

## B. Sample Policy on Workplace Harassment (Including Sexual Harassment)

A detailed sample policy that can be adopted for use by the licensee's legal workplace. For a sample policy addressing *Code*-based discrimination and harassment, see the "Sample Policy on *Human Rights Code*-Based Discrimination & Harassment"<sup>1</sup>

**Effective Date:\***

**Revised Date:\***

**Approved By:\***

### References:

- *Human Rights Code*, R.S.O. 1990, c. H.19
- *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, PART III.0.1
- *Law Society Act*, R.S.O. 1990, c. L.8, s. 33 – "Prohibited conduct"
- Rules of Professional Conduct, s. 6.3 - "Sexual Harassment"
- Rules of Professional Conduct, s. 6.3.1 - "Discrimination"
- Paralegal Rules of Conduct
- "A policy primer: Guide to developing human rights policies and procedures", Ontario Human Rights Commission (December 2013)
- "Code of Practice to Address Workplace Harassment Under Ontario's Occupational Health and Safety Act", Ministry of Labour (August 2016)
- "Policy on preventing sexual and gender-based harassment", Ontario Human Rights Commission (May 2013)
- "Workplace Violence and Harassment: Understanding the Law", Ministry of Labour (September 2016)

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## PURPOSE

XYZ Organization (the "Organization") is committed to providing an environment free of harassment, where all individuals are treated with respect and dignity, can contribute fully, and have equal opportunities.

The purpose of this policy is:

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<sup>1</sup> Provisions regarding harassment are included in both the *Ontario Human Rights Code*, which is referred to as "Code-based Harassment", as well as in the *Occupational Health and Safety Act*, which is referred to as "Workplace (non-Code) Harassment". *Code*-based harassment is a separate policy from Workplace Sexual Harassment because the *Occupational Health and Safety Act* sets out distinct requirements for reporting and investigating complaints of Workplace Harassment. An employer is therefore entitled to have a different (and perhaps less onerous) procedure for *Code*-Based Harassment.

- To ensure that XYZ meets its obligations under the *Human Rights Code* (“the Code) and the *Occupational Health and Safety Act (OHSA)* to prevent and address workplace harassment, including sexual harassment;
- To identify the types of behaviour prohibited by this policy;
- To provide procedures to follow when complaints of workplace harassment, including sexual harassment, are made by partners or employees of XYZ; and
- To ensure that all partners and employees of XYZ are aware that workplace harassment, including sexual harassment, are unacceptable and incompatible with the standards of this organization, as well as being a violation of the law.

## **APPLICATION**

This policy:

- Applies at every level of XYZ, and extends to all partners, employees (including full-time, part-time, temporary, probationary, casual, and contract staff), and students;
- Applies to every aspect of the employment relationship, including recruitment, selection, promotion, transfers, training, salaries, benefits, discipline, performance appraisals, and termination. It covers rates of pay, hours of work, leaves of absence, and holidays;
- Applies to the physical offices of XYZ; and
- Extends outside of the offices of XYZ, such as off-site client meetings, business travel, firm-sanctioned social events, and to electronic communications.

## **POSTING IN WORKPLACE**

XYZ shall ensure this policy is made available to all partners and employees and posted in a conspicuous place in the workplace.

## **PROHIBITED CONDUCT**

Workplace harassment, including sexual harassment, will not be tolerated from any person in the workplace, including fellow employees or partners, clients, other employers, supervisors, and members of the public.

Anyone at XYZ found to have engaged in workplace harassment, including sexual harassment may be subject to disciplinary action, up to and including termination.

## **DEFINITIONS**

**Employee:** For the purposes of this policy, the term “employee” includes full-time, part-time, temporary, probationary, casual, contract staff, and independent contractors.

**Licensee:** A person licensed as a lawyer or paralegal in the province of Ontario.

**Workplace Harassment:** Provisions regarding harassment are included in both the *Ontario Human Rights Code*, which is referred to as “Code-based Harassment”, as well as in the *Occupational Health and Safety Act (OHSA)*, which is referred to as “Workplace Harassment”. This policy deals with Workplace Harassment.

Workplace Harassment is harassment that is not related to a Code-protected ground of discrimination. The *OHSA* defines workplace harassment as “*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*”.

Workplace harassment often involves a course or grouping of behaviours; however, a serious single incident of harassing behaviour that has a lasting harmful effect on an employee may also constitute workplace harassment.

