



COVID CONFLICT

Managing and Resolving
Workplace Conflict in the age
of COVID-19

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Workplace Conflict and Complaint resolution in the “COVID-19” workplace

- ❑ The COVID-19 pandemic has caused significant changes in how and where work is carried out
- ❑ Workplaces are operating in an emergency mode for an extended period
- ❑ “COVID Conflict” - new sources of conflict and new drivers of traditional sources of workplace conflict
- ❑ Employers and workplaces need to adapt to the new realities, and find ways new ways of managing and resolving conflict and the complaints that may arise from it

Conflict in the workplace is nothing new



Complaints arising out of workplace conflict (other than harassment) are often rooted in a perception of unfairness or lack of equity



Complaints about interpersonal conflict between employees often arises from a lack of common norms of behaviour, communication and interaction



Performance management, communication style, or lack of feedback are often the cause of conflict and complaints between employees and their managers

Is there a new normal in workplace conflict?

- The 'new normal' for many employees means a total shift from in-person to virtual work OR very different on-site working conditions
- "New normal" = new challenges in accommodating workers, flexible work arrangements, redeployment, and new health & safety protocols
- The "COVID effect" impacts workers differently based on gender, age, level of job security which can increase the volume and complexity of conflict

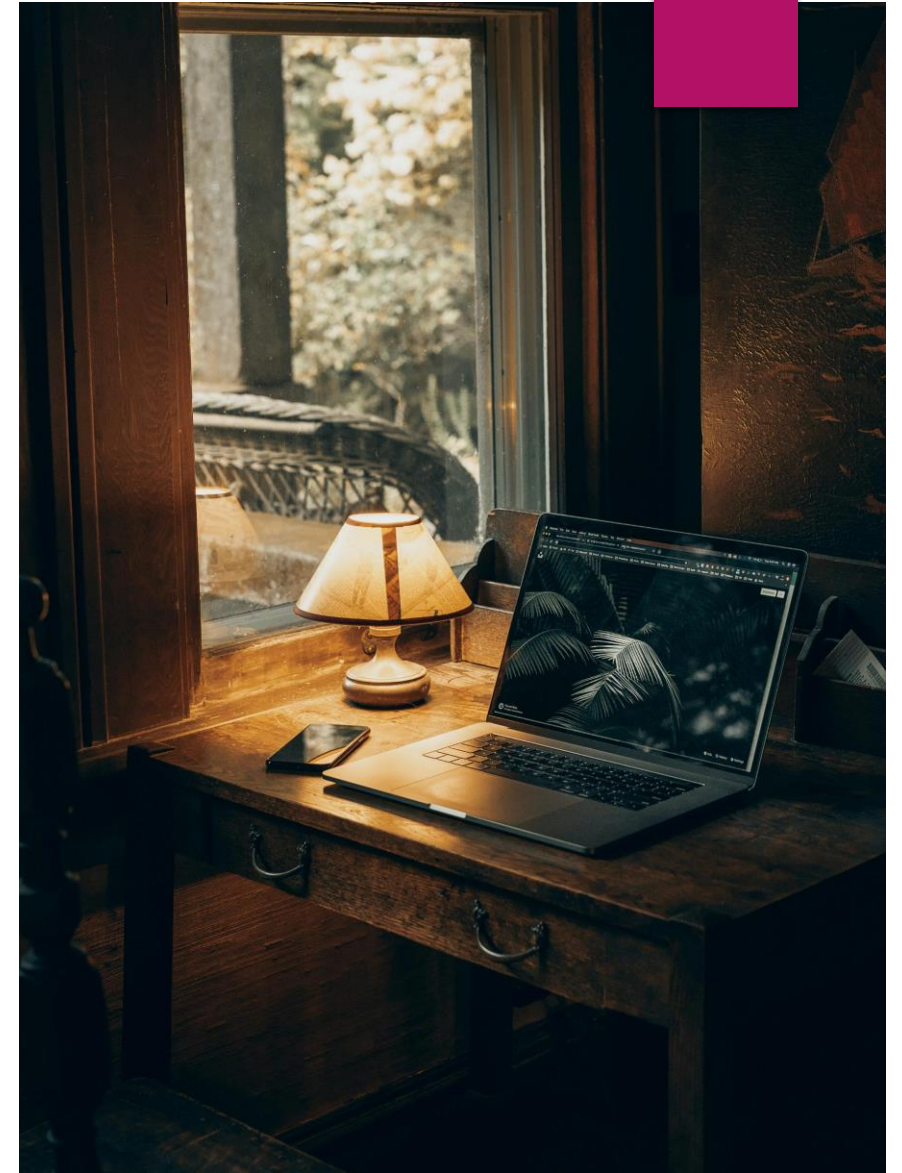
Impact of COVID-19 on the workforce

- ❑ Sudden, significant changes to both work and home life
