

North York General Hospital Policy Manual

WORKPLACE HARASSMENT

NUMBER: III-c-30

CROSS REFERENCE: III-a-40 – Shared Resolutions of Complaints and Concerns

ORIGINATOR: Manager of Labour and Employee Relations

APPROVED BY: Operations Committee

ORIGINAL DATE APPROVED: Sept 1995

DATE REVIEWED/REVISED: Feb 2012

DATE OF IMPLEMENTATION: July 2016

Page 1 of 10

Purpose:

North York General Hospital is committed to providing a work environment in which all employees, including Hospital and Medical staff, volunteers, students and contractors are treated with dignity and respect.

Policy:

The Hospital will not tolerate harassment and discrimination in the workplace and it recognizes that every employee, Medical staff, volunteer, student and contractor:

- Has the right to a workplace free from harassment and discrimination because of any of the “Protected Grounds” under the Ontario *Human Rights Code*.
- Every worker has the right to a workplace free from workplace harassment and workplace sexual harassment under the *Occupational Health & Safety Act*.
- Has the right to claim and enforce their rights under this policy, the *Human Rights Code* and the *Occupational Health & Safety Act*, in good faith, without reprisal or threat of reprisal for having done so.
- Has the right to freedom from intentionally false (bad faith) claims of discrimination and harassment.

The Hospital's *WORKPLACE HARASSMENT INTERNAL RESOLUTION PROCESS* sets out the options available for dealing with both *Human Rights Code* Discrimination and Harassment concerns as well as *Occupational Health & Safety Act* Harassment concerns. The *WORKPLACE HARASSMENT INTERNAL RESOLUTION PROCESS* contains a mechanism for making a workplace discrimination and/or harassment complaint.

Part 1 of this policy sets out the specifics of *Human Rights Code* Harassment.

Part 2 of this policy sets out the specifics of *Occupational Health & Safety Act* Harassment.

Part 3 of this policy is a General section which applies to both *Human Rights Code* Harassment and Discrimination AND *Occupational Health & Safety Act* Workplace Harassment.

Part 4 provides options for dealing with harassment concerns, contains a mechanism for making a workplace harassment complaint and explains how the Hospital will respond.

All other sections of this policy apply to both, including the *WORKPLACE HARASSMENT INTERNAL RESOLUTION PROCESS*.

PART 1 - HUMAN RIGHTS CODE HARASSMENT

A- PROTECTED GROUNDS:

Every person has the right to be free from harassment in the workplace because of any of the following Protected Grounds:

- **Race**
- **Ancestry**
- **Place of origin** (birthplace)
- **Colour**
- **Ethnic origin**
- **Citizenship**
- **Creed** (religion)
- **Sex** (including pregnancy)
- **Sexual orientation**
- **Age** (18 years old or older)
- **Record of offences** (Pardoned criminal convictions that have not been revoked and convictions for provincial offences)
- **Marital status** (status of being married, single, widowed, divorced, separated, living in conjugal relationship)
- **Family status** (status of being in a parent and child relationship)
- **Disability** (physical or mental; present or past; perceived or actual)
- **Gender Identity (a person's individual experience of gender)**
- **Gender Expression (how a person outwardly expresses gender)**

B- WHAT IS HARASSMENT UNDER THE HUMAN RIGHTS CODE?

Human Rights Code harassment is “a course of vexatious comment or conduct that is known or reasonably ought to be known to be unwelcome” which is based on any of the Protected Grounds above. Harassment may result from a single incident where the single incident is sufficiently serious on its own, or a series of incidents. [Note: Any complaint that does not arise from a Protected Ground does not form a complaint under the Ontario *Human Rights Code* and will be considered under the *Occupational Health and Safety Act* Harassment portion of this policy (Part 2).]

The making of a sexual solicitation or advance towards an employee by a person in a position to confer, grant or deny a benefit or advancement to the employee that is known or ought reasonably to be known by the maker of the sexual solicitation or advance to be unwelcome also constitutes *Human Rights Code* sexual harassment.

Human Rights Code sexual harassment also occurs when an employee rejects a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the employee, and the person who made the sexual solicitation or advance then takes a reprisal, or threatens a reprisal against the employee.

C- EXAMPLES OF *HUMAN RIGHTS CODE* HARASSMENT

Examples of *Human Rights Code* harassment which the Hospital does not tolerate might include:

- Racial, ethnic, homophobic, sexist or sexually-oriented insults, jokes, remarks, taunting, innuendo;
- Refusal to speak or work with an employee because of his or her racial or ethnic background;
- Display of pornographic or other sexual materials of an offensive nature;
- Unnecessary and unwanted physical contact such as touching, patting or pinching;

PART 2 - *OCCUPATIONAL HEALTH & SAFETY ACT* HARASSMENT

A- WHAT IS HARASSMENT UNDER THE *OCCUPATIONAL HEALTH & SAFETY ACT*?

