Table of Contents

(To find an article just click on the item)

Truth and Reconciliation Indigenous Bargaining Guide

Bargaining beyond the binary - A negotiating guide for trans inclusion and gender diversity

Bargaining Reconciliation

Domestic Violence and the Workplace – A bargaining guide

Factsheet Disability Bargaining

HIV Bargaining Checklist

CUPE Anti-Racism Strategy

Discrimination Checklist

Stop Harassment Guide

Temporary Foreign Workers in Our Union: Solidarity and Action Guide.

CA Language for Members with Temporary Work Permits

Employment Equity Guide

TRUTH AND RECONCILIATION:

CUPE TAKING ACTION THROUGH COLLECTIVE BARGAINING

CUPE National Human Rights Branch

MARCH 2022

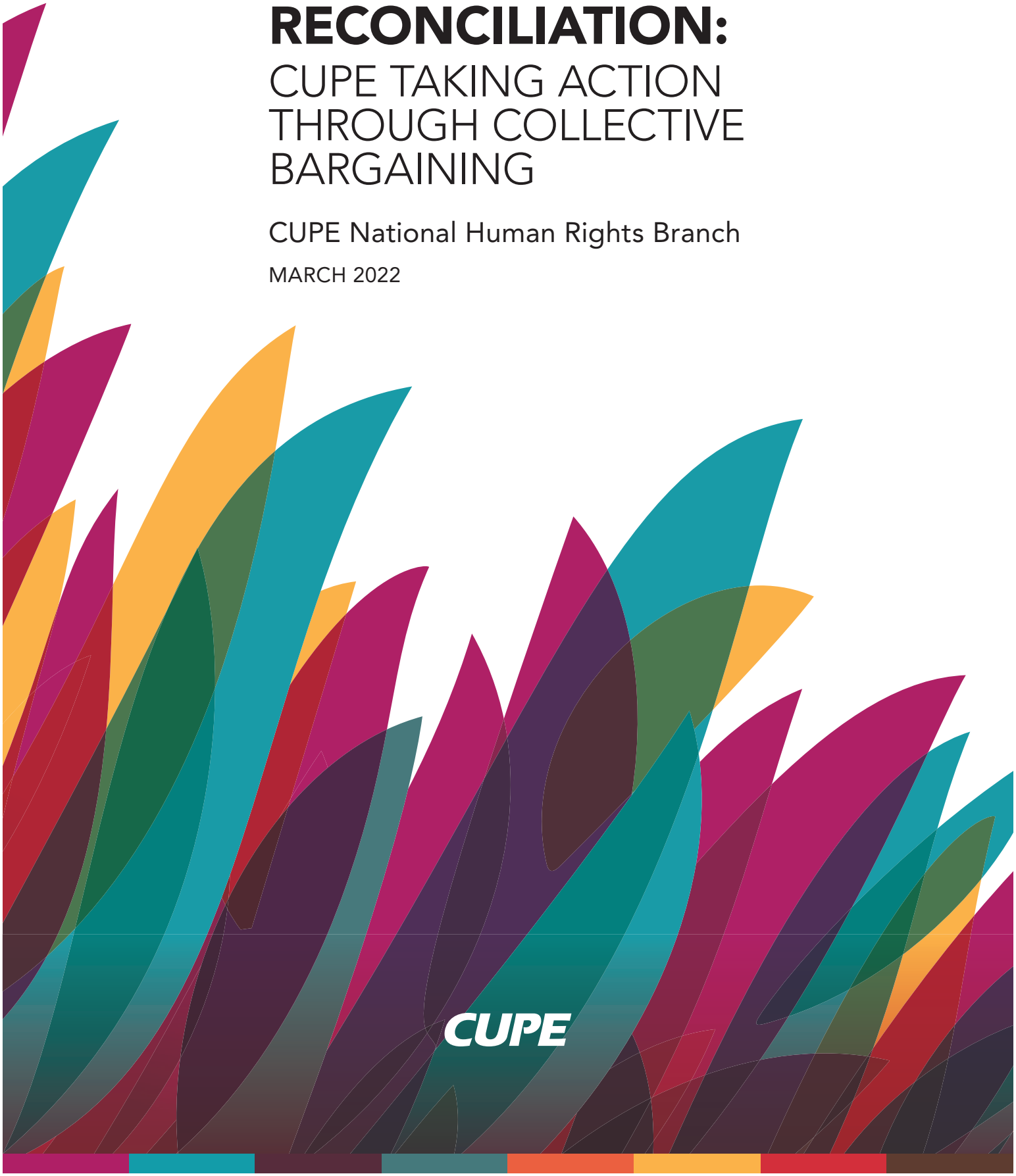


TABLE OF CONTENTS

1	CHECKLIST	1
2	INTRODUCTION	3
3	KNOWING YOUR MEMBERSHIP	4
4	LAND ACKNOWLEDGEMENT AND INDIGENOUS SOVEREIGNTY	4
5	INDIGENOUS RIGHTS AND NON-DISCRIMINATION	6
6	REPRESENTATIVE WORKFORCE	7
7	TARGETED HIRING AND JOB POSTING	8
8	IN-SERVICE TRAINING FOR INDIGENOUS WORKERS	12
9	CULTURAL SAFETY/INDIGENOUS AWARENESS TRAINING	12
10	LEAVE OF ABSENCE CLAUSES	13
10.1	BEREAVEMENT	13
10.2	LEAVE FOR VOTING IN BAND ELECTIONS OR REFERENDUM; LEAVE FOR PUBLIC DUTIES	15
10.3	LEAVE FOR CULTURAL EVENTS	16
10.4	LEAVE FOR OBSERVANCES	17
11	PAID HOLIDAYS	18
12	HOURS OF WORK AND PAYMENT OF WAGES	21
13	INDIGENOUS PENSION PLAN	22
14	INCLUDING ELDERS AT GRIEVANCES AND OTHER MEETINGS WITH THE EMPLOYER	23

1 | CHECKLIST

This checklist is a summary of the recommendations in this guide. To see a full explanation, please read the corresponding sections.

Your local should:

- ☐ Make a commitment to take action towards reconciliation.
- ☐ Insert a question in your bargaining survey that asks about self-identification of Indigenous identity, and how to support Indigenous members.
- ☐ Ensure there are Indigenous members on committees, including the bargaining committee.
- ☐ Encourage Indigenous members to apply for union positions.

Your collective agreement should include:

- ☐ An equity statement that includes Indigenous people and Two-Spirit people.
- ☐ An Indigenous territorial acknowledgement in the preamble.
- ☐ Recognition that Indigenous communities have their own cultural values and priorities.
- ☐ A non-derogation clause to make it clear that Indigenous rights under the Canadian constitution, treaties, and other legislation cannot be negated.
- ☐ A non-discrimination clause that allows preferential hiring of Indigenous people.
- ☐ A representative workforce clause that aims to increase Indigenous employment at all levels of the organization.
- ☐ Provisions for Indigenous designated positions that include the language for job posting and hiring.
- ☐ Provisions for in-service training for Indigenous workers.
- ☐ Cultural safety/Indigenous awareness training for non-Indigenous members.
- ☐ The option of the presence of Indigenous Elders in the grievance process or other meetings with the employer dealing with Indigenous members.

- ☐ An Indigenous dispute resolution process for Indigenous members.
- ☐ A travel benefit for workplaces in remote locations.
- ☐ A clause that states that workers will not be penalized for being unable to travel to the work site because of hazardous conditions.

The bereavement leave section of the collective agreement should:

- ☐ Include a very broad definition of family that includes extended family members, members of the same tribe, and Indigenous Elders.
- ☐ Provide enough time off for members to attend to Indigenous ceremonial protocols and responsibilities.

Other leaves in the collective agreement should include:

- ☐ Leave of absence for members to vote in Indigenous elections.
- ☐ Leave of absence for members who wish to run for positions in Indigenous governance.
- ☐ Leave of absence for Indigenous cultural/ceremonial events, and other Indigenous observances.

The Paid Holidays section of the collective agreement should include:

- ☐ National Indigenous Day – June 21
- ☐ Louis Riel Day – February 21
- ☐ National Day for Truth and Reconciliation – September 30
- ☐ Language that recognizes any other holiday proclaimed by the federal or provincial governments.
- ☐ Recognition of the right of a First Nations Band Council to declare a paid holiday.

2 | INTRODUCTION

This guide is for CUPE local unions, bargaining committees, members, CUPE staff, and other activists to support Indigenous members and reconciliation efforts. It provides guidance in negotiating contract language that assures all our Indigenous members enjoy dignity and equality in the workplace.

Negotiating decent work terms and conditions is at the heart of a union's mission. CUPE collective agreements cover everything from wages, classifications, job postings and promotion procedures, various leaves of absence, employment benefit plans, health and safety clauses, job security and technological change clauses, protection from discrimination and harassment, and many more issues.

CUPE is committed to ensuring that locals have access to resources that support the union in their reconciliation work. One of the ways that CUPE locals can support reconciliation is by bargaining language into collective agreements that supports Indigenous workers. This resource is for those who want to put reconciliation into action at the bargaining table.

It is important to understand that historically, unions have not always fought for the rights of Indigenous workers. Because of this, unions have not always been places where Indigenous people feel welcomed.

Many Indigenous CUPE members are carrying the weight of colonial trauma. This includes surviving the residential school system, the sixties scoop, or being an intergenerational survivor of these systems.

It is the duty of all unions, including CUPE, to begin repairing this relationship. In order to begin restoring the trust of Indigenous workers and communities in unions, actions must be taken that show a commitment to reconciliation.

Indigenous members want the same things as non-Indigenous members: decent wages and working conditions and the right to be treated fairly and with dignity in the workplace.

Whether they work for Band Councils or Indigenous organizations, or whether they work side by side with non-Indigenous CUPE members in other workplaces around the country, Indigenous members may have different needs which require the negotiation of Indigenous-specific contract language.



3 | KNOWING YOUR MEMBERSHIP

It is important to know your membership. It is not possible to know how many Indigenous members your local has unless you have surveyed your membership and collected demographic information.

Consider adding a question to the bargaining survey, or another survey of your local's membership, regarding self-identification of Indigenous identity. For example: "I am an Indigenous person (First Nations, Métis or Inuit)". Note that not all Indigenous members will be comfortable self-identifying for a variety of valid reasons, meaning that there might be Indigenous members in your local of whom you are unaware.

A survey is also an opportunity to reach out to Indigenous members and ask them about their needs. Building relationships with Indigenous members is part of building a strong union. Part of building those relationships is reaching out to Indigenous members and encouraging them to be part of local committees and applying for union positions.

Even if you may not have identified any Indigenous members in your local, it is still recommended that the union move forward on reconciliation initiatives. Taking action towards reconciliation is the responsibility of all unions and union members. This document can help guide those discussions. Another helpful document is Walking the talk: A practical guide to reconciliation for CUPE locals.

4 | LAND ACKNOWLEDGEMENT AND INDIGENOUS SOVEREIGNTY

The preamble in a collective agreement is a great place to put language that recognizes Indigenous traditional territories, people, and culture. The sample language ranges from land acknowledgment to the recognition of Indigenous sovereignty, cultural values and priorities. It is important to put this language in the preamble because it frames the entire collective agreement and guides the union and employer in their work together. This helps to create awareness of the Indigenous people and culture, and is a reminder to work towards reconciliation.

Here are a few examples from existing CUPE local collective agreements:

- **From the collective agreement between McMaster University and the Canadian Union of Public Employees Local 3906, expiring August 31, 2022:**

  1.05 The parties recognize and acknowledge that McMaster University is located on the traditional territories of the Mississauga and Haudenosaunee nations, and within the lands protected by the "Dish With One Spoon" Wampum agreement.

- **From the collective agreement between Public Interest Alberta Society and the Canadian Union of Public Employees Local 474, January 1, 2021 – December 31, 2021:**

  Public Interest Alberta and the Canadian Union of Public Employees Local 474 agree that our work takes place on the land referred to as Treaty 4, 6, 7, 8, and 10 which are the traditional meeting grounds and home to many diverse Indigenous Nations. Our work will reflect the intention of the Treaties, the intention of peace, friendship and understanding, and that the purpose of this Agreement is:

  (a) To maintain a harmonious and co-operative relationship between the Employer and the Employees covered by the Union's certification Number CR-05173.
  (b) To provide an amicable method of settling differences or grievances, which, may arise between the Employer and Employees.
  (c) To promote the mutual interests of the Employer and the Employees.

- **From the collective agreement between The Community Health Services (Saskatoon) Association Limited and the Canadian Union of Public Employees Local 974, April 1, 2017 – March 31, 2022:**

  The parties to the agreement recognize that the Employer objectives include service to First Nations, Métis and other ethnic communities and the promotion, preservation, protection and interpretation of their histories, languages, cultures and artistic heritages using ways of knowing and understanding.

- **From the Collective Agreement between Anduhyaun Inc. and the Canadian Union of Public Employees Local 4232, September 16, 2016 – August 31, 2020:**

  1.03 The Union acknowledges that the mandate of – Anduhyaun is to support Aboriginal women and their children in their efforts to maintain their cultural identity, their self-esteem, and their economic, physical and spiritual wellbeing. Both parties endeavour to promote the understanding of and respect for Aboriginal traditional cultural values in their relationship with each other and with the employees covered by this Agreement.

- **From the Collective Agreement between School District No. 92 (Nisga'a) and the Canadian Union of Public Employees Local 2298, July 1, 2019 – June 30, 2022:**

  WHEREAS the School Trustees of School District No. 92 (NISGA'A) have been given a mandate from the people of the Nass via the Nisga'a Tribal Council to maintain Nisga'a control of Nisga'a Education; and

  WHEREAS the Union shares the philosophy of Nisga'a control of Nisga'a Education; and

  WHEREAS it is the desire of the Board and the Union:

1. to provide an effective, efficient and ongoing education system for the District;
2. to maintain and improve harmonious relations;
3. to recognize the mutual value of joint discussions;
4. to promote the morale, well-being and security of the employees.

5 | INDIGENOUS RIGHTS AND NON-DISCRIMINATION

For some Indigenous members and Indigenous employers, it may be important to know that their rights cannot be overridden by language in a collective agreement. A non-derogation clause regarding Indigenous rights can be a protection that recognizes that the language in a collective agreement does not trump existing Indigenous and constitutional rights. The following language is taken from a collective agreement where the place of employment is located on federally recognized reserve lands – the Oneida Nation of the Thames.

- **From the collective agreement between Oneida Nation of the Thames Emergency Medical Services and the Canadian Union of Public Employees Local 35.6, January 30, 2019 – March 31, 2021:**

3.04 Non Derogation

For greater certainty, nothing in this agreement shall be construed so as to abrogate or derogate from the protection provided for existing Aboriginal or treaty rights of the Aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.

Hiring Indigenous people should not be considered discrimination against any other group. At the same time, Indigenous people should be protected from discrimination in the hiring process. Make sure to list Indigenous people as an equity-seeking group, and consider also including Two-Spirit people. Two-Spirit is a term that is preferred by some Indigenous people who identify as LGBTQ2+.

- **From the collective agreement between the University of Ottawa and the Canadian Union of Public Employees Local 2626, September 1, 2019 – August 21, 2022:**

No Discrimination

*10.5 * With respect to the interpretation of Article 10.1 and certain words used in the article, the Parties agree as follows:*

a)"Sex/Gender/Gender Identity" includes but is not limited to the right to equal treatment without discrimination, intimidation, interference, restriction or coercion because an Employee (i) is pregnant or may become pregnant, (ii) is breastfeeding or (iii) is not cisgender (including but not limited to: transgender, non-binary, genderqueer, genderfluid, agender, intersex, Two-Spirit, etc.) where cisgender refers to a person whose assigned sex at birth matches with their gender identity.

- **From the collective agreement between Mohawk Council of Akwesasne and the Canadian Union of Public Employees Local 5458, April 1, 2021 – March 31, 2024:**

ARTICLE 4 – NO DISCRIMINATION OR HARASSMENT

4.1 There shall be no discrimination with respect to any employee or individual in or outside the bargaining unit for any reason prohibited by the Canadian Human Rights Act, as amended, by reason of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity, marital status, family status, disability, political affiliation and conviction for which a pardon has been granted, or membership/activities with the Union. Notwithstanding the foregoing, the Parties acknowledge the Employer has a preference for hiring members of the Mohawks of Akwesasne and other recognized members of other Indigenous peoples, Métis and Inuit, and that hiring and promotion practices that conform to this preference do not constitute a violation of this Article, nor does funding provided exclusively to natives of the Akwesasne community constitute discrimination within the meaning of this Article.

6 | REPRESENTATIVE WORKFORCE

The principle behind employment equity or a representative workforce program is simple: the proportion of any particular group in the broader community should be reflected in the percentage of that group in the workplace, at all levels and sectors of employment.

For example, if 13 per cent of the population of a province is Indigenous, at least 13 per cent of the workforce of that province should include Indigenous workers. Indigenous people should have opportunities in all occupations and all sectors, especially in the public sector.

Indigenous workers have been historically excluded from the workforce, due to harmful colonialist policies and government legislation. Reconciliation calls on the labour movement to challenge and rectify this. This is particularly crucial for workplaces that service a predominantly Indigenous community, but also for all workplaces and communities across Canada.

- **From the collective agreement between All Nations Healing Hospital and the Canadian Union of Public Employees Local 3404, April 1, 2017 – March 31, 2022:**

23.04 Representative Workforce

a) Principle

The principle of a representative workforce for Aboriginal workers is where Aboriginal people are employed in all classifications and at all levels in proportion to their representation in the working age population within the community or the provincial population.

The parties will address proactive processes that support a representational workforce which shall include but not be limited to identifying employment opportunities, education and training, and preparing workplaces.

b) Workforce Representation

The parties agree to the principle of a representative workforce for Aboriginal workers. The parties agree to charge the Employment Strategy Committee with the responsibility to develop, implement, monitor and evaluate pro-active initiatives designed to ensure Aboriginal People are present in all occupations in their proportion to the provincial working population.

Therefore, when hiring new employees, the Aboriginal representative principle shall be applied, providing there are qualified Aboriginal applicants for the vacancy.

- **From the collective agreement between Ryerson University and the Canadian Union of Public Employees Local 233, July 2018 – June 30, 2022:**

Letter of Understanding

The University and CUPE Local 233 have a strong commitment to fostering equity, diversity and inclusion within its community, including a strategic vision to Indigenize Ryerson and increasing the number of Indigenous employees.

The Parties recognize that although there is a higher number of Indigenous employees in Facilities Management and Development (approximately 3%), where the number of Indigenous employees overall at Ryerson is not representative of the provincial population, which is about 8% as of March 1, 2018. The Truth and Reconciliation at Ryerson University, Community Consultation Summary Report calls for the University to increase the number of Indigenous employees at Ryerson.

The Parties agree that moving forward:

1. External postings shall reflect an open call to Indigenous applicants and will invite applicants to self-identify if they wish to be considered.

2. Each Director within Facilities Management and Development will indicate to their hiring manager(s) the needs and commitment in relation to this initiative.

3. The Parties agree to establish a standing item at the Union Management Committee meetings to review the current collective agreement and implementation of policies and procedures currently in the Agreement for recruitment, hiring and retention of Indigenous CUPE 233 Bargaining Unit employees. Where appropriate, joint non-binding recommendations to further Indigenize the Bargaining Unit will be submitted to the Assistant Vice-President, Facilities Management & Development and the President of CUPE Local 233.

7 | TARGETED HIRING AND JOB POSTING

When targeting Indigenous workers in hiring, there can be issues that arise regarding seniority. However, seniority can be respected while also making provisions to ensure that Indigenous people are hired into positions that are designated for them.

There are many reasons for targeted hiring. For example, the funding source for the positions might specify that the positions be filled by Indigenous workers; and/or the clients of the services provided are largely Indigenous. In addition to this, hiring notices can explicitly state the preference for hiring Indigenous people. This invites Indigenous workers to know that they are welcome in the positions, and that they will be supported across the workplace.

- **From the collective agreement between the Community Health Services (Saskatoon) Association Limited and the Canadian Union of Public Employees Local 974, April 1, 2017 – March 31, 2022:**

Letter of Understanding

Re: Designation of Aboriginal Positions at the Westside Clinic

In a Letter of Understanding dated April 1, 2001 between CUPE 974 and C.H.S.A. the parties agreed to designate specific permanent positions at the Westside Clinic to aboriginal people, and articulated in that letter of understanding is the methodology that would be used to recruit for and employ these positions.

The parties acknowledge that the understandings reached in that letter will continue to govern the designation of positions at the Westside Clinic to aboriginal people until such time as another letter of understanding concerning the designation of positions at the Westside Clinic to aboriginal persons and the procedures of recruitment for them is arrived at.

The positions governed by that letter of understanding included five (5) permanent positions at the time, namely:

One (1) Receptionist; two (2) Registered Nurses, of which one (1) would be a Community Health Nurse BSN (Outreach), one (1) Native Health Worker (Outreach), and one (1) Counsellor [sic] II position.

The positions noted above have since evolved and their titles changed through the Joint Job Evaluation process. At present, the same five (5) positions remain designated, but are titled as follows (as of April 1, 2001):

One (1) Westside Clinical Office Assistant Reception;

Two (2) Registered Nurses, including one (1) Community Clinic Outreach Nurse, Westside; and one (1) Registered Nurse, Westside;

One (1) Westside Aboriginal Community Worker; and

One (1) Counsellor II, General Service Westside.

- **From the collective agreement between Board of Education of School District No. 50 (Haida Gwaii) and the Canadian Union of Public Employees Local 2020, July 1, 2019 – June 30 2022:**

Letter of Understanding

RE: Indigenous Education Hiring for Positions Funded Through Indigenous Targeted Funds

The Collective Agreement is applicable to all employees covered by this Letter of Understanding.

This Letter of Understanding applies to the following positions funded from Indigenous Targeted funding:

1. First Nations Resource Worker.

2. Haida Education Administrative Assistant.

Postings for these two positions will include a caveat stating:

"Preference will be given to qualified applicants with Indigenous ancestry and knowledge of the Haida Nations."

The selection of candidates for these positions will be done by an interview/selection subcommittee of the Haida Education Committee.

The selection of the above noted positions will not be subject to the Articles 13.01 and 13.04 in the Collective Agreement.

When a vacancy occurs in any classification covered by this Agreement, or in the event of a new position being created, notice thereof shall be posted for five (5) working days and a copy shall be sent to the President of the Union.

First preference will be given to Union members with regular seniority and of Indigenous ancestry and knowledge of the Haida Nation.

Second preference will be given to Union members with recognized secondary seniority of Indigenous ancestry and knowledge of the Haida Nations.

- **From the collective agreement between McMaster University and the Canadian Union of Public Employees Local 3906, expiring August 31, 2022:**

Criteria for Hiring

(d) For vacancies posted in accordance with Article 13.02(i) in the Indigenous Studies Program and courses with primarily Indigenous-related content, preference will be given to qualified applicants who self-identify in their application as First Nations, Métis and Inuit persons.

- **From the collective agreement between University of Saskatchewan and the Canadian Union of Public Employees Local 3287, September 1, 2019 – August 31, 2021:**

16.06 SUNTEP Program

In accordance with the objectives of SUNTEP as set out in the Agreement between the Gabriel

Dumont Institute, the Province of Saskatchewan, and the University of Saskatchewan and the affirmative action initiatives of the Gabriel Dumont Institute, the parties agree that there may be special considerations in selecting sessional lecturers to teach courses for SUNTEP providing the applicants selected have qualifications comparable to those required to teach the same courses as part of the regular program or special qualifications required to teach the courses in that program. Accordingly, the Employer shall retain the right to override the normal right of first refusal provisions in order to appoint aboriginal persons to teach courses for SUNTEP. The Employer will advise the Union any time an appointment is made under this affirmative action program.

- **From the collective agreement between Oneida Nation of the Thames Emergency Medical Services and the Canadian Union of Public Employees Local 35.6, January 30, 2019 – March 31, 2021:**

10.06 Job Posting

(d) i) In the selection of the successful candidate to any job posting (including promotions and staff transfers), where skills and qualifications are relatively equal between candidates, seniority shall govern.

ii) The filing of any part time or full time vacancy may include preference to aboriginal ancestry and, in particular, Oneida of the Thames ancestry, at the discretion of the employer, providing the candidate has the required skills and qualifications. This preference will not be applied against any person who is of non-aboriginal ancestry and who was employed as of the effective date of this first collective agreement.

- **From the Collective Agreement between Anduhyaun Inc. and the Canadian Union of Public Employees Local 4232, September 16, 2016 – August 31, 2020:**

Letter of Understanding

RE: SPECIAL EMPLOYMENT

The Board of Directors of Anduhyaun Inc. has passed a resolution, set forth below, authorizing special hiring practices pursuant to the Ontario Human Rights Code. This resolution has been endorsed by the Union and is set forth below as a joint statement of the Agency and the Unions commitment to uphold the culturally based service mandate of the Agency.

1. Due to the nature of the organization's culturally based social services and based on our experience and the needs of our clients as well as feedback from clients, it is agreed that the organization must ensure, as best as possible, that all employees who serve clients directly be of Aboriginal descent.

2. Such preferential hiring is legally sanctioned and constitutes "Special Employment" for purposes of Section 24(1) (a) of the Ontario Human Rights Code.

3. Anduhyaun Inc., will consider interviewing and hiring non-Aboriginal candidates for such positions as noted in Section 1 above, but only in circumstances where it has been determined that no qualified Aboriginal candidates are available.

4. In the event that a non-Aboriginal person is the successful candidate, who will have direct contact with clients, such positions will be contractual for a period of one (1) year in order to maintain the organizations commitment to ensure the position is filled by a person with Aboriginal descent. For further clarity, in the event that a non-Aboriginal person is contracted for such a position, the

organization will continue to accept applications in order to determine if such position can be filled by a person of Aboriginal descent.

5. Contract employee's contracts can only be terminated as asset out in Section 3 of the Employment Contract.

6. Efforts to ensure employees are Aboriginal has been the practice of the organization since inception in 1973. This policy has been drafted to ensure that such practice remains in place.

8 | IN-SERVICE TRAINING FOR INDIGENOUS WORKERS

Indigenous workers should feel valued in the workplace. They should be prioritized in receiving training as part of a commitment to their professional development. Having access to workshops, professional development, and career path support is a great way to show that Indigenous workers are supported and appreciated. CUPE also provides offerings through Union Education that locals can consider.

- **From the collective agreement between Saskatchewan Association of Health Organizations and the Canadian Union of Public Employees Local 5430, April 1, 2017 – March 31, 2022:**

In-Service Training

The parties agree to facilitate educational opportunities which may include literacy training and career path counseling/planning.

9 | CULTURAL SAFETY/INDIGENOUS AWARENESS TRAINING

As workers who deliver public services, it is important to be educated on Indigenous peoples' history, treaty rights, and Indigenous law. Training like this should be delivered using an anti-racist, human rights, and cultural safety framework. Cultural safety training for public employees is one of the 94 calls to action made by the Truth and Reconciliation Commission. Locals can negotiate clauses with employers to receive training on Indigenous issues and reconciliation, and promote culturally safe practices at work and in delivering public services. This training should be directed especially to non-Indigenous workers.

From the collective agreement between Eatonia Oasis Living and the Canadian Union of Public Employees Local 4174, April 1, 2020 – March 31, 2021:

Workplace Preparation

The parties agree to implement educational opportunities for all Employees to deal with misconceptions and dispel myths about Aboriginal People. This will include enhanced orientation sessions for new employees to ensure a better understanding of respectful work practices to achieve a harassment free environment.

10 | LEAVE OF ABSENCE CLAUSES

This section accounts for various cultural reasons that Indigenous workers may need leave. It includes language on bereavement and leave for voting in Band elections, cultural events and other observances. Many of the examples are from workplaces where there are a large number of Indigenous CUPE members. As part of reconciliation, CUPE locals should negotiate this language regardless of how many Indigenous members they have or are aware of.

10.1 | BEREAVEMENT

Many Indigenous communities have expanded definitions of family that include family members that wouldn't be considered for bereavement leave under European, colonial values. Examples of this are family gained through Indigenous cultural adoption and Indigenous Elders. Indigenous communities also may have culturally specific mourning ceremonies to attend. The following collective agreements include bereavement language that recognizes Indigenous kinship structures and Indigenous ceremonial mourning duties.

- **From the collective agreement between the University of Northern British Columbia and the Canadian Union of Public Employees Local 3799, July 1, 2014 – July 30, 2019:**

24.02 Bereavement Leave

In the case of bereavement in the immediate family, an employee, not on leave of absence without pay in excess of twenty (20) calendar days, shall be entitled to bereavement leave at his/her regular rate of pay. Such leave shall normally not exceed an employee's average weekly hours of work in a normal work week as defined in Article 18.01;

(b) Immediate family is defined as an employee's parent, step-parent, spouse, common-law spouse, same sex partner, child, step-child, brother, sister, father-in-law, mother-in-law, grandparent, grandchild, son-in-law, daughter-in-law, brother-in-law, sister-in-law, and any other relative permanently residing in the employee's household or with whom the employee permanently resides;

(c) An employee may request and shall be granted additional bereavement leave without pay for any additional period that they wish to be absent from work. This may include established cultural practices such as headstone moving, tribal feast, special family bereavement and Clan or Tribal requests related to bereavement.

- **From the collective agreement between School District No. 92 (Nisga'a) and the Canadian Union of Public Employees Local 2298, July 1, 2019 – June 30, 2022:**

15.04 Compassionate Leave

Upon request, the Board shall grant an employee five (5) days leave of absence without loss of pay at the death of a parent, spouse, child(ren), brother, sister, bother-in-law, sister-in-law, grandparents, grandchildren, mother-in-law, father-in-law, aunt, uncle, nephew or niece. Family as defined in this article shall include adopted family according to well established cultural practices, providing that Nisga'a citizenship is established with Nisga'a Lisims government.

The Board shall grant an employee an additional two (2) days leave of absence without pay for travel purposes should travel one way exceed two-hundred kilometers (200 kms) beyond the employee's place of employment.

An employee may be granted compassionate leave without pay by the Board, on application, in the case of death of someone not included above.

Where a person employed by the Board is required to administer burial responsibilities, then that person shall be granted reasonable leave of absence without pay to carry out those responsibilities. Any leave under this Article over five (5) days must have Board or Designate approval.

T'il luulak' Leave

An employee who is of the T'il luulak' Wilp may be granted leave up to five (5) days without pay to carry out burial responsibilities.

Xts'ihln'iinak'amskw Leave

An employee who has to attend a Wo'om pdeekhl to Xts'ihln'iinak'amskw may be granted one (1) day off without pay to fulfil their responsibilities.

- **From the collective agreement between EPCOR Water Prairies Inc. and the Canadian Union of Public Employees Local 7667, December 29, 2018 – December 17, 2022:**

19.03 Bereavement Leave*

A permanent employee shall be granted time off with pay, at the regular rate of pay, for the position to which such employee is permanently appointed or serving a required probationary period thereof, for the purpose of making arrangements for, or attending, a funeral in accordance with the following:

When death occurs in the employee's immediate family – that is, current spouse, parent, or child, the employee, on request, shall be excused for five (5) regularly scheduled consecutive working days without loss of pay at the employee's regular rate of pay.

For the loss of a grandparent, grandchild, guardian, parent of current spouse, Indigenous Elder, brother, sister, step brother, step sister, step parent, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent of current spouse, or a related dependent of the employee, the employee, on request, shall be excused for three (3) regularly scheduled consecutive working days without loss of pay at the employee's regular rate of pay.*

**Note: An Indigenous Elder is designated as such by their Indigenous community.*

a) In addition to the above noted bereavement leave, a permanent employee may be granted additional unpaid bereavement leave past the day of the funeral if there is a demonstrated need.

b) One-half (1/2) day's leave with pay to attend funeral services of persons related more distantly than those listed in article 19.03 shall be granted upon request. Upon demonstrating the need for additional time due to extenuating circumstances, this bereavement leave shall be extended up to one (1) day.

c) The word "funeral" when used in respect of bereavement leave shall include the initial memorial service which is held in conjunction with a cremation.

d) The term "extenuating circumstances" may include travelling time, shift schedule conflicts, or such other reasons which may be applicable to the individual circumstance.

e) A permanent employee on leave of absence other than annual vacation leave shall not be eligible for bereavement leave.

10.2 | LEAVE FOR VOTING IN BAND ELECTIONS OR REFERENDUM; LEAVE FOR PUBLIC DUTIES

Indigenous workers may require leave for voting in Indigenous elections. Indigenous governance structures vary and some require in-person voting with no option to mail-in or otherwise cast a ballot or vote. In other cases, Indigenous members may be involved in Indigenous governance and require leave for those duties.

- **From the collective agreement between Community Social Services Employers' Association (CSSEA) and Community Social Services Bargaining Association of Unions (CSSBA), April 1, 2019 – March 31, 2022.**

20.3 Full-Time Union or Public Duties

The Employer will grant, on written request, leave of absence without pay:

(a) for employees to seek election in a municipal, provincial, federal, First Nation or other Indigenous election, for a maximum period of 90 days;

(b) for employees selected for a paid position with the Union or anybody to which the Union is affiliated for a period of up to one year and will be renewed upon request of the Union;

(c) for employees elected to a public office for a maximum period of five years;

(d) for an employee elected to a full-time position of the Union or anybody to which the Union is affiliated, the leave will be for the period of the term and will be renewed upon request of the Union;

(e) for an employee appointed or elected to a full-time position with a First Nation or other Indigenous organization, the leave will be for the period of the term and will be renewed upon request of the Union.

20.5 Elections

Any employee eligible to vote in a federal, provincial, municipal, First Nation or other Indigenous election or a referendum will have four consecutive clear hours during the hours in which the polls are open in which to cast their ballot.

- **From the collective agreement between Mohawk Council of Akwesasne and the Canadian Union of Public Employees Local 5458, April 1, 2021 – March 31, 2024:**

20.09 Political Leave without Pay

Political Leave shall be granted in accordance with the Mohawk Council of Akwesasne Election Law, as amended from time to time. The employees who are elected to the Mohawk Council of Akwesasne shall retain their seniority but shall not accrue further seniority during the first thirty-six (36) months as an elected chief.