- ❑ Uncertainty, fear and anxiety experienced by everyone at the same time
- ❑ More sources of stress – at work and at home-driving increases in mental health issues
- ❑ Increased absences, changing work schedules, and instability in the workforce
- ❑ Women are impacted disproportionately



Working from home during the pandemic – not business as usual

- ❑ Employees working at home due to the pandemic may lack proper work set up
- ❑ Many also have limited access to technology, internet connection and other tools of the job
- ❑ Lack of a dedicated and appropriate workspace creates stress and impacts productivity
- ❑ Isolation, lack of support and/or feedback
- ❑ Lack of clear boundaries between home and work leading to burn out



Impact on employees working from home during the pandemic

Most common challenges reported by remote workers:

- 57% - not connected to colleagues
- 27% - difficult to take breaks
- 24% - struggle to manage mental health
- 16% - difficult to balance childcare and work

Gender imbalance of impact of remote work:

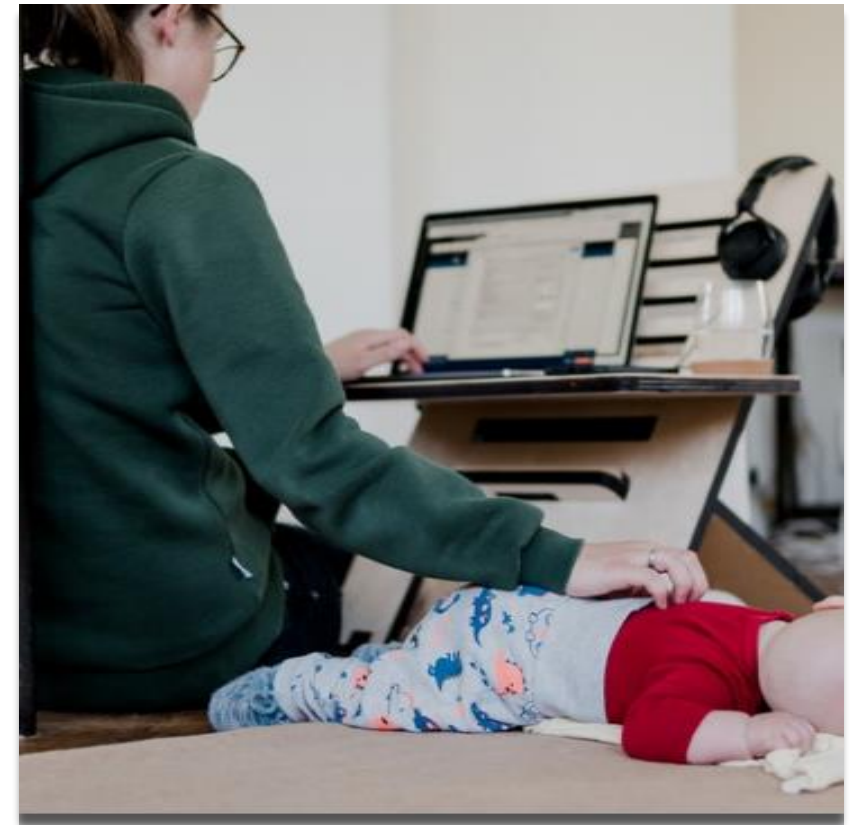
Canadians who considered quitting their job due to stress of managing family and work during lockdown

Female – 33% Male – 19%

Canadians who said remote work has increased stress

Female – 39% Male – 29%

Maclean's survey (November 2020)



The “new normal” in the COVID-19 workplace is also challenging



- ❑ New health & safety protocols
- ❑ Ensuring that employees do not come into work when they are sick or have been exposed to COVID-19
- ❑ Childcare/elder care responsibilities
- ❑ Difficulty readjusting when returning after long periods of remote work and isolation
- ❑ Mandatory quarantine vs, voluntary isolation – what is covered by the workplace policies?