Workplace harassment is defined as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”, or “workplace sexual harassment” as defined below.

Workplace sexual harassment is defined as:

- a. “Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or
- b. Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.”

Workplace harassment or workplace sexual harassment may result from a single incident where the single incident is sufficiently serious on its own.

B- EXAMPLES OF *OCCUPATIONAL HEALTH & SAFETY ACT* HARASSMENT

Examples of Workplace Harassment under the *Occupational Health & Safety Act* which the Hospital does not tolerate might include:

- Intimidating, aggressive or threatening behaviour, such as shaking fists, destroying property or throwing objects;
- Verbal abuse such as insulting, profane or condescending language;

Workplace harassment may include bullying - behaviour directed at an individual, or individuals, that is intended to cause or ought to be known to cause fear and distress and/or harm to another person’s body, feelings, self esteem, or reputation such as social isolation (silent treatment), rumours, gossip, verbal aggression, trivial fault finding

Examples of Workplace Sexual Harassment under the *Occupational Health & Safety Act* which the Hospital does not tolerate might include:

- Commenting on a colleague’s body or appearance;
- Displaying of sexual content or making sexual jokes;
- Repeated sexual advances;

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- Uttering comments about someone's sexual orientation or gender identity/expression

PART 3 – GENERAL (applies to both *Human Rights Code* Harassment and *Occupational Health & Safety Act* Workplace Harassment)

A- HARASSMENT DOES NOT INCLUDE

Harassment does not include reasonable actions taken by the Hospital or a supervisor or member of management relating to the management and direction of workers or the workplace. This includes the normal, reasonable exercise of supervisory responsibilities, including performance reviews, work direction, counselling and disciplinary action where necessary, in accordance with Hospital policies and procedures.

B- THE WORKPLACE DEFINED

What is the workplace for the purposes of this policy?

The workplace is any location where Hospital business is conducted and includes, but is not limited to: all Hospital buildings, offices, cafeterias, washrooms, lockers, worksites, parking lots, vehicles, work related social gatherings, external meetings and conferences, training sessions, business travel or customer/supplier visits.

C- NO REPRISALS

The Hospital is committed to ensuring that every employee who makes a complaint under this policy, otherwise invokes this policy, or who participates in any resolution process pursuant to the Workplace Harassment Internal Resolution Process (in Part 4 below) is free from reprisal for having done so.

D- DISCIPLINE FOR MISCONDUCT

The Hospital considers all of the following to be misconduct which will result in corrective and disciplinary action, up to and including termination of employment:

- Any incident of harassment or discrimination as set out above;
- Any failure to take corrective action by a supervisor or manager who is, or reasonably should be aware, of harassment or discrimination in the workplace;
- Any refusal to cooperate with the investigation or resolution of a complaint under this policy;
- Any interference with the investigation or resolution of a complaint under this policy;
- Any act of reprisal taken against an individual for complaining of a violation of this policy or for participating in the Workplace Harassment Internal Resolution Process (Part 4) applicable to this policy; and
- Any claim or complaint under this policy that is intentionally false (made in bad faith).

PART 4 – INTERNAL RESOLUTION PROCESS

The following are internal resolution options available to any employee, Medical staff, volunteer, student or contractor who feels that he or she has been a victim of workplace harassment or who witnesses workplace harassment.

4.1 STEP ONE: ASK THE PERSON TO STOP (OPTIONAL)

If you are able, inform the individual responsible for the harassment that his/her behaviour is unwelcome and unwanted.

Speak up quickly, directly and respectfully and ask the individual to stop the offensive behaviour and/or conduct.

Although the other individual may be embarrassed or defensive at the time, speaking up may be sufficient to put an end to the inappropriate conduct.

Asking the person to stop is OPTIONAL.

4.2 STEP TWO: KEEP A RECORD OF EVENTS (ADVISED)

Keep an accurate record of the harassment.

Record dates, times, locations and the identity of witnesses.

Note what was said and done by the harasser, yourself and any other individuals present.

Keeping a record of events is strongly ADVISED although a failure to do so will not invalidate a complaint. Keeping an accurate record will assist the Hospital in taking action.

4-3 STEP THREE: ASK FOR HELP

If the inappropriate conduct continues, or if the circumstances are such that you feel unable to ask the person to stop, talk to your manager or supervisor. Explain what happened, how it made you feel and what steps you have taken, if any, to deal with the situation.

Although your supervisor/manager will promptly inform Human Resources of your complaint of discrimination or harassment; with your agreement and participation, your supervisor/manager may be able to resolve your concern(s) informally. In such circumstances, the respective manager is required to consult with the Manager of Labour and Employee Relations on appropriate steps to be taken in response to the complaint or concern.