- **From the collective agreement between School District No. 92 (Nisga'a) and the Canadian Union of Public Employees Local 2298, July 1, 2019 to June 30, 2022:**

15.05 Other Leave

(a) An employee who provides proof that they are required or requested to attend the Nisga'a Lisims Special Assembly as a representative of their village or the Union shall be granted leave of absence without pay provided application is made to the Board or Designate in advance. A maximum of two (2) employees shall be granted such leave at the same time. This leave will be granted on a first requested, first approved basis.

10.3 | LEAVE FOR CULTURAL EVENTS

Indigenous communities have many varying cultural traditions and events that span the year. Collective agreements should include language to respect these different traditions by recognizing known, specific events, or be general enough that Indigenous members could negotiate leave for such events.

- **From the collective agreement between All Nations Healing Hospital and the Canadian Union of Public Employees Local 3404, April 1, 2017 – March 31, 2022:**

Accommodation of Spiritual or Cultural Observances

The parties agree to make every reasonable effort to accommodate an Employee in order for them to attend or participate in spiritual or cultural observances required by faith or culture.

- **From the collective agreement between School District No. 92 (Nisga'a) and the Canadian Union of Public Employees Local 2298, July 1, 2019 – June 30, 2022:**

Other Leave

(b) Such leave shall also be granted for a maximum of two (2) days to attend events for Hoobiyee, Indigenous Day, or to attend the Nisga'a Lisims Special Assembly as an observer. A maximum of two (2) employees in the district shall be granted such leave at the same time

(c) All other Wilp responsibilities will be considered on an individual basis.

- **From the collective agreement between Indigenous Women's Healing Centre Inc. and the Canadian Union of Public Employees Local 2348, June 1, 2019 – May 31 2021:**

21.13 Ceremonial Leave

Employees wishing to take part in a traditional Indigenous ceremony(ies) such as a Sundance or healing ceremony, shall be allowed up to four (4) paid working days leave per calendar year, provided that such leave is authorized by the Employer in advance.

10.4 | LEAVE FOR OBSERVANCES

Not all important dates and observances are official holidays. This is an example of collective agreement language that allows any employee to observe an important event as part of their work duties or to arrange for a substitution so that they may attend the events at the workplace. This includes several important events that are Indigenous themed.

- **From the collective agreement between McMaster University and the Canadian Union of Public Employees Local 3906, expiring August 31, 2022:**

19.11 Observances

Employees may attend the on-campus celebrations and/or commemoration(s) of:

National Day of Mourning

Remembrance Day

International Women's Day

National Aboriginal Day

Montreal Massacre

Missing and Murdered Indigenous Women

International Workers' Day

With the approval of the Employment Supervisor(s), an employee may arrange to exchange their duties, or for their substitution, with or by a qualified person, in order to attend the on-campus commemoration(s). In most instances the date of the celebrations and/or commemoration(s) are known to employees well in advance, therefore the employee must notify their Employment Supervisor as early as possible before the celebrations about their intent to observe the celebration. In the event that no celebration or commemoration is held on-campus, employees may observe a minute of silence on the days listed above. Requests will not be unreasonably denied.

11 | PAID HOLIDAYS

There are several Indigenous themed holidays that are observed across the country. Some collective agreements also recognize the right of the Band Council to declare a paid holiday. The holidays go by slightly varying names but the dates are similar: National Indigenous Day – June 21, Louis Riel Day – February 21, National Day for Truth and Reconciliation – September 30.

- **From the collective agreement between the Board of Education of Île-à-la-Crosse School Division No. 112 and the Canadian Union of Public Employees Local 4607, January 1, 2019 – December 31, 2022:**

9.1 b) Paid Holidays

Paid holiday pay will be paid in accordance with The Saskatchewan Employment Act. The following shall be observed as holidays with pay and any additional day(s) identified by the Board:

New Year's Day
Family Day
Good Friday
Victoria Day
Labour Day
Thanksgiving Day
Remembrance Day
Louis Riel Day (only if it falls on a business day)
Christmas Day

The Government of Canada established a new paid, public holiday for federally regulated workplaces called the National Day for Truth and Reconciliation. This day is observed on September 30. Most CUPE locals are governed by provincial laws and therefore the federal holiday does not apply to them. In this case, CUPE locals should negotiate this day as a public holiday to acknowledge the harms of colonization and the residential school system in Canada. For more

language on this holiday, see Bargaining Language for the National Day for Truth and Reconciliation.

- **From the collective agreement between Indigenous Women's Healing Centre Inc. and the Canadian Union of Public Employees Local 2348, June 1, 2019 – May 31 2021:**

18.01 The Employer and the Union recognize the following as paid holidays:

New Year's Day	*Jour de Louis Riel Day*
Good Friday	*Easter Monday*
Victoria Day	*Aboriginal Day-June 21*
Canada Day	*Terry Fox Day*
Labour Day	*Truth and Reconciliation Day-Sept. 30*
Thanksgiving Day	*Remembrance Day*
Christmas Day	*Boxing Day*

and any other day proclaimed as a holiday by the Federal or Provincial Governments.

In some cases, locals have already achieved language in their collective agreements which recognizes possible future days declared by federal and provincial governments.

- **From the collective agreement between Community Social Services Employers' Association (CSSEA) and Community Social Services Bargaining Association of Unions (CSSBA), April 1, 2019 – March 31, 2022.**

17.1 Paid Holidays

The Employer recognizes the following as paid holidays:

New Year's Day	*British Columbia Day*
Family Day	*Labour Day*
Good Friday	*Thanksgiving Day*
Easter Monday	*Remembrance Day*
Victoria Day	*Christmas Day*
Canada Day	*Boxing Day*

Any other holiday proclaimed by the federal or provincial governments will also be a paid holiday.

Employees shall be entitled to National Indigenous Peoples Day in lieu of Easter Monday and/or Boxing Day if their worksite is open.

There are some collective agreements that have language which gives the power of declaring a holiday to the Band Council. The language acknowledges the sovereignty of a Band Council to declare holidays on their own lands.

- **From the collective agreement between Mohawk Council of Akwesasne and the Canadian Union of Public Employees Local 5458, April 1, 2021 – March 31, 2024:**

24.01 The following are days recognized as Statutory Paid Holidays under this Agreement and entitlement and payment shall be in accordance with the terms and conditions of the Canada Labour Code, as amended:

New Year Day	*Good Friday*	*Victoria Day*
Canada Day	*Labour Day*	*Remembrance Day*
Canadian Thanksgiving	*Christmas Day*	*National Aboriginal Day*
Boxing Day		

24.02 Employees working on the Statutory Holidays listed above shall be paid two and one-half (2.5) times the regular straight time pay, commencing from twelve (12) midnight within the twenty-four (24) hour period of the Statutory Paid Holiday.

24.03 A Full-Time employee whose day of rest falls on a Statutory Holiday will be compensated at the regular straight time rate of pay for the total number of hours in their normal shift scheduled.

24.04 (a) Holidays coinciding with a Saturday are observed on the preceding Friday. Those coinciding with a Sunday are observed on the following Monday.

(b) Where an Employer's rest day falls on the Monday or Friday to be observed as a Holiday, the employee shall be compensated at straight time.

24.05 (a) The following are days recognized as Council Designated Holidays under this Agreement:

Jake Fire Day Civic Holiday Family Day Easter Monday

(b) An employee whose day of rest falls on a Council Designated Holiday, will be remunerated at the regular straight time rate, for the total number of hours worked in their normal shift.

(c) Employees who work on a Council Designated Holiday shall be paid one and one half (1 1/2) times their regular straight time hourly rate of pay for all hours worked on the Council Designated Holiday.

Other collective agreements include language that allow any staff to celebrate National Indigenous Peoples Day as part of their dedication to reconciliation and in acknowledging the Indigenous territories. This is important because National Indigenous Peoples Day is not a provincially or federally recognized holiday, so it is up to unions to include this language in the collective agreement.

- **From the collective agreement between United Way of the Lower Mainland and the Canadian Union of Public Employees Local 1760, May 1, 2018 – April 30, 2020:**

21.05 Cultural Holidays

In recognition of the organization's commitment to multiculturalism, and recognizing the cultural diversity amongst the staff, the Employer agrees that:

a) Staff who want to celebrate different cultural holidays than already outlined in this agreement, can request to work all or part of the period during Christmas and New Year.

In recognition of the Employer's commitment to its Statement of Reconciliation and in recognition of the traditional land of Indigenous peoples on which the Employer conducts its operations, this clause will apply to any staff who want to celebrate National Indigenous Peoples Day.

b) Staff making this request, shall work in their regular positions during this time period and will not be considered part of the reduced workforce as outlined in clause 21.01.

c) Compensation for working during this time shall be on a day for day basis.

d) Requests to work during this period must be made in writing to the Department Head, stating how many days will be worked and which cultural days will be taken off in lieu no later than March 31st of each year.

e) Requests shall not be unreasonably denied.

12 | HOURS OF WORK AND PAYMENT OF WAGES

There are many Indigenous workers or workplaces located in rural or remote areas that require travel to the place of employment. These workers should not be penalized for not being able to get to the workplace because of hazardous travel conditions. Additionally, a travel benefit can be offered for travel to and from a workplace that is rural or remote. These provisions make work more reachable for Indigenous workers.

- **From the collective agreement between Board of Education of School District No. 50 (Haida Gwaii) and the Canadian Union of Public Employees Local 2020, July 1, 2019 – June 30 2022:**

15.12 Hazardous Road Conditions/Road Closures – On-Island

An employee who is delayed in coming to work due to hazardous road conditions (including road closure) or has been advised not to report or who is sent home, shall not suffer loss of earnings for the day(s). In the event that a staff member is unable to report to their school that is open, that staff member will endeavour to report to the nearest school. Employees travelling on the ferry

between Skidegate Landing and Alliford Bay are covered by this Article. When an employee reports to an alternate work site they shall be assigned duties within their regular classification.

15.13 Hazardous Road Conditions/Road Closures – Off-Island

An employee who is off Island for approved career development or medical leave and is delayed returning to work due to hazardous road conditions (including road closure, flight and ferry delays and cancellations), shall not suffer loss of earnings for a maximum of five (5) days, inclusive of approved medical leave. The earnings for the additional days for the delay shall be deducted from the employee's accumulated sick leave for employees away for medical reasons.

22.12 Off-Island Travel Allowance

The Employer shall pay an off-island travel allowance equivalent to four hundred dollars ($400.00) per month to all regular employees during the months in which they receive wages. This amount will be deducted from gross earnings and credited to the employee as a travel benefit.

22.13 Off-Island Travel Benefit

Effective January 1, 2002, the Employer shall pay an Off-Island Travel Benefit of twenty-five dollars ($25.00) per month, pro-rated for part-time employees.

[The agreed to costing shall not exceed point seventy-eight per cent (.78%) of the salaries based on salaries at January 1, 2002].

13 | INDIGENOUS PENSION PLAN

Some CUPE locals in Quebec contribute to a defined benefit pension plan, known as the Native Benefits Plan (NBP), which involves 86 employers, including Band Councils, Tribal Councils and other community organizations. The plan has more than 5000 members and approximately $500 million under management, which makes it the largest First Nations defined benefits pension plan in Canada. Provisions pertaining to participation in this plan appear in the collective agreement.

- **From the collective agreement between the Council of the Nation Anishnabe of Lac Simon and the Canadian Union of Public Employees Local 5153, April 1, 2015 – December 31, 2016:**

ARTICLE 25 PENSION PLAN

The Council shall maintain in force for the entire duration of the collective agreement all currently applicable provisions concerning the pension plan (Native Benefits Plan (NBP). The plan cannot be amended without the agreement of both parties.

Employees must join the pension plan. The employer is required to disclose group insurance information to employees as soon as they become eligible for the plan. (translation)

- **From the collective agreement between the Huronne-Wendat Nation Council and the Canadian Union of Public Employees Local 4613, April 1, 2020 – March 31, 2025:**

ARTICLE 26 PENSION PLAN

26.01 All employees eligible as per the rules of the Native Benefits Plan (NBP) shall benefit from the plan in accordance with applicable rules.

All eligible regular employees who have completed their probationary period as per article 4.01 (q) must join the plan.

The plan cannot be amended without the agreement of both parties, and the costs of the plan shall be adjusted in accordance with the agreements that have been reached.

26.02 The employer and employee contributions are covered in the NBP Regulations.

26.03 On request, the employer shall provide the union with a copy of the NBP Regulations along with any amendments or any relevant documents. (translation)

14 | INCLUDING ELDERS AT GRIEVANCES AND OTHER MEETINGS WITH THE EMPLOYER

The grievance process and meetings with the employer can be challenging for our members. Indigenous members may experience culturally-based miscommunications and conflicts within that context. This is why it is important that Indigenous members have access to processes that reflect their values. Indigenous employees may prefer that an Indigenous Elder be present in the grievance process or in meetings related to matters regarding Indigenous employees. This is because Indigenous Elders are knowledge holders that are highly respected and often sought out for their advice in important matters.

In addition, many Indigenous communities have processes of conflict resolution that are based on their worldviews, and it is important to take this into consideration within grievance procedures and meetings. These clauses should be developed with guidance by Indigenous people to ensure that they are accurate and appropriate. For how to work with Indigenous Elders, please see Walking the Talk: A practical guide to reconciliation for CUPE locals.

It is also important to note that Indigenous workers experience workplace racism and this is a serious health and safety issue. Racism should be considered a factor throughout the complaint process and grievance hearings, much like racism

against Black, and Indigenous people is considered in the justice system. These processes should always be informed with an anti-racism and trauma-informed lens.

- **From the collective agreement between Eatonia Oasis Living and the Canadian Union of Public Employees Local 4174, April 1, 2020 – March 31, 2021:**

Elders

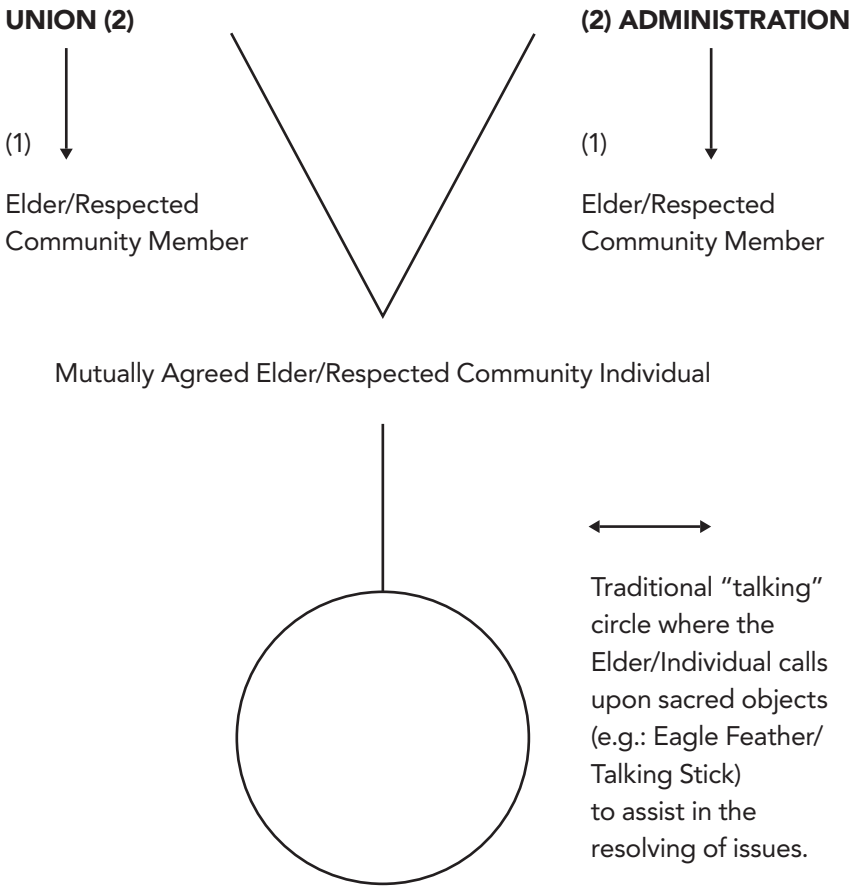
At the request of the employee, an Elder will be present when dealing with issues affecting Aboriginal employees.

- **From the collective agreement between Anduhyaun Inc. and the Canadian Union of Public Employees Local 4232, September 16, 2016 – August 31, 2020:**

7.03 Traditional Dispute Resolution

On a purely voluntary basis, individual grievors may choose to pursue grievances, following the Complaint Stage in Article 7.02, by utilizing the Traditional Dispute Resolution model attached as Schedule "B" to the Agreement. It is understood that if the grievance is not resolved through the Traditional Dispute Resolution process, it may be carried through the remainder of the normal Grievance Procedure and the time limits contained therein shall only apply upon the completion of the Traditional Dispute Resolution process/meeting. It is further understood that all grievance settlements achieved through the Traditional Dispute Resolution process will be without prejudice or precedent and shall not be relied upon in any proceeding as evidence of the proper interpretation of the Collective Agreement. A request to utilize the Traditional Dispute Model must be submitted to the Executive Director (or designate) within ten (10) business days. The Traditional Dispute Resolution process is available to all members of Local 4232.

Schedule "B"
Traditional Aboriginal Dispute Resolution



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CUPE

BARGAINING BEYOND THE BINARY

A NEGOTIATING GUIDE FOR TRANS INCLUSION AND GENDER DIVERSITY

CUPE | Canadian Union of Public Employees

CUPE National Human Rights Branch
July 2022

CONTENTS

Introduction 4

Terminology 5

Bargaining concerns for trans and gender diverse workers 7

The legal context for gender diversity protections 8

Addressing gender diversity in bargaining

- Harassment and discrimination 9
- Gender inclusive language 11
- Inclusive descriptions of parent, family and other groups 12
- Inclusive health benefits 13
- Gender affirming leave 14
- Gender inclusive facilities 17
- Uniforms and grooming 18
- Employment equity 20
- Other sections of the collective agreement 21

Ways to support trans and gender diverse workers beyond bargaining 22

Sources 23

INTRODUCTION

Trans and gender diverse people are part of our union. We all have a responsibility to ensure our collective agreements protect every worker's rights, and that all workers have the support they need. To do this, issues affecting trans and gender diverse workers must be brought to the bargaining table.

This guide is for all CUPE bargaining teams. It can help cis workers (workers who aren't trans) new to gender diversity better understand issues affecting trans and gender diverse people at work. For bargaining teams with trans and gender diverse members or who are very familiar with gender diversity, it offers ideas for translating trans advocacy to collective agreement language. For everyone, the sample clauses from CUPE locals that have already negotiated trans inclusive language offer useful templates for bargaining teams to develop their own proposals.

Much of the progress CUPE locals have achieved on gender diversity and trans inclusion is the result of the tireless activism of Two-Spirit, trans, non-binary and gender diverse members. CUPE local executives and bargaining teams don't have to wait, however, for a Two-Spirit, trans or non-binary worker to come out or be hired to bargain these issues. Even locals that don't have any trans members (that they know of) should ensure protections are in place now, so necessary supports are already there when gender diverse workers come out or enter the workplace.

This guide covers:

- Gender diversity and the workplace.
- How the union can negotiate better working conditions for Two-Spirit, trans, non-binary and other gender diverse members.
- Sample collective agreement language.
- Resources on transitioning at work and other gender diversity workplace issues.

Locals and bargaining committees who are looking to learn more about trans inclusion and gender diversity should take CUPE's workshop on safer spaces for Two-Spirit, trans and non-binary members. The workshop is available as a union-only session or can be presented jointly to union members and management.

Additional resources on gender diversity can be found at **cupe.ca/gender-diversity**.

TERMINOLOGY

People use many terms to refer to their gender identity and expression. Some common terms relating to gender diversity are defined below.

Throughout this guide we use "trans and gender diverse" to refer to workers who might be affected by transphobia, transmisogyny, and other forms of discrimination because their gender expression or identity doesn't fit society's biased assumptions and expectations about gender. This includes but is not limited to workers who are Two-Spirit, non-binary, trans and/or genderqueer.

2SLGBTQI+

An acronym referring to the Two-Spirit, lesbian, gay, bisexual, transgender, queer and intersex community. The + is an inclusive and intentional way of representing the various identities and experiences of the sexually and gender diverse community, including for example asexual people and non-binary people. While the acronym used to begin with LGBT, more recently many are putting the 2S at the start to acknowledge that Two-Spirit people were the first sexual and gender minority people in North America.

Cisgender (cis)

A person whose gender identity aligns with the sex they were assigned at birth. For example, someone who was assigned female at birth (it's a girl!) and identifies as a woman.

Cisnormativity

The prevalent idea that people's gender expressions should "match" the sex they were assigned at birth. It manifests through assuming that everyone fits neatly into the categories of man and woman and that people assigned male or female will look and behave in certain ways.

Deadnaming

When someone, intentionally or not, refers to a trans person by the name they used before they came out or transitioned. You may also hear it described as referring to someone by their "birth name" or their "given name."

Gender diversity

The wide range of gender identities and gender expressions.

Gender expression

The way we present our gender to others through our clothing, speech, mannerisms and other actions. A person's gender expression may be feminine, masculine or androgynous, among many other possibilities. Not every Two-Spirit, trans, or non-binary person feels safe to express their true gender. Many people who are not trans might still have gender expressions that do not stereotypically correspond to their gender identity (for example, a butch woman).

Gender identity

One's internal sense of their own gender. Examples of gender identities include, but are not limited to, man, woman, Two-Spirit, non-binary, gender fluid and genderqueer.

Non-binary

A person whose gender identity does not fall within the binary of "man" or "woman."

Trans or transgender

An umbrella term referring to a person whose gender identity differs from the sex they were assigned at birth. For example, someone who was assigned male at birth ("it's a boy!") who identifies as a woman, or someone who was assigned female at birth ("it's a girl!") and identifies as non-binary.

Transition

Social and/or medical changes that some trans people pursue to affirm their gender identity. Some people change their name, pronouns, or appearance. Some opt for medically supportive treatments such as hormone therapy or gender affirmation surgeries. Each person has a different process; there is no "one way" to transition, and no universal goal or endpoint.

Transphobia

The aversion to, fear, hatred, or intolerance of trans people. Like other prejudices, it is based on stereotypes and misconceptions and is expressed along a continuum of behaviour, from deadnaming and repeated misgendering to shunning, aggression, and murder.

Two-Spirit

An umbrella term that originated in the prairies and that is used by some North American Indigenous people to refer to a sense of having both masculine and feminine spirits, or to people who perform traditional ceremonial roles of both men and women. Not all Indigenous people who are lesbian, gay, bisexual, queer, trans, non-binary or intersex identify as Two-Spirit, but only Indigenous people can be Two-Spirit. Some Indigenous people who identify as lesbian, gay, bisexual, queer, trans etc. might refer to themselves as "Indigiqueer" instead of, or in addition to, Two-Spirit.

For more on inclusive terminology, see the Canadian Labour Congress' *Workers in Transition Guide*, The 519's *Creating Authentic Spaces Toolkit*, and the Government of Canada Translation Bureau's *Gender and Sexual Diversity Glossary*.

BARGAINING CONCERNS OF TRANS AND GENDER DIVERSE WORKERS

Trans and gender diverse workers are concerned about many of the same issues as cis workers, such as wages, benefits and health and safety. However, trans and gender diverse workers may face unique barriers to accessing health care, parental benefits and other rights bargained into collective agreements, and are more likely to experience exclusion, discrimination, harassment, and violence in the workplace. Trans workers are more likely than cis workers to be refused employment or promotions, stuck in precarious jobs, paid less, and forced out of a job. Because of this, there are particular benefits, leaves, and health and safety issues that are especially important to many trans and gender diverse workers.

Bargaining priorities that can help address the specific concerns of trans and gender diverse workers include:

- benefits coverage for gender affirming care;
- effective anti-harassment policies;
- access to safe washrooms and change rooms; and
- paid leave for accessing gender affirming care.

Employers often fail to provide a safe environment by:

- ignoring gender-based harassment and transphobia;
- violating confidentiality;
- not using workers' correct names or pronouns;
- refusing to include certain gender affirming medical procedures or devices in health benefits;
- maintaining gendered dress codes or refusing choice in uniforms; and
- not providing safe washrooms and change rooms.

Outside of the workplace, trans and gender diverse workers may face stigmatization, denial of services, unsafe services, isolation, harassment, violence and discrimination. Trans and gender diverse workers who are women, Indigenous, Black, and/or living with disabilities face additional layers of discrimination, harassment and violence.

Unions can play an important role in supporting members, challenging transphobia and ensuring employers provide work environments free of discrimination and harassment. Collective bargaining is one key way CUPE locals can accomplish this.

THE LEGAL CONTEXT FOR GENDER DIVERSITY PROTECTIONS

In Canada, discrimination and harassment on the basis of gender identity and/or gender expression are against the law. Many collective agreements also include "no discrimination" clauses that explicitly include gender identity and gender expression.

The *Canadian Human Rights Act* and provincial human rights legislation also prohibit discrimination on the basis of gender identity or gender expression.

By law, employers must provide a work environment that is free from harassment and violence. Workers who are targeted for their gender identity and/or gender expression are covered by those laws, which include occupational health and safety, employment standards, workers compensation, labour relations and criminal law. See CUPE's *Stop Harassment: A guide for CUPE locals* and our *Violence Prevention Kit* for more information.

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



ADDRESSING GENDER DIVERSITY IN BARGAINING

HARASSMENT AND DISCRIMINATION

Many collective agreements include gender identity and gender expression in prohibited grounds of discrimination and harassment.

Sample language:

CUPE 1281-15 and Mayworks Festival of Working People and the Arts
October 1, 2018 - September 1, 2021

Article 5 – No Harassment

5.05
Gender/Transgender Harassment shall be defined as offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean and belittle an individual(s) and/or cause personal humiliation, on the basis of sexual orientation or gender. Gender/Transgender Harassment also includes discrimination, alienation, intimidation, and silencing or the differential treatment of a person as a result of their gender identity.

CUPE 2626 and the University of Ottawa
September 1, 2019 - August 31, 2022

Article 10 – No Discrimination

10.1
e) gender identity, gender expression, and gender presentation

10.5
With respect to the interpretation of Article 10.1 and certain words used in the article, the Parties agree as follows:

a) "Sex/Gender/Gender Identity" includes but is not limited to the right to equal treatment without discrimination, intimidation, interference, restriction or coercion because an Employee (i) is pregnant or may become pregnant, (ii) is breastfeeding or (iii) is not cisgender (including but not limited to: transgender, non-binary, genderqueer, gender-fluid, agender, intersex, Two-Spirit, etc.) where cisgender refers to a person whose assigned sex at birth matches with their gender identity.

CUPE 3902, Unit 1 and the University of Toronto
January 1, 2018 - December 31, 2020

Article 4.01 No Discrimination

(a) The Employer and the Union agree that there shall be no discrimination, interference, restriction, coercion, or harassment exercised or practised in any matter concerning the application of the provisions of this Agreement by reason of age, race, creed, colour, national origin, language of origin, ethnic origin, ancestry, citizenship, religious or political affiliation or belief, sex, gender, marital or parental status, number of dependants, **sexual orientation, identity or expression, gender identity and expression**, personal appearance, mode of dress, place of residence, academic school of thought, record of offences unless the employee's record of offences is a reasonable and bona fide qualification because of the nature of employment, disability (including AIDS/HIV status), **physical attributes** nor by reason of the employee's non-membership, membership or activity in the Union.

(Emphasis added)

(c) The Employer and the Union recognize that an individual has the right to determine their own gender identity. This includes the right to determine their own pronouns.



GENDER INCLUSIVE LANGUAGE

Many collective agreements refer to "gender neutral" or "gender inclusive" language. A smaller number state explicitly that "gender" refers to all genders, not only the binary of male/female and man/woman.

Starting in the 1970s, CUPE negotiated "gender neutral" language to address the discriminatory practice where all workers were referred to using masculine pronouns (he/him/his). Some agreements continue to refer to the gender binary (he/she), but truly gender inclusive language uses a gender inclusive pronoun (they) or term (for example, employee).

Sample language:

CUPE 2348-50 and United Way Winnipeg
June 1, 2019 - May 31, 2022

Article 2.04

Whenever the gender-neutral (they/them) appears in this agreement it shall also mean all genders.

CUPE 2626 and the University of Ottawa
September 1, 2019 - August 31, 2022

Article 1.1

In this Agreement, the pronouns "they/them/theirs" are used to denote gender neutral persons both singular and plural.

Employer databases and correspondence should also be gender inclusive. Many employer systems only include two categories for workers to identify (male/female) and/or only two sets of honorifics in correspondence: Ms/Mrs or Mr.

CUPE 4600 negotiated with the employer to begin changing those systems in its most recent collective agreement:

CUPE 4600 (Unit 2) and Carleton University
September 1, 2019 - August 31, 2022

Memorandum of Agreement

RE: Right to Determining Gender Pronouns

The University will make best efforts to update relevant systems to be able to reflect employees' pronouns and pronoun changes within the term of this Agreement.

INCLUSIVE DESCRIPTIONS OF PARENT, FAMILY AND OTHER GROUPS

References to gender elsewhere in your local's collective agreement should also remove gender binary language. For example, bereavement leave should refer to "spouse" and "partner" instead of "husband/wife," and "sibling" instead of "sister/brother." When referring to parental leave, parents should be referred to in gender inclusive ways. For example, use "birthing parent" or "pregnant employee" instead of "mother."

Sample language:

CUPE 3902, Unit 1 at the University of Toronto
January 1, 2018 - December 31, 2020

20:07 Non-Birth Parent Leave

Upon the birth or adoption of a child, a non-birth parent shall be entitled to up to one (1) week without loss of pay within six (6) weeks of the birth of the employee's child, or the coming of the child into the care, custody and control of a parent for the first time. Such requests shall be made as far in advance as possible. For clarity, this provision is available to any non-birth parent.

20:08 Bereavement Leave

The University will grant up to three (3) consecutive days leave from scheduled contact hours per session without loss of pay in the event of the death of an employee's spouse, partner, child, grandchild, parent, sibling, or grandparent, or for the death of a person whose relationship is not defined above, the impact of which is comparable to that of the immediate family (e.g. a close friend). For clarity, the foregoing is inclusive of step and in-law relations and relations regardless of gender.

INCLUSIVE HEALTH BENEFITS

Not all trans and gender diverse people will seek medical interventions to better express their genders. For those who do, however, gender affirming procedures and devices are medically necessary and often life-saving. They can include surgeries, hormone replacement therapy, prosthetic devices, electrolysis (hair removal) and other care. Extended health benefits should cover drugs, devices and procedures not covered by provincial or territorial health plans. In exceptional circumstances where some items or procedures aren't available in an extended health plan, employers have provided "health spending accounts" to cover these costs. (Another option is negotiating a fund to help with the costs of transitioning. See sample language on this in the next section).

Sample language:

CUPE 5269 and Children's Aid Society of Algoma
April 1, 2021 - March 31, 2024

Appendix A:

HEALTH SPENDING ACCOUNT

You can use your Health Spending Account to cover expenses that are eligible medical and dental expenses under the Income Tax Act (Canada) and that are not paid (or not paid in full) by any other private or government plan. These include eligible expenses incurred outside your province of residence.

ELIGIBLE EXPENSES INCLUDE (BUT ARE NOT LIMITED TO) THE ITEMS LISTED BELOW:

Devices, supplies and equipment:

- Artificial Eyes
- Artificial Limbs

…

- Breast prosthesis

…

- **Wigs**

Other:

- Ambulance fees for transportation
- Laboratory, radiological or other diagnostic procedures or services

…

- **Electrolysis or hair removal performed by a licensed technician**

…

(Incomplete list. Emphasis added to highlight relevant items.)

GENDER AFFIRMING LEAVE

Because there are few clinics and physicians who perform gender affirming surgeries in Canada, many people who require surgeries have to travel for the procedures (especially if they live outside of Montreal, Toronto or Vancouver). Even those who don't need to travel often need significant recovery time, depending on the procedure.

Some workers therefore might need leave to access gender affirming surgeries. Others might need leave to receive psychological care or to take time before they are comfortable coming out at work.

Sample language:

CUPE 3902, Unit 1 at the University of Toronto
January 1, 2018 - December 31, 2020

Article 20.11 Sick Leave

Serious Illness, Surgery and Hospitalization

(d) An employee who provides a certificate from a licensed physician confirming that the employee is unable to attend work and/or perform the employee's duties due to a serious illness, required surgery and/or hospitalization, and/or course of treatment may be granted up to four (4) months of paid leave at the employee's regular rate of pay during the period of the employee's appointment. For clarity, this includes leaves pertaining to gender reassignment.

Note: CUPE 3902 won "gender reassignment surgery leave" in 2012. In 2015, this language was changed to include gender reassignment leave as part of the general sick leave in Article 20.11. The local did not want to identify trans leave as something separate or different from other health issues. In addition, the leave was not limited solely to "surgery" but included "course of treatment," and the paid leave increased from two to four months. It was part of a series of changes to language in this collective agreement on gender identity and expression, as noted elsewhere in this guide.

Local 3903 Unit 2 and York University
September 1, 2017 - August 31, 2020

17.22
Transgender Transition Leave

An employee who provides a certificate from a medical practitioner confirming that the employee requires a leave of absence in order to undergo the medical procedure(s) related to a physical change from one gender to another will suffer no reduction in pay for up to eight-thirty-fifths of the period of her Appointment Contract(s).

15.23
Trans Fund

Effective September 1, 2011 the $10,000 allocated to this Fund will be increased to $20,000. Effective September 1, 2014 $30,000 will be allocated to this Fund. Allocations from the Fund will be made by the Union.

Effective September 1, 2018, $40,000 will be allocated to this Fund annually. Allocations from the Fund will be made by the Union based upon pre-established and posted guidelines.

An annual report on the disbursement of monies shall be submitted in writing to the Labour/Management Committee.

CUPE 1936-29 and QMUNITY
January 1, 2020 - March 31, 2023

Article 20 – Special and Other Leave

20.9
Trans-affirming Care

An employee who requires a leave of absence in order to access physical or psychological trans-affirming care (including medical or non-medical procedure(s) shall be granted a leave with pay for up to fifteen (15)) days per calendar year. Such leave shall be taken, where applicable, prior to accessing sick leave.

