

GUIDE

Preventing Harassment in the Workplace



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for Preventing Harassment in the Workplace

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PREVENTING WORKPLACE HARASSMENT

Introduction

For the purpose of this guide and in relation to a worker's safety and health in the workplace:

Two main types of harassment are covered under the regulation.

1. The first type is defined as inappropriate conduct by a person that is made on the basis of:
 - race, creed, religion, colour
 - sex, sexual orientation, gender-determined characteristics
 - marital status, family status, source of income
 - political belief, political association, political activity
 - disability, physical size or weight
 - age, nationality, ancestry or place of origin
2. The second type relates to what is sometimes referred to as bullying. This may involve:
 - severe, repeated conduct that adversely affects a worker's psychological or physical well-being if it could reasonably cause a worker to be humiliated or intimidated
 - a single occurrence, if it is shown to have a lasting, harmful effect on a worker

Harassment may be written, verbal, physical, a gesture or display, or any combination of these. It may happen only once, but often happens repeatedly.

Reasonable conduct is not harassment

Reasonable actions by managers or supervisors to help manage, guide or direct workers or the workplace are not harassment. Appropriate employee performance reviews, counselling or discipline by a supervisor or manager are not harassment. Harassment can take place in the workplace or outside of it in a situation connected to work.



HARASSMENT PREVENTION POLICY

A harassment prevention policy outlines procedures for alleged victims of harassment in the workplace and for employers to deal with a harassment complaint.

All workplaces need a policy

Part 10 of Manitoba Workplace Safety and Health Regulation, M.R. 217/2006, requires employers to develop and implement a written harassment prevention policy in consultation with the workplace safety and health committee or representative. If there is no committee or representative, the employees at the workplace should be consulted.

Your harassment prevention policy must include the following statements:

- Every employee is entitled to work free of harassment.
- The employer must ensure, as much as is practical, that no employees are subjected to harassment in the workplace.
- The employer will take corrective action regarding any employee who harasses another employee.
- The employer will not disclose the name of a complainant or an alleged harasser or the circumstances of the complaint to anyone, except where disclosure is:
 - necessary to investigate the complaint or take corrective action or
 - required by law
- Employees have the right to file a complaint with the Manitoba Human Rights Commission.
- The employer's harassment prevention policy is not intended to discourage or prevent complainants from exercising any other legal rights under any other law.

The harassment prevention policy must provide information on the following:

- how to make a harassment complaint
- how a harassment complaint will be investigated
- how the complainant and alleged harasser will be informed of the results of the investigation

Employers must post a copy of the policy in a prominent location at the workplace.

(Note: not all workplaces are enclosed buildings.)

Implementing the harassment prevention policy

- The employer must ensure that all employees are trained in the harassment prevention policy.
- Employers must also ensure all employees follow the harassment prevention policy.

There is a sample harassment prevention policy at the end of this guide. Be sure to add, remove or change the information in this sample to make it specific to the needs of your workplace.



DEVELOPING A HARASSMENT PREVENTION POLICY

Policy statement

Make a clear statement that harassment is not tolerated in the workplace and that management is committed to and supports a harassment-free workplace.

The law

This section should include a brief overview of the law on harassment.

Description of harassment

Explain what is meant by harassment, including examples of behaviors or actions that may be considered harassment at the workplace.

Workers' rights and responsibilities

- the right to a harassment-free workplace
- the responsibility to treat other employees with respect
- the responsibility to speak up when harassment occurs
- the responsibility to report harassment to the appropriate person as soon as possible
- the right to file a complaint with the Manitoba Human Rights Commission

Supervisors', managers', employers' responsibilities

- treat all employees, clients, suppliers and contractors with respect
- report or investigate all complaints
- set a good example
- refuse to tolerate harassment - put a stop to it immediately
- deal with harassment allegations seriously, speedily and confidentially



Procedures to deal with a complaint

Describe the steps for responding to a harassment complaint; the roles and responsibilities of the people involved; and the possible results for the victim and harasser, including:

- practical guidelines for employees and management
- informal and formal ways of proceeding (encourage employees to choose the informal approach first)
- mediation as an option
- detailed steps to be taken in complaints
- time frames
- who is responsible for decisions
- appeals
- information about other agencies that deal with harassment

Corrective action, safeguards and remedies

- outline the range of penalties for the harasser
- state whether information about the complaint will be included in a harasser's personnel file
- list possible remedies
- information about the complaint will not be put in the complainant's personnel file when complaint is in good faith
- protect against victimization or retaliation for workers who complain of harassment, or who give evidence in an investigation
- state how employer will inform the complainant and alleged harasser of the results of the investigation

