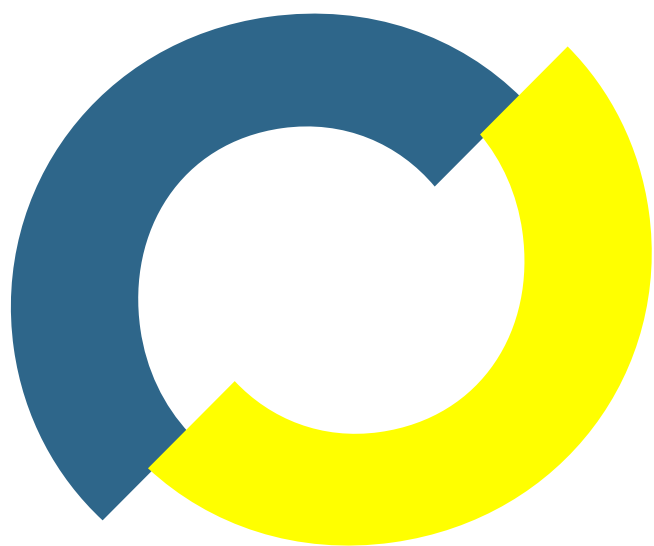




Domestic violence and the workplace

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.

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What is domestic violence?

Domestic violence is any form of violence between intimate partners. The violence can be physical, sexual, emotional, or psychological, 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.

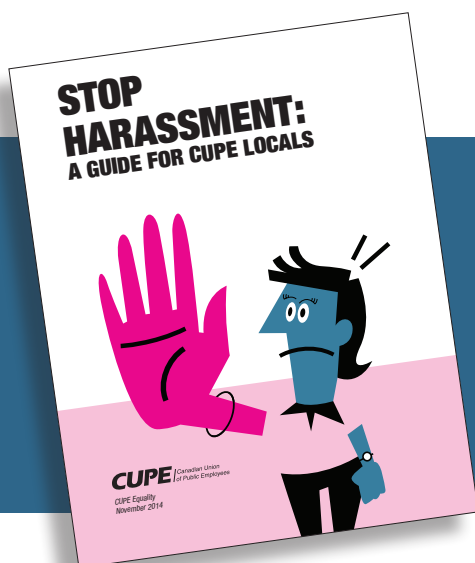
How can domestic violence be addressed in the collective agreement?

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.

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.

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