

Section: Human Resources

Council Policy No.: 18 (21)

Topic: Workplace Harassment and
Discrimination Prevention Policy

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18, 2012

Approval: City Council

Purpose:

POLICY STATEMENT

The Corporation of the City of London ("the City") is committed to fulfilling its obligation to provide every employee with a work environment that is safe and free from harassment and discrimination on the grounds set out in the Ontario Human Rights Code (the "Code").

General Information:

1.0 Ontario Human Rights Code Provisions

The following provisions of the Code form the framework of this Policy.

Employment

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Harassment in employment

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Harassment because of sex in workplaces

Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual

orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.

Sexual solicitation by a person in position to confer benefit, etc.

Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

Reprisals/Retaliation

Retaliation/reprisal is also unlawful and will not be tolerated. Discriminating against an individual for:

(a) invoking this Policy (on behalf of him/herself or another individual); or

(b) participating or cooperating in an investigation under this Policy; or

(c) associating with a person who has invoked this Policy or participated in these procedures;

will be treated as a violation of the Policy and will be dealt with accordingly. In such a case the offender may be subject to the same corrective and/or disciplinary action listed below.

2.0 DEFINITIONS

Discrimination: actions or behaviours that result in unfavourable or adverse treatment because of one or more of the prohibited grounds

Employee: all individuals employed by the Corporation, including, managerial, supervisory, full-time, part-time, temporary, casual, and students on placement

Harassment: engaging in a course of vexatious comment or conduct that is known or reasonably ought to be known to be unwelcome

Harassment/Discrimination Response Team shall be comprised of: City Manager, relevant Managing Director, Chief Human Resources Officer or their designates, and a member of Legal Services.

Prohibited Grounds are:

race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability

"age," "disability," "family status," "marital status," "record of offences," shall be as defined in the Code

Workplace: means all Corporation facilities and work sites, including vehicles and any other land, premises, locations or things at, upon, in or near where the business of the Corporation is being conducted. Included in this definition are Corporation-related activities, including Corporation sanctioned social functions, or business performed at any other location away from the Corporation, during or outside of normal working hours

3.0 EXAMPLES OF PROHIBITED CONDUCT

Discrimination

Differential or unequal treatment based on one or more of the prohibited grounds.

Examples could include but are not limited to:

- exclusion from workplace activities
- refusal to work with another employee
- denial of hiring, promotion, work assignment, career development or training
- denial of services to any individual or group of individuals

Sexual harassment

Examples could include but are not limited to:

- comments, jokes, slurs, innuendos or taunting about a person's body, attire or sex
- comments or conduct of a sexual nature (verbal, written, physical)
- jokes of a sexual nature which cause awkwardness or embarrassment
- displaying pornographic pictures or other offensive material
- attaining, viewing, retaining or distributing pornographic information/materials from the internet or other sources
- inappropriate touching, gestures, leering, staring or sexual flirtations
- sexual/physical assault (also an offence under the Criminal Code)
- persistent unaccepted solicitations for dates (including unwelcome contact subsequent to the end of an intimate relationship)
- solicitation(s) made by a person in a position to confer or deny a workplace benefit or advancement on the recipient
- unwelcome comments or questions about a person's sex life

Racial/Ethnic Discrimination/Harassment

Examples could include but are not limited to:

- remarks, jokes, slurs, innuendos, or taunting about a person's racial or ethnic background
- name-calling including derogatory racial or ethnic slurs
- the display of racist pictures or graffiti
- refusing to work or interact with an employee because of her or his racial or ethnic background
- insulting comments, gestures or jokes based on racial or ethnic grounds
- inappropriate comments, gestures or jokes about a person's racial or ethnic background

- attaining, viewing, retaining or distributing racist information from the internet or other sources

Other Discrimination/Harassment (based on any other prohibited ground):

Examples could include but are not limited to:

- pornographic or sexist remarks, jokes, slurs, innuendos or taunting
- vandalism of property
- interference with a person's ability to perform his/her work responsibilities
- offensive communication via any means (e.g. electronic mail, voice mail, print or radio)
- displaying pornography, sexist, derogatory or offensive pictures or material

