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Positive conversations
that create safer workplaces

Workplace Harassment Policy Guide

New Brunswick
EDITION



Public Legal Education
and Information Service
of New Brunswick



NEW BRUNSWICK
HUMAN RIGHTS COMMISSION
COMMISSION DES DROITS
DE LA PERSONNE DU NOUVEAU-BRUNSWICK



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**NEW BRUNSWICK
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Workplace Harassment Policy

Effective: _____

1. Overview

Consistent with its obligation to provide a safe and healthy work environment, _____ is committed to providing a workplace free of harassment of all forms.

2. Scope

This policy applies to all employees, volunteers, and independent contractors _____ of _____.

3. Definitions:

3.1 Complainant - the person making allegations of Harassment

3.2 Harassment¹ can be physical, psychological or verbal. For the purposes of this Policy, all forms of Harassment mean:

- a) objectionable or offensive conduct, comments and/or gestures;
- b) made on a onetime (if severe and results in significant and lasting impact) or repeated basis;
- c) that is known or ought reasonably to be known to be unwelcome; and
- d) that threatens the mental and/or physical health or safety of the employee and/or demeans, belittles or causes humiliation or embarrassment.

3.3 Respondent - is the person alleged to have engaged in Harassment.

3.4 Types of Harassment²:

For the purposes of this Policy, the following are different forms of Harassment (each of which must meet the conditions set out in section 3.2 of the Policy in order to constitute harassment in any given case):

¹ This definition of Harassment has been created based on definitions found in the common law and health and safety and human rights legislation.

² See Appendix "A" for examples for examples of workplace harassment

a) Personal Harassment - this form of harassment includes bullying and/or Harassment based on a protected ground under applicable human rights legislation.

b) Sexual Harassment - means objectionable or offensive behaviour of a sexual, sexualized or sexist nature that is likely to cause offence or humiliation to any employee; or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

Sexual harassment includes gender discrimination (sexism), i.e., the prejudicial treatment of a person or group based on stereotypical assumptions or generalizations about people based on their gender, sex and gender norms. This form of sexual harassment often masks itself in subtle microaggressions that may appear to be innocent, but cumulatively has negative effects on the target making them feel devalued, inferior and unsafe.

Sexual Harassment can occur between all persons, regardless of sex, sexual orientation or gender identity and/or expression.

c) Abuse of Authority - means the improper use of power and authority inherent in a position to endanger another's job, undermine the performance of that job, threaten the person's economic livelihood or in any way interfere with or influence a person's career. It is the exercise of authority in a manner which serves no legitimate work purpose.

d) Poisoned Work Environment - means circumstances where the work environment has become toxic because of pervasive discrimination or Harassment. It is often characterized as activity or behavior that is not necessarily directed at anyone in particular.

A poisonous work environment arises when an organization fails to prevent or address workplace Personal Harassment, Sexual Harassment or Abuse of Authority and this leads to an overall toxic and/or hostile work environment. Employees, owners, independent contractors and even clients/customers can create a poisonous work environment.

3.5 Workplace - any space the business of _____ is carried out including, but not limited to:

- all offices, premises and locations used by _____ and those conducting work on _____ behalf on a contractual basis;
- all premises where the business of _____ is being conducted;
- all locations and situations, including on-line communications and email, business travel, conferences, training sessions and work-related social gatherings, where _____ related activities are carried out.

3.6 Workplace Conflict - for the purpose of this Policy, Workplace Conflict is defined as tension arising as a result of interpersonal conflict (i.e., including, but not limited to, personality clashes, difficulty working with others as a result of differing and/or conflicting needs, values, opinions, methods, and beliefs.) and workplace complaints (i.e. including, but not limited to, disagreement with policies and procedures, management decisions, individual entitlements) that do not amount to Harassment.

4. General Principles

4.1 Typically, more than one act or event is needed in order to constitute harassment. It is the repetition that generates the harassment. In other words, harassment consists of repeated and persistent behaviours towards an individual to torment, undermine, exclude, demean, ridicule, frustrate or provoke a reaction from that person. It is the synergy and repetitive characteristic of these behaviours that produce harmful effects.

However, one single incident can constitute harassment when it is demonstrated that it is severe and has a significant and lasting impact on the Complainant.

4.2 It is sometimes difficult to know the difference between Workplace Conflict and Harassment, as initially they can appear similar. However, these are two distinct behaviours. While _____ is also committed to conflict resolution and understands unaddressed Workplace Conflict can escalate to Harassment, this policy does not apply to Workplace Conflict.

4.3 Harassment in the workplace will not be tolerated. In the case of employees, such conduct will be subject to disciplinary action, up to and including dismissal. In the case of volunteers, and/or independent contractors, appropriate sanctions may include dismissal and/or termination of contract.

