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Hostile Work Environment Rules: Comparative Analysis of U.S. and Canadian Laws

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Abstract: The MeToo Movement shocked the world and encouraged multiple victims of workplace harassment to disclose the severity of the problem. A few years have come since the onset of this notorious process, and it is reasonable to investigate if modern countries have adequate legislation to address the selected problem. Therefore, the legislation of the United States and Canada is the object of this research. The comparative research methodology is used to identify the applicable laws, compare them, and comment on the notable findings. This approach is practical and helpful since it highlights efficient strategies that other countries can use to succeed in the selected area. The research has identified that the two countries differ in the sources of law, enforcement, remedies, and definition conditions. Canada impresses with a more tailored approach to satisfy its local needs, but the two countries should regularly update and improve their legislation to address new harassment manifestations and challenges.

Keywords: Harassment, Hostile environment, Legislation, Prevention.

1. Introduction

In 2017, the American society was shocked by allegations against Harvey Weinstein. That notorious case further encouraged multiple men and women to report instances of sexual harassment that had happened to them at the workplace [1]. The MeToo Movement resulted in many legal cases against a hostile work environment, and the US legal and judiciary systems were forced to address all these challenges to punish perpetrators and protect victims.

This paper will explore and analyze the laws to prevent hostile work environments. This study will specifically include the anti-sexual harassment provisions in the workplaces of the United States and Canada. The comparison of the two countries is justified since they can have different approaches to the issue under analysis. In this case, the achievements of one nation can be used to make recommendations for the other country to improve its response to a hostile work environment.

Since there are differences between the legal systems of Canada and the United States, particularly concerning hostile work environments, such information is important for multinational companies, HR specialists, and attorneys. These stakeholders should be aware of the individual countries' peculiarities to understand what remedies can be used if workplace harassment is reported. Consequently, the paper improves people's knowledge of the selected problem and can potentially result in the fact that more individuals will be protected from this issue.

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2. United States Law on Hostile Work Environment

2.1. Legal Framework

In the United States, the Civil Rights Act of 1964, especially Title VII, is used to prevent harassment in the workplace. In particular, this legal provision stipulates that individuals should not be discriminated against based on their race, ethnicity, religion, and sex [2]. Even though the selected legislation piece does not directly address or mention harassment in its text, a few Supreme Court decisions show how this issue can be addressed. For instance, the given Act is used to protect individuals from harassment in Meritor Savings Bank v. Vinson, Onscale v. Sundowner Offshore Serv., Inc., and Faragher v. City of Boca Raton [2]. These examples demonstrate that harassment is adequately addressed in the US judiciary system.

2.2. Definition of Harassment

Sexual harassment is defined as unwelcome sexual contact or verbal harassment. Such negative behavior should additionally satisfy two specific conditions that should be considered harassment. First, sustaining the offending behavior becomes the price employees pay to keep their jobs. This statement demonstrates that victims are forced to withstand this negative experience to avoid being fired. Second, the conduct is harmful and alters the work environment in a way that most decent employees would consider hostile or abusive [2]. This condition implies that harassment always negatively impacts an organization's climate, which can adversely affect employees' well-being and productivity. Consequently, when one of these conditions is absent, misbehavior cannot be identified as harassment.

2.2.1. Unlawful Conduct

In addition to that, American legislation introduces one more term that is broader in its scope. Some employees can suffer from inappropriate jokes, including ethnic or racial slurs. Other workplaces are characterized by undesired physical contact or threats of physical harm [3]. Furthermore, threatening messages or offensive comments result in verbal and written harassment. Finally, sabotage or obstruction is frequent, which denotes that a person intentionally undermines peers' efforts or performance. According to Rosenthal and Belmas, all these misbehaviors can be described as unlawful conduct. It results in a toxic workplace culture that negatively affects workplace morale.