1 in 5 Workers are concerned about returning to the workplace

63% cited exposure to others who aren't taking enough precautions

39% were worried about working in close proximity to other colleagues or customers

31% were worried about shared spaces, such as eating or resting areas

25% were worried about large gatherings/meetings

22% were worried about sanitation/cleanliness

16% cited a lack of protective tools and equipment such as masks, hand sanitizer

14% cited a lack of safety precautions

13% cited a lack of support from their employer's sick leave and remote work policies

LinkedIn- Workforce Confidence Report – July 2020

Trends in “COVID 19” Complaints reported by investigators, law firms and ADR professionals

- ❑ Interpersonal conflicts despite employees working remotely
- ❑ Inconsistency in application of workplace policies and practices
- ❑ Complaints arising out of performance management including lack of feedback
- ❑ Grievances and complaints arising out of working conditions, accommodation (or failure to do so), redeployment, and lay-off and recall
- ❑ Layoff, termination and claims of wrongful dismissal
- ❑ Racism, discrimination and duty to accommodate

“COVID-19 conflict” and complaints – 4 key areas

- ❑ Harassment
- ❑ Racism and discrimination
- ❑ Duty to accommodate and competing human rights
- ❑ Enforcement of COVID-19 safety protocols

Workplace harassment in the age of COVID -19

- ❑ Performance management when employees and managers are stressed, working in isolation and remotely may trigger more claims of harassment/bullying by manager
- ❑ Employees may feel more comfortable filing a complaint when they do not have to be in the workplace with the respondent(s) including their manager
- ❑ Be aware that some employees may fear making complaints due to job insecurity
- ❑ Respect in the 'virtual' workplace has some unique challenges:
 - ❑ Digital body language/tone on video calls, email/text
 - ❑ Inappropriate material in the background (or inappropriate behaviour) on video calls
 - ❑ Lack of clear boundaries in virtual work may blur the lines of what is/not appropriate or unwelcomed

Racism – in 2020

- ❑ Racism and discrimination occurs in any workplace including virtual
- ❑ Anti-Asian racism has been on the rise during the COVID-19 pandemic as it was during SARS
- ❑ Increased awareness and complaints about racism against BIPOC persons in 2020
- ❑ Employees may feel more emboldened to speak up about racism and harassment if working remotely

Canadian and Ontario Human Rights Commissioners – issued Statements on Anti-Asian Racism resulting from the COVID-19 pandemic



Human Rights and Accommodation

- ❑ COVID-19 is a **disability** under the Ontario Human Rights Code
- ❑ COVID-19 is impacting some employees disproportionately based on age, gender, job security and ethnicity, and some are experiencing discrimination because of it
- ❑ Women may have more claims of discrimination based on failure to accommodate child/elder care responsibilities
- ❑ Negative treatment of employees who have or are perceived to have COVID-19 may be discrimination under the Code
- ❑ Discrimination may also occur due to family status – child/elder caregiving requirements and the need for isolation when family members have been exposed

OHRC Policy Statement on COVID-19

- ❑ OHRC recognizes the need to **balance rights to non-discrimination with public health and safety** including risks associated with COVID-19
- ❑ Employers should ensure that restrictions are consistent with the **most recent public health advice** AND are justified for health and safety reasons
- ❑ **Absenteeism** policies must not negatively affect employees who cannot work due to COVID-19 concerns
- ❑ Employers should be flexible in requirements for **medical notes** to support absences
- ❑ Employers may not discipline or terminate employees who are unable to work because of a requirement to quarantine or advice to isolate
- ❑ Accommodation of **care-giving responsibilities** must be provided to the point of undue hardship