What Is Not Harassment

- the performance of management functions such as but not limited to: performance reviews/appraisals, performance management (including coaching, counselling, discipline), organizational changes/restructuring, shift/vacation scheduling and work assignments/work location.
- stressful events encountered in the performance of legitimate duties
- consensual romantic relationships, except where one participant is in a position to confer or deny a workplace benefit on the other

4.0 RESPONSIBILITIES

Every individual to whom this Policy applies has a responsibility to ensure that the work environment is safe and free from workplace harassment and discrimination by:

- a) refraining from any form of workplace harassment or discrimination;
- b) advising the Intake Administrator or Human Resources Service Partner or any member of management of an incident of apparent workplace harassment or discrimination, or any incident of retaliation against any person for invoking this Policy; and
- c) co-operating in an investigation and handling of any incident of harassment or discrimination.

Managers

Managers are responsible for providing a workplace free from harassment and discrimination. They must act immediately on observations or allegations of harassment/discrimination. A manager may be held responsible if he or she was aware of an incident involving harassment or discrimination but did not take any steps to resolve or address it.

Managers must be aware of what constitutes harassment and discrimination and the procedures that are in place for dealing with allegations/complaints.

Managers must ensure that their own acts adhere to this policy.

Human Resources Division

The Human Resources Division can assist managers in responding to matters under this Policy. Human Resources can also make referrals to agencies for counselling and assistance where required. The Division is also responsible for: maintaining and updating this Policy, training on the Policy, receiving and

acting on complaints (including investigating and mediating complaints, and the implementation of resolutions), and all reporting relating to the Policy.

Human Rights Division

The Human Rights Division provides support for the intake, tracking and processing of inquiries, complaints and investigations under this Policy. In addition, the Human Rights Division can also make referrals to agencies for counselling and assistance when required.

Unions/Associations

Union/Association officials are available for confidential consultation and to provide representation to both complainants and respondents, if they are union/association members. Union/Association officials can also make a referral to agencies for counselling and assistance when required.

Community Agencies

Community agencies are available to provide confidential advice to individuals affected by complaints.

5.0 Complaints Involving the City Manager/Managing Directors/Intake Administrator

If an employee believes that a Managing Director or Intake Administrator has engaged in conduct contrary to this Policy, the employee is encouraged to advise the City Manager or Chief Human Resources Officer as soon as possible. If an employee believes that the individual holding the position of City Manager has engaged in conduct contrary to this policy, the employee is encouraged to advise the Chief Human Resources Officer as soon as possible. Upon being advised of a complaint, the Chief Human Resources Officer or the City Manager, as the case may be, will immediately refer the complaint to an external investigator. The external investigator will perform all the functions assigned to the Human Rights Division and Human Resources Division as described in this Policy and the Formal Investigation Process and will provide his or her investigation report and recommendations, if any, to the Finance and Administrative Services Committee. The Finance and Administrative Services Committee, after consultation with the external investigator, shall make recommendations to the Municipal Council relating to corrective and/or disciplinary actions, and the Municipal Council shall consider, adopt or otherwise deal with the recommendations from the Finance and Administrative Services Committee.

In all other respects, the Resolution/Complaint Procedures set out below will apply to the processing of the complaint.

6.0 RESOLUTION/COMPLAINT PROCEDURES

- (a) Individual Action
- (b) Informal Action
- (c) Mediation
- (d) Formal Investigation

(a) Individual Action - OPTIONAL

If an employee believes that he/she is being harassed or discriminated against contrary to this Policy, it is recommended, but not required by the Policy, that the respondent be told as soon as possible that his/her behaviour/actions are unwelcome and must stop.

It is not necessary for the complainant to advise the respondent directly. The communication may be done verbally, via e-mail, in writing, or other suitable means. It is recommended that if the communication is done verbally, what was said, as well as the date, time and place be recorded.

The Intake Administrator, a Union/Association representative, a Human Resources Service Partner, any member of management or a trusted friend may assist.

Documentation

It is recommended that the complainant maintain a detailed, written record of incidents of harassment/discrimination, including the number of occurrences, date(s), time(s), place(s), nature of the offensive behaviour(s), names of individuals who may have observed the incidents and all actions taken.

