron Lucha is an Of Counsel at Dickinson Wright LLP with offices in both Windsor and Toronto. She represents employers in respect of workplace safety and insurance, human rights, and other employment and labour law matters including pay equity, health and safety, alleged employment standards breaches and labour disputes. Tracy's combined educational and professional experience uniquely enable her to comprehensively advocate on behalf of employers in respect of employees with complex disability issues. Tracy can be reached at 416-777-4047 or TBergeron@dickinson-wright.com and you can visit her bio [here](#).

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