(March 2020 – updated October 2020)

Enforcing Public Health Measures in the Workplace

- ❑ New health and safety protocols may give rise to complaints regarding:
 - ❑ Enforcement of public health measures (and changes to them)
 - ❑ Balancing competing rights of those which medical exemptions to measures and employees' right to be protected
 - ❑ Testing/screening may lead to complaints about employee privacy and potential discrimination
- ❑ Balancing accommodation of medical exemptions to PPE vs. health and safety of employees and the public can be challenging
- ❑ Balancing public access to government services with protection of employees



What can employers do?

HR polices and practices

Review and update HR Policies	<ul style="list-style-type: none">Update Respect in the Workplace/Harassment to ensure they cover remote workplace and are updated in language on racismFlexible work arrangement policies – including unplanned remote workUpdate Compensation policies (i.e. sick time; leaves of absence) to comply with ESA/regulationsWork at home policies (technology, performance management, access)
Communication Tools	<ul style="list-style-type: none">Use a variety of communication tools for meetingsBe aware of time and duration of meetings for those working from homeConduct regular employee check-ins using a variety of toolsEducation on health & safety protocolsDigital communication guidelines and training for management and staff
Employee Resources	<ul style="list-style-type: none">Review/enhance employee support resourcesEAP programs – online servicesMental health resourcesCoaching and other supportReturn to work plans and supportsDON'T forget about management staff – they need support too

Managing and resolving Competing Human Rights

- ❑ The Ontario Human Rights Commission **Policy on Competing Human Rights (2012)** sets out a process that organizations can use to analyze and reconcile competing rights and address conflicts between them
- ❑ Taking proactive and effective steps to address competing rights matters will help to protect organizations from liability if they are ever named as a respondent in a human rights claim involving competing rights.
- ❑ Policy sets out a 3-stage process for addressing competing human rights and an ADR model for resolving competing claims

OHRC Policy on Competing Human Rights

□ **Key legal principles:**

1. No rights are absolute
2. There is no hierarchy of rights
3. Rights may not extend as far as claimed
4. The full context, facts and constitutional values at stake must be considered
5. Must look at extent of interference
6. The core of a right is more protected than its periphery
7. Aim to respect the importance of both sets of rights
8. Statutory defences may restrict rights of one group and give rights to another.

Managing disputes over health & safety protocols



- ❑ Health & safety protocols should include provision for dealing with exemptions, changes in public health measures, **disputes and competing safety concerns**
- ❑ Protocols and enforcement of safety measures must comply with OHRC and accommodate for exemptions
 - ❑ How will those with a disability be exempted from wearing masks?
 - ❑ Can employees refuse to work if others (including the public) are not wearing masks?
 - ❑ Sensitivity to sanitization products
- ❑ Anticipate future issues – including vaccines, changes in mask and physical distance rules as public health measures are eased

Responding to complaints in the age of COVID-19



Complaints/claims must still be addressed despite the ongoing emergency, even if everyone is working virtually



Third party interventions including facilitation and mediation are widely available virtually



Complaints/claims must still be addressed in a timely way

Limitation periods were restored as of September 14, 2020



Investigation and conflict resolution can be conducted virtually (and effectively) while maintaining due process

Online Dispute Resolution

Reduces time and costs of in-person sessions

Provides timely resolution to conflict and complaints

Respects public health measures – preferable to in-person with masks, physical distance in place

Suitable for a wide variety of disputes including legal claims

Addresses power imbalances and fear of being with other parties

Courts and tribunals are now offering ODR



Conflict management strategies in the “new normal”

- ❑ Be proactive – identify potential sources of conflict and try to minimize them
- ❑ Look for opportunities to reframe negatives into positives – new ways of doing things
- ❑ Ensure that the Harassment and Respect in the Workplace policies include a complaints procedure is compatible with remote work – update procedures for filing complaints, investigation and response
- ❑ Consider training/refresher for managers on key human rights issues impacted by COVID-19, including competing rights, and racism, diversity and discrimination

Questions?

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