(b) Informal Action

If an employee is not comfortable confronting the respondent or if the harassment or discrimination continues, he/she shall advise one of the following: the Intake Administrator, a Human Resources Service Partner or any member of management of his/her complaint, preferably in writing. A Human Resources Service Partner or member of management will report the matter to the Intake Administrator. The Chief Human Resources Officer, or designate, in consultation with the Intake Administrator, and with the employee if appropriate, may determine an appropriate informal course of action which will effectively resolve the complaint in a timely and fair manner.

Circumstances in which an informal course of action may be appropriate include, but are not limited to, the following:

- Where the alleged misconduct is minor in nature.
- Where all the facts necessary for resolution are known without the need for further inquiry.
- Where no other resources or special expertise are required for an impartial and timely resolution.

Upon becoming aware of a complaint, the Corporation will determine whether the subject matter falls under this Policy or is more appropriately dealt with under another policy (e.g. Code of Conduct for Employees, Workplace Violence Prevention policy), and whether further action and/or investigation is warranted.

(c) Mediation - OPTIONAL

Mediation is a voluntary process whereby the complainant and respondent meet with a trained mediator to determine whether the complaint can be resolved in a mutually satisfactory manner.

The Corporation recognizes that mediation is not appropriate in all circumstances, such as when there are allegations of severe discrimination/harassment which, if substantiated, would result in disciplinary action. Accordingly, where the Corporation deems mediation appropriate it will be offered to the parties but will only be conducted with the consent of both the complainant and the respondent. It is preferable that mediation be attempted prior to a formal investigation but will remain available to the parties throughout the investigation process.

During the mediation process, the complainant and the respondent may, if desired, be accompanied by a Union/Association representative or trusted friend.

If a mediated settlement is reached, the terms of the settlement shall be reduced to writing and signed by the complainant, respondent and the mediator. If the settlement requires any action on the part of the Corporation, the agreement of the Chief Human Resources Officer will be required.

Discussions between the parties at the mediation will be treated as discussions carried out with a view to effecting a settlement and will be treated as privileged and confidential to the full extent permitted by law.

(d) Formal Investigation

If mediation or other informal attempts to resolve the complaint are not appropriate or prove ineffective or where the Corporation determines that further inquiry is warranted, a formal investigation into the matter will be conducted.

An investigation into a potential breach of this Policy may also be initiated by the Corporation where it deems appropriate, including where allegations of harassment or discrimination that, in the Corporation's assessment, warrant further action/investigation are made by someone other than the alleged victim and the alleged victim does not wish to submit a complaint.

Formal investigations and communication of the findings from such investigations will be conducted in accordance with the Corporation's Formal Investigation Process.

7.0 GENERAL PROVISIONS

Interim Measures

In certain circumstances such as where safety is at issue, it may be necessary to take immediate measures. In such a case, interim measures shall be determined by the Chief Human Resources Officer, or designate, in consultation, where appropriate, with other members of the Harassment/Discrimination Response Team, the Corporate Security and Emergency Management Division and/or the London Police Department, if applicable. Interim measures may include but are not limited to relocating a party, or placing a party on a non-disciplinary suspension with pay, pending the resolution of the complaint or outcome of the investigation.

Support for Parties

The Corporation recognizes that involvement in a harassment/discrimination investigation may be stressful and emotionally upsetting. Complainants, respondents and other affected employees may access the counselling services and support provided by the Corporation's employee assistance provider. Additionally, complainants may wish to access counselling and support through outside agencies.

8.0 CORRECTIVE ACTION AND/OR DISCIPLINARY ACTION

Where a finding of discrimination or harassment has been made, the Harassment/Discrimination Response Team will determine what the appropriate corrective action and/or disciplinary actions will be.

Where it is determined that corrective action or disciplinary action is to be taken against an employee of the Corporation, such action may include, but is not limited to, the following:

- an apology
- coaching or counselling
- education or training
- warning
- suspension or leave without pay
- demotion
- transfer
- termination of employment

Where there has been a finding of harassment or discrimination, a manager will implement any corrective or disciplinary actions.

