

HRPA's New Practice Guideline: Addressing Racism and Racial Discrimination in the Workplace Q&A

October 17, 2022

Please note that the following answers below do not constitute legal advice.

1. How far back can people go to make a complaint against an employer for racial trauma in Ontario?

From a human rights perspective, the statutory limit is a year. From a civil perspective (e.g. if someone were to raise discrimination in the context of a civil lawsuit), the limitation period is two years. From an investigation perspective, it is recommended you go as far back as what you can investigate. If for instance, the incident happened twelve years ago and there is no recent evidence of similar patterns over the years, it may be difficult to gather evidence and as such an investigation may not be feasible.

Ultimately, investigations on complaints can really go back as far as evidence allows.

2. Sometimes even in diverse organizations with many different ethnic groups, there can be ethnic groups accusing other ethnic groups of racism. What can be done to manage these situations?

Specific, individual allegations must always be investigated. On the macro level, it is important to ensure that everyone in the workplace is aware of what respectful workplace conduct looks like, what the expectations are, and how employees will be held accountable for how they are treating others in the workplace.

If there are some very explicit conflicts that seem to be ethnicity against ethnicity, that is something where you may need to bring in an external third party (such a consultant or mediator trained in this area) to triage and help to rehabilitate that kind of conduct – especially if there is a lot of hurt and the need for healing.

3. What are the rights of a complainant in a workplace review or investigation related to racism experienced in the workplace? For example, do complainants have the right to the final report after dedicating a lot of time participating in the review/investigation that can add to the trauma?

Employers are subject to specific employment laws for how investigations must be conducted, which includes reporting requirements. As stated in HRPAs Practice Standard on Conducting Workplace Investigations, it is expected that both complainants and respondents following the investigation are promptly told what the results/outcomes of the investigation are and what remedial steps, if any, are being taken.

From a more holistic and healing perspective, if someone leaves an organization and they're traumatized from the treatment they endured – the organization should ensure that the complaint is properly looked into, there is appropriate redress, and there is a circle back from the employer.

4. What are some of the best ways to investigate “subtle”/“micro” discrimination and provide evidence?

To investigate subtle forms of discrimination, naturally you want to do as thorough of an investigation as possible. Investigators must have a strong understanding of what subtle/micro discrimination is and how they can manifest to be able to conduct this type of investigation. After gathering as much evidence as possible into the investigation, you would then assess the evidence accordingly on a balance of probabilities.

5. How do you suggest antisemitism be addressed?

Antisemitism should be addressed as seriously and vigorously as any other type of discrimination in the workplace. It should not be treated any differently or less than. Anything that creates disadvantage in the workplace needs to be dealt with on a zero-tolerance basis without exception – and workplace policies should reflect this.

6. What should HR do if a client who is not an employee of an organization is being racist against employees of the organization?

As recommended in HRPAs Practice Guideline on Addressing Racism and Racial Discrimination, organizations should develop zero tolerance policies for racism and racial

discrimination, with clear ramifications for breaches of the policy. This can include conduct from clients. While it can vary based on context, it would likely make sense to contact the client and make them aware of their conduct and how it goes against your organization's policy – which has ramifications (that you can detail). This could potentially warrant you removing the individual as a client depending on the context.

If your workplace does not currently have such a policy, incidents like this help warrant a review of your current policies and protocols in order to make sure that this is addressed properly. Additionally, if not already done, it is recommended that all employees, clients, contractors, etc. review and sign off of organization policies regarding racism and racial discrimination before beginning any work with the company.

7. What is your advice to overcoming common types of resistance to addressing racism and racial discrimination?

The best way is to be proactive and pre-emptive. Head on discussions about how an organization tends to respond to equity strategies in the workplace and calling out resistances is important. By calling out resistances, people will more readily see the types of resistance as it formulates within themselves and see it in the workplace as well.

8. What are appropriate remedial resources to give to an employee who has been found to be making racist or discriminatory remarks that could effect meaningful change in employees' racial biases?

Remedial resources can vary and depend on the severity of the employee's actions. Generally speaking however, mandatory and ongoing training on racism, racial discrimination and unconscious biases led by experts in anti-racism could be helpful. The training and education should include:

- how to recognize and challenge racism and unconscious biases
- how to appropriately deal with racism in the workplace
- how to identify and address different types of racism and discrimination (including subtle forms)
- how to identify and address racial trauma as well as psychological harm, etc.

Testing the employee following training can also be an approach to help ensure true learning.

9. How should racial discrimination be approached when it is coming from a senior leader to a subordinate?

Workplaces should implement and follow a zero-tolerance policy for any forms of racism and racial discrimination in the workplace, with clear ramifications for breaches. Policies should clearly state that it does not matter what a person's position or role is in the organization and have clear reporting measures that can be taken in order for an investigation to be launched, where applicable.

Ultimately, workplaces have a duty to investigate incidents of racism or racial discrimination, no matter who the person is in the workplace. For more information on HRPAs' expectations regarding conducting workplace investigations, you can view our [Practice Standard](#) on the topic.