4.4 This policy is not intended to limit or constrain _____ right to manage. Performance reviews, work evaluation and disciplinary measures taken by _____ for any valid reason do not constitute Harassment in the workplace.

4.5 Nothing in this policy prevents the _____ from foregoing the procedures under this policy when it is determined a person has committed an act or acts constituting Harassment.

4.6 If allegations of Harassment are made against the _____, the Chair of the Board of Directors will assume all responsibilities normally falling to the _____ under this policy.

5. Informal Resolution

Complainants are encouraged to use informal resolution processes to attempt to solve workplace Harassment unless it is inappropriate to do so.

5.1 Informal Resolution Steps:

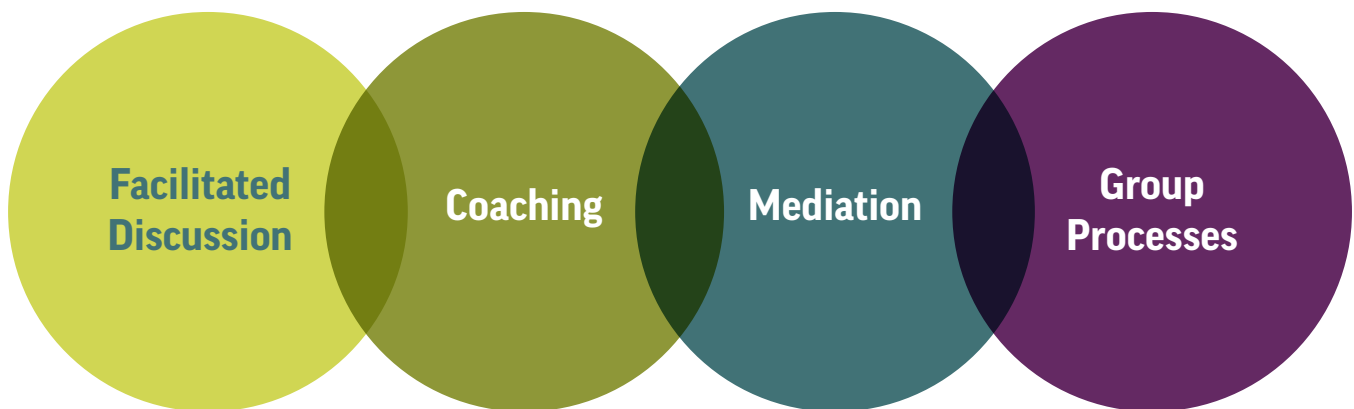
Step 1

An effective way of ending Harassment in the workplace is to communicate concerns directly by telling the person that the behaviour is unwelcome and must stop, or by requesting the _____ do so.

Step 2

If Step 1 is unsuccessful, or inappropriate in the circumstances, the Complainant should request the _____ assistance in determining other methods of informal resolution in the circumstances.

The informal complaint procedure is flexible and includes many types of resolution processes. All are completely voluntary in nature and include, but are not limited to:



5.2 Facilitated Conversations

In the event parties are uncomfortable meeting alone, a neutral third party (normally a member of management) can meet with them to help facilitate a discussion.

5.3 Coaching

Sometimes, a party needs more guidance and direction. Coaching is a one-on-one process that encourages self-awareness and empowers parties to recognize the impact of their behaviour and actions on others and how others might perceive such behaviour and actions.

5.4 Mediation

Mediation involves an impartial third party that hears both sides of the situation and helps the parties reach a satisfactory decision about the issue at hand. The mediator provides a forum where the parties can construct their own mutual agreement. The mediator can work directly and in-depth with the parties and encourage discussion. The mediator tries to help the parties reach their own agreement but does not decide what the solution should be. The mediator helps the parties achieve lasting decisions but cannot enforce agreements once they have been reached.

5.5 Group processes

A group or team process is a proactive approach that works at identifying underlying issues and potential conflicts within a group that, left unchecked, have resulted in and may continue to result in harassment situations. With a facilitator, the group or team identifies issues and conflicts that are negatively affecting the group. The group clarifies roles and expectations within the group. It also sets mutual goals for the group and develops a plan of action for future behaviour and interaction.

If Step 2 is unsuccessful, or inappropriate in the circumstances, either the Complainant or _____
_____ may pursue further action including a formal complaint.

6. Formal Procedure

Where appropriate, the Complainant may choose to file a formal complaint.

The Formal Procedure is as follows:

6.1 A formal complaint must be written and signed. It should give an accurate account of the incident or incidents of harassment including times, places and parties involved. When completed, the complaint is submitted to the

_____.

6.2 A formal complaint must be filed within 12 months of the incident, or within 12 months of the last incident if ongoing. The employer may extend the time period for filing in extenuating circumstances. Factors considered will include the severity of the alleged conduct, whether the Complainant has a justifiable reason for not filing within the 12-month time period, and any prejudice to the Respondent.