CUPE 4948 and Toronto Public Library
January 1, 2020 - December 31, 2024

Article 25.21 Trans-Affirming Care Leave

a. An employee may request a leave of absence under this article in order for the employee to access physical or psychological trans-affirming care (including medical or non-medical procedure(s)). Full-time employees shall receive up to seventy (70) hours of paid time at the employee's regular rate annually under this article, and Part-time employees and Page employees shall receive up to forty-nine (49) hours of paid time at the employee's regular rate annually under this article. The Board reserves the right to request medical or other documentation to support the request for leave under this article.

b. This paid leave can be taken as part days, full days, or periods of more than one (1) day. If an employee takes a part day leave, it will not be counted as a full day.

c. The Board shall endeavor to protect the privacy and confidentiality of employees accessing trans-affirming care leave, including prohibiting anyone from sharing information about an employee's identity, orientation, or expression without the express permission of the individual.

d. Employees on such leave shall be reinstated to their former position upon return from leave, or an equivalent alternate position.

e. During the period of trans-affirming care leave, the Board shall pay the employer share of OMERS contributions unless the employee gives written notice before the leave begins of their choice not to pay their share. If the employee elects, before the leave begins, not to pay the member share of contributions, then the Board is not required to pay.

f. During the period of trans-affirming care leave, the employee shall suffer no loss of benefits and shall continue to accrue seniority, vacation, and sick credits.

g. When the leave entitlements under Article 25.21(b) have been exhausted, an employee may use other entitlements in accordance with the collective agreement.

GENDER INCLUSIVE FACILITIES

Often trans and gender diverse workers are subjected to isolation or discrimination when accessing gendered washrooms or change rooms. Sometimes they might be refused access to the washroom or change room that corresponds with their gender. The right to access safe facilities can be enshrined in the collective agreement.

Sample language:

CUPE 416 and the City of Toronto
January 1, 2016 - December 31, 2019

Article 6 – No Discrimination or Harassment

6.05
All work locations that are staffed shall contain washroom facilities available to employees. This does not preclude the use of gender neutral washrooms which are clearly signed and can be securely locked from the inside so as to afford the occupant privacy. Such locks shall also have the capacity to be unlocked from the outside for the sole purpose of access that would not infringe employee privacy or in the case of an emergency. Where the Union brings to management's attention specific concerns regarding washrooms or independent change rooms, the City shall take the appropriate measures to remedy the concern.

CUPE 2626 and the University of Ottawa
September 1, 2019 - August 31, 2022

Article 25 – Provisions for Employees with Disabilities

25.4
The Employer has a multi-year accessibility plan under the AODA that includes wheelchair-accessible and gender neutral facilities (including but not limited to bathrooms and change rooms). The Employer will regularly update the online university map which details the location of these facilities and ensure that the map is accessible on their website.

UNIFORMS AND GROOMING

Uniforms and rules about clothing, hair and other aspects of appearance often reinforce the gender binary. Rules that require employees to wear uniforms that correspond with a specific gender or the sex they were assigned at birth should be removed.

CUPE 4098, representing workers at Air Canada Rouge, recently used a human rights complaint to force the employer to change clothing and grooming rules that restricted and even injured members. As one example, the requirements included specific shoes for women flight attendants that injured their feet. In addition to footwear options, members won an end to sexist makeup rules. On the surface, the union was challenging sexism and not the assumptions and biases of cisnormativity, (the fact that uniform and cosmetics rules were built on the notion that women had to look a certain way). In effect though, removing gendered elements of the clothing and grooming policy was a win on gender expression as well as sex discrimination.

CUPE 4029, representing flight attendants at Calm Air, also recently had the uniform policy changed to be gender neutral. The uniform clause now reads:

CUPE 4029 and Calm Air International LP
May 1, 2018 - April 30, 2022

5.06 UNIFORMS

(a) INITIAL UNIFORM ENTITLEMENT

(i) New Hire Flight Attendants will be provided with an initial uniform entitlement as follows:

ARTICLE	NUMBER
Shirts	5
Shell	1
Cardigan	1
Blazer	1
Dress or additional Blazer	1
Serving Vest	1
Belt	1
Pants	2 (1 skirt and 1 pant upon request)
Uniform Scarf or Tie	2
Winter Scarf	1
Jacket (Seasonal: Spring/Fall & Rain)	1
Satchel	1
Roller Bag	1
Tie Pin	Upon request
Winter Parka	1

Language emphasizing that the worker gets to choose which uniform elements are best for them is important.

Sample language:

CUPE 1001 and the University of Windsor
August 1, 2016 - July 21, 2022

Article 23 – Clothing

23:01 (a)

4. All Service Staff (General Cafeteria): The Employer will supply three uniforms annually of the Employer's choice of colour and style to correspond with the decor of the outlet the Employee is working in. The Uniform will consist of three tops, three pants or skirts (employee's choice), three aprons and one hat.

EMPLOYMENT EQUITY

Employment equity refers to proactive measures to increase the representation of workers from communities who have been historically underrepresented in the workplace. Trans workers face more employment discrimination than cis workers. They are likely underrepresented in most workplaces. Trans and gender diverse workers should be included in employment equity efforts.

Sample language:

CUPE 1281-18 and OPIRG (Ontario Public Interest Research Group)
March 1, 2014 - February 28, 2018

Article 13 – Hiring, Promotions and Staff Changes

13.2.3

All hiring notices will include the following:

OPIRG welcomes the contributions that individuals from marginalized communities bring to our organization, and invites aboriginal people, people of colour, poor and working-class people and those on social assistance, women, gays, lesbians, bisexuals, queer-oriented people; transgender, transsexual, intersex and two-spirit people; single parents, members of ethnic minorities, immigrants, people from non-academic backgrounds and people with disabilities to apply. We encourage applicants to describe the contributions and experiences they would bring to the OPIRG organization in their cover letter. All applicants are asked for a brief statement on their views of power and oppression.

CUPE 2484-24 and Brookhaven Child Care Centre
January 1, 2016 - December 31, 2018

Letter of Understanding #8 Employment Equity

The Employer and the Union agree to co-operate in developing, implementing and monitoring an Employment Equity Program covering employees of the Centre. All components of the program will be jointly developed between the Employer and the Union.

The intent of the program is to identify and implement plans to remove any barriers that may exist, and to develop a plan to correct any barriers that create disadvantages for persons from the groups set out below in accessing employment or any rights under the Collective Agreement. This will include the identification of unintentional systemic barriers.

The designated groups include: Aboriginal/Indigenous people, Racialized people, LGBTQ and Transgender persons, Persons with disabilities and Women.

CUPE 3913 (Unit 2) and the University of Guelph
September 1, 2016 - August 31, 2019

Article 11 Postings and Appointments

11.04 Selection Process

(c) A Selection Committee must be established for all work assignment competitions. The Selection Committee, when established, must be composed of, at minimum, three people with knowledge, experience, and expertise, of which at least one shall be a designated group member (i.e., member of an equity-seeking group, which may include women, racialized people, members of the lesbian, gay, bisexual, transgender, or queer communities, aboriginal people, or persons with disabilities).

In a recent trend, some post-secondary employers are expanding anti-discrimination employment measures to 2SLGBTQI+ workers. Thanks to activism by the Canadian Association of University Teachers, post-secondary institutions are now required to include 2SLGBTQI+ workers in their Equity, Diversity and Inclusion Action plans in order to receive Canada Research Chair funding.[1]

OTHER SECTIONS OF THE COLLECTIVE AGREEMENT

Employer obligations around privacy and confidentiality are critical when it comes to protecting and strengthening the rights of gender diverse workers. Trans workers might be required to provide the employer with confidential identity information such as their deadname for payroll or insurance purposes, for example. They are sometimes also required to disclose medical information in order to access benefits or leave.

Employers' duty to accommodate may be relevant given that trans and gender diverse workers might require access to special leave, medical benefits or facilities. This guide has focused on provisions that explicitly address gender diversity, but many other aspects of the collective agreement apply as well.

[1] The Canadian Association of University Teachers won a human rights challenge in federal court in 2019. Among other changes, 2SLGBTQI+ communities must be included in post-secondary Equity, Diversity and Inclusion Action Plans. https://www.chairs-chaires.gc.ca/program-programme/2019_open_letter-eng.aspx

WAYS TO SUPPORT TRANS AND GENDER DIVERSE WORKERS BEYOND BARGAINING

Ask CUPE's Union Education Branch to deliver the workshop on safer spaces for Two-Spirit, trans and non-binary workers with your local.

Add the CUPE Code of Conduct to your bylaws.

Create a 2SLGBTQI+ committee and make space for Two-Spirit, trans and non-binary leaders.

Challenge transphobia and take actions like the ones listed in CUPE's *Allies on Gender Diversity*.

Support local Two-Spirit, trans and non-binary activist groups. Join an action. Invite a speaker. Hire an artist. Sponsor an event.

Read these and other resources on trans workplace issues:

> *Canadian Labour Congress (2020) Workers in Transition Guide.* canadianlabour.ca/workers-in-transition-guide/
>
> *The 519 (2017) Creating Authentic Spaces Toolkit.* the519.org/education-training/training-resources/our-resources/creating-authentic-spaces

Don't wait for a Two-Spirit, trans or non-binary member to come forward. Take these steps to make your union and workplace safer now. Members of all genders will gain trust in the union and help build safer spaces.



SOURCES

Mills, S., Owen, B. Guta, A, Lewis, N., Oswin, N. (2020). *Work and Inclusion and 2SLGBTQ+ People in Sudbury and Windsor.* Accessed at lgbtqworkandinclusion.mcmaster.ca/ labour-studies/news/work-inclusion-and-2slgbtq-people-in-sudbury-and-windsor

Mills, S. (2019). Report: LGBTQ2S+ Work & Inclusion: *THE LGBTQ2S+ Work & Inclusion Study brings together unions, worker centres, and LGBTQ2S+ people in Sudbury and Windsor to investigate the experiences of LGBTQ2S+ workers.* McMaster University.

Bauer, G. R., & Scheim, A. I. (2015). Report: *Transgender People in Ontario, Canada Statistics from the TransPULSE Project to Inform Human Rights Policy.* TransPULSE. London, ON.

TransPulse Canada. 2020. Health and health care access for trans and non-binary people in Canada. Accessed at transpulsecanada.ca/research-type/reports/


CUPE
Canadian Union
of Public Employees

BARGAINING LANGUAGE FOR THE NATIONAL DAY FOR TRUTH AND RECONCILIATION

THE NATIONAL DAY FOR TRUTH AND RECONCILIATION

In June 2021, the Government of Canada passed legislation to create a new federal statutory holiday, the National Day for Truth and Reconciliation (September 30). This means September 30 is now a paid holiday for workers in federally regulated sectors.

WHAT IS THE HOLIDAY ABOUT?

September 30 is commonly known as Orange Shirt Day. The Orange Shirt Day movement began in 2013 to honour the survivors of residential schools and those who never returned home.

Orange Shirt Day was inspired by Phyllis Webstad's experiences at St. Joseph Mission Residential School, outside of Williams Lake, British Columbia. As a child, Phyllis was given an orange shirt by her grandmother to wear on her first day at the school. The shirt was promptly confiscated and destroyed by her teachers when she arrived. Phyllis' story has come to symbolize the colonial goal of residential schools to assimilate Indigenous peoples. September 30 was selected as a day of remembrance because it is in the fall, around the time when Indigenous children were forced to attend the institutions.

In 2015, the Truth and Reconciliation Commission of Canada (TRC) recommended that a statutory holiday be established to commemorate the history and legacy of the residential school system. The new National Day for Truth and Reconciliation on September 30 has been established as part of the reconciliation process.

CUPE

WHY IS IT IMPORTANT?

Bargaining the National Day for Truth and Reconciliation into your collective agreement contributes to the reconciliation process and helps fulfill the TRC's calls to action.

CUPE's Strategic Directions, adopted by the membership at our National Convention, commit our union to truth and reconciliation. This includes recognizing the legacy of the residential school system and the ongoing harm that Canada's assimilationist policies and laws have on Indigenous peoples.

September 30 is a time to commemorate and reflect on the residential school system and the anti-Indigenous racism that allowed these institutions to exist. It is also a time for members to educate themselves and others on the legacy of residential schools and how anti-Indigenous racism continues to harm Indigenous people.

BARGAINING THE NEW HOLIDAY

Most CUPE locals are under provincial jurisdiction. This means that September 30 will be considered a normal working day for most CUPE members.

- Some locals have already bargained the observation of September 30 into their collective agreements. Make sure to check your collective agreement language on paid holidays to see if it is already included.
- Some collective agreements contain language that lists current provincially and federally declared holidays, or that recognizes potential future holidays by federal or provincial governments. This language should be enforced to observe the National Day for Truth and Reconciliation.
- If your collective agreement does not include any language that can be used to argue for the observance of September 30, then September 30 should be proposed as a paid holiday in future bargaining.

Sample Language from Collective Agreements

Sample language from collective agreements regarding the holiday is provided below. For more information, ask your servicing representative.

From the Collective Agreement between Indigenous Women's Healing Centre Inc. and The Canadian Union of Public Employees Local 2348, June 1, 2019 – May 31, 2021 (emphasis not in the original):

18.01 The Employer and the Union recognize the following as paid holidays:

New Year's Day / Louis Riel Day / Good Friday / Easter Monday / Victoria Day / Aboriginal Day – June 21 / Canada Day / Terry Fox Day / Labour Day / **Truth and Reconciliation Day – Sept. 30** / Thanksgiving Day / Remembrance Day / Christmas Day / Boxing Day

and any other day proclaimed as a holiday by the Federal or Provincial Governments.



From the collective agreement between The Board of Governors of College of the Rockies and the Canadian Union of Public Employees Local 2773, July 1, 2019 – June 30, 2022 (emphasis not in the original):

11.1 A regular, term, or auxiliary employee shall be entitled to the following statutory/general holidays or such other days as the College may designate to be taken in lieu of these holidays and/**or any other day proclaimed by the Government of Canada, the Government of British Columbia, or the College**, with pay:

New Year's Day / Family Day / Good Friday / Easter Monday / Victoria Day / Canada Day / B.C. Day / Labour Day / Thanksgiving Day / Remembrance Day / Christmas Day / Boxing Day

From the collective agreement between Regional Municipality of Durham and the Canadian Union of Public Employees Local 1764, April 2018 - March 31, 2021 (emphasis not in the original):

20.01 Regular and probationary employees shall be entitled to the following paid holidays which shall also be granted to temporary employees:

New Year's Day / Family Day / Good Friday / Easter Monday / Victoria Day / Canada Day / Civic Holiday / Labour Day / Thanksgiving Day / Remembrance Day / Half day at Christmas Eve / Christmas Day / Boxing Day / Half day at New Year's Eve

and any national or provincial holiday declared by the Federal Government or the Government of Ontario.



A bargaining guide

CUPE Human Rights
Updated 2023

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 counselling 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 and its impacts 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.

Table of contents

5 What is domestic violence?
7 How is domestic violence a workplace issue?
8 How can domestic violence be addressed in the collective agreement?
15 What have other unions bargained on domestic violence?
16 Privacy and confidentiality
17 What else can the union do, outside of bargaining?
18 If the person experiencing and the person perpetrating violence are both members
19 Checklist for domestic violence at work contract language or policy
21 Bibliography

What is domestic violence?

Domestic violence is any form of violence between intimate partners. The violence can be physical, sexual, emotional, or psychological, including financial control, stalking and harassment. It can occur between intimate partners of any gender, 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 people of all genders, but the vast majority of abusers are men and victims are 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 impacts the workplace. Many workers have faced domestic violence and/or are currently experiencing abuse. Unions have an important role to play 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.

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.
- Protect workers, investigate, and follow up when they learn of incidents or risk of harm.

Occupational health and safety legislation in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Ontario, Quebec, and Yukon explicitly requires employers to take steps to prevent domestic violence from entering the workplace and address it when it does. Employers in federally regulated sectors also have a responsibility to address domestic violence under the *Canada Labour Code (Violence and Harassment)*.

Additionally, every province and territory in Canada except Alberta now offers paid leave for domestic, family and/or sexual violence. Alberta offers 10 unpaid days of leave. Federally regulated employers are required to offer five paid days and an additional five unpaid days.

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 those who experience it and those who perpetrate it. According to a 2014 survey jointly conducted by the Canadian Labour Congress and Western University's Centre for Research and Education on Violence Against Women and Children:

- One in three workers in Canada has experienced domestic violence.
- Of those who have, 82% indicated that domestic violence negatively impacted their work and 8.5% lost a job because they were experiencing domestic violence.
- People in abusive relationships or with an ex-partner perpetrating violence against them often continue to experience abuse while at work through frequent phone calls, emails or text messages, and/or stalking at the workplace. Their partner or ex-partner might also contact their co-workers.
- This means co-workers, users/clients and others connected with either partner's workplaces are also at risk for injury or some other form of trauma.
- For people experiencing domestic violence, 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. It is critical that members' jobs are protected.

With more workers working from home, those in abusive relationships may face even greater risks of severe physical and psychological injury. Their partner can more easily monitor them and their communications, which makes it harder to seek help. They also might not get the same reprieve from abuse that going to a physical workplace could provide.

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 their partner or ex-partner. Unions need to 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 from a general reference to specific protections.

Domestic violence at the workplace might also be covered by anti-discrimination, anti-harassment and anti-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, even if it is not specifically listed. Naming domestic violence in those clauses will help raise awareness and make it easier to pursue a grievance.

Many collective agreements have language in other areas that relates 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. CUPE's *Violence Prevention Kit* also gives guidance on how to prevent, document and respond to incidences of workplace violence.

1

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

CUPE 8-11 and Intercare Corporate Group
Expiry June 30, 2024

Article 8 – No Discrimination, Harassment or Violence

8.02 Harassment & Violence

The Employer and the Union recognize that an Employee should be able to work free from harassment and violence and will cooperate in the achievement of that objective.

Workplace harassment is defined as a single or repeated incident of objectionable or unwelcome conduct, comment, bullying, or action intended to intimidate, offend, degrade or humiliate a particular person or group.

Any discriminatory behaviour at or related to the workplace which denies an individual their dignity and respect or affects their job security by creating an intimidating, offensive, embarrassing, or humiliating work environment is considered to be personal harassment.

Workplace harassment is inappropriate, coercive, intimidating, embarrassing, or unwelcome behavior in the workplace by one person towards another, particularly if the behavior is adversely affecting, either directly or indirectly, the working conditions or work prospects of a staff member.

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 guidelines*.

It can be committed verbally, in writing, including through email and over the internet, graphically, or physically. Examples of workplace harassment include, but are not limited to: gossiping, verbal, written or graphic abuse or threats; taunting or other forms of intimidation; unwelcome remarks or jokes about physical attributes, attire, age, gender, sexual orientation, marital status, family, religion, ethnic or national origin; practical jokes which cause undue embarrassment or humiliation; rumour mongering; unwelcome physical contact; physical assault.

Violence, **whether at a work site or work related**, is defined as the threatened, attempted, or actual conduct of a person that causes or is likely to cause physical or psychological injury or harm. It can include: a physical attack or aggression, threatening behaviour, verbal or written threats, **domestic violence** and/or sexual violence.

(Emphasis added)

2
Include paid domestic violence leave.

A worker experiencing domestic violence often needs paid leave to access mental health support, attend court, move, or otherwise deal with the violence they are facing.

Every province and territory except Alberta provides between two and five days of paid leave for workers experiencing domestic violence. Federally regulated employers are also required to provide five days of paid domestic violence leave, and five additional unpaid days per calendar year. Many collective agreements either affirm the regulatory requirement or go over and above what is provided. For instance, Alberta provides 10 days of unpaid leave. Provincially regulated workers in Alberta should negotiate paid time. Here are two examples of this type of collective agreement language:

CUPE 2768-02 and The Town of Centreville/Wareham/Trinity
Expiry August 31, 2025

Article 22 – Leaves of Absence

22.08 Domestic Violence Leave

The employer recognizes 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 the victim 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 directly affecting them or their immediate family living in their household. **An employee who is the victim of domestic violence or abuse will be**

granted up to five (5) days of paid leave per year. This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day, without prior approval. Employees are also entitled to up to twenty-six (26) additional weeks without pay which shall be taken in one (1) continuous period. All personal information concerning domestic violence will be kept confidential in line with relevant legislation. No information will be kept on an employee's personnel file without their express written permission.

(Emphasis added)

CUPE 5176 and Epic Opportunities Inc.
Expiry March 31, 2022

Article 17 – Leaves of Absence

17.18 Domestic Violence Leave

(a) An employee who has been employed by the Employer for at least ninety (90) days, and who is the victim of domestic violence as referred to in the Employment Standards Code is entitled to both the following periods of domestic violence leave in each fifty-two (52) week period:

  (i) leave of up to ten (10) days, which the employee may choose to take intermittently or in one continuous period;

  (ii) leave of up to seventeen (17) weeks to be taken in one (1) continuous period.

(b) Domestic violence leave may be taken for one (1) or more of the following purposes:

  (i) to seek medical attention for the employee or the employee's child in respect of a physical or psychological injury or disability caused by the domestic violence;

  (ii) to obtain services from a victim services organization;

  (iii) to obtain psychological or other professional counselling;

  (iv) to relocate temporarily or permanently;

  (v) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence;

  (vi) any other purpose prescribed in the Employment Standards Code or Regulations.

(c) The first five (5) days of leave taken in a calendar year shall be paid. The remainder of any such leave (leave in excess of five [5] days in a calendar year) shall be unpaid.

3

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

CUPE 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 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.

CUPE 799-01 and The City of Quinte West
Expiry December 31, 2025

Article 22 – Safety

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)

CUPE 79-06 and Toronto Community Housing Corporation
Expiry December 31, 2019

Letter of Intent – DOMESTIC VIOLENCE / WORKPLACE VIOLENCE AND HARASSMENT

a) Workplace Harassment and Violence: TCHC agrees to meet its legal obligations under the *Occupational Health and Safety Act* with respect to violence and harassment in the workplace as established in TCHC's Workplace Violence and Workplace Harassment Policy and Guidelines for Implementing Workplace Violence and Harassment Policy, Guidelines for Addressing Domestic Violence in TCHC & Subsidiaries Workplaces outlined in the policy section contained herein.

TCHC will provide employees with information and instruction that is appropriate based on the contents of established policy and program guidelines.

5

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

CUPE Air Transat Component and Air Transat
Expiry October 31, 2021

13.09 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 counsellor), 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 their absence in accordance with the terms of Article 16.01.

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."

CUPE 2484-15 and Ferncliff Day Care and After School Group
Expiry March 31, 2025

22.13 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.

What have other unions bargained on domestic violence?

Unifor negotiated a Women's Advocate program and now has over 400 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 members 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 and New Zealand have negotiated paid domestic violence leave (ranging from two days to unlimited leave), protection from adverse action and flexible work arrangements in collective agreements. UNISON, CUPE's sister union in the United Kingdom, has also negotiated special paid leave in a number of contracts.

In 2019, the Professional Institute of the Public Service of Canada negotiated 10 paid days of domestic violence leave, going beyond existing federal legislation.

Privacy and confidentiality

Employers should disclose information only on a need-to-know basis to protect confidentiality while ensuring worker safety. Workers are often reluctant to disclose because of the stigma associated with domestic violence and the fear of gossip, not being believed, further violence from their partner, job loss and other negative outcomes. Perpetrators are often skilled at hiding and rationalizing their abusive behaviour. Inquiries must be made 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, and
- for the effective implementation of protective orders.

In these cases, privacy and confidentiality should be maintained as much as possible. This means sharing only 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 written permission.

What else can the union do, outside of bargaining?

CUPE's resources on harassment and violence can help members learn about 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 in another way.

Resources specific to domestic violence can be found on the Western University *Make It Our Business* website.

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 an education module on workplace violence that covers domestic violence. Domestic violence can also be addressed in CUPE's workshops on harassment and health and safety.

Establish an internal (union) anti-harassment policy, code of conduct and equality statement to promote a harassment-free union environment. Refer to CUPE's Code of Conduct and Equality Statement.

Distribute resources about domestic violence electronically if workers are working from home. Ensure all workers have options to communicate with their steward confidentially away from their home when it is safe to do so. If a worker has disclosed that they are facing abuse, you might want to establish a safety system or code word for them to indicate when they are safe to speak freely.

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 person experiencing and the person perpetrating violence are both members

The union and the employer have particular responsibilities when both people in a relationship or former relationship work in the same workplace.

Most people who are abusive are capable of changing their behaviour with support. Firing a worker who is perpetrating abuse may actually make the abuse worse for their partner. However, in many situations, especially if the relationship has ended, the employer will likely need to:

- Ensure that the parties do not come into contact in the workplace by taking steps like scheduling them on different shifts or changing worksites.
- Prevent the perpetrator from using their position or work resources to get information on the victim, including their location.

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

Both unions and employers should support behaviour change for workers who use abusive behaviour. You can call your local women's shelter to find out if there are services available in your community for people who use abusive behaviour. Services for perpetrators voluntarily seeking support exist in many communities in Canada. There are some regions where services are only available to people who have been arrested.

The union may 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.
- Establish a "firewall" between them, ensuring that the two union 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 can occur between intimate partners of any gender, 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 work environment free of any form of harassment and violence.
    - 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 a 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 counselling and referral to appropriate services.
- Protect employees who disclose domestic violence from retaliation such as unfair discipline, involuntary leave, suspension or termination.
- 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 send the union all investigation reports.
- Train supervisors and workers to recognize warning signs and risk factors, and to be able to respond safely and effectively, on an ongoing basis.
- 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 and employer-paid, union-appointed and trained anti-violence advocates (such as Unifor's Women's Advocates).

Ask your servicing representative for clarification and further advice.

Bibliography

Baird, Marian, Ludo McFerran, and Ingrid Wright. 2014. "An Equality Bargaining Breakthrough: Paid Domestic Violence Leave." *Journal of Industrial Relations*, January, 0022185613517471. doi:10.1177/0022185613517471.

Canadian Union of Public Employees. 2014. *Stop Harassment: A Guide for CUPE Locals*. **http://cupe.ca/stop-harassment-guide-cupe-locals**

Canadian Union of Public Employees. 2017. *Violence Prevention Kit*. **https://cupe.ca/orders/violence-prevention-kit**

C.N. Wathen, J.C.D. MacGregor, and B.J. MacQuarrie. 2014. "Can Work Be Safe When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace." Centre for Research & Education on Violence Against Women and Children. **https://canadianlabour.ca/wp-content/uploads/2019/04/dvwork_survey_report_2014_enr.pdf**

Department of Justice Canada. 2022. "Family Violence Laws." **http://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html**

PreVAIL Preventing Violence Across the Lifespan Research Network. 2014. "The Impacts of Intimate Partner Violence on Workers and Workplaces: A Research Brief." **http://dvatworknet.org/sites/dvatworknet.org/files/PreVAiL_Work_IPV_Research_Brief_March2014.pdf**

Unifor. 2014. "What if we had a Women's Advocate in all Unifor workplaces?". *Unifor National*. **https://www.unifor.org/sites/default/files/legacy/documents/document/unifor-wa-broch-eng_final_web.pdf**

Unifor. 2017. Bargaining a Domestic Violence Policy & Program. *Unifor National*. **https://www.unifor.org/sites/default/files/legacy/documents/document/bdvpp_v.1.pdf**

UNISON. 2017. "Domestic Violence and Abuse: A Trade Union Issue." **https://www.unison.org.uk/content/uploads/2017/02/24192.pdf**

CUPE

copesepb
CANADIAN STAFF UNION
SYNDICAT CANADIEN DU PERSONNEL

Ready and able

Bargaining disability rights

The accommodation of workers with disabilities is a duty shared by the employer, the union, and the individual seeking the accommodation. It's an important right that helps keep workers in the workforce, even if they have a disability.

Your local union has a key role to play in supporting disability rights, including the right to be accommodated at work. Your union can take a number of steps to ensure that all members understand their workplace rights and employers' obligations relating to a disability.

Preparing for bargaining

Consider: do the individuals on the bargaining committee reflect the makeup of the local membership? Is there someone on the bargaining committee with a disability that will be aware of, and able to bring forward disability-related concerns?

If no one on your committee has a disability, seek outside input or better yet, ask a member with a disability to join the committee.

Regarding contract language, consider:

(a) Existing disability-related rights contained in human rights legislation;

(b) Existing collective agreement benefits relative to ill health or disability;

(c) Potential disability-related bargaining proposals to improve collective agreement protections.

Workers with disabilities are protected under human rights legislation

Every jurisdiction in Canada has human rights legislation protecting workers from disability-related discrimination and providing them with the right to be accommodated.

Check out CUPE's factsheet
What is the duty to accommodate?
cupe.ca/disability-rights

Even though the right to accommodation exists independent of any specific language in a collective agreement, it is important to have this right set out in a contract because it reminds employers of their duties under the law.

The contract is also where most union members look to understand their workplace rights, and including this right in the contract gives members access to grievance and arbitration procedures, which can be a quicker way of settling disputes.

Examples of rights that you already have, but that should be spelled out in the collective agreement include:

(a) A comprehensive anti-discrimination clause stating that the employer intends to comply with their legal obligations under applicable human rights legislation;

(b) Affirmation that a worker with a disability has the right to be free from disability-related discrimination at work, including the right to have his or her disability accommodated;

c) Affirmation that the union also has a legal obligation to accommodate and, if there is no viable alternative, may agree to waive or suspend a collective agreement provision in order to ensure that a member is accommodated;

(d) Affirmation that the individual accommodation-seeker also has a legal obligation to bring his or her need for accommodation to the employer's attention, and to provide the employer with information regarding limitations imposed by the disability;

(e) Affirmation that the duty to accommodate applies to all workers within the bargaining unit regardless of employee status or seniority.

Basic collective agreement benefits

CUPE locals have bargained a range of basic rights and benefits related to disability for decades. They include:

(a) Provisions for extended health benefits including drugs, medical aides, vision and dental care, hospital coverage, professional services and nursing home care;

(b) Short-term sick leave provisions and long-term disability programs;

(c) Seniority protection for members absent from work on sick leave, long-term disability, or for any disability-related reason;

(d) Top ups on workers' compensation benefits.

These kinds of provisions benefit all CUPE members.

Further disability-related contract language

In the event that a collective agreement already contains strong language in the areas highlighted above, there are other principles that could be negotiated to

ensure the protection of disability-related rights.

Examples include:

(a) A clear procedure for all accommodation requests, with the union and the accommodation-seeking worker involved in all discussions and arrangements;

(b) Duty to accommodate training for employers and members;

(c) A statement affirming that the employers' duty to accommodate is ongoing over the course of a worker's work life;

(d) A statement outlining the specific obligations on all three parties involved in the duty to accommodate and a statement of some of the principles relevant to that duty;

(e) An expedited grievance process that would allow "failure to accommodate" grievances to proceed quickly, in order to reduce the negative impact on a worker who is away from work while the employer attempts to find an appropriate accommodation;

(f) A statement affirming that there is a very broad scope of arrangements and accommodations that an employer might be expected to facilitate, with examples.

While employers and members are generally familiar with some accommodations, like returning workers to work following a disability-related leave in a graduated way, or rearranging certain tasks, they are often not aware of the broad range of possible accommodations.

Representing our members fairly

Bargaining language to enhance disability rights is a great way to make gains at the table that benefit all members, particularly when monetary gains may not be a viable option.

Disabilities can happen to anyone at any time. This is an equality-seeking group that you might become a member of tomorrow!

CUPE offers training on the duty to accommodate to help members understand their rights and responsibilities, and to support other members seeking accommodations. Find out more about training at cupe.ca/union-education.



CUPE: HIV and AIDS Bargaining checklist

The HIV and AIDS bargaining checklist is a resource tool for local unions, bargaining committees, members and other activists to support those infected and affected by HIV and AIDS.

Unions have an important role to play in advancing the rights of people who are dealing with the health, economic and social impacts of HIV in the workplace. All workers must be safeguarded against discrimination, and treated fairly. We can protect workers' income security and employment, and require employers to face their responsibilities.

HIV and AIDS are considered chronic and episodic disabilities, and may affect a person's ability to work for periods of time. All jurisdictions in Canada prohibit discrimination on the basis of disability. While human rights and labour codes apply to employers on a number of grounds, including disability, unions provide a critical source of protection through collective agreements.

The CUPE national policy on HIV and AIDS can also be a good conversation starter in your workplace when looking to discuss the issues, core values and positions that will frame collective agreement language and workplace policies.

See CUPE's national ***policy booklet on HIV and AIDS.***

Anti-discrimination, anti-harassment, anti-violence

A clear and comprehensive anti-discrimination clause will spell out that employers cannot discriminate with respect to any terms and conditions of employment on the grounds of disability, including HIV status.

Acts of discrimination can be challenged through the grievance and arbitration processes, even if the collective agreement does not mention it. Human rights legislation is implied in all collective agreements. All workplace policies and practices must conform to human rights, labour standards, health and safety, and other laws governing the workplace, both federally and provincially.

Workers may need access to information, education, and counselling to help create a supportive work environment. Specific collective agreement clauses can help members access such programs.

For more information see CUPE's ***stop harassment guide.***

Confidentiality, privacy and testing

Workers, their families and dependants must enjoy the confidentiality and protection of their privacy. Information about a worker's disabilities, including HIV status, is irrelevant to the workplace in most circumstances. Most jobs do not pose a risk of HIV transmission. Except in limited circumstances, there is no legal obligation to disclose one's status, and generally, it is unlawful for employers to request this information.

In health care settings there may be some exceptions to the general rule about disclosure. There may be a small risk of HIV transmission in certain job tasks such as performing certain medical procedures. Any requirement to disclose can only be justified if the specific job duties pose a real risk of HIV exposure to someone else. There may be special requirements about HIV disclosure set out by professional regulatory bodies in each province, and by specific provincial legislation.

CUPE Canadian Union of Public Employees

People with HIV and AIDS have a right to employment without discrimination, as do all workers with disabilities. Employers cannot discriminate based on HIV status upon hire, remuneration, promotion, transfer, layoff, recall, and any other terms and conditions of employment. They have a legal obligation to adapt work and workplaces unless it would cause undue hardship.