Education

Employers must circulate the policy to all employees and managers through:

- orientation or information sessions
- staff meetings
- memos, emails, or pay slip notices
- films/videos, posters/brochures

Education of staff on policy requirements

Employers must:

- train managers to react appropriately, handle cases appropriately
- maintain an anti-harassment atmosphere
- train employees to respect each other
- train harassment counsellors and investigators to perform their roles
- make ongoing harassment training part of other training sessions, such as: management training, induction programs for new employees, courses for union-management committees, social skills training for employees, assertiveness training for employees

Monitoring

Employers must make a commitment to periodic review of the policy by:

- being open to employees' comments
- requesting feedback from counsellors, managers and employees
- conducting exit interviews with personnel leaving the organization
- adjusting policy and procedures as needed/required

Note:

The sections on developing a harassment prevention policy and the sample harassment prevention policy were adapted from: *Anti-Harassment Policies for the Workplace: An Employer's Guide – Canadian Human Rights Commission* in cooperation with Human Resources Development Canada and Status of Women Canada, October 2002.

In developing a harassment prevention program, employers must also be aware of the requirements of *The Human Rights Code*. An effective policy will include remedies for the harassed worker and corrective action for the harasser.



INVESTIGATING ALLEGATIONS OF HARASSMENT

Investigations are an important part of addressing allegations of workplace harassment. The basic steps that follow will guide you in conducting this type of investigation at your workplace.

General investigation guidelines

- All allegations of harassment in the workplace are to be investigated as outlined in the workplace harassment prevention policy.
- All investigations are to be conducted as soon as possible.

Who should conduct the investigation?

- Investigations should be conducted by a person in the workplace not associated with the parties involved in the allegation. This is often done by a representative of the company's human resources or senior management. In some workplaces, a union representative or anti-harassment/respectful workplace committee representative may be present to support the persons involved, but is not part of the investigation process.
- Although they do not actively participate in the investigation progress, the safety and health committee or safety and health representative at the workplace must be made aware that an allegation of harassment has been made and is being investigated.
- The investigation must be kept as confidential as possible and involve only those who need to know the details. All persons involved in the investigation must maintain confidentiality.



Starting the investigation

Once notification of (e.g. an allegation of) harassment is received, get the complainant's allegations in writing. This will allow everyone involved to be clear about the details of the allegation. If it is not possible to obtain a documented version of the allegation, the investigator should plan a meeting and listen to the complainant's concerns. The investigator must then document those concerns.

At this time, it is important to establish if the conduct in question meets the definition of harassment.

If the investigator determines that the conduct does not meet the definition, the complainant must be informed of the decision and advised that there will be no further action on the matter.

If the investigator determines that the conduct in question does meet the definition of harassment, it must be determined if any immediate action is required to protect the complainant or other persons from further harassment, reprisal or retaliation while they wait for the investigation and resolution of the complaint.

An investigation plan can then be created, including:

- a list of persons to be interviewed (e.g. complainant, alleged harasser, witnesses, supervisor, others with relevant information)
- a review of any documents related to the allegation
- interview questions

Interview basics

- Interviews should be conducted individually in a private area.
- Go over the investigation process with all persons being interviewed (interviewees). Inform them why they are being interviewed, what will be done with the information and who may receive a copy. *It is important to remind all interviewees that confidentiality must be maintained.*
- Ask for any information the interviewees may have. Ask them to give as much detail as possible. Inform the interviewees that you are looking for facts. If they are unsure about a matter, they should say so.
- At the end of the interview, review the information gathered with each interviewee. This will help to confirm the accuracy of the information gathered and allow for the interviewees to add any additional information.



Documenting the interview

- Whenever possible, have the interviewee document their information (e.g. detail of events). You can ask for more details during the interview. If it is not possible for the interviewee to do this, the interviewer may take notes during the interview.
- All notes must be legible and written in blue or black pen. If a mistake is made, stroke it out with one line and initial.
- Include the following information in the notes:
 - name of person being interviewed
 - date and time of the interview
 - who was present for the interview
 - questions asked and the corresponding answers
- Ask the interviewee to sign and date the documented statement once complete.
- Attach all interview documents/notes to the final report.