2.2.2. Scope

It is challenging to limit the scope of the object under consideration. The difficulty is associated with the fact that every member of an organization can become a harassment victim. First, it does not matter what position a person occupies since ordinary employees and high-ranking managers are subject to an issue [3]. Second, personal characteristics cannot result in any protection because representatives of all genders, ages, ethnicities, and socioeconomic backgrounds can suffer from harassment. This information indicates that the selected problem is of a universal scope, which denotes that almost everyone can be affected by it. In addition to that, the problem is of universal scope in terms of who can become a perpetrator. High-ranking managers typically engage in this misbehavior, but low-ranking employees can simultaneously harass their colleagues. As for personal characteristics, it is additionally impossible to mention that any specific trait or a combination thereof can make a person more subject to this misbehavior.

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2.2.3. Preventative Measures

Since the given problem is significant and widespread, it is no coincidence that an essential body of research is devoted to how this issue can be prevented. The growth of the MeToo movement increased the importance of this information, and modern organizations and managers typically deal with a few recommendations [4]. Some experts believe that it is impossible to eliminate the risk of this problem entirely and advocate for the establishment of a practice grievance procedure at the workplace. Victims should ideally know what they should do to report this misbehavior and obtain the required assistance. Other suitable guidelines include communication protocols and training sessions [4]. These interventions are needed to instruct people on how they can recognize early signs of harassment and minimize their chances of becoming victims.

3. Canadian Law on Hostile Work Environment

Harassment is a universal problem, which denotes that the United States is not the only nation that suffers from it. Employees from multiple world countries and cultures deal with the issue and suffer from its consequences. This statement equally refers to the US, Israel, most European nations, and other states [5]. Canada is no exception, and local workers suffer from the selected problem in the same way that their international peers do. The Canadian government has recognized the importance of this problem and issued appropriate legislation pieces to address it. On the one hand, the country has specific federal laws that establish behavioral and anti-discrimination standards in the workplace. On the other hand, individual provinces may impose their own codes, rules, and regulations to prevent the spread of this problem [6]. These two layers of the legal framework will be discussed in detail below to get a better insight into how Canada addresses the issue under consideration.

3.1. Federal Legislation

At this level, Canada relies on Part II of the Canada Labor Code and the Canadian Human Rights Act (CHRA) to address workplace harassment. The Canada Labor Code is a comprehensive legislation piece that focuses on occupational health and safety. Significant attention is devoted to sexual harassment since the Code defines the problem and specifies that employers have certain obligations. In particular, organizations should take proactive measures to prevent the issue and have practical prevention policies at hand [4] The legislation additionally includes clear guidelines to demonstrate how harassment cases should be reported, investigated, and resolved. As for the CHRA, it protects employees from various forms of discrimination, and harassment is considered one of its kinds. This legal provision implies broad protection because it regulates behaviors in multiple federal workplaces, such as banks, federal government agencies, and other related companies. Finally, the CHRA specifies a few remedies and interventions that should be used if a person suffers from harassment. They include financial compensation and disciplinary orders against perpetrators [4]. This description demonstrates that Canada adequately addresses the problem from a federal level.

3.2. Provincial Legislation

In addition to the federal laws, individual provinces implement their own provisions to have complete control over the issue under consideration. In general, all the rules and laws that the provinces have are mainly aligned with the federal legislation that has been described above [6]. For instance, Ontario relies on the Occupational Health and Safety Act and the Ontario Human Rights Code. These legislation pieces prohibit harassment in all workplaces and specify that Canadian employers are obliged to develop harassment prevention policies [6]. An identical state of affairs is found in other provinces, including Quebec, British Columbia, and Manitoba. Local governments issue their own

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regulations, but they are mainly informed and impacted by federal rules. The inclusion of local measures is necessary to highlight the importance of the problem and ensure that representatives of all organizations are protected. While the federal legislation pieces typically cover federal workplaces, territorial interventions address all private environments, even those that are specific and unique to the given province.

3.3. Definition of Harassment

In terms of defining harassment, Canada relies on the universally accepted practice. This fact denotes that the Canadian definition is similar to that used in other nations. It is possible to present this articulation based on the CHRA and the Canada Labor Code [4]. Thus, harassment is considered an unwelcome behavior that is offensive, or that is reasonably understood as offensive or humiliating. Perpetrators can rely on verbal, written, or physical means to harass other people. Furthermore, the Canadian legislation comments on the fact that harassment affects the entire work environment and makes it hostile and demeaning. This definition is aligned with the American one, which denotes that the countries have similar approaches to the problem.