Personal health information should not be collected, used, disclosed or retained unless there is reasonable circumstance to do so. If such circumstance arises, the employer may be entitled to limited health information; they must respect and maintain privacy and confidentiality at all times.

Employers are not legally allowed to test for HIV or ask about a worker's status except in limited circumstances, and they should not make assumptions. Unions have a responsibility to help protect members' privacy and confidentiality.

Worker health and safety

Employers are responsible for maintaining a safe and harassment-free workplace. Unions have a duty to protect against harassment, and this duty extends to all aspects of health and safety.

Collective agreement language will help strengthen the union's position in ensuring that normal disciplinary procedures will come into effect should discrimination, harassment, or mistreatment occur.

Workers must be protected from blood and bodily fluids. Good health and safety practices and procedures are necessary in all work environments as appropriate for the work performed.

Where there is risk of exposure to blood and body fluids employers should institute appropriate infection control. These practices and procedures must be accompanied by effective education and recurrent training on risk prevention, as well as proper use of protocols and personal protective equipment.

CUPE's ***Health and Safety fact sheet on HIV and AIDS*** *provides further details on occupational health and safety measures.*

Duty to accommodate

HIV is a chronic, recurring and episodic disability, quite often with long periods of health interrupted by periods of illness and disability. It is important to ensure the recognition of "episodic disability" in our collective agreements, and to extend our health benefits to cover these circumstances. Many illnesses are considered episodic and such a clause will benefit many workers including those who are living with HIV, cancer, lupus, multiple sclerosis, diabetes, mental and mood disabilities, and others.

Accommodation becomes essential for persons living with HIV and AIDS to continue working as long as possible. With new advances in medication and treatments, HIV positive workers continue long and productive careers. They may at times require support to protect meaningful employment.

Employers and unions share a duty to accommodate workers with disabilities. The employer must fully review the working terms and conditions for any modification that would keep the worker employed, without causing undue hardship.

Unions should negotiate collective agreement provisions that remind the employer of their obligations, while ensuring that bargaining language has no discriminatory effect. Unions will also support members through the accommodation process, and file grievances under the collective agreement if the employer fails to provide reasonable accommodation.

For more information, see CUPE's ***duty to accommodate fact sheets.***

Medical and health benefits

Medication and therapies can be costly. Unions negotiate extended health benefits that cover the partial or full cost of prescription medication, health care services and products that are not covered publicly.

Additional provisions will need to be considered to address specific HIV therapies, including coverage for anti-retroviral treatment, and other care.

Members are further supported financially if the costs are paid directly without the need for workers to seek reimbursement. There should be no exclusions or annual maximums.

All benefits should be reviewed so that they do not discriminate against people with HIV and AIDS, or any other chronic illnesses and disabilities. Employers and insurance companies should not deny access to benefits or coverage based on HIV status.

In some cases, insurance companies provide health benefits that contain "pre-existing conditions" clauses. Members may need to pay additional charges for coverage, or require wait periods before making a health claim. In such cases, top-ups to the plans will need to be considered.

We should also negotiate language to cover all doctor's notes and medical documents requested by the employer.

Pensions

Workplace pension plans need to include disability pensions as well as retiree health care benefits.

For surviving partners and children in case of death, bargaining pension payout language will benefit the families of our members.

Early retirement benefits and bridging can provide more viable financial choices for members who are faced with declining health, or who need to focus on maintaining good health and quality of life as they age.

Retiree health benefits are most often found in the collective agreement, as few union members are under combined pension/benefit trusts.

Leave provisions

Negotiating short-term sick leave provisions and long-term disability (LTD) programs can support basic needs for persons with HIV and AIDS, as well as for other workers with chronic and episodic disabilities. Seniority also needs to be protected for members on sick leave or LTD.

Negotiating benefit coverage that has the employer continuing to pay their share of the premiums while an employee is on sick leave and LTD is very important.

Bereavement and compassionate leaves must be expanded to meet the unique leave requirements associated with HIV and AIDS. Improved leave benefits are important for those whose support network is a family of choice rather than a biological family. Occasions may arise when the main caregiver does not reside with the person with the medical needs. We need to negotiate contract language that enables leave in these situations, and can benefit everyone in the bargaining unit.

Unions have a responsibility to develop workplace policies and strong contract language to support members with disabilities, including HIV and AIDS. We can go a step further by facilitating opportunities for worker education and awareness to help eradicate stigma and discrimination, and create healthy and safe work environments.

Ask your servicing representative for more information and advice.

Resources

CUPE Resources – cupe.ca

- **CUPE national policy on HIV and AIDS**
  cupe.ca/hiv-aids-policy
- **Bargaining Disability Rights**
  cupe.ca/bargaining-disability-rights
- **What is the Duty to Accommodate?**
  cupe.ca/duty-to-accommodate
- **The Duty to Accommodate: How Far does an employer have to go?**
  cupe.ca/full-scope-duty-to-accommodate
- **Health and Safety fact sheet on HIV and AIDS**
  cupe.ca/hiv-aids-fact-sheet
- **Stop harassment: A guide for CUPE locals**
  cupe.ca/stop-harassment

Canadian AIDS Legal Network

aidslaw.ca

Activist network that addresses legal and human rights issues related to HIV. Advocating at both the policy and community levels, they defend the rights of people affected by HIV, from women, newcomers and gay men, to prisoners, people who use drugs, sex workers, and men who have sex with men.

Know Your Rights is a series of eight brochures (available in seven languages) addressing the privacy rights and disclosure obligations of people living with HIV in a variety of day-to-day contexts, including the workplace.

Canadian Working Group on HIV and Rehabilitation (CWGHR)

hivandrehab.ca

National organization that responds to the rehabilitation needs of people living with HIV and AIDS through research, education and cross-sector partnerships, working to improve the lives of people with HIV.

Labour Research Service (LRS)

lrs.org.za/index.php/10-resources/resources/69-hiv-a-aids-agreement

A South African non-profit organization working to develop strategies for labour to play a role in the effective implementation, monitoring, evaluation and improvement of the South African Government's National HIV and AIDS Strategic Plan.

The HIV & AIDS Model Agreement is a resource to build trade union capacity and awareness on HIV and AIDS workplace policies and collective agreements.



CUPE ANTI-RACISM STRATEGY 2021-2027

To be presented for adoption at the 2021 National Convention

CUPE

CUPE ANTI-RACISM STRATEGY

CUPE has a strong history of challenging racism. Over two decades ago, delegates to CUPE's National Convention adopted our 1999 *CUPE Policy Statement on Workplace Racism: Challenging Racism in the Workplace*. Since that crucial milestone, our union has challenged racism through a wide range of initiatives. We have developed bargaining strategies to advance workplace equity; created anti-racism workshops and educational materials; lobbied governments to take action on racism and human rights; supported community-led actions and initiatives; worked with anti-racist global justice activists; developed equity committees and designated equity positions on Local executives; and created two Diversity Vice-President seats on our National Executive Board, representing racialized and Indigenous members.

We must build on this work and do more. The devastating effects of colonization are ongoing. Racism, xenophobia, and Islamophobia and anti-Semitic hate crimes are a harmful reality in Canada and across the world. Canada's history continues to be shaped by all forms of racism, including anti-Black Racism, anti-Indigenous racism, anti-Asian racism and other forms of racism.

Black, Indigenous and racialized members continue to experience discrimination in and outside the union and those who are women, persons with disabilities or LGBTQ2+ members are likely to face more discrimination. Anti-racism work needs a strong intersectional lens.

CUPE's *2014 Membership Survey* showed that racialized members are over-represented in precarious jobs and less likely to be involved in the union.[1] It indicated that racialized and Indigenous workers are under-represented among our membership compared to their representation in the Canadian population. CUPE's 2016-2017 *National Leadership Project* suggested that Black, Indigenous and racialized members are under-represented in Local elected positions and face challenges in becoming more involved in the union.[2]

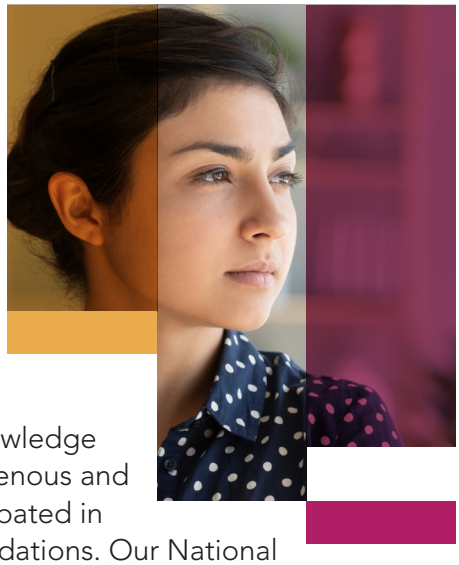
As trade unionists, we know that we cannot achieve economic justice without achieving racial justice. In 2019, delegates to CUPE's National Convention voted unanimously to create a CUPE-wide Anti-Racism Strategy.

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[1] https://cupe.ca/cupe-membership-survey-results-equality
[2] https://cupe.ca/building-strong-locals-national-leadership-survey-project

The resolution called upon CUPE National to:

1. Create and implement an anti-racism strategy, including anti-Black racism, for the workplace and union that builds on CUPE's 1999 policy statement on racism in the workplace; and
2. Present this strategy at our 2021 CUPE National Convention for delegates to adopt.



This Anti-Racism Strategy is rooted in the knowledge and experience of our members. Black, Indigenous and racialized members across the country participated in online consultations to make their recommendations. Our National Indigenous Council and National Rainbow Committee held a joint meeting for the same purpose.

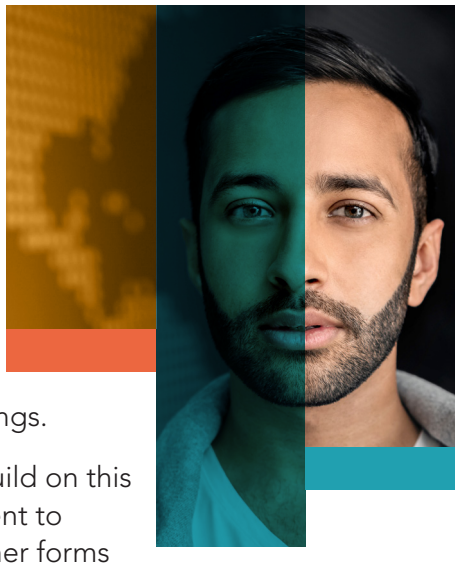
During these consultations, CUPE members shared their lived experiences of racism. They discussed the barriers they face in and outside the union. They described how these challenges have been heightened by the growth of white supremacist movements in Canada and across the world.

Members also highlighted opportunities for change. As Canada diversifies, our labour movement is diversifying too. In order to build union power, we must organize in a way that connects our histories and struggles. This Strategy outlines key goals for CUPE to follow in our struggle to dismantle systemic racism and build an equitable and inclusive labour movement that fights for the rights of all working people. These actions include making changes to our internal policies and structures, advancing an anti-racism approach to organizing and bargaining, and taking political action and working in coalition with anti-racist movements in Canada and globally.

Systemic racism includes patterns of behaviour, policies or practices that shape institutions and organizations, and which create or reinforce disadvantage for Black, Indigenous and racialized people. Racism can be intentional, or it can be unintentional due to unconscious bias. Whether intentional or not, racism has a devastating impact on those experiencing it. Human rights law does not consider intent when determining wrongdoing and the need for remedy.

Our new Anti-Racism Strategy is made up of 10 priority goals. These goals provide a comprehensive six-year road map for challenging and dismantling systemic racism in our members' workplaces, our union and our communities. In addition to the recent mobilization of members in support of this Strategy, these goals also build on CUPE's previous anti-racist work, advanced by Black, Indigenous and racialized CUPE members who have contributed their activism over the decades of our union's history.

1 Ensure our Constitution and Local bylaws acknowledge and address systemic racism.



CUPE's Constitution and Local bylaws lay out the rules and procedures that govern how our union works.

There are many ways we can use the Constitution and Local bylaws to centre equity and inclusion. For example, in 2019, our Constitution was amended to increase equity-seeking delegates at National Convention and to include Indigenous land acknowledgements as part of the standard agenda of Local membership meetings.

In order to tackle systemic racism, we must build on this work. We should amend the Equality Statement to explicitly oppose racism, colonization and other forms of systemic oppression. We should update our *Guide to Local Union Bylaws* to encourage the creation of human rights and anti-racism committees and other measures to increase representation.

Black, Indigenous and racialized members also need safe ways to report experiences of racism in the union.

2 Increase the representation of Black, Indigenous and racialized members in the union.



Lack of representation in union leadership is a barrier to participation for many Black, Indigenous and racialized members. When people do not see themselves reflected in union leadership positions, it becomes difficult to see the union's relevance to their lives.

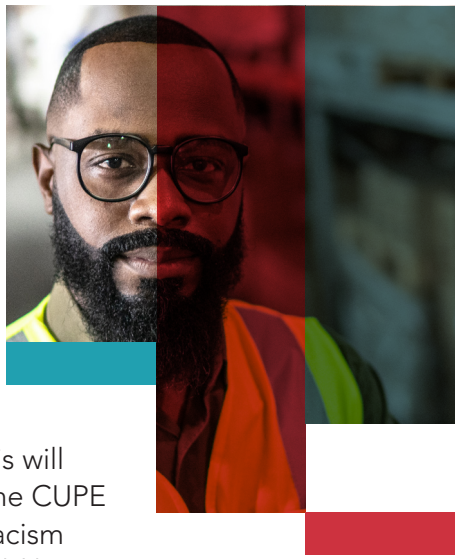
Lack of representation can lead to decisions that ignore the needs of Black, Indigenous and racialized members. It also deprives the union of their vital perspectives, leadership skills and activism. This absence weakens the union and undermines the fundamental union principle of solidarity.

Many Local initiatives to increase representation already exist. These initiatives include the creation of designated equity positions on Local executives, as well as practices to increase participation at Local union meetings. CUPE should highlight these initiatives and encourage other Locals to adopt similar approaches.

To address the barrier of representation, CUPE should also provide leadership training for Black, Indigenous and racialized members to develop their capacity to take on leadership positions. Mentorship programs meant for recruiting staff should specifically include outreach to Black, Indigenous and racialized members. In addition, the union should create more regional and national organizing spaces specifically for Black, Indigenous and racialized members to discuss their needs and consider solutions in a safe space without judgement or bias. Examples of such organizing spaces could include Local anti-racism committees, as well as online regional and national meetings.

By building a strong network of anti-racism activists across the country with effective communications systems, Black, Indigenous and racialized members are empowered to overcome isolation, build solidarity and strengthen our union. We should monitor progress in advancing representation through National surveys of union executives.

3 Develop and engage in anti-racism education.



Collective action against systemic racism requires an understanding of our shared history and the ongoing impacts of racism, colonization and white supremacy in our lives today. Anti-racism education uncovers why inequities exist, exploring characteristics of white supremacy culture and its damaging impacts, and how oppression operates in our society. A commitment to anti-racism starts with the leadership of our union at all levels, including the National Executive Board. Regular anti-racism training at the highest level of CUPE should take place as this will set the standard for the rest of the union. Some CUPE Locals have already begun to integrate anti-racism training in their bylaws, and other Locals should be encouraged to do so as well.

CUPE already has a strong history of providing anti-racism workshops for rank-and-file members and Local executives. As we move forward, we must monitor how often these workshops are delivered and how many members take them. We must ensure that Black, Indigenous and racialized members are involved in the development and delivery of CUPE's anti-racism education and that Canada's difficult history is told such as the history and impact of Black enslavement in Canada, the residential school system and the Sixties Scoop.

Anti-racism education should also be included in other workshops not specifically focused on human rights and anti-racism. For example, anti-racism education should be included in Local executive training and in CUPE's Internship Program, which develops new servicing staff. When possible, we should also collaborate with employers to provide anti-racism education in our workplaces.

Anti-racism education is especially important given the services we provide as public sector workers to diverse communities. In its final report, the Truth and Reconciliation Commission of Canada called for Indigenous awareness training for public service workers, including those CUPE represents. CUPE should provide this training to members as part of our union's commitment to truth and reconciliation.

CUPE can also contribute to the education of children and youth on anti-racism principles and our colonial history. We should provide resources for members to talk about anti-racism at home and integrate anti-racist content into youth-focused union spaces, such as the Youth Council at National Convention.

4 Learn from the experiences of Black, Indigenous and racialized members and celebrate their successes.



CUPE advocates for change by communicating our members' challenges and successes. However, Black, Indigenous and racialized members' stories have been historically under-reported. We need to acknowledge and profile the lived experiences of Black, Indigenous and racialized members and celebrate their successes. Members' stories should be shared on CUPE's social media, at CUPE events and in CUPE publications like Counterpoint. Regularly highlighting Black, Indigenous and racialized members and their achievements is a way to empower members and ensure that their stories are centred and valued as part of the union movement.

5 Integrate an anti-racism focus into organizing strategies.

Canada's workforce is becoming increasingly diverse. Expanding the diversity of our membership is critical if the union is to build organizing power.

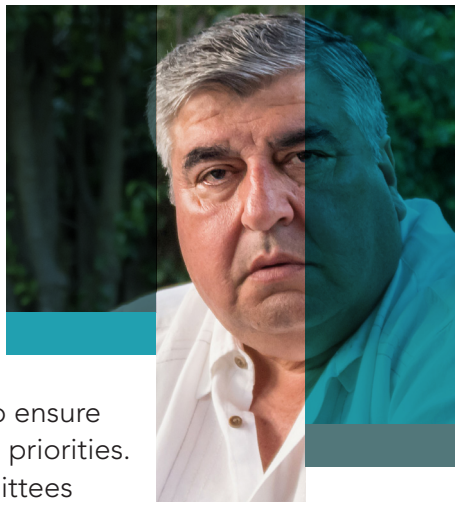
CUPE's 2014 *Membership Survey* showed that Black, Indigenous and racialized workers are under-represented among our membership compared to their representation in the Canadian population. Organizing the unorganized is part of CUPE's mandate. Our new members should reflect the diversity of Canada.

Organizing efforts must be attuned to the needs of Black, Indigenous and racialized workers and involve strategies for direct outreach. As part of this work, CUPE should train Black, Indigenous and racialized members to serve as member organizers.

CUPE should also focus on including precariously employed workers in the scope clauses of our collective agreements. Precarious workers are disproportionately Black, Indigenous and racialized. Expanding scope clauses will provide job protection, better wages and benefits for all.

Finally, union-provided orientation training sessions for new Locals and members should be regularly held and bargained into collective agreements. These sessions should educate new members about their rights as workers and explain how the union operates, while emphasizing CUPE's commitment to human rights and anti-racism.

6 Bargain to eliminate systemic racism and workplace inequities.



Struggles at the bargaining table are inseparable from our work to dismantle systemic racism and other forms of discrimination faced by our members. Bargaining with an anti-racism/anti-discrimination focus will significantly strengthen the labour movement by ensuring that we fight for the rights of all workers.

Black, Indigenous and racialized members must be included in the bargaining process to ensure that their lived experiences inform bargaining priorities. Designated equity seats on bargaining committees should be created to ensure that all members' voices are heard. Bargaining surveys should also include questions about equity and discrimination.

As part of an anti-racist bargaining agenda, Locals should review collective agreements and negotiate language on a wide range of issues such as wage discrimination, health and safety, and leaves for cultural and religious reasons.

'No discrimination' clauses and anti-harassment language should clearly prohibit discrimination and harassment on the basis of prohibited human rights grounds, including racial discrimination. The language should also outline a fair, timely and effective process for investigating and resolving incidents and complaints.

Bargaining must also prioritize the elimination of precarious work. Black, Indigenous and racialized workers are over-represented in precarious work in Canada. As such, precarity is an important way in which systemic racism manifests in our workplaces. Precarity weakens all workers and our union. We can fight precarity by bargaining access to benefits and pension entitlements for precarious workers, or by bargaining language that obligates the employer to convert part-time positions to full-time, permanent positions.

Precarity includes temporary, permanent part-time, casual, on-call or contract employment. Members who work precariously also lack decent pay, benefits, pensions or leave provisions, including sick leave. Precarious workers lack job security and, as a result, are often afraid to challenge discrimination or health and safety violations.



We must also prioritize employment equity in bargaining. Employment equity aims to build a workforce that is more representative of our communities through fair hiring and promotion processes. It also works to eliminate systemic discrimination in employer policies that pose barriers to good jobs for Black, Indigenous and racialized workers, as well as other equity-seeking workers. Examples of employment equity include collective bargaining language that establishes more equitable hiring and promotion clauses, targeted training to provide opportunities for promotions and transfers, provisions for designated positions and the establishment of joint employment equity committees.

Resources and tools such as checklists for bargaining and sample bargaining language will help Locals to advance an anti-racist bargaining agenda, as will workshops and training for Locals, servicing representatives and participants in CUPE's *Internship Program*. An effective system to track Local collective agreement language that advances equity will also be key for measuring our success.

7 Administer and enforce the collective agreement with an anti-racist lens.



Our existing collective agreements contain clauses we can use to fight racism. We must be vigilant about enforcing these rights.

When reporting workplace racism, Black, Indigenous and racialized members are often told that they are overreacting or misinterpreting racist behaviour and discriminatory practices. Fear of backlash and lack of union support may prevent members from coming forward with their experiences.

Local executives, shop stewards and staff should receive training to understand the prevalence and detrimental impact of workplace racism. Workplace racism is a serious health and safety concern and it has a major psychological and physical impact on members.

Local leaders need to know how to support Black, Indigenous and racialized members who are experiencing it. Locals should promptly file grievances related to racial discrimination and harassment, and bring them through the grievance procedure in a timely way from start to finish. Violence and harassment targeting Black, Indigenous and racialized members should also be reported to joint health and safety committees. CUPE will ensure health and safety resources highlight health and safety concerns for these members.

A central system for CUPE to track grievances related to discrimination and racism would also help to determine trends in CUPE workplaces, as well as solutions.

8 Collect data on demographics, precarity and union involvement.



Data collection is essential to understand the full picture of CUPE's membership, including the intersection between demographics, work precarity and union involvement.

Data on our membership should be collected at regular intervals. When data is collected, it should be done via accessible means, using appropriate technology, to ensure that the voices of the most marginalized members are captured.

Race-based data should be broken down by racial group, where possible. Membership data can reveal the issues and challenges that need to be tackled by the union regarding anti-racism, including barriers to participation for Black, Indigenous and racialized members. Data can be used to provide an anti-racist lens in policy creation and the union's decision-making processes.

Locals should be supported in surveying their membership, and in collaborating with employers to collect demographic data about their workplaces and the need for employment equity measures to increase representation in the workforce.

9 Take political action to challenge and eliminate systemic racism.

As the largest union in Canada representing public sector workers, CUPE must be vigilant in ensuring safety in public services. Violence and harassment against Black, Indigenous and racialized people will not be tolerated by CUPE members. As public sector workers, we must lobby governments for change when the services we are expected to deliver are unsafe, culturally insensitive or inadequate

for Black, Indigenous and racialized communities. Our campaigns for quality public services and against privatization and austerity will be strengthened when they are grounded in the communities we serve.

CUPE has political power, and we work hard to elect progressive governments and to lobby for change between elections. CUPE members deserve accountability from all levels of government, and governments that fail to address systemic racism in our workplaces and communities must be challenged. In allyship with the NDP, we should push for change by encouraging Black, Indigenous and racialized members to run for elected office. We must continue to advocate for legislation that eliminates precarious work, advances employment equity, challenges racist policing and justice systems, and implements fully funded anti-racism strategies.

10 Work in coalition with community groups and in solidarity with anti-racist global justice activists.



As public sector workers and CUPE members, we are deeply connected to our communities. CUPE was founded through grassroots mobilization, and we continue to support ground-up, community-based organizing today.

Advancing social justice is a core mandate of our union. We have supported Black Lives Matter and activists fighting against Islamophobia, anti-Semitism, anti-immigrant sentiment and other forms of hate. As part of our commitment to Truth and Reconciliation, we have supported Indigenous struggles around land and water, justice for missing and murdered Indigenous women and girls, treaty rights and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

We must continue to work in coalition alongside community groups in the fight for justice. Our strength as a union – our power to mobilize and organize – gives us this responsibility. Working in coalition, in turn, strengthens our position at the bargaining table and our anti-privatization and anti-austerity campaigns.

We also need to expand our fight for global justice. The global economic system relies on racism to exploit and ultimately divide workers. This undermines our power. Building and strengthening a globally organized labour movement is critical to challenge this system, and to exert our collective right to live in a just world.

CUPE has expressed solidarity and stood alongside Black, Indigenous and racialized communities in the Global South that are resisting land theft by local governments and international corporations, including Canadian mining companies. We have spoken out against police brutality and white supremacist violence. We have challenged Canada's racist immigration policies, which severely restrict access to essential programs, services and permanent status for mostly racialized migrant workers. We have also opposed Canadian foreign policy that undermines democracy, reinforces colonial power and creates the economic and social conditions that force people to migrate in search of work and safety.

The continuation and expansion of this work is critical. We must approach it with a clear understanding of Canada's role in the world, and an awareness of the privilege that so many of us hold as Canadian union members working and living in a rich nation. Worker-to-worker solidarity exchanges, a cornerstone of our work, will allow us to share our perspectives, and our global partners can share theirs with us.

IMPLEMENTATION AND TIMELINE

CUPE will develop workplans to implement the Anti-Racism Strategy in consultation with the National Indigenous Council and the National Rainbow Committee. The work will be implemented over a six-year period. This time frame will allow the union to fully address the content of the Strategy and to implement the multiple actions it describes. Workplans will be provided to the National Executive Board for approval. Specific actions for each goal of the Strategy will be included, as well as ways to measure success in achieving these goals and prioritized timing for actions over the six-year implementation period. Implementation will also include ways to consult with Black, Indigenous and racialized members in the regions on the development and implementation of these actions.

ACCOUNTABILITY AND REPORTING

As the Anti-Racism Strategy is implemented, ongoing accountability to Black, Indigenous and racialized members will be built into workplans. Reports will be provided regularly to the National Executive Board on the implementation of the Anti-Racism Strategy. Progress reports will also be provided to the 2023 and 2025 National Conventions. A final report and possible recommendations to renew the Strategy will be presented at our 2027 National Convention.

Discrimination:

A CHECKLIST AND SAMPLE COLLECTIVE AGREEMENT LANGUAGE

This document provides a checklist and examples of collective agreement language on discrimination.

Discrimination is an action or a decision that treats a person or a group negatively for reasons such as their gender, race or disability. These reasons are known as grounds of discrimination.

Depending on the jurisdiction of your workplace (provincial, territorial or federal), your list of "prohibited grounds" of discrimination can include:

> age, sex, race, gender, colour, creed, religion, ethnicity, pregnancy, ancestry, political belief, marital status, family status, language, citizenship, civil status, nationality, place of origin, physical disability, mental disability, criminal conviction, Aboriginal origin, social condition, sexual orientation, gender identity, gender expression, source of income, linguistic background or other grounds.

Your collective agreement should have a non-discrimination clause that:

- ☐ Covers all grounds of discrimination under human rights legislation in your jurisdiction.
- ☐ Covers additional grounds such as social condition and gender identity and expression that are not yet listed in all Canadian human rights laws.
- ☐ Protects workers from discrimination by anyone in the workplace - management, co-workers, the public, contractors, and service users.

Your collective agreement should also cover:

- ☐ Harassment. See the CUPE document *Stop harassment: A guide for CUPE locals* for tips on anti-harassment language.
- ☐ Counseling or services of an Employee Assistance Program for members who have experienced discrimination.
- ☐ Anti-oppression education for members and management.
- ☐ Measures to address systemic discrimination such as employment equity, pay equity and accommodation related to disability, family status, religion or other grounds.

The employer must ensure that workplace rules, policies and practices are not discriminatory. By law, employers must take proactive steps to make sure that standards and requirements do not discriminate against an individual or group of individuals. The impact, not the intent, is what matters.

The union must (a) not negotiate discriminatory contract language, and (b) actively cooperate with any reasonable accommodation being put forward.

CUPE
2016

Most CUPE collective agreements contain an anti-discrimination clause. Here's a few examples.

CUPE Local 3903 and York University
Expiry August 31, 2017

Article 4 – Discrimination and Harassment

4.01 Discrimination

The employer and the union agree that there shall be no discrimination, interference, restriction, harassment or coercion, including no mandatory blood or urine tests, including but not limited to as these relate to Acquired Immune Deficiency Syndrome (AIDS), AIDS related illness, AIDS-Related-Complex, or positive immune deficiency test, and including no genetic screening for specific medical disabilities or pregnancy, exercised or practiced with respect to any member of the bargaining unit in any matter concerning the application of the provisions of this agreement by reason of race, creed, colour, age, sex, marital status, parental status, number of dependents, nationality, citizenship (subject to the provisions of the Ontario Human Rights code concerning citizenship), ancestry, place of origin, native language (subject to Article 12.02.1), disability or disabilities (subject to Article 12.02.1), Acquired Immune Deficiency Syndrome (AIDS), or AIDS related illness, or AIDS-Related-Complex, or positive immune deficiency test (virus HIV) (subject to Article 12.02.1), political or religious affiliations or orientations, academic affiliations or orientations (subject to the exercise of academic freedom as set out in Article 14.01), record of offences (except where such a record is a reasonable and bona fide ground for discrimination because of the nature of the employment), sexual orientation, transsexual transition status, gender expression, and gender identity, nor by reason of her membership or non-membership or lawful activity or lack of activity in the union, or the exercise of any of the rights under this agreement.

The employer undertakes that no York University student who is or has been employed in Unit 2 shall be penalized in her student status for the exercise of any of her rights under this collective agreement or by reason of her membership or non-membership or lawful activity or lack of activity in the union.

CUPE Local 8920 and Nova Scotia Provincial Health Authority
Expiry October 31, 2014

Article 4.1 No Discrimination/No Harassment

4.1.1 The Employer agrees that there shall be no discrimination, interference, restriction, harassment or coercion exercised or practiced with respect to any Employee or applicant for employment by reason including but not limited to age; race; creed; colour; place of origin; ethnic origin; citizenship; ancestry; political or religious affiliation, beliefs or activities; sex; gender expression or gender identity; transsexual/transgendered identification; sexual preference, orientation or identification; marital status; family status; parental status; number of dependents; class; place of residence; physical appearance; record of offences except where it relates to bona fide employment qualifications; Acquired Immune Deficiency Syndrome (AIDS), AIDS-related illnesses, positive

Human Immunodeficiency Virus (HIV) test and any other illness or disability, mental, physical or other disability, so long as it does not significantly impair the performance of the duties of the position; union membership or activity; nor by reason of the exercise of any of the rights contained in this Agreement.

For more information on human rights topics such as disability rights, pay equity and other issues related to discrimination, see **cupe.ca/issues-research**.

STOP HARASSMENT:
A GUIDE FOR CUPE LOCALS



CUPE / Canadian Union of Public Employees

CUPE Equality
November 2014

This guide is for local union stewards, officers and other activists. It covers:

- The definition of harassment.
- The effects of harassment.
- An overview of workers' rights and employers' responsibilities.
- How the union can challenge harassment and support members.
- A checklist for anti-harassment policies and collective agreement language.



The pamphlet *Speak out! Stop harassment* is for members who have experienced or witnessed harassment, or who want to organize on the issue.

Table of contents

A What is worplace harassment 2

B What are the effects of harassment 6

C What can the local union do? 8

Checklist for anti-harassment contract language or policy 15

Harassment and other forms of violence undermine our solidarity as workers. A united union membership that challenges harassment is stronger and able to make gains elsewhere too. CUPE has been successful in advocating for healthy, safe and respectful workplaces. This guide provides information and ideas to help locals continue that progress.

A WHAT IS WORKPLACE HARASSMENT?

Harassment is offensive behaviour that a reasonable person would consider unwelcome.

If the target of harassment considers the behaviour offensive[1] and unwelcome, and a reasonable person would anticipate that response, the behaviour is harassment.

Different laws, collective agreements and other legal texts define harassment differently, but according to overarching legal standards:

- The behaviour can be direct or indirect, obvious or subtle, active or passive.
- It can take written, verbal, physical, electronic or any other form of expression.
- Harassment can be physical, psychological, or a combination of the two.
- The effect on the target of harassment, not the intent of the harasser, defines harassment. "I didn't mean to offend" or "it was meant as a joke" is not a legitimate defense.
- The person who is the target of harassment is not required to tell the harasser to stop.
- Harassment can be one incident or repeated incidents. It is often several incidents over a period of time. However, it can be a single incident that has a severe impact on the target.

Harassment is illegal under a number of laws and prohibited by policies and collective agreements. Depending on where you work and the type of harassment, 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
- Tort law
- Sector-specific regulation (e.g. education sector laws that prohibit bullying)
- Criminal law if the harassment involves physical or sexual threat, or assault

1 There are many other terms used to describe harassing behaviour, including humiliating, insulting, hostile, aggressive, intimidating, coercive, abusive or threatening.

Workplace harassment is either human rights harassment or personal harassment.

1. **Human rights harassment** is related to discrimination, which is illegal under human rights legislation.

2. **Personal harassment** is not related to protected human rights characteristics but still illegal under health and safety and other laws.

Human rights harassment

In all jurisdictions, human rights legislation prohibits discrimination-related harassment.

Depending on the jurisdiction of your workplace (provincial, territorial or federal), your list of "prohibited grounds" for discrimination can include: age, sex, race, gender, colour, creed, religion, ethnicity, pregnancy, ancestry, political belief, marital status, family status, language, citizenship, civil status, nationality, place of origin, physical disability, mental disability, criminal conviction, Aboriginal origin, social condition, sexual orientation, gender identity, gender expression, source of income, linguistic background or other grounds.

Consult the law in your jurisdiction for the specific prohibited grounds.

Workers and unions often advocate for new grounds and broader interpretation of existing grounds. For example, discrimination related to gender identity or gender expression is argued under "gender" protection if gender identity or expression are not listed as protected grounds.

The target of harassment might not even have the protected characteristics. For example, a worker who is straight might be the target of "jokes" about being gay. He could claim harassment related to sexual orientation, even though he is not gay.

It is also not necessary for comments to be targeted at an individual. For example, a woman exposed to derogatory comments about women could claim harassment if the behaviour created a hostile work environment for her, even though the comments were not about her or directed at her.