Interviewing the witness(es)

- Ask the witness to explain what they heard or saw. Get the details:
 - What, when and where did it happen?
 - Who was present?
 - Who did and said what to whom?
 - Was the incident an isolated event or part of a pattern?
 - Is there anyone else who might have relevant information?

Interviewing the complainant

- Inform the complainant of the steps the company will be taking in the investigation. This should include the names of those who will receive information about the allegation, the names of those who will be interviewed and the steps to be taken once the investigation is concluded.
- Ask the complainant to tell you about the incident(s). If needed, this is where you can ask for more details, such as:
 - When did the conduct occur? How often did it occur? Where did it occur? Who was involved?
 - Who did and said what to whom?
 - What is the relationship between the complainant and alleged harasser?
 - What are the current interactions with the alleged harasser?
 - How did the complainant feel about the behaviour at the time it occurred? How did the complainant respond to the behaviour?
 - Was there a pattern of similar behaviour toward this complainant or another employee?
 - What did the complainant say or do to indicate to the alleged harasser that the conduct was unwelcome?
 - Did the complainant tell any other employees/supervisor about what happened? If not, why not?
 - Did the complainant make any notes about what happened?
 - Were there any witnesses? If so, what are their names?
 - Ask the complainant what action(s) would be considered reasonable to resolve the matter.
 - Explore any time lapse that might exist between the alleged act of harassment and reporting it to the employer.



Interviewing the alleged harasser

- Explain the allegation(s) in detail and confirm that the company takes these types of complaints seriously. Alleged harassers are entitled to be informed of all allegations made against them and allowed to defend against these allegations. This does not mean they are entitled to see or receive copies of statements. However, they are entitled to see or receive a summary of the evidence.
- Inform the alleged harasser of the steps the company will take in the investigation. This should include the names of those who will receive information related to the allegation, who will be interviewed and the steps to be taken once the investigation is concluded.
- Obtain the alleged harasser's reply to the allegation(s) in writing.
- Determine the nature of the relationship between the alleged harasser and the complainant (e.g. personal, professional, etc.)
- Determine if the complainant(s) initiated or participated in any inappropriate discussions, jokes, gestures, etc.
- Determine if the complainant(s) ever objected to any of the alleged harasser's actions and how they responded.
- Ask the alleged harasser why they believe the complainant has made the complaint (e.g. any motives to fabricate the story?)
- Ask for the names of all witnesses the alleged harasser believes should be interviewed as part of the investigation.
- Explain that the company will not permit any retaliation against the complainant and that if the alleged harasser, or other persons, tries to do so, there will be disciplinary action.

The report

- Once all information is collected and interviews conducted, a report must be prepared detailing the findings of the investigation. The report must state whether the complainant's allegations were substantiated or not. The content of the report should include:
 - names of persons conducting the investigation, other persons involved and interviewed
 - date, time and place of the alleged harassment
 - description of the alleged harassment
 - graphics, photographs or evidence
 - findings of the investigation, including the facts and reasons for determining if harassment took place or not
 - immediate and long-term corrective action to be taken
 - reasons why no corrective action will be taken
- The employer must meet separately with the complainant and the alleged harasser to explain the conclusions in the report, along with any disciplinary action to be taken or other steps that will be put in place to stop a repeat of the offensive conduct. If the results of the investigation are inconclusive, the employer should explain that the investigation was unable to make a clear determination of the events that occurred and that the company will monitor the situation to ensure no further offensive conduct takes place.

SAMPLE HARASSMENT PREVENTION POLICY

The following example of a harassment prevention policy will provide practical guidance on developing a policy for your workplace. Be sure to add, remove or change the information in the following example to make it specific to your workplace.

Harassment prevention policy for: _____

Company commitment

At _____, we are committed to providing a safe and respectful work environment for all staff and customers. No one may be harassed and no one has the right to harass anyone else, at work or in any situation related to employment with this organization. This policy is a step toward ensuring that our workplace is a respectful and safe place for all of us, free from harassment.

What is harassment?

There are two main types of harassment. One type includes inappropriate conduct in any form about a person's:

- age, race
- creed, religion
- sex, sexual orientation
- marital status, family status, economic status
- political belief, association or activity
- disability, size, weight, physical appearance
- nationality, ancestry or place of origin

A second main type relates to what is sometimes referred to as “bullying” behaviour that may involve:

- repeated humiliation or intimidation that adversely affects a worker's psychological or physical well-being
- a single instance so serious that it has a lasting, harmful effect on a worker

Harassment may be written, verbal, physical, a gesture or display, or any combination of these. It may happen only once, but often happens repeatedly.