3.4. Unlawful Conduct

It is reasonable to investigate how the issue of harassment fits into the broader concept of Canadian law. For that purpose, one should understand how this country defines and addresses unlawful conduct in general. According to Rosenthal and Belmas, this term refers to threats, abusive language, and various forms of physical harassment, including sexual pressure. Furthermore, unlawful conduct is a broad term that is used to describe a myriad of offenses and misbehaviors. They can include criminal offenses, torts, regulatory violations, human rights issues, unlawful employment practices, constitutional violations, and cybercrime. This information demonstrates that the given word combination can be considered a generic term for every violation of law that happens in Canada. Therefore, harassment is a kind of unlawful conduct that can adversely affect employees in different environments. This description indicates that all possible stakeholders should draw adequate attention to the selected problem. Policymakers should make the necessary decisions to develop practical regulatory frameworks, employers are expected to follow these guidelines, and all people should know what they can do to prevent or avoid this issue.

3.5. Preventative Measures

As has been mentioned above, Canadian law at the federal and provincial levels draws much attention to harassment prevention. First, policymakers engage in a research process to develop suitable guidelines and statutes and distribute them among employers and employees. Second, employers are provided with essential responsibility to prevent the spread of this issue. In particular, such managers should organize training and education sessions to improve their workers' knowledge and awareness of the problem [7]. These interventions are needed to guarantee that people are familiar with actions that they should take if they come across harassment. Third, an easy and transparent complaint mechanism should be established in every organization [7]. This system should be created to ensure that employees can quickly and safely report the negative experiences that they had in the workplace. It is effective when this mechanism relies on thorough investigation steps to check the trustworthiness of the complaint and implement appropriate punishment actions if a perpetrator is found guilty.

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4. Comparison and Analysis

4.1. Similarities

Based on the information provided, it is now possible to analyze and compare the two countries' approaches to harassment. It is reasonable to begin by discussing the similarities that show identical steps and interventions regarding the selected problem. First, Canada and the United States offer similar definitions of sexual harassment and outlaw this phenomenon in their workplaces. The two nations are unanimous in stipulating that this issue is an unlawful conduct that contributes to a hostile environment that, in turn, can be described more broadly. This similarity denotes that the nations recognize the importance of the problem and are identically ready to address it.

Second, one cannot ignore the fact that the selected legislation systems allocated much time and effort to describing harassment prevention. The two countries understand that the issue affects multiple individuals, which denotes that different stakeholders should be involved in preventing measures. The US and Canada agree that employers can play a vital role in this aspect because they are responsible for internal policies and guidelines that regulate behavior and relationships between individuals representing the same or different hierarchical levels [7]. In addition to that, governments should provide employers with the required assistance, while employees are expected to engage in intervention strategies willingly and reasonably.

Third, the United States and Canada have arrived at the same conclusion, which is that any person can be subject to harassment. This statement denotes that victims are people of all genders, ages, ethnicities, and religions. The same state of affairs relates to perpetrators, which implies that it is impossible to state that any individual characteristic can state that a person is susceptible to this misbehavior [7]. Finally, the two nations stipulate that harassment does not always contribute to financial or other economic losses for a victim. Instead of it, this phenomenon always results in physical or mental harm that adversely impacts their performance and productivity.

4.2. Differences

This section comments on the discrepancies that are found in the states' approaches. This information is directly aligned with the research's primary purpose because it aims to see the differences in how the two countries address the phenomenon under consideration. Since various approaches to the same issues are found, one can suggest that they contribute to different outcomes.

4.2.1. Scope of Legislation

The first discrepancy is associated with the sources of harassment legislation in the countries provided. Even though the two are federal states, the given aspect is essentially different. In the United States, federal legislation provides all the necessary information. This statement refers to Title VII of the Civil Rights Act of 1964 and Supreme Court decisions [4]. These provisions represent a federal level, which denotes that this regulation is sufficient in the US. However, Canada shows a different approach because the available federal clauses, such as the CHRA and the Canada Labor Code, are associated with individual provinces' laws and regulations [3]. This strategy is more specific since local governments can adjust and tailor the applicable legislation to the needs and requirements that are acute and crucial in the given territory.