Personal harassment

Personal harassment is any harassment that does not fall under human rights prohibited grounds.

Harassment is a serious occupational hazard. It directly threatens workers' physical and psychological safety, and it makes workers vulnerable to other work hazards. Ontario, Manitoba, Saskatchewan and BC specifically address harassment under health and safety law. In other provinces, workers can use their right to refuse unsafe work or other health and safety rights to prevent or challenge harassment.

Quebec addresses psychological harassment in its employment standards law.

In some jurisdictions, workers are entitled to compensation for physical or psychological injuries related to harassment, and some workers' compensation regimes provide benefits.

A number of provinces have recently addressed bullying in regulation for the education sector. Members who work in the education or post-secondary sector might be able to use these rules to challenge harassment.

Laws and rules on harassment are evolving. Consult your servicing representative for current information in your jurisdiction.

The term "workplace" in workplace harassment is broadly defined. 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 harasser or target can be:

- A supervisor, manager, board member or other employer representative.
- A co-worker.
- A client, patient, student or parent (a group we will call user/client in this document).
- A contractor, community member or other visitor or member of the public coming into the worksite.
- One person or a number of people. (In this guide, we say "harasser" and "target", for ease of reading, but incidents can involve groups.)

Harassing behaviours could include:

- Spreading malicious rumours, gossip or innuendo.
- Persistently criticizing, demeaning or ridiculing a person.
- Undermining or deliberately impeding a person's work.
- Excluding or isolating someone.
- Verbal threats or abuse.
- Physical threats or assault.
- Calling someone derogatory names.
- Teasing or joking about a person.
- Hazing or pranks.
- Displaying offensive posters, cartoons, images or other visuals.
- Making aggressive or threatening gestures.
- Unwelcome invitations or requests.
- Vandalizing or hiding personal belongings or work equipment.
- Unwelcome physical contact.
- Publicly ridiculing or disciplining.
- Blocking applications for leaves, training or promotion.

A wide range of behaviour falls under harassment, from persistent teasing to assaults. It all counts. Union locals should support members concerned about harassment, whatever the form and degree of severity.

Harassment is not:

- Consensual workplace banter and interactions.
- Reasonable management action carried out in a fair way, like day-to-day actions by a supervisor or manager related to performance, absenteeism, assignments, discipline and even dismissal – as long as they respect the collective agreement, policies and legislation, are reasonable and are not abusive or discriminatory.
- Every workplace disagreement, though if a conflict is poorly handled or left unresolved, it can lead to harassment. Unlike harassment, healthy conflict can be a constructive rather than a destructive process.

Harassment is a **form of violence**. See CUPE's violence prevention kit at cupe.ca/health-and-safety for information and tools on other forms of violence.

The term **bullying** is defined in different ways; it can be either the same as harassment or a form of harassment. Bullying is not specifically mentioned in health and safety or human rights legislation. (BC refers to bullying in policy related to health and safety law, as a synonym for harassment.) In other laws and rules, bullying is sometimes defined more narrowly than harassment. For example, the definition of bullying might require intent, repetition or threat, or equate bullying with only personal harassment or psychological harassment.

Terms used to describe harassment include:

- Bullying
- Mobbing
- Abuse
- Workplace aggression
- Worker-to-worker violence
- Victimization
- Hazing
- Social undermining

We use the term harassment in this guide because it is clearer, stronger and used more often in laws and policies. In a harassment case, consider all legal avenues, whatever the terminology.

B WHAT ARE THE EFFECTS OF HARASSMENT?

Workers as targets can:

- Be blamed, disbelieved and isolated
- Develop health problems, such as anxiety, depression, and post-traumatic stress
- Get injured
- Need sick leave or other absences from work
- Lose out on training, promotion or transfer opportunities
- Lose income or even their job

Workers as witnesses can:

- Suffer many of the same consequences
- Be afraid to support or help the target, fearing they may also be harassed
- Join in, participating in the harassing behaviour

Workers as a group can:

- Become divided by harassment, undermining worker solidarity and union strength

Employers face:

- High turnover, absenteeism, use of sick leave, and long-term disability costs
- Increased risk of errors and accidents
- Decreased morale, productivity and motivation
- Recruitment problems and training costs
- Expensive investigations, arbitration, court costs, and potential financial and legal liability

Users/clients can:

- Suffer worse quality of care or service when there is high turnover, absenteeism or a poisoned environment
- Be harassed themselves

Workers who are marginalized by sexism, misogyny, homophobia, transphobia, racism, colonialism, ableism and other forms of oppression face particular challenges. For example, research suggests that racialized workers, compared to their co-workers, are more likely to be attacked on personal characteristics rather than work performance. Women are less likely than men to have their reports of harassment recognized as work-related and even less likely to be compensated for related workplace illness.

Workers belonging to more than one equity-seeking group can experience multiple forms of harassment, making the effects more complex and usually worse. For example, a racialized woman can face sexual and racial harassment at the same time – with worse outcomes as a result.

C WHAT CAN THE LOCAL UNION DO?

Make sure employers carry out their responsibilities

By law employers must provide a work environment that is free from harassment. Employers control the organization and are therefore the only ones who can ensure a healthy and safe work environment. A general statement in a workplace anti-harassment policy or collective agreement may state that the union supports the employer's attempts to create a harassment-free work environment.

Employers cannot guarantee that no harassment will occur, but they must:

- Do everything they can to prevent harassment, and not ignore the signs.
- Protect workers, investigate, and follow up when they become aware of harassment.

Preventative measures might include establishing workplace arrangements that minimize the hazards that lead to harassment. For example, in an environment where clients are often verbally aggressive, an employer might establish a process to screen calls and quickly direct angry customers to a manager.

Negotiate and enforce collective agreement language and policy

Many collective agreements have language that prohibits harassment, and many workplaces have an anti-harassment policy statement. See *page 15* for a summary of what that language and policy should include.

Depending on your jurisdiction, your employer might be required by law to develop and implement an anti-harassment policy.

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

Harassment can be grieved even when the collective agreement doesn't mention it. Further, a collective agreement cannot diminish rights that an employee has under law. For example, the employer and union cannot agree to a definition of harassment that is weaker than what is in legislation. This applies to both human rights and personal harassment.

An arbitrator can also apply the law even if the collective agreement is silent on the issue of harassment. For example, an arbitrator can apply rules against discrimination or unsafe work in a harassment case, even if there is nothing that specifically applies in the collective agreement.

Members can use the grievance procedure to get the employer to comply with the law. A union that does not support members facing harassment is potentially liable under human rights law and duty of fair representation.

If you are filing a grievance relying on the law instead of specific collective agreement language, seek advice on how to word the grievance in your jurisdiction.

Demand better working conditions

Often an incident of harassment is the tip of the iceberg, signaling an unhealthy workplace climate and wider power-relationship problems. The union doesn't have to wait for harassment to occur to take action. We can improve workplace conditions through bargaining, mobilization, lobbying, and other collective actions.

Understaffing, job insecurity and other characteristics of the work environment contribute to harassment and are a form of structural violence. Structural violence describes how institutions and social practices cause physical and psychological harm. Structural oppression – discrimination that is built into our culture, rules, and institutions like the workplace – is also a form of structural violence and contributes to harassment. Restructuring, cuts and privatization make these conditions worse. For more on these aspects of harassment, see the CUPE document *Workplace Harassment and Mental Injuries: Examining Root Causes*.

Specific, concrete and enforceable legal rights that address root causes of harassment are the most effective way to combat structural violence and oppression. For example, legislated minimum staffing levels, no-contracting-out language in collective agreements, and employment equity programs can reduce harassment through healthier working conditions.

Promote a harassment-free environment within the union

Establish an internal (union) anti-harassment policy, code of conduct and equality statement to provide a harassment-free union environment. Include anti-discrimination and anti-harassment language in the local bylaws. It may be helpful to refer to CUPE's national Code of Conduct (see Appendix B in CUPE's Guide to Preparing Local Union Bylaws) and Equality Statement.

Train union leaders and stewards to recognize and challenge harassment. CUPE offers workshops on violence, harassment, human rights, and health and safety. Find out more from your servicing representative.

If you see inappropriate behaviour deal with it head on, especially in the union environment, like a local meeting. Show members the union doesn't accept harassment.

Appoint someone on the executive to deal with harassment issues.

Write articles for your website or newsletter about harassment, members' rights, and ways to stop or prevent harassment.

Survey members about their experiences with harassment and discrimination.

Build alliances with local community groups fighting discrimination and violence. For example, invite a speaker to a union event, sponsor a community event, or support a joint action.

The union's actions on harassment send an important message. Members can be reluctant to come forward with concerns about harassment. Members who trust the union to challenge harassment and advocate for a harassment-free workplace are more likely to come forward.

Support members affected by harassment

In addition to the collective actions described above, the local union offers support to individual members affected by harassment. This section describes members' rights and concrete steps union representatives can take.

Members' rights

The union has a legal duty to represent all members of the bargaining unit affected by the harassment.

The complainant (target) has the right to:

- Work in a healthy and safe work environment.
- Have a complaint heard and receive a fair, unbiased investigation of the facts.
- Have a union representative with them at any time during the complaint process.
- Confidentiality.
- Be free from retaliation for filing a complaint.

The respondent (alleged harasser) has the right to:

- Work in a healthy and safe work environment.
- Know the full nature of the allegations in order to make a full response.
- Have their response heard and receive a fair, unbiased investigation of the facts.
- Confidentiality.
- Fair discipline, should discipline occur.
- Union representation as provided by the collective agreement during any investigation and discipline procedure.

Other members have the right to:

- Work in a healthy and safe work environment.
- Receive support if they have witnessed and been harmed by harassment.
- Be free from retaliation for participating in an investigation.

First steps

When a member comes to the union with a harassment issue, or the union learns of alleged harassment another way, talk with the target as soon as possible about their experience, needs and options.

The person who takes the complaint may or may not be the person who carries out the investigation. Union stewards, officials or other member representatives handling harassment should have harassment expertise and be trusted by the member.

Listen without judgment and offer the member support. Talking about harassment can be difficult for the target. Acknowledge this difficulty and show that you take the complaint seriously.

Clarify the facts and encourage the member to collect evidence. The member should keep a record of all incidents: the time, date, location, what was said or done, and any witnesses. Evidence might include emails, handwritten notes, photographs or physical evidence like vandalized personal belongings.

Take notes in case there is a grievance or other followup. Find out what happened, where, when and who was involved.

Ask your servicing representative for advice on handling investigations.

Harassment is a sensitive issue. Treat all parts of the harassment investigation carefully and with strict confidentiality.

Provide information on the options for going forward.

Informal resolution

In some cases of co-worker harassment, a member might want to resolve the problem without going to the employer. If the complainant agrees, talk to the respondent about the concerns and arrange a meeting between the members to resolve the problem.

If the complainant wants support confronting the alleged harasser, accompany them. This situation might require two stewards – one to represent the complainant and one the respondent.

Some members opt for a group circle, mediation or other alternative dispute resolution processes.

Sometimes a respected neutral person can act as informal facilitator. They might be a member of the local, or someone external.

In many cases, a firm demand to stop the harassment will work. The harassment will not go away if it's ignored.

Try to resolve co-worker harassment informally only if the target chooses this route; it might not be a safe option. People who have been harassed do not have to confront the alleged harasser. They can directly file a grievance or other complaint. Always leave open the opportunity to proceed formally.

Involve management in an informal resolution if appropriate. Support the member in raising the issue with their manager (or someone higher up if their manager is the alleged harasser) or the human resources department, if the target chooses this option. The member might feel unable to raise the matter directly and want you to handle this communication.

Formal complaint

Circumstances vary in harassment situations. If informal resolution is not possible or advisable, support the member in filing a complaint with the employer or, if necessary, file a grievance, use an alternative dispute resolution process, or pursue other legal avenues. Grievance time limits always apply.

The order and labeling of the processes are not set in stone; sometimes a formal complaint is the first step, followed by informal resolution, and alternative dispute resolution can be either formal or informal.

Depending on the situation, use no-discrimination, anti-harassment, violence, health and safety[2] or other language in your collective agreement to file a complaint or a grievance. You can also refer to relevant human rights, health and safety or other legislation.

The union should not be a partner in an employer investigation of a harassment complaint. Co-facilitating a process that leads to the discipline of a member could lead to a conflict of interest.

For investigation of co-worker harassment complaints, assign different union representatives for the complainant and respondent. Establish a "firewall" between them; the two representatives should not communicate about the complaint.

Make sure the steps in the grievance procedure or other complaint resolution process are followed as quickly as possible.

Maintain confidentiality as much as possible. The union should try to prevent gossip and protect the members' privacy. However, the target must self-identify and name the alleged harasser in a complaint, and if the complaint goes to formal adjudication, what they say to the employer cannot be confidential.

Protect the target from isolation, demotion, forced transfer, increased workload or other negative repercussions from co-workers or the employer.

If the complainant and respondent need to be kept apart at any step in the process, talk with your servicing representative about negotiating those arrangements with the employer. Try to ensure the impact of any changes does not punish the complainant, for example changing their shift or assignment against their wishes.

Negotiate a protocol with the employer for union representation of witnesses, and ensure witnesses are on paid time. Many members are nervous about being interviewed during an investigation and want union representation.

Keep a record of any recommendations made against the employer by an arbitrator, human rights tribunal or other third party, and ensure the employer follows through. If there is another case involving similar facts and the employer failed to comply with previous recommendations, the employer's liability will increase.

2 Pursue a health and safety complaint through the health and safety committee or staff representative.

Other actions

Whatever the process (informal resolution or a formal complaint), the union has other responsibilities.

Be pro-active. Watch for signs of harassment, patterns and root causes. For example, high absenteeism and stress levels, turnover of particular groups in a department or sudden changes in a member's behaviour might indicate a problem. Take action to reduce and eliminate the hazards and factors that contribute to harassment. See CUPE's violence prevention kit for more information on dealing with harassment as a health and safety issue.

People who experience or witness harassment might fear embarrassment, retaliation or isolation if they draw attention to the problem. The union should inquire carefully and do what it can to protect members from negative consequences. Find union members or counsellors who can support the target and witnesses, as needed. Explore Employee Assistance Plan options.

Help the target secure sick leave (or another type of leave) or file a workers' compensation claim, as needed. Lost time due to stress may be compensable.

Help the target get a temporary work reassignment if necessary.

Ensure that harassment complaints are handled in a culturally safe way, respecting the cultural values and practices of members involved.

When to involve the police

Some harassment has a criminal element (for example physical or sexual assault or death threats). If it occurs in the workplace, approach the employer and suggest they get legal advice about involving the police. The union may need to go up the chain of command if the manager who is approached doesn't act.

If the police are involved and demand that the union turn over its records, tell them to get a warrant and get specific legal advice immediately.

There are special considerations when members face criminal charges, but normally the union still has a duty to investigate and file a grievance where appropriate. Consult your servicing representative about getting specific legal advice.

CHECKLIST FOR ANTI-HARASSMENT CONTRACT LANGUAGE OR POLICY

Strong anti-harassment language and policy helps the employer prevent and address harassment. It also helps workers understand what harassment is, how it can happen, what the law says, appropriate responses, and how to eliminate or at least minimize it in the workplace.

Your anti-harassment collective agreement clause and employer policy should:

- ☐ State the employer's responsibility to provide a harassment-free workplace.
- ☐ Define harassment, for example as offensive behaviour that a reasonable person should have known would be unwelcome. Refer to human rights, health and safety and other laws, for example listing the prohibited grounds of discrimination. See Section A of this guide for more information on what should be covered by the definition of harassment, for example:
  - Behaviour can be direct or indirect, obvious or subtle and in any form of expression
  - Repeated incidents or one serious incident
  - Psychological or physical
  - Human rights or personal
  - Workplace is broadly defined
  - Effects not intent matter
  - Harasser can be a supervisor, co-worker, user/client or other person in the workplace
  - Examples of harassment, noting that the list is not exhaustive

☐ State how the employer will prevent and correct harassment (see Section C of this guide), for example the employer will:

- Prevent harassment
- Provide a harassment-free work environment
- Treat all complaints seriously and deal with harassment situations immediately upon becoming aware of them, whether or not a formal complaint has been made
- Provide a fair, timely and effective process for investigating and resolving incidents and complaints
- Treat complaints in a sensitive and confidential manner
- Encourage the reporting of behaviour which breaches the policy
- Ensure protection from retaliation
- Provide workers who are targets and witnesses with counseling, accommodation or other support
- Inform the union, for example send the union all investigation reports
- Train supervisors and workers when they are hired and on an ongoing basis
- Inform workers of the policy statement and steps taken to prevent harassment
- Commit to eliminate the hazards and control the risk factors for harassment, including work environment factors

☐ Include language that says that nothing in the collective agreement affects the right of an employee subjected to harassment to seek any available legal remedy.

☐ Require an annual review of the policy and its implementation.

Ask your servicing representative for sample contract and policy language or other advice.

Temporary foreign workers in our union:

A SOLIDARITY AND ACTION GUIDE

CUPE











Photo: Migrant Workers Alliance for Change



INTRODUCTION

CUPE locals across the country represent members working in Canada under various immigration statuses, including temporary foreign workers (TFWs), international students, refugees and others.

This document is about TFWs, often referred to as migrant workers, who come to Canada under the Temporary Foreign Worker Program (TFWP).

The TFWP is a federal program that brings workers to Canada from abroad to meet short-term, regional and sectoral labour needs. These workers are tied to their employers through closed work permits and usually have to leave Canada when their temporary employment ends.

TFWs in unionized jobs are covered by existing collective agreements. However, their unique immigration and work situations demand our special attention and support.

TFWs in Canada are part of over 200 million workers globally who have left their homes and families in search of decent work in other countries. Often, they have been forced to migrate due to poverty, unemployment, the climate crisis and the legacy of colonialism and capitalism.

The export of this labour is systematized, racist and exploitative. Workers in poorer countries must often find jobs abroad. This allows workers to earn money and send it back to their families in their home countries who depend on this income. Meanwhile, wealthier nations, like Canada, have set up temporary foreign worker programs for the benefit of employers, who are able to maintain low wages for workers whose rights cannot easily be protected.



Historically, Canada's TFWP and similar programs have used racist and exclusionary policies to exploit Black and racialized workers without offering them permanent status. Programs like the West Indian Domestic Scheme and the Live-in Caregiver Program, for example, exploited women from the Caribbean and the Philippines for decades. Opportunities for these workers to obtain permanent residency have been inconsistent. Similarly, the Seasonal Agricultural Worker Program, which started in 1966, brings workers in seasonally but doesn't allow them to stay permanently, based on the racist belief that these workers won't fit into Canadian society.[1]

A significant migrant rights movement, led by migrant workers, has emerged in Canada in response to the injustice and abuse of these programs. Migrant workers have long been advocating for their rights, raising awareness of their difficult living and working conditions and the racism and discrimination they face. CUPE members have strongly supported their efforts and this document is guided and inspired by the leadership, political action and courage of migrant workers.

Temporary foreign workers in our union: A solidarity and action guide is designed to help CUPE bargaining teams and local executives support members who are TFWs at the bargaining table and in the workplace. It seeks to contribute to the broader fight for justice for migrant workers, and, by extension, all workers. This fight must take place in workplaces, in the government and on the streets. As trade unionists, we must continue building an anti-racist union and stand in solidarity with migrant workers.

[1] Mooten, N. (2021). *Racism, discrimination and migrant workers in Canada: Evidence from the literature.* Policy Research, Research and Evaluation Branch, Immigration, Refugees and Citizenship Canada.

IMPORTANT TERMINOLOGY



ILLEGAL

This is a term that is often used to describe migrants who are living in Canada without government permission. It is sometimes used synonymously with "undocumented." The term "illegal" creates divisions within the working class, dehumanizing migrants by equating them with illegality. The "No one is illegal" movement advances solidarity with migrants and rejects the criminalization of migration.

IMMIGRATION STATUS

Immigration status describes the permissions under which someone is allowed to visit or stay in Canada. For example, someone could be a citizen, a permanent resident or a tourist. Some people may not have an immigration status because they are undocumented.

LABOUR MARKET IMPACT ASSESSMENT (LMIA)

A Labour Market Impact Assessment (LMIA) is a document from Employment and Social Development Canada (ESDC) that gives an employer permission to hire a temporary foreign worker.

A positive LMIA, sometimes called a confirmation letter, will show that there is a need for a foreign worker to fill a job. It will also show that no Canadian worker or permanent resident is available to do the job. A positive LMIA is provided to the employer by ESDC and is a requirement for the worker to apply for a work permit. It essentially functions as a contract between the Canadian government, the employer and the worker.

This is a document the union will want to access to determine whether the specific terms of work for a TFW align with the provisions of the collective agreement. Otherwise, the union can consider recourse such as a grievance.

There are some industries and occupations that are deemed "LMIA-exempt," which means that the government believes that there are either circumstances in a specific occupation or an acute enough labour shortage in that industry that the employers can hire TFWs without first obtaining an LMIA. The list frequently changes, and in general, an LMIA is required for the TFWP.

NATIONAL OCCUPATION CLASSIFICATION (NOC)

The National Occupation Classification (NOC) is a list of job classifications maintained by the Government of Canada. The NOC is an important part of the immigration process for migrant workers seeking work in Canada. The government uses the NOC to identify which occupations have a labour shortage and what the median wage rate will be.

OPEN WORK PERMITS AND CLOSED WORK PERMITS

Work permits authorize migrants to work in Canada. Work permits can either be closed or open.

Closed work permits allow someone to work for a specific employer only. Closed work permits are a defining feature of the TFWP.

Open work permits allow a worker to seek employment from different employers. Some may include sector or location restrictions. International students who receive a post-graduate work permit often hold an open work permit.

Work permits are different from a visa or a temporary resident permit.

PERMANENT RESIDENT

A permanent resident is someone who has satisfied the requirements set out in law to stay in Canada indefinitely, without being a citizen of Canada.

People can obtain permanent residence in several ways, including by immigrating to Canada, by receiving refugee protection or by successfully applying for it on humanitarian and compassionate grounds. Certain residency criteria must be met to maintain permanent resident status. Permanent residency can be lost or revoked.

PRECARIOUS WORKER

A precarious worker is someone who does not have stable employment or whose job conditions make them more likely to face financial instability, mistreatment and exploitation.

A precarious worker who has a precarious immigration status is doubly vulnerable. Precarious immigration status is characterized by the possibility of deportation from Canada if a permit to remain in the country is revoked or expires without renewal.

REGULARIZATION

Regularization means giving permanent residence status to those whose immigration status is precarious, such as those who have a temporary closed work permit or who are undocumented.

There have been several programs since the 1960s providing broad or targeted regularization for migrants and refugees.

CUPE has adopted convention resolutions and policies supporting full and permanent immigration status for all migrants and refugees currently in Canada.

SPONSORSHIP

Sponsorship is a Canadian immigration policy that allows Canadians and permanent residents to officially support someone to come to Canada under certain circumstances, with specified responsibilities. Recipients of sponsorship may include refugees, certain family members and workers. It often speeds up the immigration process.

STATUS FOR ALL

Status for All is a campaign led by migrant workers and their organizations and allies. It calls for all foreign workers to be given permanent residence status upon arrival in Canada.

Workers who come to Canada often arrive as temporary workers under closed work permits, meaning they are tied to one employer and one workplace. This makes them vulnerable to exploitation by their employers.

Having permanent residence upon arrival would allow workers the freedom of mobility afforded to other workers and would remove the fear of deportation for reasons beyond their control, such as job loss or an abusive employer.

THIRD-PARTY REPRESENTATIVES OR RECRUITERS

Employers commonly use “recruiters” or immigration consulting agencies to handle their LMIA applications. These agencies also help find foreign workers who are qualified and interested in working in Canada.

The business of recruiting foreign workers is profitable and often unethical. Migrant workers are frequently financially exploited by recruiters and given false promises of jobs, work permits and permanent residency status.

Some jurisdictions have implemented rules for recruiters, typically involving licensing requirements and a code of conduct. As of 2024, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Prince Edward Island and Nova Scotia have established, or plan to establish, licensing systems for recruiters.

UNDOCUMENTED

Undocumented is a general term used to refer to someone who is in Canada without authorization to reside and/or work. A person can become undocumented because they entered the country without reporting to border authorities or because they did not leave the country after the expiration of their permission to stay. This can happen for a variety of reasons, including financial insecurity or the risk of persecution in their country of origin.

Undocumented people are at risk of being deported and subjected to employer abuse and exploitation. They often face hate and negative treatment from the public. Someone who may not have permission to stay in Canada (if they do not have the right kind of immigration status) may still be able to work in Canada if they hold a valid work permit.



CHALLENGES FACED BY TEMPORARY FOREIGN WORKERS



Photo: Migrante Canada

If a TFW starts a job in a unionized workplace, and their job classification falls within the scope of the collective agreement, then they have the same rights under the collective agreement as any other person employed in the bargaining unit and are likewise entitled to union representation. But the circumstances under which TFWs work are different in important ways.

The TFWP is based on the premise that there is a labour shortage in certain sectors and in certain regions across the country. When an employer can't find a Canadian or permanent resident to fill a position, they can hire a foreign worker temporarily. These foreign workers come to Canada on a closed work permit, which means they can only work for that particular employer and at that specific workplace. Typically, they have to leave Canada when their temporary job ends.

The maximum amount of time a temporary worker can work in Canada may depend on the contract they sign with their employer and the conditions set in the Labour Market Impact Assessment (LMIA) if the employer was required to get one.

There are a few different streams of the TFWP. These include the low-wage stream, the high-wage stream, the agricultural stream, the Global Talent Stream and the caregiver program. CUPE members who are TFWs are most likely to be in Canada under the low-wage stream and the caregiver program.

Depending on the stream, the employer may have certain obligations. These can include providing housing, transportation to and from the worker's home country and private health insurance coverage.

On paper, the worker is free to quit their job. In practice, however, quitting may risk not only their income but also their housing, health care and even their permission to remain in the country.

TFWs are not allowed to find another job unless they find another employer with permission from the government to hire TFWs. This process can take months. Quitting is often not an option, and many are therefore forced to stay in jobs that are exploitative. Migrant workers in Canada often refer to this situation as modern-day slavery. This charge has been echoed by the United Nations Special Rapporteur on contemporary forms of slavery who described Canada's closed work permit system as "a breeding ground for contemporary forms of slavery."[2]

ROLE OF THE UNION

Like other contract or temporary workers, migrant workers are often reluctant to join union activities, file grievances or take job action because they fear losing their jobs. But unlike other precarious workers, migrant workers face the additional risk of losing their immigration status and being deported. This risk creates an enormous financial and emotional burden.

Migrant workers also have legitimate reasons to be worried about filing complaints against employers with various levels of government. This is because the TFWP has been established to meet the needs of employers rather than workers.

These conditions may sow division in the union if migrant workers' concerns are misconstrued as anti-union. These tensions can also become fertile ground for racism and discrimination.

[2] Obokata, T. (2023). *End of mission statement of the special rapporteur on contemporary forms of slavery, including its causes and consequences*. United Nations. https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf

Employers can take advantage of these divisions, making it more difficult for workers to achieve better working conditions and gains at the bargaining table. Union solidarity is the most effective tool to fight back.

Locals need to closely monitor the treatment of migrant workers in the workplace and make sure employers follow their requirements under the TFWP. Failing to address employers' violations or to educate members about the TFWP may lead to union members feeling resentful of migrant workers.

Sometimes workers can misdirect their legitimate frustrations about poor working conditions, high living costs and other issues toward migrant workers, wrongly blaming them instead of focusing on the actions or inactions of employers. Migrant workers are frequently accused of "taking our jobs" and can face hostility for speaking languages other than English or French.

The union should also be aware that the safety measures for migrant workers set up by federal, territorial and provincial governments are often insufficient or even harmful. For example, reporting issues through the federal government's tip line may lead to an investigation of the employer. In small workplaces, this could accidentally reveal the identity of the worker who suffered harm, exposing them to retaliation. The union must therefore carefully consider all the complaint and grievance processes available to migrant workers before moving forward.





LOOKING TO DO MORE?

Here are some steps your local can take to support temporary foreign workers. Not all actions may be right for your local's specific situation.

Migrant workers know best what their needs are. Whenever possible, migrant workers should be involved in and lead this work.

ACTION 1:
SHOW UNION SOLIDARITY

The union should **identify and address structural barriers** in the local that prevent migrant workers from fully participating in the union. For instance, the union can address language barriers by providing information in multiple languages.

The union can offer collective agreement **orientation sessions** specifically for newly hired TFWs. This would not only provide TFWs with essential information, but also create a welcoming and trustworthy environment for members who might be new to the union or the country, and who are experiencing the vulnerability of their immigration status.

The union could **create committees** for migrant worker participation. This would encourage lived-experience leadership in local unions so that the union's efforts on behalf of migrant workers are led by migrant workers. Trust-building may be required before migrant workers participate on committees or in other union structures. Contact your CUPE national representative for help.

Locals can also **organize events** to increase migrant worker involvement. Events could include inviting migrant worker organizations to host "lunch and learns," celebrating significant cultural days or holding a community barbecue. Remember to consider the cultural and religious backgrounds of migrant workers when selecting food and drinks for events.



ACTION 2:
BUILD COMMUNITY CONNECTIONS

The union can **build connections with local migrant justice advocacy groups**. These groups often have experience with connecting migrant workers to resources such as psychological support and legal aid.

Migrant justice advocacy groups may also be able to **connect workers** to other members of their community. This can help workers who are suffering from isolation feel a sense of belonging.

CUPE has debated and adopted policy at our national conventions in support of the **Status for All campaign** aimed at building a migrant-led movement to win full and permanent immigration status for all migrants, including undocumented people.

To keep up to date on this campaign, visit **migrantrights.ca**. Our work together inside the union and in the community is a contribution to this movement.



Photo: Migrante Canada

ACTION 3:
REQUEST DOCUMENTS

Requesting a wide range of documents and information about employers' plans to hire TFWs is a good strategy for the union to gather the necessary information to protect everyone's rights.

Employers often use third-party immigration consultants for TFW applications and might not automatically share all relevant information without a specific request. But this information can be very helpful for unions.

The TFWP application requires employers to prove no Canadian citizens or permanent residents are available to fill the position. They also need to prove that they have advertised the job for a specific time and publicized that it is in a unionized workplace.

The evidence employers provide may show that their job advertisements were minimal or misleading, did not state that the workplace is unionized or failed to include the union in the process.

If the union wasn't informed of these job postings, the local may be able to contest the claimed labour shortage by demonstrating that bargaining unit members were interested and available to do the work. This could take the form of a grievance or a complaint to the Employment and Social Development Canada (ESDC) tip line. Either the worker or the union can make complaints to the tip line, but care is required to ensure the immigration status of temporary foreign workers is be protected in the process. CUPE does not recommend using the tip line without consulting a CUPE national representative or migrant rights advocate.

Contesting a labour shortage could put the union in a difficult position of having to protect the seniority rights of existing members while also ensuring that they do not jeopardize the employment of TFWs whose immigration status – and livelihoods –

could be at risk if they lose their jobs. Such a situation is ripe for xenophobia and racism, and an employer can exploit division in the local. The union must take steps to simultaneously protect both groups. There is no easy solution to this tension. Each situation is unique and may require a specific approach.

Here is a list of possible **document disclosure requests** regarding the employer's intentions and/or actual plans to hire and/or house foreign workers:

1. Copies of all applications made to any level of government in relation to the hiring of foreign workers. This includes, but is not limited to, all Labour Market Impact Assessments received and/or applied for.
2. All promotional material and an explanation of all steps taken to advertise and promote locally the positions for which foreign workers will be hired.
3. The number of foreign workers the employer plans to hire.
4. A list of all job classifications for which the employer plans to hire foreign workers.
5. Expected start and end dates for hired foreign workers, as per relevant program requirements/restrictions.
6. A copy of any contracts, agreements or other such documents between the employer and any recruitment agencies that are providing services to the employer to help hire and recruit foreign workers for positions in or outside the bargaining unit.
7. A copy of any contracts, agreements or other such documents between the employer and any foreign worker in the bargaining unit. No agreements should be signed that undermine the union's role as the official bargaining agent.
8. The employer's plans to provide housing support.
9. The employer's plans for the settlement and integration of the foreign workers that arrive, including details of the employer's plans to provide information to foreign workers about their rights.
10. The employer's plans to support foreign workers to acquire permanent residence status in anticipation of the expiration of the temporary work permit.

ACTION 4:
NO TWO-TIER AGREEMENTS

CUPE's national bargaining policy opposes two-tier agreements in our workplaces. These agreements create different conditions for workers doing the same work, often excluding new employees from protections that workers with more seniority enjoy. Two-tier agreements weaken union solidarity and limit our ability to make meaningful gains in bargaining.

Employers may seek two-tier agreements by proposing a separate letter of understanding (LOU) to lock in lower wages or different conditions for newly hired migrant workers. CUPE considers this discriminatory and locals should never agree to lower terms based on immigration status.

Employers may also point to federal TFWP rules to justify lower provisions for migrant workers. But these rules only set out minimum labour standards and should not be used to undermine provisions already stated in the collective agreement.

In addition to the collective agreement, employers may have a duty to provide specific support to workers they hire under the TFWP, such as housing support, transportation and health care coverage. These basic provisions are not perks; they are obligations that the employer must meet depending on the kind of program through which the workers arrive.

Despite this, employers sometimes attempt to negotiate LOUs to lower these standards. For example, an employer might try to avoid providing housing and transportation by offering migrant workers a wage enhancement in lieu of these benefits. This is not allowed. The employer's duty to provide the entitlements laid out under the TFWP is non-negotiable because these entitlements are set out in the laws and regulations governing the program. However, it is possible to bargain language that makes improvements to these basic entitlements, like better health care coverage.

The union should also be aware that signing an LOU could violate human rights legislation if the agreement is deemed to be discriminatory.

Finally, locals should ensure that the existence of distinct employer support for TFWs, like housing, health care and transportation, is understood by the membership. The provision of these benefits is the employer meeting minimum legal standards set up by the federal government, not preferential treatment. Educating members about the TFWP will be helpful. Contact CUPE's Human Rights Branch for assistance.