A few common examples of workplace harassment may include, but are not limited to, a pattern of:

- Frequent angry shouting/yelling or blow-ups;
- Regular use of profanity and abusive language;
- Verbal or e-mail threats;
- intimidating behaviours such as slamming doors, throwing objects, etc.;
- Targeting individual(s) in humiliating practical jokes;
- Excluding, shunning, impeding work performance;
- Spreading gossip, rumours, cyber-bullying, etc.;
- Retaliation, bullying, sabotaging;
- Unsubstantiated criticism, unreasonable demands;
- Frequent insults and/or name calling;
- Public humiliation;
- Communication that is demeaning, insulting, humiliating, mocking; and/or
- A single, serious incident that has a lasting, harmful impact.

Workplace harassment does not include:

- Legitimate performance or probation management;
- Appropriate exercise and delegation of managerial authority;
- A disagreement or misunderstanding or other conflict between co-workers;
- Appropriate discipline;
- Less than optimal management;
- Rudeness unless it is extreme and repetitive;
- Incivility; and/or
- Conditions in the workplace that generate stress (e.g., technological change, impending layoffs, a new boss, friction with other employees, workload, etc.).

**Workplace Sexual Harassment:** Workplace Sexual Harassment is defined in the *OHSA* 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.*

Where the conduct or behaviour includes inappropriate sexual touching, this may also constitute a criminal offence such as sexual assault. In such cases, the police should be notified.

A few common examples of workplace sexual harassment may include, but are not limited to:

- Asking questions, talking, or writing about sexual activities;
- Rough or vulgar humour or language related to sexuality, sexual orientation, or gender;
- Displaying or circulating pornography, sexual images, or offensive sexual jokes in print or electronic form;
- Leering or inappropriate staring;
- Invading personal space;
- Unnecessary physical contact, including inappropriate touching;
- Demanding hugs, dates, or sexual favours;
- Making gender-related comments about someone's physical characteristics, mannerisms, or conformity to sex-role stereotypes;
- Verbally abusing, threatening, or taunting someone based on gender or sexual orientation; and/or
- Threatening to penalize or otherwise punish a worker if they refuse a sexual advance.

**Gender:** Gender can refer to the individual and/or social experience of being a man, a woman, or neither. Social norms, expectations, and roles related to gender vary across time, space, culture, and individuals.

**Gender Expression:** How a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language, and voice. A person's chosen name and pronoun are also common ways of expressing gender. All people, regardless of their gender identity, have a gender expression and they may express it in any number of ways.

**Gender Identity:** A person's internal and individual experience of gender. It is a person's sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex.

**Sex:** The classification of people as either male, female, or intersex. Sex is usually assigned at birth and is based on an assessment of a person's reproductive systems, hormones, chromosomes, and other physical characteristics.

**Sexual Orientation:** The direction of one's attraction. Some people use the terms gay, straight, bi, pan, or lesbian to describe their experience.

**Sexual Solicitation:** Unwelcome advances or requests for sexual favours made by a boss, supervisor, or other person in a position of authority.

## **REPORTING WORKPLACE HARASSMENT**

This section outlines the reporting process for workplace harassment.<sup>2</sup>

### **1. How to Report Workplace Harassment**

Partners or employees can report incidents or complaints of workplace harassment verbally or in writing. When reporting verbally, the reporting contact, along with the person complaining of harassment, will fill out a complaint form.

The report of the allegation(s) should include the following information:

- a) Name(s) of (any) person(s) who has allegedly experienced workplace harassment, including their position and contact information.
- b) Name(s) of (any) person(s) alleged to be responsible for workplace harassment, including their position and contact information (if known).
- c) Names of witness(es) (if any) or other person(s) with relevant information to provide and contact information (if known).
- d) Details of what happened, including date(s), frequency, and location(s) of the alleged incident(s). Any supporting documents the person who complains of harassment may have in their possession that are relevant to the complaint.
- e) List any documents the respondent, a witness, or other person may have in their possession that are relevant to the complaint.

### **2. Full Participation**

XYZ employees will not be penalized or disciplined for reporting an incident involving workplace harassment.

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<sup>2</sup> The reporting process outlined also applies to complaints related to sexual harassment. Anywhere that the term "workplace harassment" is used should be read to include "workplace sexual harassment". For the reporting process for *Code*-based discrimination and harassment, see the "Sample on Human Rights Code-Based Discrimination & Harassment".

### 3. Confidentiality

All reports of incidents or complaints of workplace harassment shall be kept confidential except to the extent necessary to protect workers, to investigate the complaint or incident, to take corrective action, or otherwise as required by law.