Where it is determined that corrective action is to be taken against members of Council, volunteers (including members of Advisory Committees, Special Committees, and Task Forces), students on placements, individuals contracted by the Corporation on a "purchase of service" agreement, clients or customers, the Corporation will take such corrective action as is reasonable in the circumstances and permitted by law to ensure that the harassment or discrimination stops.

The Corporation may also implement any systemic remedies as it may deem appropriate.

Where Complaint Not Substantiated

Where there is insufficient evidence to prove that harassment or discrimination occurred, no record of the complaint shall be placed in the respondent's Human Resources file.

Vexatious/Bad Faith Complaints

Where it is determined that the complainant has made a vexatious/bad faith complaint or an individual makes allegations knowing them to be false, the Harassment/Discrimination Response Team will take appropriate corrective and/or disciplinary action which may include the same corrective and/or disciplinary actions noted above.

Timing

The complaint should be made as soon as possible after the harassment or discrimination occurred, preferably within one year after the last incident of harassment or discrimination occurred unless there are reasons why it was not practicable to bring it forward sooner. Where failure to make a complaint in a timely fashion affects the ability of the Corporation to conduct a full and complete investigation, the Corporation may decline to deal with the complaint.

9.0 RELATED CRIMINAL PROCEEDINGS

Where criminal proceedings are initiated against a respondent based on the allegations in a complaint of harassment or discrimination that fall within the ambit of this Policy, the Corporation will conduct its own independent investigation, if possible, into the allegations and make its own determination in accordance with this Policy.

10.0 CONFIDENTIALITY AND RECORD OF DISCIPLINARY / CORRECTIVE ACTION

The administration of this Policy will also be in accordance with the *Municipal Freedom of Information and Protection of Privacy Act* and the *Occupational Health and Safety Act*. All complaints received under this Policy will be considered strictly confidential subject to the Corporation's obligation to safeguard employees, to conduct a thorough investigation and take appropriate corrective and/or disciplinary action.

The parties to the complaint and any witnesses are expected to maintain confidentiality. Unwarranted breaches of confidentiality will result in corrective and/or disciplinary action.

Where an investigation results in corrective and/or disciplinary action against an employee, a record of such action will be placed in the employee's Human Resources file.

11.0 RECOURSE TO HUMAN RIGHTS TRIBUNAL OR GRIEVANCE ARBITRATION

A complainant who is not satisfied with the findings made through the investigation process may refer his/her complaint to the Ontario Human Rights Tribunal or may file a grievance under the relevant collective agreement, if applicable.

12.0 POLICY REVIEW PROCESS

The Corporation is committed to continuing to enhance its harassment/discrimination policies, practices and procedures. This Policy shall be reviewed as required. Employees and their representatives are encouraged to provide input and feedback to a Human Resources Service Partner or the Intake Administrator.

13.0 HARASSMENT AND DISCRIMINATION PREVENTION TRAINING

Employees of the Corporation will receive mandatory training on this Policy upon hire. Thereafter, as appropriate, employees will receive refresher training or in-service with respect to specific rights and/or obligations arising from the *Human Rights Code* and/or the *Occupational Health and Safety Act* and will be reminded of the complaint mechanism to enforce those rights contained in this Policy and any substantial changes.

14.0 APPLICATION

The Corporation will not tolerate harassment or discrimination on the grounds set out above of any of its employees in any of its workplaces, by anyone, including: other employees of the Corporation, non-employees, clients and customers of the Corporation. Accordingly, this Policy applies to all Corporation employees, members of Council, volunteers (including members of Advisory Committees, Special Committees and Task Forces), students on placements, individuals contracted by the Corporation on a "purchase of service" agreement, clients and customers.

The Policy shall be posted on the Corporation's intranet, on the Corporation's website and in Corporation workplaces.

15.0 RELATED POLICIES

Accommodation of Employees with Disabilities Guideline
Code of Conduct for Employees
Computer Usage Policy
Time Off for Religious Observances Guideline
Workplace Violence Prevention policy
Formal Investigation Process