Photo: Solidarity Across Borders

ACTION 5:
FILE GRIEVANCES AND COMPLAINTS

If the employer violates the collective agreement or their obligations under the TFWP, the union can **file a grievance or a complaint**.

Employers using the TFWP must follow specific standards. Regulation of these standards is shared by federal and provincial or territorial authorities.

The federal government handles violations of immigration rules, while provincial and territorial governments deal with violations of provincial and territorial labour laws.

Sometimes, municipalities may investigate public health issues or the state of migrant worker housing.

Some jurisdictions have special protections for foreign workers, typically found in specific legislation or in the relevant Employment Standards Act.

These rules vary, from specifying rights for foreign workers to establishing a licensing system for recruiters. Each jurisdiction is different.

In certain situations, it might be beneficial to file a complaint at the federal level, file a grievance against the employer that could reach a provincial or territorial tribunal or board, and also lodge a complaint under a provincial or territorial temporary foreign worker protection act, if available.

For example, if the union suspects the employer has threatened a TFW with deportation for being involved in the union, the union could consider a grievance as well as a complaint with ESDC. In jurisdictions where unionized members have access to the Human Rights Commission, the member may be able to file a human rights complaint concurrently. In jurisdictions with specific protections for TFWs, there may be another complaint process available.

The union must aim to ensure that collective agreements are respected while also protecting any affected TFWs in the workplace.

If an employer signs a contract with a TFW without mentioning the workplace is unionized, and if they intend to employ the worker without respecting the collective agreement, the union can file a complaint with the ESDC. The union could also file grievances for the employer's violations of the collective agreement, like contracting out bargaining unit work, failing to follow posting procedures or violating the scope clause.

While ESDC guidelines recommend that employers consult with the union when hiring a TFW into a unionized position, this is not required. However, the guidelines state that the hiring of TFWs cannot "affect current or foreseeable labour disputes at the workplace." If there is evidence that hiring a TFW could affect the "course, outcome or settlement of any labour dispute," the employer's application for an LMIA could be refused.[3] For example, an employer cannot use TFWs during a strike or a lockout even if they are in a jurisdiction that does not prohibit the use of replacement workers.

ESDC runs a confidential tip line for complaints against employers, including abuse faced by TFWs or LMIA requirement violations. However, migrant workers have criticized this tip line as it sometimes results in more abuse. This is because the government notifies employers about complaints, making it easy to guess who made the complaint in small workplaces. As such, the union should use the tip line cautiously and generally should rely on processes set out in the collective agreement to protect worker rights.

[3] Employment and Social Development Canada. *Program requirements for low-wage positions*. Retrieved March 18, 2024, from https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/low/requirements.html

ACTION 6:

OPEN WORK PERMITS FOR VULNERABLE WORKERS

If a worker is experiencing abuse or at risk of experiencing abuse, they can be eligible to get an open work permit to leave the employer. The federal government has a process through which a worker can apply for a temporary open work permit. The process requires the worker to submit evidence to back a claim of abuse or risk of abuse. The union should be aware of this option for members who may be experiencing or at risk of abuse.



Photo: Migrante Canada

ACTION 7:

TEMPORARY RESIDENT PERMITS FOR VICTIMS OF TRAFFICKING

It is common for migrant workers to be victims of labour trafficking. Labour trafficking is a criminal code offense. It happens when someone is recruited, moved or held to force them into doing work. Migrant workers with closed work permits are at high risk of labour trafficking.

Trafficked workers frequently lack immigration status. Immigration, Refugees and Citizenship Canada can issue a special permit called the Temporary Resident Permit for Victims of Trafficking which will grant the holder temporary status for a minimum of 180 days as well as an open work permit. The union should be aware of this option for members who may be victims of labour trafficking.



Photo: Migrant Workers Alliance for Change

ACTION 8:

ASK FOR HELP

Immigration law is complex. CUPE representatives, local executive members and the union in general are not expected to be experts in immigration law. **Reach out to your CUPE national representative, human rights representative or legal representative** to determine options for support when proceeding with a case involving migrant worker exploitation or abuse.

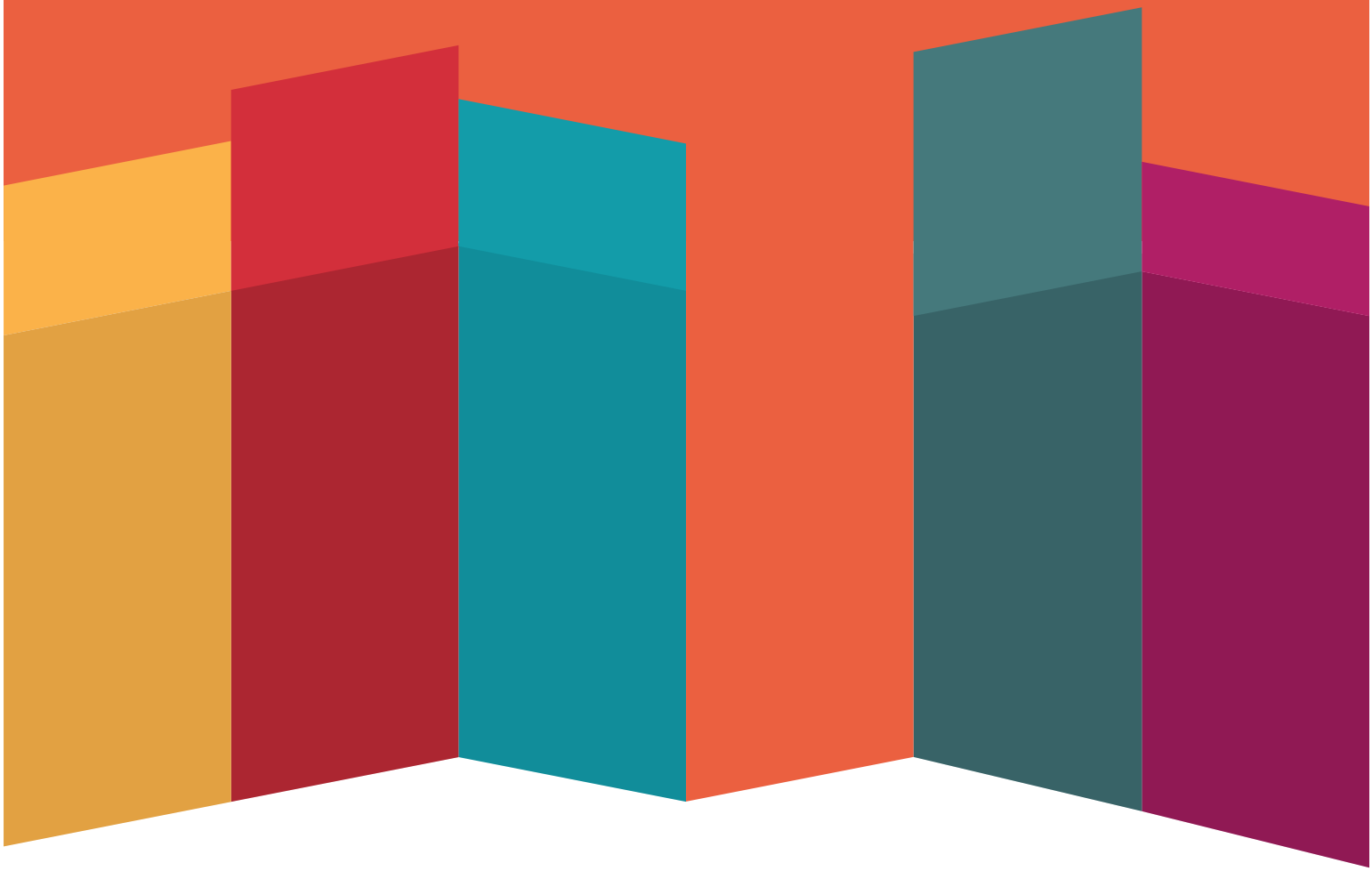


Photo: Migrant Workers Alliance for Change



CUPE

COLLECTIVE AGREEMENT LANGUAGE TO SUPPORT MEMBERS WITH TEMPORARY WORK PERMITS



CUPE

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Contents

Contents 1
Introduction 2
Collective agreement language 3
- Notifying the union 3
- Documentation from the union 4
- Documentation from the employer 5
- Time off for immigration-related issues 6
- Upholding the collective agreement 6
- Grievances 7
- Orientation to the collective agreement 8
- No discrimination or harassment 9
- Documentation, translation, application fees and language training 9

Conclusion 11
Important terms 12
- Immigration status 12
- International Student Program 12
- Labour Market Impact Assessment (LMIA) 12
- Maintained Status 12
- National Occupation Classification (NOC) 13
- Open and closed work permits 13
- Permanent resident 13
- Post-graduation work permit (PGWP) 14
- Precarious worker 14
- Provincial Nominee Program (PNP) 14
- Regularization 14
- Sponsorship 15
- Status for All 15
- Temporary Foreign Worker Program (TFWP) 15
- Third party representatives or recruiters 15
- Undocumented 16

Introduction

CUPE locals across the country represent members working under different temporary work permits. These permits include temporary foreign worker (TFW) permits, study permits and post-graduation work permits (PGWP).

This document is for CUPE bargaining teams and local executives. It will help you bargain strong collective agreements that meet the needs of members with temporary work permits.

The term “members with a temporary work permit” refers to members with temporary immigration status. Depending on their immigration program, these members may also be called migrant workers, foreign workers, temporary foreign workers, or international students.

CUPE members with temporary work permits are covered by existing collective agreements. They must also follow other rules and regulations, depending on their work permit and immigration program. CUPE locals should be ready to enforce and expand their collective agreement to protect the rights of members with temporary work permits.

Our solidarity is essential. Canada’s immigration system is often racist and is used to exploit workers from other countries. Workers with temporary immigration status face financial instability, employer abuse and exploitation, and can be deported if their status changes.

Negotiating the language in this guide into your contract will help protect CUPE members with temporary work permits and defend their rights. Collective bargaining is one way CUPE members and locals can support the fight for migrant justice. Locals should contact their national representative for more information about bargaining these provisions and other ways to support members with temporary work permits.

Collective agreement language

Notifying the union

Employers who want to hire workers with temporary work permits often need permission from the federal government through a Labour Market Impact Assessment (LMIA). Employers must prove there is a labour shortage before they can hire workers under the Temporary Foreign Worker Program. Your local should bargain language requiring the employer to notify the union about this assessment process and before hiring any workers with temporary work permits. This language is meant to support workers with temporary work permits, not create barriers.

Sometimes employers will claim there is a labour shortage when there is not. This puts workers in vulnerable situations. For example, employers hiring workers under the Temporary Foreign Worker Program must hire them to work full time (30 hours a week). But they may classify these workers as part time to avoid providing benefits and then provide overtime hours to meet the 30-hour requirement.

This can create division in the workplace if overtime hours are allocated in a way that violates seniority rights. It may also put members with temporary work permits at risk of not meeting program requirements, jeopardizing their ability to stay in Canada permanently. If the union is involved, we can ensure workers' rights and immigration program requirements are respected.

Even if an LMIA is not needed, your local should know about members with temporary work permits. This information helps stewards and executive members accurately assess the level of risk for a member who chooses to file a grievance or take job action.

Members with temporary work permits are more vulnerable than other workers because of their precarious immigration status. If speaking out leads to them losing their job or facing other employer retribution, they could be deported. It is still important to file grievances when the collective agreement has been violated if we are clear about the risks.

Requiring employers to notify the local when workers with temporary work permits are hired helps ensure workplace solidarity. This collective agreement language ensures your local is informed and can provide support to members with temporary work permits as soon as they arrive.

Labour shortage determination

The Employer agrees to follow the procedure outlined in Article(s) X of this agreement with regards to internal and external job postings and seniority. The Employer shall notify the Union of any intention to hire employees on a temporary work permit:

- When a Labour Market Impact Assessment (LMIA) is required, the Employer will notify the Union in writing within fifteen (15) days of submitting an LMIA application. The Employer will provide the Union with a copy of the LMIA application and supporting documents. The Employer will notify the Union when a positive LMIA and/or confirmation letter is received.
- In the event an LMIA is not required, the Employer will notify the Union in writing fifteen (15) days in advance of hiring an employee with a temporary work permit.

Documentation from the union

Some immigration streams require employers to submit a “union concurrence” letter when they apply to hire workers with temporary work permits, extend work permits, or support permanent residency applications. The union is often asked to confirm in writing that there is a labour shortage, that the hiring follows the collective agreement process, and that the hiring will not interfere with any ongoing labour dispute.

Employers sometimes request union concurrence letters at the last minute, without providing details about the situation. In other cases, employers do not submit the concurrence letter in their application package, leaving the worker to follow up with their local. Both situations are unfair to the worker and the local union and can lead to a worker’s immigration application being delayed or rejected.

This collective agreement language ensures the employer meets their obligation to provide the documentation needed for a successful immigration application. It also requires the employer to give your local advance notice and background information when requesting a letter as part of the employer’s application package.

Union concurrence

In the event the Employer requires a concurrence or a consent letter from the Union to employ workers with a temporary work permit, the Employer agrees to:

1. Notify the Union in writing in advance of issuing a job offer to an employee with a temporary work permit.
2. Issue a request for a union concurrence or consent letter in advance of the Employer's application to relevant government officials.
3. Ensure all documents are provided to the employee with a temporary work permit in a timely manner to ensure application requirements can be met.

Documentation from the employer

Workers with temporary work permits who want to apply for a work permit extension, for entry into a different temporary immigration stream, or for permanent residency often need a specific letter from the employer. This letter includes either a job offer or a confirmation of previous employment and is required for a successful application to Immigration, Refugees and Citizenship Canada. A letter may also be needed to get a provincial health card. These letters are extremely important.

Some employers could withhold these letters to punish a worker standing up for their rights, or to control vulnerable workers. Other employers may treat the letters as a bureaucratic burden, which can lead to delays or missed deadlines for the worker.

This collective agreement language sends a strong message to members with temporary work permits that the local union is ready to support them.

Application letters

The Employer will provide letters and other documentation requested for work permits and permanent residency applications, or to verify employment eligibility for a health card, within 48 hours of an employee's written request, in the format accepted by Immigration, Refugees and Citizenship Canada, or other relevant authorities.

If within the probationary period, this provision applies only upon the employee's written request and does not constitute a waiver of the Employer's rights under the probationary terms of this Agreement.

Time off for immigration-related issues

If a member with a temporary work permit has a problem applying for a work permit extension or permanent residency, they could lose their legal ability to work. They may need to meet with a legal or immigration representative during work hours to keep their immigration status. Under some programs, a worker who has lost their legal status will have 90 days to restore it, and in other cases it will take longer or may include “maintained status” (see Important Terms at the end). If they are successful, they can return to work or may not need to leave at all.

Language about immigration-related leaves of absence in the collective agreement will ensure workers have the time they need to navigate the often confusing and expensive immigration system. Paid leaves of absence protect workers with temporary work permits from being terminated if their work permit expires before they can restore their status.

It is not uncommon for employers to provide a worker with a termination letter when a work permit expires and then rescind it after the union requests a leave of absence be provided instead. If an employer refuses to provide a leave of absence, the union should consider filing a grievance.

Leave of Absence

The Employer will grant a leave of absence with pay and with no loss of seniority to employees who require time off work for immigration-related issues, including but not limited to the following:

1. to update, extend or make an application for a work permit, a study permit, or permanent residence status
2. for the time required to restore immigration status if a work permit expires prior to extension

Upholding the collective agreement

A worker with a temporary work permit in a unionized workplace is covered by the collective agreement. Despite this, some employers have asked locals to consider signing a Letter of Understanding (LOU) that does not align with the collective agreement.

The employer may try to use an LOU to lock wages at their starting rate for the duration of a temporary work permit, to limit access to benefits or to modify collective agreement provisions in other ways.

Locals should never agree verbally or in writing to an employer proposal that takes away rights for members with temporary work permits or otherwise reduces their collective agreement benefits and protections. In addition to this language, the local can file a grievance if an employer insists an LOU be signed.

This collective agreement language as written applies to all members but is particularly important to members with temporary work permits.

No Other Agreements

No Employee will be required or permitted to make any written or verbal agreement with the Employer or their representatives which may conflict with the terms of this Agreement.

Grievances

Workers with temporary work permits who need to file a grievance have unique needs. They may need an expedited grievance process to meet work permit expiry dates and immigration application deadlines.

The outcome of a grievance could force a member to leave Canada before they are ready, so a timely process is critical.

This collective agreement language outlines a grievance process that helps address the precarious reality of holding a temporary work permit.

Expedited Grievance Handling

The parties agree to expedite the handling of a grievance where the outcome of the grievance may affect the ability of an employee hired on a temporary work permit to maintain their work permit and/or immigration status. The Parties agree to:

1. Advance the grievance to the last step of the grievance process. The parties shall have the grievance meeting within ten (10) days of the filing of the

grievance. The Employer will provide their response to the Union no later than five (5) days following the meeting.

2. After step X (insert the last step of the grievance process),

- immediately determine which arbitrators are ready and available to hear the matter within thirty (30) days of the submission to arbitration, and
- issue an oral award where possible, or a written decision where necessary or required by either party within a further fifteen (15) days of the conclusion of the hearing.

3. The Employer agrees to provide interpreters or translators as required by employees with temporary work permits to participate in the grievance process.

Orientation to the collective agreement

Locals should bargain language allowing them to orient all new members to the collective agreement on work time. It is also a good idea for your local to offer collective agreement orientation sessions specifically for newly hired members with temporary work permits.

Beyond providing essential information, an orientation creates a welcoming and trustworthy environment for members new to your local, city, or the country who are feeling vulnerable because of their immigration status. An orientation is especially important if there are language barriers or the employer has a history of exploiting or discriminating against workers with temporary work permits.

Collective Agreement Orientation

The Employer agrees to permit a two (2) hour meeting between the Union and new employees within ten (10) working days of their hire date to offer an orientation to the Collective Agreement, their rights as Union members and the grievance process.

No discrimination or harassment

Some employers have prevented members with temporary work permits from posting into full time or permanent positions because they hold a temporary work permit. This denial of their seniority rights is discrimination based on immigration status.

All provincial, territorial and federal human rights acts or codes prohibit discrimination based on national origin or place of origin. The Ontario *Human Rights Code* and the Nunavut *Human Rights Act* prohibit discrimination based on citizenship. Including immigration status in your local's discrimination and harassment language is another way to protect the rights of members with temporary work permits.

This collective agreement language includes discrimination based on immigration status.

Discrimination and Harassment

The Employer and the Union agree that there shall be no discrimination, interference, restriction, coercion, or harassment exercised or practiced in any matter concerning the application of the provisions of this Agreement by reason of age, marital status, family status, creed or religion, physical disability, mental disability, race, colour, ancestry, place of origin, national origin, social condition, political belief or activity, sexual orientation, gender identity or expression, sex (including pregnancy), citizenship, **immigration status** or type of employment.

Documentation, translation, application fees, and language training

There are other ways your local can use the collective agreement to support members with temporary work permits. Workers who are new to Canada face many barriers in the workplace and community. Their first language may not be English or French, and they are navigating an expensive and complex immigration system.

These collective agreement clauses are examples of how your local can negotiate employer support around documentation, application fees, translation, and language training.

Employer-provided documentation and application assistance

The Employer agrees to provide administrative support for work permit extensions and permanent residency applications to any employee with a temporary work permit.

The Employer will provide regular updates to the Union until the employee has been nominated for permanent residency. The update shall include, but is not limited to, date of expiration for work permit, status update for the immigration work program such as the nominee program, any information that could affect the employee's ability to work or remain in Canada.

Employer to provide translation of collective agreement and interpretation assistance

The Collective Agreement will be translated into any language that is the first language of at least twenty (20) employees. Where there is ambiguity in the translated text, the language of the text which was negotiated and agreed to by the parties shall prevail.

The Employer agrees to provide interpreters whenever required by employees on temporary work permits for employment related meetings. The Union and the Employer shall share the cost of translation equally.

Application fees

The Employer shall reimburse employees for work permit fees and permanent resident application fees.

Language training

The Employer agrees to provide financial assistance to employees who require language training to meet permanent residency application criteria

Conclusion

CUPE collective agreements can be a tool to help workers with temporary work permits defend their rights and work towards permanent resident status.

This guide has examples of language that can be included in your collective agreement. Not all language will be right for your specific circumstances. Members with temporary work permits know their needs best and whenever possible should be involved in the bargaining process.

Local leaders, bargaining teams and members with temporary work permits should work together on additional language that addresses their experiences as workers with precarious immigration status. Ask your national representative for help.

Collective bargaining is part of the broader fight for justice for migrant workers, and all workers. CUPE members must also join migrant workers and their organizations to campaign for fundamental changes to our immigration system so that everyone who comes here to work can also stay permanently.

For more information:

Temporary foreign workers in our union: A solidarity and action guide
cupe.ca/TFWguide

Important terms

Immigration status

Immigration status describes the permissions under which someone is allowed to visit or stay in Canada. For example, someone could be a citizen, a permanent resident or a tourist. Some people may not have an immigration status because they are undocumented

International Student Program

The International Student Program let students from other countries come to Canada to study at specific schools, known as designated learning institutions (DLI)s.

For many years, CUPE has represented international students who work on campus in the post-secondary education sector. Their study permit may function as a work permit, on and off campus.

Labour Market Impact Assessment (LMIA)

A Labour Market Impact Assessment (LMIA) is a document from Employment and Social Development Canada (ESDC) that gives an employer permission to hire a temporary foreign worker.

A positive LMIA, sometimes called a confirmation letter, will show there is a need for a foreign worker to fill a job. It will also show that no Canadian worker or permanent resident is available to do the job. The LMIA may be required for the foreign worker to apply for a work permit.

This is one of the documents your local should review to see if the specific terms of work, such as the starting rate of pay for a TFW, align with your collective agreement. It may also tell you how many TFWs the employer has permission to hire.

Some occupations and industries are “LMIA-exempt.” This means the worker can directly apply for a work permit if they meet certain requirements. The employer does not have to prove they tried to find a worker with Canadian citizenship or permanent resident status. The exemption list frequently changes and in general, an LMIA is required for the Temporary Foreign Worker Program (TFWP).

Maintained Status

If a worker, student or a visitor applies to extend their immigration status (this includes a work or study permit or via a permanent residency application) before their current

permit expires, then they can legally remain in Canada while their application is being processed by the government. They have what is called “maintained status.”

If their current permit expires while their application is being processed, they can remain in Canada under the same conditions of their previous permit until they receive a decision on their application.

For CUPE members, this could mean that they are legally allowed to continue to work, even if their work permit has expired. It is important to consider this possibility if a termination letter has been received from the employer and prior to negotiating a leave of absence for immigration related purposes.

National Occupation Classification (NOC)

The Canadian government maintains a list of job classifications known as the National Occupation Classification (NOC). The NOC is an important part of the immigration process for migrant workers seeking work in Canada. The government uses the NOC to identify which occupations have a labour shortage and to set the median wage rate.

Open and closed work permits

Work permits authorize migrants to work in Canada. Work permits can be closed or open. Workers with a closed work permit can only work for a specific employer, in a specific workplace, in a specific job. Closed work permits are a defining feature of the TFWP

Workers with an open work permit can apply for jobs from different employers. Some permits may include sector or location restrictions. International students who receive a post-graduation work permit often hold an open work permit.

Work permits are different from a visa or a temporary resident permit.

Permanent resident

A permanent resident is someone who has satisfied the legal requirements to stay in Canada indefinitely, without being a citizen of Canada.

People can get permanent resident status in several ways, including by immigrating to Canada, by receiving refugee protection or by successfully applying on humanitarian and compassionate grounds. People must meet certain residency criteria to maintain permanent resident status. Permanent residency can be lost or revoked.

Post-graduation work permit (PGWP)

After an international student graduates, they may be eligible for a post-graduation work permit. The PGWP is one of several permit options under the International Mobility Program.

The PGWP is an open permit that lets new graduates from designated learning institutions stay in Canada to work temporarily. The length of these permits varies, many expire after three years.

Recent changes to Canadian immigration policy have made it harder for PGWP holders to access permanent resident status when their temporary work permit expires.

Precarious worker

A precarious worker is someone who does not have stable employment or whose job conditions make them more likely to face financial instability, mistreatment and exploitation.

A precarious worker who has a precarious immigration status is doubly vulnerable. People with precarious immigration status can be deported from Canada if their permit to remain in the country is revoked or expires without the option to renew it.

Provincial Nominee Program (PNP)

The Provincial Nominee Program (PNP) is a federal program that allows provinces and territories to nominate people for permanent residency based on their specific needs and workforce requirements. Provinces choose workers based on different streams and criteria. The PNP is an important pathway that gives workers the option to apply to stay in Canada after they complete the requirements of a temporary work or study program.

Regularization

Regularization means giving permanent resident status to people whose immigration status is precarious because they have a temporary closed work permit or are undocumented.

There have been several programs since the 1960s providing broad or targeted regularization for migrants and refugees.

CUPE has adopted convention resolutions and policies supporting full and permanent immigration status for all migrants and refugees currently in Canada.

Sponsorship

Sponsorship is a Canadian immigration policy that allows Canadians and permanent residents to officially support someone to come to Canada under certain circumstances, with specified responsibilities. People being sponsored may include refugees, certain family members, and workers. Sponsorship often speeds up the immigration process.

Status for All

Status for All is a campaign led by migrant workers and their organizations and allies. It calls for all foreign workers to be given permanent residence status when they arrive in Canada.

Workers who come to Canada often arrive as temporary workers under closed work permits, meaning they are tied to one employer and one workplace. This makes them vulnerable to exploitation by their employers.

Having permanent residence upon arrival would give foreign workers same freedom to change jobs as other workers. It would also remove the fear of deportation for reasons beyond their control, such as job loss or an abusive employer.

Temporary Foreign Worker Program (TFWP)

The Temporary Foreign Worker Program (TFWP) is a federal immigration program designed to bring workers from other countries to meet employers' short term regional and sectoral labour needs. The program has streams for seasonal agricultural workers, caregivers, high and low-wage workers, and more.

The TFWP is often used for workers who enter Canada under the low wage stream. These workers have employer-specific work permits, called closed work permits. Migrant rights organizations and United Nations experts have described closed work permits as creating the conditions for "modern day slavery."

Third party representatives or recruiters

Employers commonly use "recruiters" or immigration consulting agencies to handle their LMIA applications. These agencies also help find foreign workers who are qualified and interested in working in Canada.

The business of recruiting foreign workers is profitable and often unethical. Recruiters often financially exploit migrant workers and make false promises about jobs, work permits and permanent resident status.

Some provinces have implemented rules for recruiters, which may involve licensing requirements, a registry, and a code of conduct.

Undocumented

Undocumented is a general term used to refer to someone who is working or living in Canada without authorization. A person who does not have permission to stay in Canada (if they do not have the right kind of immigration status) may still be able to work in Canada if they hold a valid work permit.

A person can become undocumented because they entered the country without reporting to border authorities, or because they did not leave the country when their permission to stay expired. People do this for a variety of reasons, including financial insecurity or the risk of persecution in their country of origin.

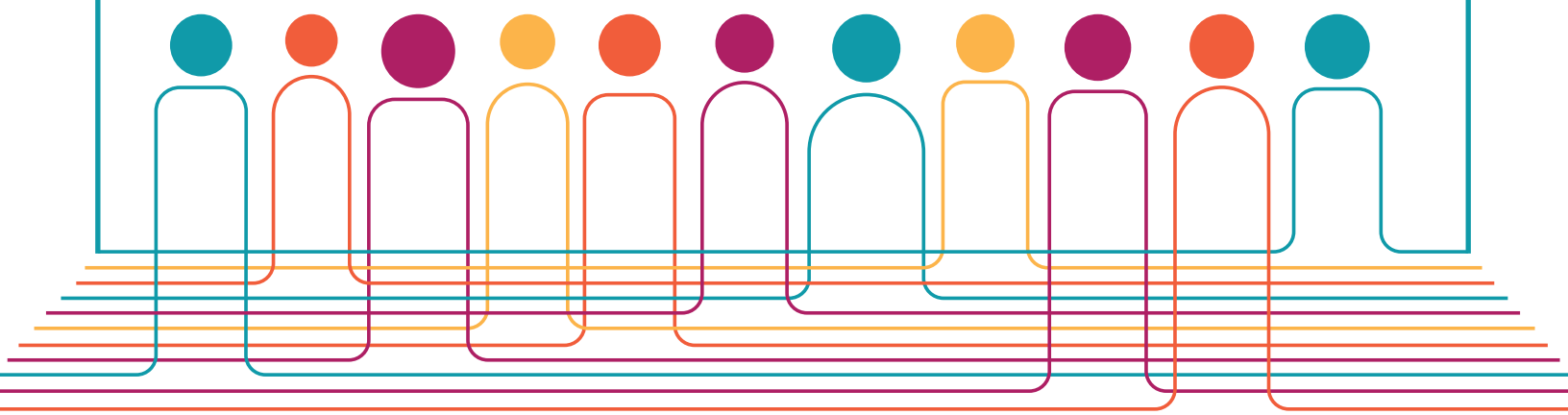
Undocumented people risk being deported and are the targets of employer abuse and exploitation. They often face hate and negative treatment from the public.

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CUPE

EMPLOYMENT EQUITY

Building a representative workforce



CUPE Human Rights | August 2026

Download this guide and order printed copies at
cupe.ca/employment-equity

TABLE OF CONTENTS

Introduction **1**

What is discrimination? **2**

What is employment equity? **5**

Why do we need employment equity? **6**

Where is employment equity in the law? **8**

Federal 8

Provincial 9

Special Programs 10

Addressing common criticisms of employment equity **12**

Concerns about discrimination 13

Seniority-based concerns 13

Qualifications-based concerns 13

What can your local and the employer do? **15**

Local union actions 15

Employer actions 15

How to build an employment equity plan **17**

Step 1: Identify barriers in your workplace 17

CHECKLIST: BARRIERS TO WATCH FOR IN A WORKPLACE SCAN 17

Step 2: Negotiate an employment equity clause in your collective agreement 19

Step 3: Develop and carry out an employment equity plan 23

CHECKLIST: STEPS FOR A JOINT EMPLOYMENT EQUITY COMMITTEE 24

Conclusion **25**

Commonly used terms **26**

Sample employment equity collective agreement language **28**

Introduction

CUPE is proud to be a leader in advocating for more inclusive and representative workplaces. Our communities deserve public services that reflect the people who live and work in them.

Employment equity is an essential part of this work. Employment equity plans help remove barriers so that groups of people who face historical and ongoing discrimination can succeed in our workplaces.

This guide is for CUPE bargaining teams, local executives, equity committee members, and every CUPE member working to advance human rights. It includes information on discrimination and employment equity, sample collective agreement language to bargain, and checklists to keep your work on track.

Use this guide to educate yourself and other CUPE members, to identify barriers in your workplace, and to bargain for change. Work with your CUPE national representative and human rights representative to develop and negotiate the best language for your local's needs.

CUPE members have bargained for important wins and broken new ground on employment equity. Social services members have negotiated equity hiring language that allows the employer to hire a diverse group of employees while respecting the collective agreement.

In the library sector, where 85% of workers are women and 12% are racialized, some locals have negotiated employment equity forums and incorporated employment equity goals in their job evaluation committees.

These wins show us CUPE members are up to the challenge of creating equitable and representative workplaces. Every day, CUPE members are advancing employment equity in their workplaces and locals by negotiating language in their collective agreements and creating spaces to challenge discrimination and learn from each other.

For more information, contact CUPE's Human Rights Branch at humanrights@cupe.ca.

What is discrimination?

Before we talk about employment equity, it's important to be aware of the ways discrimination can appear in our workplaces and how it can affect members.

Here's a breakdown of some key terms.

Discrimination is treating a person or group of people negatively for reasons like their race, age, disability, sex, sexual orientation, gender, religion, ethnic origin, or legal status. These reasons are called grounds of discrimination. Often, these views are founded in belief systems such as colonialism, religion, and culture. The human rights legislation covering your workplace will have a list of prohibited grounds of discrimination. These are also known as protected characteristics.

Direct discrimination happens when individuals or organizations intentionally deny certain people benefits that are available to others. An example of this type of discrimination in the workplace is the Canadian military's historical exclusion of 2SLGBTQI+ people. This policy was designed to discriminate against people based on their sexual orientation and was a significant barrier for 2SLGBTQI+ people. It meant they couldn't be a part of the military, let alone be promoted.

Implicit bias refers to a tacit, indirect, or embedded preference or inclination, most often unconscious, that is developed through beliefs, values, culture, background, education, societal norms, stereotypes, or personal experiences. Such bias can prefer or distinguish individuals or groups because of their race, colour, descent, national or ethnic origin, class, language, religious beliefs, age, able-bodiedness, sexual orientation, gender identity and expression, sex characteristics, and other traits.[1]

Intersecting discrimination is experienced by someone who belongs to more than one equity-deserving group. Workers experiencing intersecting forms of discrimination face even more barriers.

One important step toward understanding these forms of discrimination is having cultural safety training in the workplace. By increasing awareness and understanding of diverse perspectives and experiences, this kind of training helps create a safer, more supportive environment for all employees.

1 This definition was developed for the *CUPE BC racial justice glossary*, authored by the CUPE BC Racialized Workers Committee.

Indirect and systemic discrimination

Employment equity addresses all forms of discrimination, but it aims to specifically address *systemic and indirect discrimination* by identifying and removing barriers that prevent equitable opportunities. To understand employment equity, it's important we first understand both forms of discrimination.

Indirect discrimination in our workplaces can be a policy or change in practice that seems neutral but discriminates against workers who are protected under human rights law. While the employer may present this as a neutral rule, the reality is that it's a barrier to those protected under human rights law. The intention behind the rule is not relevant; the impact is what matters.

An example of indirect discrimination is an employer insisting all employees work on a certain day of the week without accommodating employees who can't for religious reasons. Indirect discrimination can be difficult to identify. It comes across as unintentional and "just the way things are."