If you are unable to speak to your manager or supervisor for some reason (ie they are part of or the source of the harassment) you may bring your concern directly to the attention of the Manager of Labour and Employee Relations. .

Your supervisor/manager will not, however, conduct a formal investigation.

At any time you may seek assistance from Human Resources for advice, assistance or if you are unsure about the most appropriate way to deal with a harassment concern.

4.4 STEP FOUR: MAKE A FORMAL COMPLAINT

If the inappropriate conduct continues, you are unsatisfied with the progress of the informal resolution, or if you feel unable to participate in an informal resolution process (such as mediation) with the individual, you may make a formal complaint.

A formal complaint should be made in writing and submitted to the Manager of Labour and Employee Relations.

A formal complaint should contain the details of your concerns: what was said or done; who said or did it; where it occurred; when it occurred (date and time); who else was present; what you did.

The Hospital will maintain the information that you provide in confidence to the degree possible and subject to any disclosure requirements at law and the principles of procedural fairness.

A formal complaint will be investigated in accordance with the Formal Investigation process below.

4.4.1 COMPLAINT TIMEFRAME

Complaints should be made as soon as possible and formal complaints are to be filed **within six months** of the alleged inappropriate conduct, unless there are extenuating circumstances (as determined by the Manager of Labour and Employee Relations) which justify an extension of the six-month complaint timeframe and which does not unfairly prejudice the respondent's ability to respond to the allegations.

4.4.2 WHAT IF SOMEONE COMPLAINS ABOUT YOU?

If a co-worker approaches you and tells you that something that you said or did was offensive, embarrassed them or made them feel uncomfortable:

- Listen to your co-worker before responding;
- Accept that what you said or did may have been interpreted in a way that you did not intend;
- Accept that what you did or say may have had a negative impact on your co-worker;
- Own up if you have caused offense, embarrassment or discomfort;
- Thank your co-worker for sharing their feelings with you;
- Apologize when appropriate;
- Agree not to repeat the offending behaviour; and,
- Do not repeat the offending behaviour.

If a co-worker makes a harassment complaint against you to his or her supervisor, manager, or to Human Resources:

- You will be treated fairly and the allegations will be considered objectively;
- You will have a full opportunity to present your side of the story;
- You will be expected to co-operate fully and in good faith in any informal resolution process or in a formal investigation;

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- The Hospital will maintain the information that you provide in confidence to the degree possible and subject to any disclosure requirements at law and the principles of procedural fairness.
 - Upon completion of a formal investigation, the Manager of Labour and Employee Relations or designate will meet with you to advise you of the outcome.
 - You will be subject to discipline up to and including discharge in the event that the outcome of a formal investigation is that you violated the *Workplace Harassment Prevention Policy* OR if you take any reprisal against any person for the reason that he or she invoked this policy or participated in the resolution process.

4.4.3 FORMAL INVESTIGATION PROCESS

When a formal complaint under the *Workplace Harassment Prevention Policy* is received from a complainant, or is initiated by the employer, it will be investigated as follows:

1. The complaint will be processed and investigated by Human Resources, or it's designate.
2. At the earliest opportunity, a Human Resources representative or designate (the "Investigator") will meet with the employee who lodged the complaint (the "Complainant") to obtain the details of the allegations. This process may entail one or more meetings. If the Complainant has not already done so, he or she may be asked to provide such information in writing, in addition to meeting with the Investigator.
3. The Investigator will meet with the person who is alleged to have been the source of the harassment (the "Respondent") to advise him or her of the particular complaint and to provide a fair opportunity to respond. This process may entail one or more meetings. The Respondent may be requested to respond in writing in addition to meeting with the Investigator.
4. In consultation with the Complainant and Respondent, the Investigator will determine whether an informal resolution of the complaint is possible – i.e. by way of a face-to-face meeting to clear the air, an apology or some other informal resolution. If so Human Resources will retain a copy of the written complaint and a memo outlining the resolution in a separate file and no reference to the complaint will be included in the personnel file of either the Complainant or Respondent unless otherwise provided in the informal resolution.
5. If an informal resolution is not possible, the Investigator will conduct a formal investigation of the complaint. Both the Complainant and the Respondent may provide names of witnesses who may assist in the investigation. The Investigator may interview these witnesses as well as any other individual who reasonably appears to have information relevant to the matters in dispute.
6. The Investigator will conduct the investigation fairly, objectively and reasonably promptly. The Investigator will make, maintain and preserve interview notes and the investigation file. Where the Investigator is external to the Hospital, the Investigator will submit the original investigation file to the Vice President of People Services and Organizational Development.

Within a reasonable time period following the conclusion of the investigation, the Investigator will prepare an Investigation Report that makes Findings of Fact and an assessment of whether or not the Respondent violated the *Workplace Harassment Prevention Policy*.