6.3 The _____ shall investigate or shall appoint an investigator to ensure the complaint is investigated in a confidential and expeditious manner.

6.4 The _____ or the investigator may, upon reviewing the written complaint and interviewing the Complainant, determine whether or not the Complainant has a prima facie complaint under this policy which merits further investigation (meaning, assuming all allegations are true, whether those allegations would amount to harassment). The _____ or investigator shall inform the Complainant whether or not the investigation will be pursued and may take action to resolve the issue.

6.5 In the case of a prima facie complaint under this policy, the Respondent shall be informed of the complaint, presented with a written statement of allegations and afforded an opportunity to respond.

6.6 Unless directed otherwise, the investigator shall gather and analyze the information, summarize the findings and may propose corrective action or make recommendations.

6.7 The investigator shall report the findings and recommendations to the _____.

6.8 Where it is determined that the Respondent has committed Harassment, the _____ shall take appropriate action.

6.9 The _____ may take any other action deemed advisable.

6.10 A complaint under this policy that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate action.

6.11 The parties to the complaint must be informed in writing of the outcome.

6.11.1 At any time, where it is appropriate to do so and on the consent of both the Complainant and the Respondent, informal resolution processes may be used at any time to reach an acceptable resolution.

7. Rights And Responsibilities

7.1 _____

The _____ is responsible for the implementation and administration of this policy and they shall:

- investigate or appoint an investigator or investigators as soon as possible;
- consult with the investigator or investigators to set a reasonable time frame for the completion of the investigation;
- review the findings and recommendations; and
- determine the outcome and the appropriate action to be taken, and ensure the parties are informed of the outcome in a timely fashion.

7.2 Complainant

A Complainant has the right:

- to make a complaint and to obtain a review of the complaint;
- to be accompanied by a person of support during their interview, provided that person is not a co-worker or potential witness;
- not to be subject to retaliation for the reason of having made a complaint under this policy; and
- to be informed of the results of the investigation.

A Complainant is required to:

- to immediately make known, if possible, their disapproval or unease to the individual responsible for the objectionable or offensive behavior and/or give serious consideration to the use of other informal resolution processes where appropriate;
- to follow all procedures under this Policy;
- to cooperate with all those responsible for dealing with the investigation of any formal complaint; and
- keep the complaint and the investigation strictly confidential. However, the Complainant may:
 - a. seek legal advice, support from their union representative, consult medical advisor(s) and/or other public support services;
 - b. seek support from an immediate family member or close friend, provided they are not a potential witness and further provided those individuals also maintain strict confidentiality; and/or
 - c. file a complaint under applicable human rights legislation and/or with the police, where applicable.

7.3 Respondent

A Respondent has the right:

- in the case of a prima facie complaint under this Policy, to be informed that a complaint has been filed;
- to be presented with a written statement of allegations and to be afforded an opportunity to respond to them;
- to be accompanied by a person of support during their interview, provided that person is not a co-worker or potential witness; and
- to be informed of the results of the investigation.

A Respondent is required to:

- follow all procedures under this Policy;
- cooperate with all those responsible for dealing with the investigation of the complaint; and
- keep the complaint and the investigation strictly confidential. However, the Respondent may:
 - a. seek legal advice, support from their union representative, consult medical advisor(s) and/or other public support services; and/or
 - b. seek support from an immediate family member or close friend, provided they are not a potential witness and further provided those individuals also maintain strict confidentiality.

7.4 Witnesses

A witness has the right not to be subject to retaliation because they have participated in processes under this policy.

A witness is required to:

- meet with the investigator and to cooperate with all those responsible for the investigation of the complaint; and
- keep the complaint and the investigation confidential.

7.5 Investigator

The investigator is required to:

- in the case of a prima facie complaint, ensure the Respondent has received a written statement of the allegations;
- ensure all parties involved have been informed of their rights and responsibilities;
- interview the parties concerned and any relevant witnesses;
- collect all pertinent evidence;

- use informal resolution processes where appropriate;
- prepare a report; and
- ensure the investigation is completed in a timely fashion taking into account particular circumstances (usually up to 3 months).

8. Other Options

The New Brunswick Human Rights Act (Act) prohibits sexual harassment and discrimination in employment as well as housing, public services, in memberships of trade unions, professional or business organizations, and trade associations.

Under the Act, complaints must be filed in writing to the New Brunswick Human Rights Commission (NBHRC) within 12 months from the time the harassment allegedly occurred, or within 12 months of the last incident, if it is ongoing. Complaints must be submitted on NBHRC's form. Complaints, once filed, are reviewed and may be mediated, if all parties agree, and/or investigated further. Complaints may also be dismissed at any point pursuant to the Act.