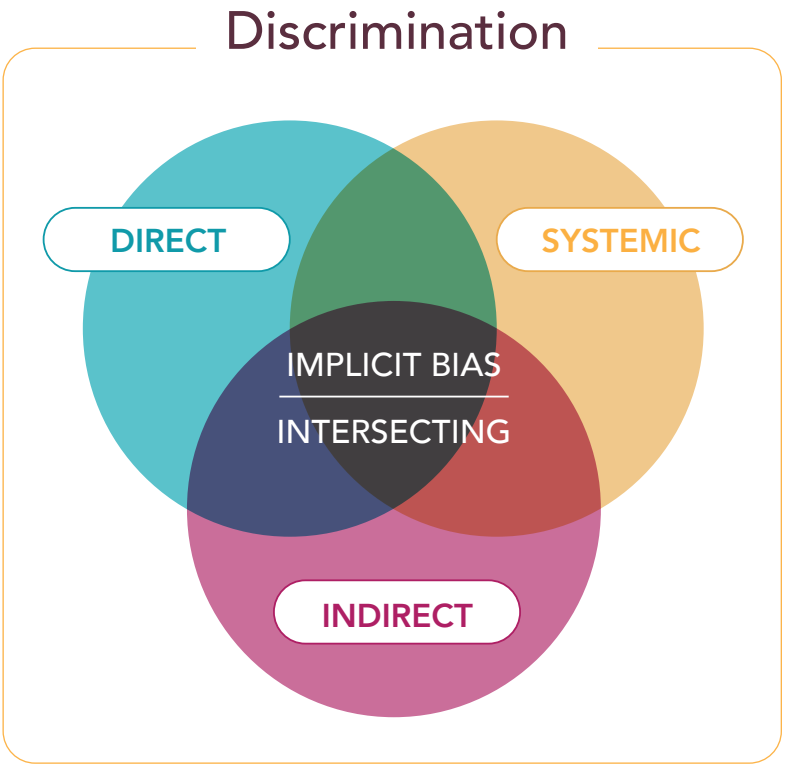
Another example is an employer deciding that uniforms can't be changed in any way. While the employer may present this as a neutral rule, the reality is that it's a barrier to anyone who wears a kippah, turban, or hijab for religious reasons.



Systemic discrimination is the result of biased attitudes and decisions making their way into organizational and institutional models, practices, and policies. Systemic discrimination exists in many forms, including systemic racism, sexism, ableism, transphobia, homophobia, and other forms of human rights-based discrimination. A common example in our day-to-day lives is when police officers do a routine check and single out Black or racialized people.

Systemic discrimination is often detected by looking at a series of incidents to find a pattern. For example, people do not usually admit that their behaviour stems from discriminatory beliefs. That's why it can be difficult to spot. Whether it's an individual act or an organizational strategy, there must be a harmful effect on a specific group of people to establish systemic discrimination.

In employment, systemic discrimination prevents some groups of people from having the same job opportunities as others. This leads to precarious work, inequity, and a divided workforce. This type of discrimination is usually identified by measuring under-representation or over-representation of equity-deserving groups in certain workplaces, job categories, or employment statuses.



An example of systemic discrimination in the workplace is the persistent gender segregation across many occupations. This pattern stems from entrenched gender stereotypes, sexist attitudes, and unconscious biases rooted in traditional gender roles, all of which continue to shape workplace practices today. Similarly, Black and racialized workers continue to be overrepresented in precarious forms of employment and lower-paid job categories. This is not coincidental—it is the result of long-standing systemic inequities and structural barriers in the labour market.

Systemic discrimination and implicit biases perpetuate historical and ongoing inequity by excluding groups like Indigenous workers, women, Black and racialized workers, persons with disabilities, and 2SLGBTQI+ workers from benefits and opportunities. These workers have a harder time finding decent and fair work matching their skills and qualifications. They tend to be concentrated in lower-paid, precarious, and more hazardous jobs.

Employers have a responsibility to create inclusive, discrimination-free workplaces. Employment equity goes further by requiring employers to have policies and concrete actions directly aimed at removing barriers. While employment equity addresses all forms of discrimination, it is specifically designed to address systemic discrimination, making it a valuable tool.

CUPE focuses on five groups who have historically been denied equity and still face discrimination and disadvantages in our workplaces today: Indigenous workers, women, Black and racialized workers, persons with disabilities, and 2SLGBTQI+ workers.

This guide refers to *equity-deserving* groups since CUPE recognizes their inherent right to equity. You may also have heard the term *equity seeking*. However, this term implies that people who have been historically marginalized have to strive for equity, placing the responsibility on them to correct systemic inequities.

You can find a list of commonly used terms at the end of this guide.

What is employment equity?

Employment equity finds and eliminates workplace barriers for workers from equity-deserving groups. These barriers are caused by both systemic and indirect discrimination that are not always easy to spot.

Employment equity programs look for barriers to equity in workplace policies and practices like recruitment, hiring, promotion, training opportunities, working conditions, and more.

These programs help build and maintain a workforce that reflects the community. With employment equity, members of equity-deserving groups see themselves reflected in the workplace and work in a welcoming and inclusive environment where they can advance in their careers.

Employment equity identifies groups that have been denied fair job opportunities in the past, known as designated groups. The next step is to remedy that injustice and build a work environment that encourages members of these groups to stay and advance.

The term equity, diversity, and inclusion (EDI) is becoming more common in the media and among academics and social justice activists. Many employers and unions are using this term instead of specifically mentioning an employment equity plan in their collective agreement. These concepts can work together but are seen differently from a legal perspective.

Employment equity has legal meaning in many jurisdictions. It refers to language and requirements found in legislation and specifies five equity-deserving groups. EDI initiatives can be broader and are not accountable under the legal requirements of an employment equity plan.

This guide features collective agreement language that refers to an employment equity plan, an EDI policy or a strategy. We recommend working with your national representative to negotiate employment equity language. This ensures the employer follows their legal obligations and still lets your local create EDI initiatives that broaden the scope of your employment equity plan.

EMPLOYMENT EQUITY AND PAY EQUITY

Employment equity is different from pay equity, but the two are related. Employment equity builds representative workplaces that reflect the diversity of the communities they serve. Employment equity plans set hiring targets, eliminate barriers, and create policies, all with the goal of creating discrimination-free workplaces.

Pay equity ensures workers receive equal pay for work of equal value by closing the pay gap between predominantly male jobs and predominantly female jobs. This gap exists because jobs that are mostly done by women are undervalued. This is the result of systemic discrimination.

Why do we need employment equity?

Employment equity advances principles at the heart of our movement, and that benefit us all: solidarity, fairness, and collective action. We must use union principles to deal with the past and present impacts of colonialism, capitalism, sexism, patriarchy, and white supremacy in our workplaces. These systems of oppression have created a world where people have unequal opportunities and are treated unfairly because of who they are.

CUPE members are well placed to use employment equity to build equitable workplaces. The public and parapublic sectors play a critical role in advancing equity because they are large employers of women and other equity-deserving groups.[2] Keeping services public matters. CUPE's research shows privatization drives down wages, erodes working conditions,[3] and harms quality public services for Indigenous, Black and racialized workers and communities while also exposing these workers to racism.[4]

There are many reasons for employment equity. For example, although unions and feminist movements have won significant advancements, women still only earn 88 cents for every dollar earned by men doing the same job. Women are also more likely to work part-time, work in traditionally "female" professions, and shoulder an unequal amount of unpaid care work.[5]

Indigenous and immigrant women face even deeper economic injustice. In 2022, Indigenous women earned 20.1% less than Canadian-born men overall and 9.3% less than Canadian-born men when doing the same job. The same study found immigrant women arriving as adults earned 20.4% less than Canadian-born men doing the same job.[6]

2 Levac, Leah and Cowper-Smith, Yuriko for CRIAW, "Women and Public Sector Precarity: Causes, Conditions and Consequences." *Canadian Research Institute for the Advancement of Women*, April 25, 2016, http://www.criaw-icref.ca/images/userfiles/files/Women%20and%20Public%20Sector%20Precarity%20FINAL(1).pdf.

3 Canadian Union of Public Employees, "The Colour of Privatization: A CUPE Report on the Impacts of Privatized and For-Profit Services on Indigenous, Black and Racialized Workers and Communities." *Canadian Union of Public Employees*, 2024, https://cupe.ca/sites/default/files/colour_of_privatization_report_en.pdf.

4 Ibid.

5 Moyser, Melissa, "Measuring and Analyzing the Gender Pay Gap: A Conceptual and Methodological Overview." *Statistics Canada*, August 30, 2019, https://www150.statcan.gc.ca/n1/pub/45-20-0002/452000022019001-eng.htm.

6 Marie, and Mandana Mardare Amini. Intersectional Perspective on the Canadian Gender Wage Gap. Statistics Canada, 21 Sept. 2023, https://www150.statcan.gc.ca/n1/pub/45-20-0002/452000022023002-eng.htm

Black and racialized workers also experience economic injustice. A 2024 report found that racialized workers in Canada are less likely than non-racialized workers to belong to a union and face higher wage gaps depending on their sector of work. In addition, racialized women earn 59 cents for every dollar earned by non-racialized men, with Filipino and Black workers facing the largest wage gap among racialized workers.[7] This is an example of how Black and Filipino women face intersecting forms of discrimination because of their race and gender.

Workplace discrimination persists. The 2SLGBTQI+ Action Plan Survey conducted by the Government of Canada found that 45% of trans women and 47% of trans men faced harassment in the workplace due to their gender identity.[8]



Harassment is another major concern, and oppression is a root cause of harassment.[9] Racialized workers are more likely than white workers to report high levels of harassment, and the majority of workers targeted for harassment are women.[10]

Finally, employment equity can help tackle poverty by ensuring people from designated groups have access to stable and well-paying jobs with benefits. These are just some of the reasons to work for fairness and equity for all workers.

7 Ng, Winnie, Khan, Salmaan, and Stanford, Jim, "The Importance of Unions in Reducing Racial Inequality: New Data and Best Practices." *Centre for Future Work*, August 2024, https://centreforfuturework.ca/wp-content/uploads/2024/08/Union-Advantage-for-Racialized-Workers.pdf.

8 Government of Canada, "2SLGBTQI+ Action Plan Survey." *Government of Canada*, May 9, 2023, https://www.canada.ca/en/women-gender-equality/free-to-be-me/federal-2slgbtqi-plus-action-plan/survey-findings/quick-stats.html.

9 Canadian Union of Public Employees, "Workplace harassment and mental injuries: examining root causes." Canadian Union of Public Employees, November 2014, https://cupe.ca/sites/cupe/files/harassment_and_mental_injuries.pdf.

10 Ibid.

Where is employment equity in the law?

Employment discrimination is against the law in every Canadian jurisdiction. Federal and provincial governments have human rights laws that set a framework for employment equity work. But many provincial governments don't have specific employment equity legislation, so it's important to negotiate collective agreement language on employment equity. While some jurisdictions have detailed legislation, policies, or rules, we must work to ensure every province and territory has employment equity legislation that covers all workers.

Federal

The federal *Employment Equity Act*[11] recognizes women, visible minorities,[12] persons with disabilities and Aboriginal peoples[13] as the four designated groups covered under the *Act*.

A 2023 review[14] made comprehensive recommendations to update the language used in the legislation, including a CUPE proposal[15] to include 2SLGBTQI+ workers and update the language from Aboriginal to Indigenous workers and visible minorities to Black and racialized workers.

The *Act* covers federally regulated private and public employers with 100 or more workers. CUPE has 27,000 members working for federally regulated employers.

These employers include:

- The federal government
- Crown corporations
- Workplaces in the transportation sector, including airlines, ports, interprovincial railroads, and buses that cross provincial borders
- Telecommunications
- The Royal Canadian Mounted Police

The *Act* also covers provincially regulated employers or contractors doing business with the federal government under the Federal Contractors Program. These contractors must have 100 or more workers and be bidding on contracts worth more than $1 million, including taxes. Contractors must sign an agreement to implement employment equity.

11 *Employment Equity Act, S.C. 1995, c. 44.*
12 The *Act* uses the term "visible minorities." When not referring to the *Act*, CUPE uses the term "Black and racialized."
13 The *Act* uses the term "Aboriginal." When not referring to the *Act*, CUPE uses the term "Indigenous."
14 Blackett, Adelle, "A transformative framework to achieve and sustain employment equity – Report of the Employment Equity Act Review Task Force." *Employment and Social Development Canada*, December 2023, https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/employment-equity/reports/act-review-task-force.html.
15 Canadian Union of Public Employees, "Employment Equity Task Force report accepts CUPE's recommendations." *Canadian Union of Public Employees*, December 15, 2023, https://cupe.ca/employment-equity-task-force-report-accepts-cupes-recommendations-cupe.

Many Canadian universities are covered by the Federal Contractors Program and must have employment equity policies. CUPE represents 70,000 workers at universities and colleges across the country.

The federal *Act* makes employers responsible for implementing employment equity and sets out specific requirements. For example, employers must have an employment equity plan that removes barriers to employment for designated groups, with the goal of a representative workforce.

Under the *Act*, employers must take action on employment equity unless it would create an undue hardship, like a safety concern or significant financial costs. The *Act* also clarifies that employment equity plans do not force employers to hire an unqualified person or create new positions in their workforce.

CUPE locals in federally regulated workplaces must monitor whether the employer is, at a minimum, doing what's required by law on employment equity.

Provincial

Only British Columbia and Quebec have legislation requiring employers to take action on employment equity. In 1994, the B.C. NDP government amended the *Public Service Act* to include employment equity.[16] Quebec's law only applies to public and parapublic sector employers.[17]

Ontario is the only other province that had an employment equity law. An NDP government passed the law in 1993. A Progressive Conservative government repealed it two years later.

Manitoba's *Public Service Act* has principles about a representative public service but does not require an employment equity plan.

Most provinces have employment equity policies, even if there is no legislation. Manitoba has an employment equity policy.

16 Canlii, "Public Service Act" RSBC 1996, c 385, part 2 s5(3)(h) and part 3 s8(4)(a)., retrieved on February 26, 2026, https://canlii.ca/t/563q3

17 A-2.01 Act respecting equal access to employment in public bodies. Updated March 2025. https://www.legisquebec.gouv.qc.ca/fr/document/lc/A-2.01?langCont=en

New Brunswick, Nova Scotia, and Prince Edward Island have employment equity policies that are administered in partnership with provincial human rights commissions. New Brunswick's Equal Employment Opportunity program supports government departments hiring someone from a designated group by paying up to 50% of the salary, to a maximum of $20,000.[18]

The Saskatchewan Human Rights Commission offers a guide on employment equity plans.[19] Saskatchewan's commission can direct employers to implement an employment equity plan and is the only commission with this legal power. Other commissions can use what's known as a "special programs clause" to help develop employment equity programs where there is no provincial law. The next section discusses special programs.

Special Programs

Some human rights laws include a "special program" or "special measures" clause. This clause lets employers give disadvantaged individuals and groups of people preferential treatment if it removes or reduces barriers.[20] This is called an exemption.

For example, P.E.I.'s *Human Rights Act* states: "The Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved program shall be deemed not to be a violation of the prohibitions of this Act."[21]

Special programs can advance reconciliation. In the early 2000s, CUPE developed a Representative Workforce Strategy and signed over a dozen partnership agreements with employers in Saskatchewan to increase the representation of Indigenous workers in the health care sector.



18 Government of New Brunswick, Finance and Treasury Board, "Equal Employment Opportunity Program, Government of New Brunswick." *Government of New Brunswick*, https://www2.gnb.ca/content/gnb/en/corporate/promo/choose-gnb/equal-employment-opportunity.html.

19 Saskatchewan Human Rights Commission. "Employment Equity." *Saskatchewan Human Rights Commission*, 2026. https://saskhrc.ca/employment-equity/.

20 At the federal level, the disadvantages faced by a group must also have a connection to one of the prohibited grounds of discrimination in the *Canadian Human Rights Act*. See Canadian Human Rights Commission's report, "Levelling the field: Developing a special program or special measure under the Canadian Human Rights Act or the Employment Equity Act." *Canadian Human Rights Commission*. January 6, 2022. https://www.chrc-ccdp.gc.ca/resources/publications/levelling-the-field-developing-a-special-program-under-the-canadian-human.

21 Canlii, "Human Rights Act" RSPEI 1988, c H-12, s 20., retrieved on February 26, 2026. https://canlii.ca/t/52tgj.

Special programs can advance reconciliation. In 2020, Canada Post introduced the Indigenous and Northern Reconciliation Strategy. Developed in collaboration with Indigenous communities and unions, the strategy embeds Indigenous knowledge and practices into hiring and workplace culture.[22]

Some human rights commissions have an application form for employers requesting a special program exemption. The form from B.C.'s Office of the Human Rights Commissioner asks employers to list organizations that the special program affects, including workplaces where there are unionized workers. It also asks the employer to explain how these parties were consulted. CUPE locals should ensure they are consulted when their employer applies and should ask their national representative for support.

> Locals should generally not provide their employer with a letter of endorsement, even if their local supports the reasons for the employer's exemption request. This preserves your local's right to file a grievance if the employer misuses the exemption. Employers don't need union approval to get an exemption.

Locals can also advocate for community benefits agreements. These agreements help ensure benefits from public infrastructure projects flow to affected local Indigenous, Black, and racialized communities.[23] With the leadership of Indigenous communities and other affected communities, these agreements can advance economic justice, one of the Calls to Action of the Truth and Reconciliation Commission.

Find out about the employment equity obligations in your province. Check if your local could use your provincial human rights commission and existing legislation to push your employer to implement employment equity.

22 Canada Post, "Canada Post Introduces Indigenous and Northern Reconciliation Strategy", *Canada Post*. November 17, 2020, https://www.canadapost-postescanada.ca/cpc/en/our-company/news-and-media/corporate-news/news-release/2020-11-17-canada-post-introduces-indigenous-and-northern-reconciliation-strategy.

23 British Columbia was the first jurisdiction in Canada to adopt legislation implementing the *UN Declaration on the Rights of Indigenous Peoples*. In 2018, the province signed a Community Benefits Agreement with the Allied Infrastructure and Related Construction Council, a group of 19 unions, that has led to increased inclusion of Indigenous workers in projects.

Addressing common criticisms of employment equity

CUPE members advocating for employment equity may get questions or pushback from members or their employer. These reactions are based on a misunderstanding of what equity and equality mean.

The misunderstanding makes people think that equality is treating everyone the same, regardless of their individual circumstances. But substantive equality, as well as equity, take into account people's differences and experiences of inequality at work and in their daily lives.

Treating everyone the same can reinforce inequality. For example, failing to provide accommodations for a person's physical disability—such as hearing aids or an access ramp—can deny them access to opportunities, ultimately undermining their right to equality. Accommodations and similar measures are meant to modify workplace practices or policies to account for individual differences, rather than treating everyone the same.

> **Substantive equality** means recognizing and addressing historic and ongoing systemic disadvantages to ensure equitable outcomes. This may require different approaches or support. **Formal equality** refers to treating everyone the same, regardless of their differences or circumstances. Unfortunately, this approach ignores the effects of historical and systemic discrimination. Equal treatment doesn't always lead to equal outcomes. That is why at CUPE, we prioritize substantive equality.

This section debunks three common criticisms of employment equity: concerns about discrimination, seniority, and qualifications. It is important to address these concerns. When people do not have the facts, it can undermine solidarity. Unaddressed concerns can divide members. This creates a harmful work environment, especially for equity-deserving members.

Conversations about employment equity are an opportunity to organize members, build solidarity, and strengthen our power as workers. When some members face injustice, it hurts us all. Everyone benefits from a more diverse workplace that's welcoming and accepting. This strengthens the workplace as well as our union and the communities our members serve.

Concerns about discrimination

Some people criticize employment equity as discrimination. They argue that employment equity plans are unfair because they favour certain groups over others. But these requirements are part of a fair and just process that corrects past and ongoing wrongs.

It's unfair that people or groups have unequal opportunities at work because of their race, gender, sexuality, or disability. Employment equity identifies and corrects this discrimination and tries to level the playing field for everyone.

Seniority-based concerns

Some argue that employment equity threatens the principle of seniority by giving more weight to a job applicant's identities than to the seniority of other applicants. The goal of employment equity plans is to increase diversity and fairness in the workplace, not undermine seniority.

Employment equity programs support the principle of seniority. Seniority-based hiring requires that the successful candidate has the most seniority of all qualified applicants. However, this sometimes fails to consider other important factors such as lived experience and anti-oppression analysis. Employment equity programs build on this by ensuring that lived experience in an equity-deserving group is part of the equation when assessing the pool of qualified candidates. The person who gets the job is still the most senior candidate who is qualified for the position.

Employment equity and seniority principles share a common goal – to ensure that employment opportunities are unbiased and eliminate favouritism or discrimination.

Qualifications-based concerns

Some argue that employment equity programs mean unqualified people will be hired. These arguments rely on the assumption that a Black or racialized worker, an Indigenous worker, a woman, a 2SLGBTQI+ worker, or a worker with a disability is more likely to be unqualified for a certain position. That assumption is discriminatory.

Far too often, members of equity-deserving groups are overlooked for jobs even if they are the most qualified. This is exactly the problem that employment equity programs can fix.

Employment equity programs recognize that discrimination in the past still affects people today, allowing some groups to keep benefiting from unfair advantages.

For example, a study focusing on employers in Toronto, Montreal, and Vancouver found that job applicants with English-sounding names were more likely to be called back than those with Indian or Chinese names, even when qualifications were identical. The study suggests this gap comes from unconscious or "implicit" bias tied to assumptions about language, competencies and social skills.[24]

A similar study in Montreal by the Quebec Human Rights Commission found that job seekers with Québécois-sounding names were more likely to be invited to interviews than equally qualified candidates with African, Arab, or Latin American names. The results suggest that hiring barriers faced by racialized groups are not only about skills or credential recognition but also stem from employers' discriminatory—often unconscious—preferences.[25]

24 Dechief, Diane and Oreopoulos, Philip, "Why Do Some Employers Prefer to Interview Matthew, but Not Samir? New Evidence from Toronto, Montreal, and Vancouver." *SSRN Electronic Journal*, February 2012, https://doi.org/10.2139/ssrn.2018047.

25 La Commission des droits de la personne et des droits de la jeunesse. "The Commission des droits de la personne et des droits de la jeunesse measures discriminatory hiring practices: It's easier when your name is Bélanger, not Traoré." *Commission des droits de la personne et des droits de la jeunesse*, August 2012, https://www.cdpdj.qc.ca/en/news/the-commission-des-droits-de-l-67.

What can your local and the employer do?

Local union actions

- Negotiate and enforce employment equity language in the collective agreement.
- Push for a joint employment equity committee with the employer.
- Include equity-deserving members in committees and decision-making like bargaining, health and safety, and other joint employer-union groups.
- Bargain and enforce no discrimination collective agreement clauses, including anti-racism and no harassment language.
- File a systemic discrimination grievance if your employer discriminates in hiring and promotion. If you don't have anti-discrimination language in your collective agreement, ask your national representative how you can file a grievance or complaint.
- Require ongoing human rights and employment equity training for local officers and stewards.
- Ensure the employer obeys human rights and employment equity laws.
- Ensure the employer meets the requirements of any employment equity program in place and monitor progress.
- Advocate for new or stronger employment equity legislation.

Employer actions

Policies and education

- Conduct an employment system review, which is an in-depth analysis of the organization's employment systems, policies, and practices - formal and informal - as well as the way these are implemented. An employment system review helps capture the attitudes, behaviours, and culture of the workplace.
- Create an employment equity plan.
- Educate employees about employment equity so that misconceptions can be addressed.
- Provide sensitivity and anti-oppression cultural training for workers to help make the workplace more welcoming and inclusive.
- Implement anti-harassment and anti-racism programs and policies.
- Establish a monitoring and evaluation system to assess the effectiveness of the employment equity plan. This can be part of the role of the joint employment equity committee.

Hiring and job creation

- Fund training and apprenticeship positions.
- Introduce mentoring programs and bridging positions to help equity-deserving members get the qualifications and experience they need to advance.
- Hire a member of an equity-deserving group when qualifications and seniority are relatively equal in a job competition.
- Target outreach to equity-deserving communities. Post job ads in community media and, when possible, translate into multiple languages.
- Review the academic qualifications required for a job. "Bona fide occupational requirements" must not create unnecessary barriers for potential applicants.

Workplace changes

- Implement work-life balance policies like child care and elder care leave, flexible work hours, and flexible arrangements like job sharing and remote work.
- Introduce accommodation measures like cultural and religious leave.
- Provide paid leave for survivors of domestic violence and people seeking gender-affirming care.
- Provide gender-inclusive washrooms, facilities, and uniforms.
- Recognize there is more than one way of doing things. Be open to change.

STEP 1: Identify barriers in your workplace

Barriers in policies and practices exclude or harm people in equity-deserving groups. If you spot barriers like the ones in the checklist that follows, your local needs to negotiate employment equity language, examine the workplace carefully, and work to end inequities.

You can use the bargaining process to request information from the employer using disclosure obligations.

CHECKLIST: BARRIERS TO WATCH FOR IN A WORKPLACE SCAN

Recruitment practices do not attract diverse candidates

- ☐ The employer does not advertise the position widely and relies on word-of-mouth and/or personal relationships and connections. This can limit recruitment to people who are connected to current employees and may exclude equity-deserving groups. This is also an example of a systemic barrier.
- ☐ The job description imposes a requirement for Canadian work experience. This is a barrier for newcomers to Canada.
- ☐ Job qualifications require academic credentials that may not be necessary. This can exclude equity-deserving groups who are underrepresented in post-secondary institutions.

Hiring processes are biased

- ☐ The interview panel or committee reviewing applications is not diverse and not trained in equity and anti-oppression. This makes it more likely that unconscious biases will affect the process.
- ☐ The employer hires friends and relatives of people who already work there. This could be a sign to review the fairness of the employer's hiring practices.
- ☐ Interview questions are discriminatory, for example, asking women candidates if they plan to have children.

Equity-deserving members are in lower-paying jobs

- ☐ Jobs done mostly by women and other equity-deserving workers are paid less than comparable jobs held mostly by workers from non-equity-deserving groups.
- ☐ Equity-deserving workers are concentrated in the same job categories, also known as being pigeonholed. For example, most of the Black staff are cleaners, or they are assumed to take on all the equity roles.

Advancement pathways are unclear

- ☐ Equity-deserving workers are overrepresented in positions with little or no chance of advancement.
- ☐ When promotions are awarded, it is unclear what criteria was used and why.
- ☐ Managers make promotions based on their own preferences without a clear application or interview process.
- ☐ Pathways for workers' professional development are chronically under-resourced.
- ☐ Some unwritten norms and expectations are not communicated to workers yet affect their ability to advance or change roles.

Access to training and professional development is unequal

- ☐ Training is only offered in certain positions, and those positions tend to be male-dominated or "professional."
- ☐ Training is only offered outside work hours, and employees are expected to volunteer their time.
- ☐ Workers are not reimbursed for the cost of training and professional development they take.

Working conditions for equity-deserving members are not addressed properly

- ☐ Allegations of racism, harassment, and discrimination are not taken seriously.
- ☐ Incidents of racism, bullying, and harassment are not treated as workplace health and safety issues.
- ☐ There are patterns of employees leaving the workplace, especially equity-deserving workers.
- ☐ There are no gender-neutral washrooms.
- ☐ Workers do not have access to gender-affirming care leave.
- ☐ Workplace buildings are inaccessible to persons with disabilities.
- ☐ Social events only take place at bars and in the evenings, excluding workers who do not consume alcohol or have family obligations.
- ☐ There are no cultural and religious leave options. Indigenous workers must use their vacation leave to attend cultural ceremonies and events.

STEP 2:
Negotiate an employment equity clause in your collective agreement

Once you have identified workplace barriers, you are ready to negotiate collective agreement language about employment equity.

> The best employment equity plans are developed collaboratively in a joint committee, with the active participation of union members. These plans include the voices of members who have lived experience with systemic discrimination and empower them to create meaningful change. Your local should ensure that any plan follows the collective agreement.
>
> However, the employer does not need union consent to develop and carry out an employment equity plan. While your local should always assert the right to be consulted on employment equity initiatives, it's the employer's duty to carry out the plan. Your local should not specifically endorse any plan that has not been developed collaboratively. This protects your local's ability to grieve violations of the collective agreement.

What to include in an employment equity clause:

- ☐ Policy statement or statement of commitment to employment equity (including the purpose and objectives of the program).
- ☐ Provision for a joint union/management employment equity committee, including committee mandate.

This section has examples of minimum standards for this language. Note that some of the terminology does not reflect CUPE's current practice when describing equity-deserving groups. There are also references to EDI. It is preferable to use the term *employment equity plan* because this term has legal meaning in many jurisdictions. We encourage you to discuss the current terminology with your national servicing representative when negotiating language.

Policy statement/Statement of commitment

The Policy statement or Statement of commitment clause states that the union and the employer will design and put in place an employment equity program. It may also set out the program's principles.

> **The collective agreement between CUPE 500 and the City of Winnipeg (2021-2025) includes the following Letter of Understanding text:**
>
> The City and the Union agree to cooperate in creating a diverse workforce that is inclusive of all employees.

Purpose

The purpose or objective clause outlines the goals of the employment equity program. It describes the inequity that the employment equity plan aims to correct. It might also cover the importance of non-discrimination, the goal of increasing representation in the workforce, or the objective of removing barriers for equity-deserving groups.

> **The collective agreement between CUPE 500 and the City of Winnipeg (2021–2025) includes the following Letter of Understanding:**
>
> The objectives of the EDI policy and strategy include the following:
>
> a) to ensure that current and future employment systems are non-discriminatory;
>
> b) to redress disparities in the City's present workforce distribution, thus pursuing a workforce composition which reflects workforce availability of equity group members in the City of Winnipeg; including the active recruitment and hiring of equity group members; and
>
> c) to prepare the organization for the increasing role equity group members will play in the workforce.

Joint Employment Equity Committee

An employment equity clause should establish a joint union/management employment equity committee. The committee makeup depends on the workplace. If multiple unions are involved, they can work together to bargain similar language, setting up a committee.

The collective agreement between CUPE 1949 and Saskatchewan Legal Aid Commission, Saskatchewan (2022-2025) includes the following clause:

A Joint Employment Equity Committee comprised of two representatives of the Commission and two representatives of the Union shall be struck. The salary and expenses of the two Union representatives for meetings of the Joint Employment Equity Committee shall be paid by the Commission. The Joint Committee shall meet and develop an Employment Equity Program. The Committee will obtain approval of the program by the respective parties and will then jointly seek the approval of the Saskatchewan Human Rights Commission.

Mandate of the joint committee

The collective agreement must have a clear mandate for the committee. This includes terms of reference or guiding principles that describe the committee's purpose, makeup, scope, term, and frequency of meetings. The terms of reference should include a clear plan for taking, preparing, and sharing meeting minutes.

The 1997 terms of reference of the Joint Employment Equity Committee between CUPE 500 and the City of Winnipeg states that:

The Committee is mandated to:

1. Analyze the representation and distribution of employees covered by the CUPE bargaining unit to identify areas of under representation.
2. Examine current employment systems to identify possible systemic discrimination.
3. Make recommendations where required to the respective parties on all elements normally associated with an Equity and Diversity Initiative, including:
    a) the elimination of systemic and employment barriers;
    b) the establishment of objective and non-discriminatory employment systems;
    c) the setting of goals and timetables for the program;
    d) the development of special measures to redress past and present employment barriers; and
    e) the development of policies that support achievement of goals.
4. Monitor and evaluate the progress of the program.
5. Co-ordinate educational sessions on equity and diversity directed at all employees.

Submit a report on the program annually to senior administration and the executive of CUPE Local 500.

It is critical that a joint employment equity committee have equal representation from the employer and the union. Like joint health and safety committees, your local will choose the worker representatives.

The collective agreement between CUPE 926 and Wilfrid Laurier University (2024–2027) includes the following clause:

Article 28.01

The Union will have the right to appoint one (1) representative to the University's Employment Equity Advisory Committee. The parties agree to work together, through the Committee to:

(a) Advise the President and the Union concerning the realization of the commitment to non-discrimination and equity in employment of members of the equity-deserving groups;

(b) Identify any artificial or systemic barriers in recruitment, employment, and promotion policies and procedures that discriminate against members of the equity-deserving groups;

(c) Identify and recommend measures to increase the representation of members of the equity-deserving groups where such are found to be under-represented;

(d) Receive and review reports on matters pertaining to equity issues at the University and the reports of the Employment Equity & Accessibility Officer;

(e) Review on an on-going basis, employment equity plans at other universities in Canada; and

(f) Provide copies of all Committee reports and recommendations to the Union.