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7. The Investigation Report will be reviewed by the Vice President of People Services and Organizational Development.
 8. If they conclude that harassment has occurred they will determine what action is appropriate in the circumstances in accordance with the *Workplace Harassment Prevention Policy*.
 9. If they conclude that no harassment occurred, or cannot be established based on the evidence available, a record of the complaint together with the results of the investigation will be retained by the Manager of Labour and Employee Relations in a separate file. No reference to the complaint will be placed in the Respondent's personnel file.
 10. If they conclude that the complaint was made frivolously, vexatiously or in bad faith, they will determine what corrective and disciplinary action is appropriate in respect of the Complainant.
 11. The Manager of Labour and Employee Relations will meet separately with the Complainant and Respondent and advise each of the results of the investigation. The Complainant and Respondent will have an opportunity to comment at that time.
 12. The Manager of Labour and Employee Relations will consider whether the Complainant or Respondent raised any legitimate basis for changing the conclusion of the investigation. The final decision regarding corrective and disciplinary action will be made by the Manager of Labour and Employee Relations in consultation with the Vice President of People Services and Organizational Development.
 13. The Manager of Labour and Employee Relations will inform the Complainant and Respondent of the final results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation.

4.4.4 CONFIDENTIALITY

Information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law;

The confidentiality of everyone who invokes or participates in the Internal Resolution Process under this policy will be protected to the degree possible and subject to any disclosure requirements at law and the principles of procedural fairness.

Every employee is expected to maintain strict confidence with respect to any knowledge he or she may have as a result of his or her involvement in any Internal Resolution Process under this policy. The Hospital considers the failure to maintain confidence to be misconduct which may result in corrective and disciplinary action, up to and including termination of employment.

4.4.5 OTHER RESOLUTION OPTIONS

All employees are entitled to make a complaint to the Ontario Human Rights Tribunal (for complaints under the *Ontario Human Rights Code*) or to the Ontario Labour Relations Board (for complaints under the *Occupational Health and Safety Act*).

PART 5 - RESPONSIBILITIES

All employees, Medical staff, volunteers, students and contractors are responsible for:

- Treating each other respectfully and professionally and not engaging in conduct considered to be harassment or discrimination under this policy.
- Taking action if they witness harassment or discrimination by telling the individual to stop, or reporting it to a member of management.
- Reviewing the Hospital's Internal Resolution Process under this policy for the options available for dealing with harassment or discrimination.
- Cooperating in the resolution of any concerns or complaints made under this policy and dealt with under the Hospital's Internal Resolution Process under this policy.
- Keeping information about complaints, investigations and results under this policy and dealt with under the Hospital's Internal Resolution Process under this policy confidential (subject to any disclosure requirements at law) and not undermining any resolution process or engaging in gossip or innuendo with respect to any concern or complaint under this policy or any stage of the Internal Resolution Process under this policy.

In addition, all Supervisors, Managers and other members of Hospital management are also responsible for:

- Familiarizing themselves with this policy.
- Ensuring that employees, Medical staff, volunteers and students under their supervision or in their area of responsibility are aware of their rights and responsibilities under this policy.
- Ensuring that this policy is posted at a conspicuous place in the workplace.
- Carrying out regular education, training and instruction for employees Medical staff, volunteers and students under their supervision with respect to this policy and the Internal Resolution Process as developed and prescribed by Human Resources.
- Taking immediate steps to prevent or stop incidents or actions that may lead to complaints of harassment.
- Ensuring that the working environment is free from inappropriate pictures, posters or other material.
- Modelling respectful and professional behaviour and not engaging in, condoning or ignoring behaviour that may be considered harassment under this policy.
- Reviewing the Hospital's Internal Resolution Process for the options available to management for responding when an employee makes a harassment complaint.

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- Immediately reporting to the Manager of Labour and Employee Relations any allegation of discrimination or harassment or observed or suspected discrimination or harassment by an employee.
 - Documenting allegations of discrimination or harassment by an employee and forwarding such documentation to the Manager of Labour and Employee Relations.

Manager, Labour and Employee Relations is also responsible for:

- Developing education and training materials in support of this policy.
- Prescribing education, training and instruction of this policy, including the Workplace Resolution Process, by Supervisors and Managers to employees under their supervision.
- Providing employees with advice in respect of the requirements of this policy.
- Advising and directing Supervisors, Managers and other members of management with respect to responding to informal complaints of harassment consistent with the provisions of the Workplace Internal Resolution Process.
- Taking responsibility for formal complaints of harassment and initiating and/or conducting informal resolutions or formal investigations under this policy as required.
- Ensuring that this policy is reviewed as often as is necessary, but at least annually.

Application:

This policy applies to all individuals who are employed by North York General Hospital, those working under contractual agreements with the Hospital, students, volunteers, Medical staff and others carrying out business on behalf of the Hospital regardless of where that business might be conducted.