4.2.2. Enforcement and Remedies

The discrepancy introduced above contributes to further points of interest that affect law enforcement and remedies. Since the United States relies on federal law to regulate this sphere, it has a unified

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approach to remedies and enforcement. This statement denotes that employers should use the available law to guarantee that their employees are provided with safe working conditions and working complaint procedures. If judges hear harassment cases, their decisions should be based on the Civil Rights Act of 1964. On the contrary, Canada impresses with more flexibility and variations in the given aspect. Provinces are entitled to issue their own rules and standards for how harassment cases should be handled in the workplace [2]. That is why various organizations in Canada can have different enforcement procedures and remedies. However, one should acknowledge that these regional variations should not contradict the federal rules.

4.2.3. Cultural and Legal Context

The third difference is slight, but it deserves adequate attention. It is worth acknowledging that Canadian law fails to specify what conditions should be met for an aggressive and offending misbehavior to be considered harassment. As per the provided legal documents, this term refers to offending and humiliating actions that can be performed in different forms. However, the American approach is more specific because it stipulates that harassment occurs when a perpetrator knows that victims will withstand this harmful experience to keep their employment [2]. This description indicates that not every case of offending behavior is harassment and requires appropriate responses. Stakeholders should understand that interventions and prevention measures should be used in those cases when harassment takes place.

5. Conclusion

The research that was conducted has arrived at a few significant conclusions and implications. The Canadian approach to harassment legislation is more specific because the country's provincial governments issue local regulations to guarantee that current and unique threats are adequately achieved. This finding demonstrates that every nation should draw attention to its regional and local peculiarities when developing and issuing harassment regulations. It is of vital importance to ensure that all organizations and employees can easily find recommendations and assistance in dealing with harassment, irrespective of where they reside or work.

The presented evidence has additionally indicated that employers can play a crucial role in preventing, addressing, and managing workplace harassment. Therefore, the given research is helpful for those managers and leaders of organizations that have offices or facilities in the United States and Canada. These individuals should understand that the provided countries have different regulations and expectations regarding harassment management.

In conclusion, it is reasonable to comment on future considerations that can be raised based on obtained findings. The two countries should understand that workplace harassment and hostile work environments are not stable phenomena. They continually change and fluctuate, which denotes that all stakeholders should be aware of these changes and adequately address them to prevent the spread of the problem. Today, employers face an increased concern and importance because the post-remote work era provides workplace environments with new challenges.

References

[1] *Brake, D. L., Chamallas, M., Williams, V. L. (2023). The Oxford Handbook of Feminism and Law in the United States. Oxford University Press.*

[2] *Estreicher, S., Scopelitis, J. (2020). How the EEOC's maintenance of an "Alleged Offenders" log can help prevent the next Harvey Weinstein. Justia Verdict, Retrieved from http://dx.doi.org/10.2139/ssrn.3624382.*

[3] *Rosenthal, H. M., Belmas, G. I. (2021). (Non) existent laws of workplace cyberbullying: Limitations of legal redress in a digitized market. In L. R. Salazar (Ed.), Handbook of research on cyberbullying and online harassment in the workplace, 425-446..*

DOI: 10.54254/2753-7048/66/2024MU0045

[4] *Seidler, R. (2020). The economics of Canadian anti-discrimination laws. Alberta Law Review, 57(3),839-852.*
[5] *Shannon, J. H., Hunter Jr, R. J. (2020). The Civil Rights Act of 1964: Beyond race to employment discrimination based on sex: The "Three Letter Word" that has continued to vex society and the United States Supreme Court. Journal of Social and Political Sciences, 3(3),613-646.*
[6] *Waite, S. (2021). Should I stay or should I go? Employment discrimination and workplace harassment against transgender and other minority employees in Canada's federal public service. Journal of Homosexuality, 68(11),1833-1859.*
[7] *Yanisky-Ravid, S. (2020). Making physical and virtual sexual harassment illegitimate: The US #MeToo movement and the Israeli Prevention Act. ABA Journal of Labor & Employment Law, 34(2),181-216.*