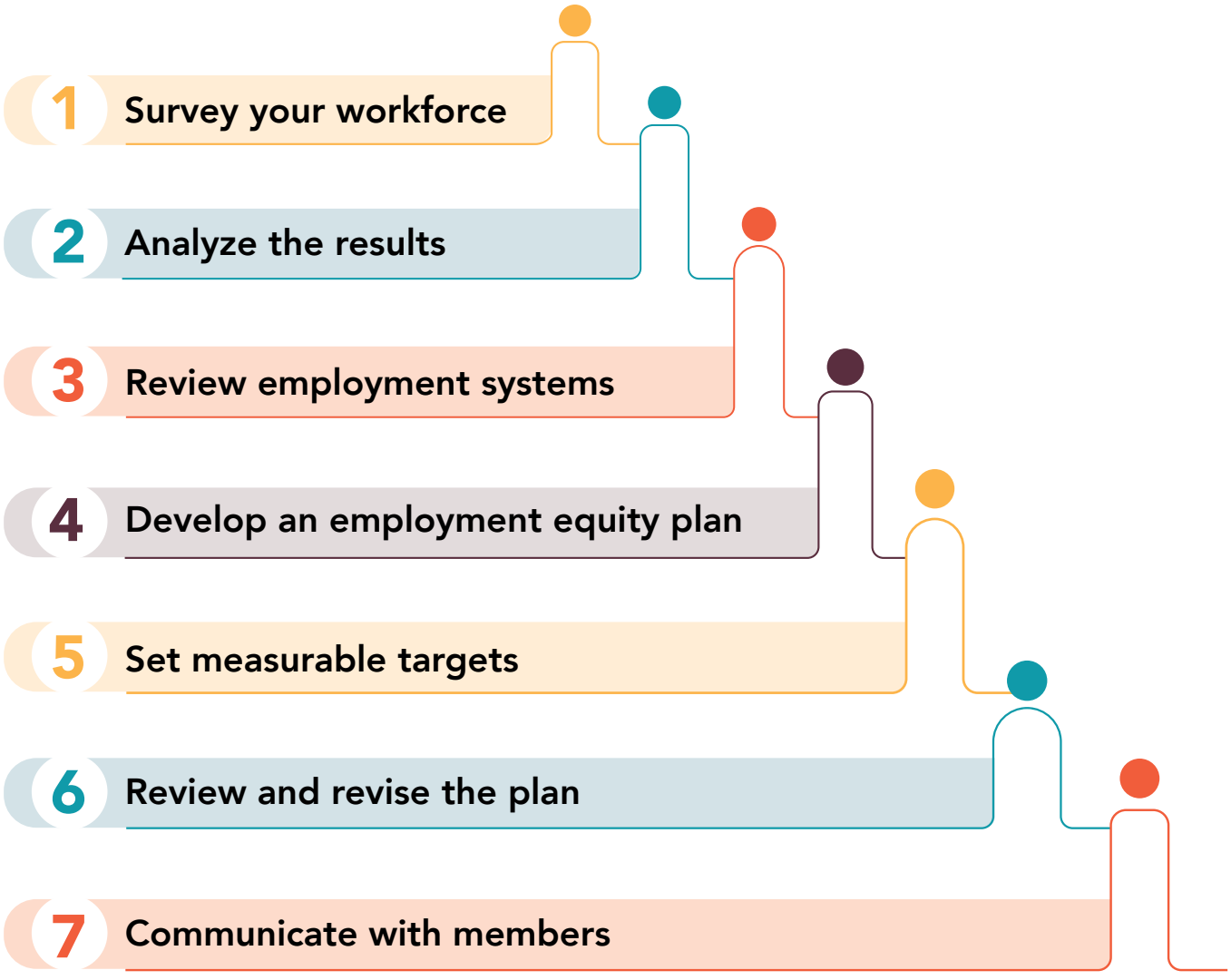
Whenever possible, your local should appoint committee members who are women, workers with disabilities, Black and racialized workers, Indigenous workers, and 2SLGBTQI+ workers.

At the end of this guide, you'll find more examples of employment equity collective agreement language that CUPE locals have negotiated.

STEP 3:
Develop and carry out an employment equity plan

Once your local has negotiated employment equity language, the joint committee can get to work. An important first step is analyzing the workforce to see if CUPE's five designated groups are underrepresented. This can be done through internal surveys that gather demographic data in your workplace, as well as a review of government census data and other statistics.

The joint committee should identify any unfair practices or employment barriers – both formal and informal. This is part of an employment systems review. The employment equity plan should aim to remove these barriers. The employer must clearly communicate the plan to all members and develop ways to gather feedback and revise the plan.



CHECKLIST: STEPS FOR A JOINT EMPLOYMENT EQUITY COMMITTEE

1 Survey your workforce

- ☐ Collect information on how the designated groups are represented in each occupational group.

2 Analyze the results

- ☐ Review the survey results to see if the workplace reflects the community.

3 Review employment systems

- ☐ Look at systems, policies, and practices to identify employment barriers and discrimination against members of designated groups. The review should cover:
  - recruitment
  - selection
  - job classification (including wages, benefits, part-time and casual designation)
  - promotion
  - training
  - working conditions, including workplace culture

4 Develop an employment equity plan

- ☐ Develop a plan with concrete actions that addresses the needs of CUPE's five designated groups. These are known as positive measures.
- ☐ Identify designated groups (women, Black and racialized workers, Indigenous workers, workers with disabilities, and 2SLGBTQI+ workers).
- ☐ Take concrete steps to treat designated groups equitably, including:
  - mentoring and bridging programs
  - flexible hours of work that help include designated groups
  - policies and practices that increase accessibility and provide adaptive devices for persons with disabilities
  - occupational requirements that are bona fide (necessary for the job)

5 Set measurable targets

- ☐ Set concrete goals for each designated group. These goals should make the workforce better represent the community, including in leadership positions.
- ☐ Set a timeframe to reach goals. List short and long-term goals.

6 Review and revise the plan

- ☐ Build in ways to get feedback and regularly review and update the plan. Under federal employment equity law, plans must be reviewed every five years.

7 Communicate with members

- ☐ Communicate with members regularly. Start before you bargain for employment equity language.
- ☐ Use consultations, education and training, and conversations with members to share plan details and build an inclusive and welcoming environment. Talk about why the plan is needed, what it covers, and how it will roll out.

Conclusion

Employment equity is a powerful tool to dismantle systemic discrimination in the workplace. These systems of discrimination come from centuries-old patterns of domination and exclusion. Sexism, ableism, colonialism, racism, homophobia, and transphobia are still realities in our workplaces and the labour market.

Employment equity takes a deliberate, long-term, system-wide approach to ending systemic discrimination. Using this guide, CUPE locals can break down barriers and ensure equity-deserving workers have fair access to jobs in welcoming and supportive workplaces.

Together, we can use employment equity to build equitable workplaces free from discrimination, where equity-deserving workers are encouraged to stay and have access to training and career development, and where persons with disabilities are accommodated.

Everyone benefits when our workplaces reflect our communities. Employment equity ensures fairness and human rights in employment, and it builds CUPE's diversity and strength.

As CUPE members, we have the power to bargain for employment equity and advocate for inclusive workplaces. Let's get to work.

Commonly used terms

Bias: A belief that prejudices some people or groups over others. Biases can be conscious or unconscious. A conscious bias is one that a person is aware they hold. An unconscious bias is internalized over time, and the person is not aware that they hold it.

Implicit bias: A preference or inclination, sometimes unconscious, that is developed through beliefs, values, culture, background, education, societal norms, stereotypes, or personal experiences. This bias can prefer or distinguish individuals or groups because of their race, colour, descent, national or ethnic origin, class, religious beliefs, age, able-bodiedness, sexual orientation, gender identity and expression, sex characteristics, and other such traits.

Bona fide occupational requirement: A job qualification, rule, or other factor that is necessary to do a particular job. The Saskatchewan Human Rights Commission uses this example: a taxi driver must have good eyesight to do what the job requires, which is to hold a driver's license and be able to drive a car that transports passengers.

Designated group: A group of people or a community chosen for employment equity initiatives because they face systemic barriers to employment and advancement.

Employment equity: A process that an employer can use to identify and eliminate discrimination in recruitment, hiring, working conditions, promotion, and training. The goal of employment equity is to ensure a diverse workplace that represents the community and is free of barriers.

Equity, diversity, and inclusion (EDI): A broad employer policy or strategy that covers all aspects of diversity. EDI focuses on making the work environment welcoming and inclusive, while employment equity focuses on representation in the workforce and removing systemic barriers. Employment equity legislation provides a targeted approach to increasing representation in the workforce that includes regular reporting by the employer. EDI policies are not bound to the same degree of accountability. Both can co-exist in a workplace, but locals should negotiate an employment equity plan as the foundation for an EDI policy.

Equity-deserving: Equity-deserving, equity-denied, or equity-seeking are all terms to describe groups of people who face barriers and discrimination because of longstanding social and economic barriers, known as historical disadvantages. CUPE uses equity-deserving because we recognize their inherent right to equity. The term *equity seeking* implies that people who have been historically marginalized have to strive for equity, placing the responsibility on them to correct systemic inequities.

Equity in the workplace: The principle that all workers must be treated fairly and have equal opportunities to advance. Employment equity plans take concrete action to address unfair treatment and limited access to advancement that affect some groups of workers more than others.

Historically disadvantaged: A term describing groups that have faced social and economic barriers throughout history in some societies. These barriers are based on characteristics such as gender, ethnicity, or nationality. For example, men as a whole have accumulated more power and wealth than women throughout history. In Canada, white people as a whole have accumulated more power and wealth than Indigenous, Black, and racialized people throughout history.

Joint employment equity committee: A group set up by the employer and the union to oversee the rollout of an employment equity plan.

Reverse discrimination: The incorrect belief that supporting the advancement of historically disadvantaged groups is unlawful discrimination against groups that hold power and privilege in society. This belief can be found in anti-gender, anti-feminist, and white nationalist movements, among others. For example, anti-feminists argue that supporting the advancement of women in society discriminates against men.

Systemic discrimination: Discrimination that is embedded in the policies and practices of our institutions and systems. Systemic discrimination includes systemic racism, sexism, ableism, transphobia, homophobia, and other forms of human rights-based discrimination. This form of discrimination happens when laws, rules, policies, or practices in our workplace, union, and communities negatively impact participation or advancement, or deny equality for certain groups of people. Sometimes it's unconscious or unintentional, and it may go unnoticed by anyone except its target.

Sample employment equity collective agreement language

Note that some of the terminology does not reflect CUPE's current practice when describing equity-deserving groups. There are also references to EDI. It is preferable to use the term used in the legislation applicable to your workplace. We encourage you to discuss the current terminology with your national servicing representative when negotiating language.

CUPE 7 and City of Regina, Saskatchewan, 2022–2024

ARTICLE 23 — WORKFORCE DIVERSITY

23.1. The parties are committed to Employment Equity and the joint development, education, promotion, implementation, monitoring, evaluation and updating of the Employment Equity plan as negotiated between the parties, and approved by the Saskatchewan Human Rights Commission.

CUPE 3851 and Nelson House, Ottawa, Ontario, 2024-2027

Article 4.04 — Employment Equity

a) Employment Equity Mission Statement

Nelson House recognizes:

That societal oppression is systemic and is maintained and manifested within relationships between individuals and groups; this prevents certain marginalized groups from fully participating within society.

The links between woman abuse and other forms of oppression experienced by women and children; and how multiple oppression further impacts the way women are treated by our health, legal, law enforcement, regulatory and social welfare systems.

Furthermore, Nelson House acknowledges that as a result of societal oppression, diverse groups of women have been prevented from participating and/or do not feel welcome to participate in many women's organizations.

In accordance with values of social justice and accountability to the community, Nelson House is committed to providing services which reflect and support the demographics of its catchment area.

Nelson House staff must be representative of community diversity; and have the sensitivity necessary in order to work effectively with diverse groups.

b) Promotion of Employment Equity

Nelson House shall promote employment equity through the following actions:

- hiring women from traditionally excluded groups;
- recruiting women from traditionally excluded groups as volunteers (including Board members);
- providing training to Nelson House employees which will sensitize and educate employees in regards to identifying and confronting their own bias and the bias of others;
- ensuring the location (the shelter and outside meeting space where possible) is physically accessible and has a welcoming decor;
- the dissemination of material that reflect the diversity of the catchment area (e.g. diverse languages, issues);
- active networking and information sharing with local organizations whose services are aimed towards traditionally excluded groups;
- implementation of anti-harassment policies, with the intent of protecting Nelson House members from abusive treatment;
- promotion of the commitment of Nelson House to diversity within the catchment area;
- the parties agree to work together to identify and remove systemic barriers that stand in the way of employment equity.

Traditionally excluded/oppressed groups include but may not be limited to: racialized women, persons with disabilities, Indigenous people, immigrants and refugees, LGBTQ2IA, women who have been in conflict with the law, seniors, Francophones, and people with low-income.

CUPE 998 and Manitoba Hydro, Manitoba, 2025–2027

Article 6 – Employment Equity

C6.1: The parties agree to work co-operatively to identify and remove systemic barriers to stable long-term employment in order to facilitate equitable participation of qualified women, persons of Aboriginal ancestry, persons with disabilities, and members of visible minority groups in Manitoba Hydro's workforce.

C6.2: The posting of all positions as provided in Article E1 is contingent upon this Employment Equity language remaining in effect.

C6.3: The parties will discuss, with the aim of reaching mutually acceptable solutions, such employment equity issues that may arise.

C6.4: The Union will suspend the posting and selection procedure of the collective agreement in favour of the following arrangement:

a) Union and Management will establish a joint advisory committee of equal representation which will develop placement criteria for this program.

b) The Corporation will identify to the committee, vacant positions which it proposes be filled through this program.

c) The Corporation will provide the committee with information on the Corporation's ongoing efforts to facilitate employment equity and will exchange information concerning recruitment practices, selection standards, working conditions and training.

d) The Corporation, in consultation with the Union, will, through this committee:

   i. Establish the number of vacancies to be utilized for employment equity.

   ii. Establish specific time frames where the appointment to the position is of a temporary nature.

   iii. Develop a procedure to rotate employment equity positions to ensure that a job is not permanently or indefinitely removed from the Union's job pool.

   iv. Receive input from the Union concerning members of the Union who might qualify for inclusion in the program.

e) Individuals may be hired who can perform only a portion of the duties of a classification. The parties agree to establish a rate of pay which will reflect the work the applicant is capable of performing. Any further salary adjustments will require bargaining unit concurrence.

Pre-Placement Training Programs

C6.5: The general purpose of pre-placement training programs is to provide on-the-job training and orientation to prepare employment equity designated group candidates for entry-level positions and training programs. The training period will be dependent upon the nature, extent and rate of growth of the trainee's job-related skills. There will be no guarantee of employment beyond the pre-placement training. Dependent upon requirements, trainees may be hired for regular employment in accordance with established hiring practices for the various classifications.

C6.6: Participants in a program will be a supplement to Manitoba Hydro's normal work force requirements.

C6.7: With the exception of the initial period of job readiness training (to be determined at the inception of the program), participants will normally work the hours and schedule established for the location and the work group to which they are assigned.

C6.8: All terms and conditions of the collective agreement will apply to the participants with the following exceptions:

a) Time accumulated during pre-placement training will not count toward completion of probationary periods or union seniority except that:

   i. If a participant successfully completes a program and, within 12 months after completion is employed in a related job or accepted into a related regular training program, the participant will receive credit for the time spent in the program for the purpose of completing the probationary period and union seniority accrual.

b) If a participant successfully completes a program and, within 12 months of completion is employed in a related job or accepted into a related regular training program, the participant may receive credit for time spent in the program for the purpose of future progression. The amount of credit will be determined by the circumstances of the specific program.

c) Participants will be paid an appropriate hourly rate of pay during the entire pre-placement training. The rate will be determined by the circumstances of the specific program.

d) Participants will not be subject to displacement or bumping under the terms of Article I 2 of the Collective Agreement during the pre-placement training.

On-The-Job Training Programs

C6.9: The parties agree to work cooperatively in removing systemic barriers to employment for all employment equity groups through on-the-job training programs.

C6.10: Bargaining unit concurrence will be required for any new programs being initiated.

C6.11: Each program will provide for up to 6 hourly term employees with each requirement to be for a period of up to 1 year effective upon the date of hire.

C6.12: Individuals employed under these programs will be subject to the terms and conditions of the Collective Agreement between CUPE Local 998 & Manitoba Hydro with the following exceptions:

1. As the programs are dependent upon the funding received, individuals employed under these programs will not be subject to displacement or bumping under the provisions of Article I 2 of the Collective Agreement for a period of 1 year from the date of hire. Individuals employed under these programs shall not accrue union seniority with respect to bumping and/or displacing other Manitoba Hydro employees during the 1 year term.
2. Any union seniority accrued during employment with Manitoba Hydro for employees in these programs shall be recognized for job selection purposes, however, prior to any appointment to temporary positions without posting during the term, concurrence must be received from the Union.
3. If employees in these programs have not secured alternate employment during their 1 year term, their employment will be terminated following expiration of their 1 year term.

4. Following the expiration of the program and provided that employees in these programs have not secured permanent employment, they shall be given first consideration for any vacancies for which they are qualified, ahead of external applicants. This consideration shall extend for 12 months beyond the expiry of the program.
5. The Union will be notified prior to any individuals commencing employment under these programs and any placements following their initial term.

CUPE 1871 and Saskatchewan Human Rights Commission, SK, 2017–2022

Article 31 — Employment Equity Program

31.01: Both parties agree to develop and implement a comprehensive employment equity program designed to eliminate systemic discrimination and reduce the underrepresentation of designated groups. This plan shall conform with the requirements set out under Section 47 of *The Saskatchewan Human Rights Code*. A joint Union/management committee shall be struck to oversee the implementation of the Employment Equity Program and to monitor the progress of the Employment Equity Program, as per Article 8.02 a). The work of the Committee shall be subject to the following conditions and to Article 8.03 a):

a) The Committee shall meet at least four (4) times a year, with the first meeting taking place no later than ninety (90) days after the signing of this Agreement.

b) Committee members shall attend Committee meetings and carry out Committee work during work hours without loss of pay.

c) Any elements of the plan which interfere or alter any of the Articles set out in this Collective Agreement, shall first be submitted to the Employer and the Union membership for ratification before incorporating into the plan, subject to the Commission authorizing any changes to the existing approved plan.

CUPE 79 and the Toronto Community Housing Corporation, 2020-2024

Article 37 — Employment Equity/Diversity

37.01 The Union recognizes TCHC's Workplace Diversity Policy which supports creating a workforce which is reflective of the City of Toronto's diversity. To better reflect the communities we serve, the parties agree to work in partnership in order to eliminate barriers to recruitment, hiring, promotion and retention and ensuring balanced representation of all groups at all levels of the organization.

The parties will meet no later than one hundred and twenty (120) days following ratification to discuss and engage in the development and implementation of a workforce equity and inclusion plan for TCHC with the shared goal of creating working conditions that are free of barriers, to remedy conditions of disadvantage in employment, and promote the principle that employment equity requires special measures and accommodations where necessary for Indigenous Peoples, Black People, Racialized People, Women, LGBTQ2S+ and Persons with Disabilities.

The parties further agree to discuss youth and persons protected under the Human Rights Code who are seeking equitable treatment in the workplace. Priority items for discussion and development shall include, but not be limited to:

a) TCHC-wide promotion and retention system;

b) Increasing the range of opportunities for permanent jobs as it pertains to identified groups;

c) Ensuring access to employment opportunities for all employees of the TCHC accompanied with achievements and a methodology for measuring and monitoring outcomes and progress;

d) Ensuring access to workplace accommodations;

e) Improving training and development opportunities including access for all employees with a particular focus given to the identified groups;

f) Promotion as opposed to alternate rate;

g) Recognizing equivalents to academic credentials, and/or workplace experience;

h) Career Planning and advancement;

i) Career related leaves and educational opportunities.

CUPE 3903 Unit 3 and York University, Ontario, 2023–2026

5.04 EMPLOYMENT EQUITY COMMITTEE

5.04.1 Employment Equity Committee

a) The Union and the Employer agree to continue to maintain an Employment Equity Committee, which will consist of three representatives of each party, including a senior designate of the Office of the Vice-President Equity, People and Culture and the CUPE 3903 Staff Representative Equity. The Committee may invite additional participants. A representative of each party shall be designated as joint Chair and the two persons so designated shall alternate in the Chair. Either Chair may call meetings on at least two weeks' notice to the other members of the Committee. Where possible, Equity Groups identified in Article 5.03.3 may be included among the representatives.

b) The Employment Equity Committee's mandate will include setting goals and timetables for the elimination of discriminatory practices and systemic barriers to equal opportunity. Issues to be addressed will include recruitment of employees, selection procedures, job postings, Employer required and provided training, salaries and benefits, and working conditions (including accommodation for persons with disabilities).

c) Further to its mandate as set out at Article 5.03.1 (b) above, the Employment Equity Committee in consultation with the parties, will review and make recommendations in respect of the Employment Equity Plan for approval by the Parties. The Employment Equity Plan will address the removal of employment barriers in order to achieve the ultimate goal of fair representation of Equity Groups as defined at 5.03.3(a).

d) By March 1 each year the Employment Equity Committee shall report to the Labour Management Committee on its activities and provide any recommendations for the consideration of the Labour Management Committee.

e) Pursuant to its mandate, the Employment Equity Committee will have access to the non-confidential findings of Internal Self-identification Representation Data defined in Article 5.03.3(e) below. The Internal Self-Identification Data will be correlated with employment-related information, including number of positions held, position type, and salaries for purposes of reporting to the Employment Equity Committee.

f) Pursuant to its mandate, the Employment Equity Committee may have regard to other sources of external data to review representation thresholds, including the General Workforce Population Equity Group Data in Article 5.03.3(d).

g) Pursuant to its mandate given representation thresholds achieved within the bargaining unit, the Employment Equity Committee may consider whether to recommend to the parties and recommend, as part of its annual review of the Employment Equity Plan, that the parties aim for a higher goal than currently prevails.

h) Intentionally Deleted Applicable only to Unit 2.

i) All data handled by the Employment Equity Committee will be in accordance with relevant privacy statutes.

j) Where issues of interpretation, data or process arise, the parties will review these at the Employment Equity Committee.

CUPE 3338 and Simon Fraser University (Clerical), British Columbia, 2022–2025

7.07 — Employment Equity

The University and the Union are committed to Employment Equity and furthering the progress of the University's Employment Equity program.

The Employment Equity program will not abrogate collective agreement provisions between the University and the Union.

The Union shall have a representative on the University's Employment Equity Advisory Committee.

CUPE 1281 and the Guelph Resource Centre for Gender Empowerment and Diversity (Guelph University), Ontario, 2015–2019

Article 15 — Hiring, Promotions and Staff Changes

15.01 Employment Equity

15.01.1 The Employer and the Union agree on the following and believe:

a) that we live in a society rooted in oppression,

b) that structural injustice and unconscious prejudice influence our experiences and the decisions that we make,

c) that there is no such thing as a "level playing field" with regards to people's experience and job qualifications and methods of evaluating the above,

d) that any progressively-oriented organization has a need for experience, knowledge, and guidance from oppressed people, especially in the case in which oppressed people are currently underrepresented within the culture of such an organization,

e) that policies such as employment equity policies exist to address and compensate for the above dynamics and to help the Employer identify the best candidate for a job based on qualifications and considerations which are not always easily represented in a traditional resume or job application.

Therefore, GRCGED encourages members from oppressed communities, such as aboriginal people, immigrants, members of non-dominant ethnic, linguistic, religious and/or cultural groups, people of colour, people with disabilities, people living in poverty, queer people, refugees, single and sole-support parents, transgender, transsexual and gender-queer people and working class people to apply and to identify as an employment equity candidate in their cover letter.

All job postings shall consider the ability to uphold the GRCGED vision and basis of unity as a required qualification as well as the ability to work within an anti-oppressive environment. All candidates who identify under employment equity and who meet the required qualifications for the job shall be shortlisted for an interview.

The GRCGED shall recognize non-formal experience and education as being equally valuable to formal education and work. The GRCGED shall also consider the candidate's ability to address oppression within the GRCGED.

Where two or more candidates are equally or equivalently qualified for a job, priority will be given to a candidate who qualifies under employment equity.

Where no employment equity candidates are considered qualified for the job but two or more candidates are equally or equivalently qualified, priority will be given to the candidate who the hiring committee believes can best uphold the GRCGED vision and basis of unity, work within an anti-oppressive environment, and work with oppressed communities, especially those currently underrepresented at the GRCGED.

15.01.2 The GRCGED shall therefore abide by the Employment Equity Policy outlined in 15.01.1 and shall include it in all job postings.

CUPE 5259 and Community Living Lanark Association, Ontario, 2024–2026

Article 4 — Discrimination, Harassment and Employment Equity

4.01 Community Living Association (Lanark County) is committed to providing a respectful working environment in which all individuals are treated with respect and dignity. All employees have the right to freedom from harassment in any CLA workplace. The harassment of any employee constitutes serious misconduct and will be subject to disciplinary measures.

The Employer and the Union agree that there shall be no discrimination or harassment, interference, restriction, or coercion exercised or practiced with respect to any employee and/or potential employee in the matter of hiring, wage rates, training, upgrading, promotion, transfer, layoff, recall, discipline, discharge or otherwise on the basis of enumerated in the Ontario Human Rights code, as amended from time to time, specifically by reason of age, race, ancestry, creed, colour, national origin, political or religious affiliation, sex or marital status, sexual orientation, family status and number of dependents, mental or physical disability or membership in the Union.

4.02 There shall be no retaliation against anyone who makes a complaint in good faith or cooperates in the investigation of a complaint of harassment. Anyone who files a complaint in bad faith or for vexatious purposes will be subject to disciplinary action.

CUPE 15 and City of Vancouver Parks Board, British Columbia, 2023–2024

Schedule "G"
Employment Equity

A. The Employer and the Union agree to indicate their support of Employment Equity by agreeing to the following:

(1) The Employer will provide, subject to budgetary restrictions, training on diversity, equity, inclusion and reconciliation to departments on an as-requested basis.

(2) The Union agrees to support Employment Equity programs, including financial support.

(3) The Union agrees to support employees learning on diversity, equity, inclusion and reconciliation, including reinforcing key messages when possible.

(4) The Employer and the Union agree with such on-going concepts as outreach into Indigenous, immigrant and other communities that may be underrepresented in the workforce.

(5) The Employer and the Union agree, as part of a rehabilitative program in conjunction with CUPE Local 1004, to discuss retraining options, alternate employment opportunities, waiving of seniority and posting requirements, and crossing jurisdictional boundaries for employees who are unable to perform their jobs as a result of becoming "persons with disabilities".

B. Employment Equity Committee

The Employer, CUPE Local 15 and CUPE Local 1004 agree to participate in a committee to review matters related to Employment Equity including, but not limited to, the review of specific job classes which are under-represented by women, gender diverse people, Indigenous and racialized people, and persons with disabilities. Where there is mutual agreement, such under-represented positions may be posted externally and internally at the same time.

CUPE 926 and Wilfrid Laurier University, Ontario, 2024–2027

Article 28 — Employment Equity

Article 28.01

The University and Union agree to remain committed to providing equitable employment opportunity to all individuals and a workplace environment that is free of discrimination as stated in Article 4.03 and to provide equity in employment for those who identify as Indigenous, women, racialized, having disabilities, and persons in a sexual and/or gender minority; herein after referred to as the "equity-deserving groups."

The University agrees to continue to staff the position of Employment Equity & Accessibility Officer, reporting to the President or designate, to assist the University in fulfilling its commitment as stated in this Article.

The Union will have the right to appoint one (1) representative to the University's Employment Equity Advisory Committee. The Parties agree to work together, through the Committee to:

a) Advise the President and the Union concerning the realization of the commitment to non-discrimination and equity in employment of members of the equity-deserving groups;

b) Identify any artificial or systemic barriers in recruitment, employment, and promotion policies and procedures that discriminate against members of the equity-deserving groups;

c) Identify and recommend measures to increase the representation of members of the equity-deserving groups where such are found to be under-represented;

d) Receive and review reports on matters pertaining to equity issues at the University and the reports of the Employment Equity and Accessibility Officer;

e) Review on an on-going basis, employment equity plans at other universities in Canada;

f) Provide copies of all Committee reports and recommendations to the Union.

The Union appointees will be provided with the following:

a) Time off with no loss of compensation and benefits to attend all meetings of the Committee, subcommittees, or working groups formed by the Committee; if additional time is warranted and recommended by the Employment Equity & Accessibility Officer, it will be granted subject to the approval of the Chief Human Resources and Equity Officer.

b) Support of the Employment Equity & Accessibility Officer in the discharge of their responsibility.

Annually the University will provide the Union with the employment equity report.

CUPE 3876 and Annapolis Valley Regional Centre for Education, Nova Scotia, 2024–2026

Letter of Understanding

Re: Employment Equity

The participating Education Entities and the participating Locals of the Nova Scotia School Board Council of Unions recognize the diverse communities served by the participating

Education Entities. The composition of the workforce should reflect the diversity of these communities. To that end, the parties agree as follows:

a) The Education Entities will develop an Employment Equity Program which ensures that employment barriers and systematic discriminatory practices are identified, and strategies developed and implemented to achieve a fair and reasonable representation of diverse applicants. The Education Entities will consult with its CUPE representatives in the development of this Employment Equity Program.

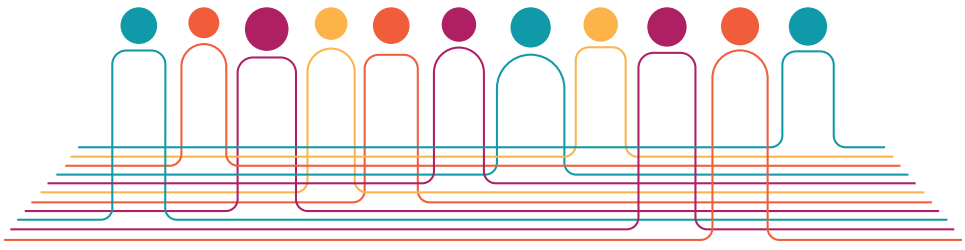
b) Diverse applicants, for the purpose of this Letter of Understanding, is defined to include African Nova Scotians or persons of African descent, members of other racially visible groups, Mi'kmaq/indigenous peoples, persons with disabilities, women in non-traditional roles, and persons belonging to sexual orientation, gender expression and/or gender identity minority groups.

The Parties agree:

1) Timelines and goals will be developed for the implementation of the Program.
2) An education and training program will be developed for implementation of the Program and to foster advancement of all interested employees.

The typical stages in the implementation of an Employment Equity Program will include:

1) Agreement of the Employer and Bargaining Unit to conduct a self-identification survey.
2) The Employer will be responsible for the maintenance of the self-identification data.
3) Reporting of the statistical results of the self-identification survey.
4) Analysis of the results of the self-identification survey to compare the number of identified people in the bargaining unit with the identified peoples within the boundaries of the applicable RCE or CSAP.
5) Development of goals and timelines to eliminate the discrepancies in representation of identified peoples between the bargaining unit and the general population.
6) Joint education and training for all employees with respect to the implementation of the Employment Equity Program.
7) Training and development to foster advancement of all interested employees within the bargaining unit.
8) Recruitment of identified peoples.
9) Skills, qualifications, experience as selection criteria for vacant positions.
10) An annual review of the progress towards development of representative population within the bargaining unit.



CUPE

Human Rights

Bargaining Information and Resources

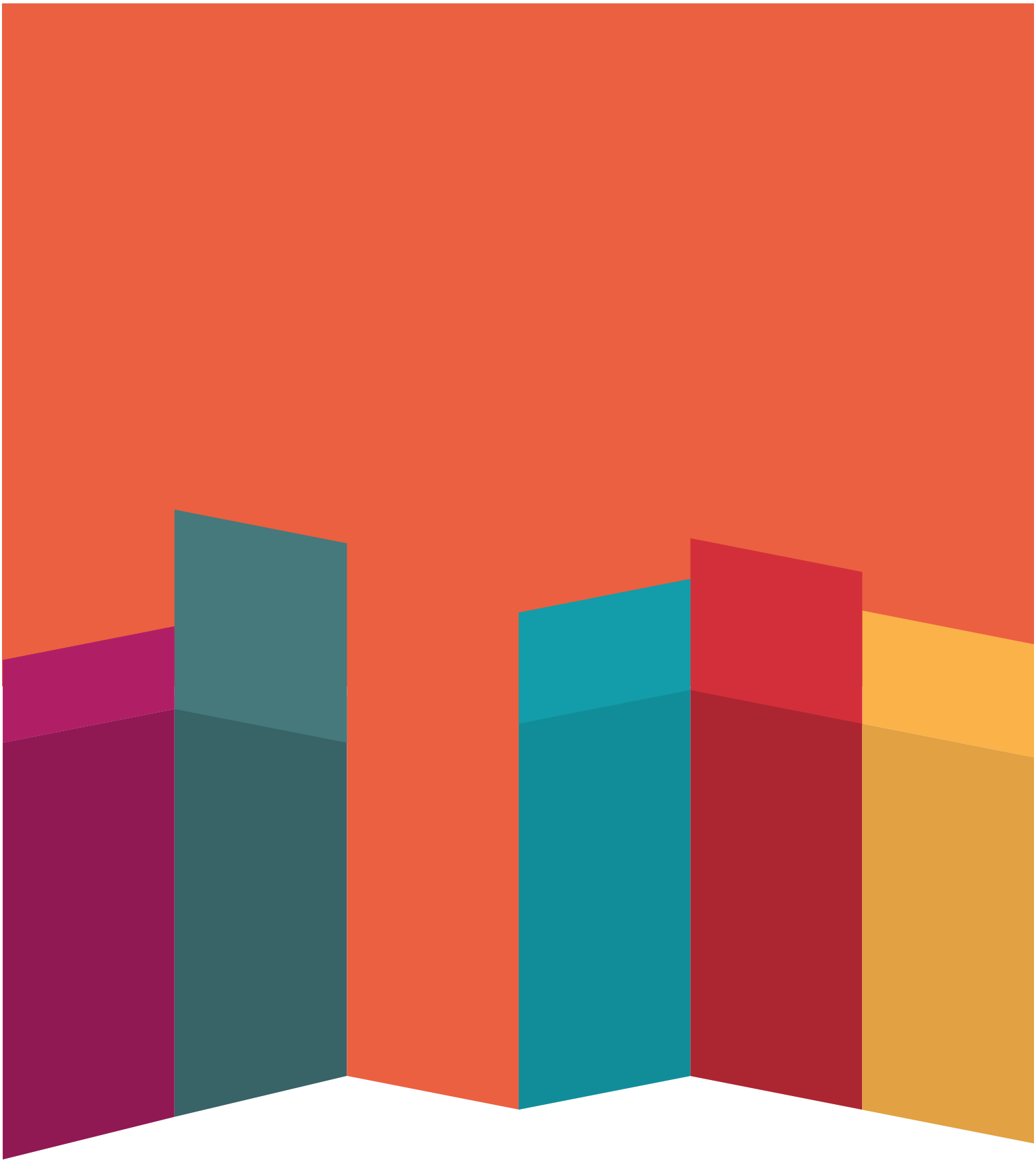
SCAN THE QR CODE BELOW TO ACCESS THESE RESOURCES ONLINE:

- Truth and Reconciliation Indigenous Bargaining Guide
- Bargaining beyond the binary - A negotiating guide for trans inclusion and gender diversity
- Bargaining Reconciliation
- Domestic Violence and the Workplace – A bargaining guide
- Factsheet Disability Bargaining
- HIV Bargaining Checklist
- CUPE Anti-Racism Strategy
- Discrimination Checklist
- Stop Harassment Guide
- Temporary Foreign Workers in Our Union: Solidarity and Action Guide

SCAN ME

Or visit: *https://qrco.de/SuperCon-HumanRights*





CUPE