What is not harassment?

Reasonable actions by managers or supervisors to help manage, guide or direct workers or the workplace are not harassment. Appropriate employee performance reviews, counselling or discipline by a supervisor or manager is not harassment.

Employee rights and responsibilities

Employees are entitled to work free of harassment at _____.

Employees have the responsibility to treat each other with respect. We ask that any employee who experiences harassment or sees another person harassed reports it to the appropriate person at _____.

Employees are responsible to co-operate in the investigation of a harassment complaint. Anyone who investigates or gives evidence in a complaint investigation is asked to keep details confidential until the investigation is complete.

All employees have the right to file a complaint with the Manitoba Human Rights Commission.

Employer responsibilities

Management at _____ must ensure, as much as possible, that no employee is harassed in the workplace.

Management will take corrective action with anyone under their direction who harasses another person.

Management will not disclose the name of a complainant or an alleged harasser or the circumstances of the complaint to anyone except where disclosure is:

- necessary to investigate the complaint
- a part of taking corrective action
- required by law

The harassment prevention policy at _____ does not discourage or prevent anyone from exercising their legal rights.

_____, its managers and supervisors are responsible for keeping a safe work environment, free of harassment. If you are a manager and you become aware of harassment you must do everything in your power to stop it, whether or not a complaint is made.

Courts presume that employers and managers are responsible for being aware of harassment in their organization and may penalize them accordingly. Managers who ignore harassment leave themselves and their employer open to legal consequences, and will be disciplined at _____.

Procedures applying to complaints of harassment

If you are harassed, the first thing to do is tell the person harassing you to stop, if you feel comfortable doing that. You can do this in person or in writing. If you feel unable to deal with him or her directly, you can speak to your supervisor or _____ (identify a specific manager or designated member of a harassment committee).

There may be informal ways to handle your complaint. Your supervisor may speak to the harasser. Your supervisor may also arrange for mediation, in which a neutral third party helps the people involved reach an acceptable solution. If the informal route does not succeed or is not appropriate, _____ supports its employees in filing a formal complaint.

The complaint will be investigated thoroughly and promptly by an independent party (either within the organization or outside of it) trained to investigate such matters. The investigator will interview the complainant, the alleged harasser and any witnesses. When the investigation is complete, the investigator will provide a written report for management.

_____ (identify appropriate company manager) will inform the person who filed the complaint and the alleged harasser of the results of the investigation in a timely manner.

Corrective action for harassers

Employees who harass another person will be subject to corrective action by the employer. In most cases, the harasser will also be required to attend workplace behaviour training.

If the investigation does not find evidence to support the complaint, no record will be kept in the file of the alleged harasser. When the investigation finds harassment occurred, the incident and the corrective action will be recorded in the harasser's personnel file.

Confidentiality

The company and its managers will not identify a complainant, an alleged harasser or any circumstances about a complaint, to anyone, except:

- when it is necessary in investigating the complaint
- if it is part of disciplinary action
- where required by law



Retaliation

Anyone who retaliates in any way against a person who has complained of harassment, given evidence in a harassment investigation or been found guilty of harassment, will be considered to have committed harassment and will be subject to corrective actions described previously.

Education

_____ commits to making sure all of its employees and managers learn about harassment and the company's harassment policy.

Monitoring

_____ will monitor this policy and make adjustments whenever necessary. If you have any concerns with this policy, please bring them to the attention of _____ (identify appropriate manager).

Note:

If the investigation does not find evidence to support the complaint, no record of the complaint, investigation or decision will go in the complainant's personnel file if the complaint was made in good faith.



ADDITIONAL RESOURCES FOR ADDRESSING HARASSMENT IN THE WORKPLACE

SAFE Work Manitoba - Mental Health Toolkit

<http://safemanitoba.com/mental-health-toolkit>

Preventing and Resolving Harassment in the Workplace – A Guide for Managers

<http://www.tbs-sct.gc.ca/gui/hars-eng.asp>

Guide on Applying the Harassment Resolution Process

<http://www.tbs-sct.gc.ca/gui/gahrp-gaprh-eng.asp>

Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process

<http://www.tbs-sct.gc.ca/gui/hig-eng.asp>

People to People Communication – Preventing and Resolving Harassment for a Healthy Work Environment

<http://www.tbs-sct.gc.ca/ve/ppc-ff/ppc-ff01-eng.asp>





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