For more information on filing a complaint about harassment in New Brunswick and to obtain a Complaint Form, please visit the website at: <https://www2.gnb.ca/content/gnb/en/departments/nbhrc/the-complaint-process/filing-a-complaint.html>

Complaints under the Criminal Code

Sexual and other forms of assault are covered under the Criminal Code. In these instances, the police can be asked to lay criminal charges. Sexual and other forms of assault are serious criminal offenses that should be reported to the police.

Appendix “A” – Examples of Workplace Harassment

Personal Harassment:

Examples include, but are not limited to:

- **Physical contact** – such as pinching, pushing, poking etc.
- **Aggression/Intimidation** - yelling or shouting at an employee; exhibiting anger or aggression verbally or non-verbally (e.g. pounding a desk)
- **Intrusion** - tampering with someone’s personal belongings; intruding on someone by unnecessarily lurking around their desk; stalking, spying, or pestering someone
- **Coercion** - aggressively forcing or persuading someone to say or do things against their will or better judgment
- **Punishment** - undeservedly punishing an employee with physical discipline, psychologically through passive aggression, or emotionally through isolation
- **Belittling** - persistently disparaging someone or their opinions, ideas, work, or personal circumstances in an undeserving manner
- **Embarrassment** - embarrassing, degrading, or humiliating an employee publicly in front of others
- **Revenge** - acting vindictive towards someone; seeking unfair revenge when a mistake happens; retaliating against an employee
- **Threats** - threatening unwarranted punishment, discipline, termination, and/or physical, emotional, or psychological abuse
- **Offensive Communication** – using profanity, demeaning jokes, untrue rumors or gossip
- **Campaigning** - launching an overt or underhanded campaign to “oust” a person out of their job or the organization
- **Blocking Advancement or Growth** - impeding an employee’s progression, growth, and/or advancement in the organization unfairly

Sexual Harassment

Examples include, but are noted limited to:

- **Personal Harassment** – any form of Personal Harassment that is based on sex, sexual orientation and gender identity and expression
- **Sexual Inquiries, Remarks and Gestures** - questions, suggestions or remarks about a person’s sex life, sexual preferences, or physical appearance; rude, and sexually degrading or offensive remarks or gestures;
- **Sexist Comments/Remarks** – for example, cat calling, calling a woman “sweetie”, “honey”, “good girl” etc., commenting that a colleague doesn’t dress “masculine enough” or is “too” feminine, comments like “that’s so gay”, or “you throw like a girl”

• **Microaggressions Based on Sex, Gender and Sexual Orientation – for example:**

- use of heterosexist and transphobic terminology (“faggot”, “dyke”, “tranny”, “butch”)
- exoticization (e.g., asking explicit questions about sex and genitals)
- expressing discomfort/approval with the LGBTQ2S+ experience (e.g. remarks that LGBTQ2S+ couples should not raise children)
- tone policing – occurs when a member of a marginalized group calls attention to injustice but the injustice is ignored because the individual used rough or accusatory language. It also refers to degrading a person for not adhering to “traditional norms” in relation to their sex or gender (for example, breastfeeding, marriage, body size)
- pattern of excluding women, LGBTQ2S+ persons from key social or networking opportunities
- expecting women to clean the office, answer the phone, fill out paperwork, take notes, fetch coffee, mentor young people or assist coworkers etc.
- **Offensive Material** - displaying pictures, posters, or sending emails of a sexual nature
- **Advances** - sexual advances, unwelcome social invitations, with sexual overtones or flirting
- **Physical Touching** - caressing, kissing, fondling, hugging, shoulder rubbing etc.
- **Blocking Advancement or Growth** - impeding an employee's progression, growth, and/or advancement in the organization based on their sex, sexual orientation or gender identity or expression, or their rejection of sexual conduct, comments or gestures
- **Retaliation** - treating an employee in a negative fashion as punishment for rejecting sexual conduct, comments or gestures
- **Sexual Violence** - attempted or actual use of physical force against an employee, or any threatening statement or behaviour that gives an employee reasonable cause to believe that physical force of a sexual nature will be used against the employee

Abuse of Authority

Some examples include, but are not limited to:

- **Personal Harassment** – outlined above
- **Sexual Harassment** – outlined above
- **Favoritism** - giving unfair preferential treatment to one person or group at the expense of another
- **Unreasonableness/Arbitrariness** - unreasonable and arbitrary demands on subordinates, inappropriately giving too little or too much work, unjustly monitoring everything that is done
- **Exclusion** – unjustly failing to include an employee in meetings, projects, job assignments, activities etc.
- **Withholding**– unjustly failing to provide an employee with information, tools, material etc.
- **Discrimination** – unjust or prejudicial treatment of a person based on a protected ground
- **Inappropriate Requests** - requiring employees to perform personal tasks
- **Illegitimate** - asking/instructing an employee to perform unethical or illegal acts