### 4. Timing of Complaint

An incident or a complaint of workplace harassment should be reported as soon as possible after experiencing or witnessing an incident. This allows the incident to be investigated in a timely manner. **[designated person at the workplace]** will be responsible for ensuring that the incident is investigated promptly and completed within a reasonable timeline.

### 5. Who to Report Workplace Harassment To

Complainants are encouraged to report any incidents or complaints of workplace harassment to **[designated person at the workplace]**. If the **[designated person at the workplace]** is the person engaging in the workplace harassment, contact **[alternate designated person at the workplace]**. The person designated as the reporting contact should also not be under the direct control of the respondent. If that is the case, contact **[alternate designated person at the workplace]**.

The **[designated person at the workplace]** shall be notified of the workplace harassment incident or complaint so that they can ensure an investigation is conducted that is appropriate in the circumstances. Depending on the nature of the allegations and the people involved, an external person qualified to conduct a workplace harassment investigation who has knowledge of the relevant workplace harassment laws will be retained to conduct the investigation.

### 6. Report All Incidents

XYZ encourages the reporting of all incidents of workplace harassment, regardless of who the alleged offender(s) might be.

## REPRISAL

All employees have a right to freedom from reprisals or threat of reprisals for refusing to accept workplace harassment in any form, for making a formal complaint, or cooperating in an investigation. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or helping to resolve a complaint. It is a violation of XYZ's policy to discipline or punish a person because they have brought forward a complaint, provided information related to a complaint, or otherwise been involved in the complaint resolution process. Reprisal may be the subject of a complaint under this procedure, and persons engaging in reprisal are subject to disciplinary

measures, up to and including termination of employment.

## **INVESTIGATING COMPLAINTS**

### **1. Commitment to Investigate**

XYZ will ensure that an investigation appropriate in the circumstances is conducted when any **[designated person at the workplace]**, manager, or supervisor becomes aware of an incident of workplace harassment or receives a complaint of workplace harassment. Complaints or incidents of workplace harassment will be investigated in a fair, respectful, and timely manner.

### **2. Full Participation**

All XYZ staff, including partners, lawyers, and staff are expected to adhere to this policy, and will be held responsible by the employer for not following it. XYZ employees will not to be penalized or disciplined for participating in an investigation involving workplace harassment.

### **3. Confidentiality**

Information about complaints and incidents shall be kept confidential. Information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless disclosure is necessary to protect employees, to investigate the complaint or incident, to take corrective action, or otherwise as required by law.

While the investigation is on-going, the person who has allegedly experienced harassment, the alleged harasser(s) and any witnesses should not to discuss the incident or complaint or the investigation with the party, employees, or witnesses. The investigator may discuss the investigation and disclose the incident or complaint-related information only as necessary to conduct the investigation.

All records of the investigation will be kept confidential.

### **4. Timing of the Investigation**

The investigation must be completed in a timely manner and generally within 90 days or less unless there are extenuating circumstances (i.e., illness, complex investigation) warranting a longer investigation.

### **5. Who Will Investigate:**

The **[designated person at the workplace or other senior leader]** will determine who will conduct the investigation into the incident or complaint of workplace harassment. The person selected to do the investigation should be independent and objective. Wherever

possible, the investigator should not be in a position of direct authority over any of the people involved in a complaint but should report to someone with the authority to make decisions and have them enforced. Depending on the allegations and the people involved, the investigation may be referred to an external investigator to conduct an impartial investigation.

## **6. Representation**

Complainants and respondents are entitled to seek representation of their choice, including legal counsel, during the complaints, mediation, and investigation process, at their own expense.

## **7. Investigation Process**

The person conducting the investigation whether internal or external to the workplace will, at minimum, complete the following:

- a. Ensure the investigation is kept confidential and that any identifying information is not disclosed unless necessary to conduct the investigation. The investigator should remind the parties of this confidentiality obligation at the beginning of the investigation.
- b. Thoroughly interview the employee who allegedly experienced the workplace harassment and the alleged harasser(s), if the alleged harasser is an employee of the employer. If the alleged harasser is not a partner or an employee of the organization, the investigator should make reasonable efforts to interview the alleged harasser.
- c. Give the alleged harasser(s) an opportunity to respond to the specific allegations raised by the complainant. In some circumstances, the person who allegedly experienced the workplace harassment should be given a reasonable opportunity to reply.
- d. Interview any relevant witnesses employed XYZ Organization who may be identified by either the employee who allegedly experienced the workplace harassment, the alleged harasser(s) or as necessary to conduct a thorough investigation. The investigator must make reasonable efforts to interview any relevant witnesses who are not employed by XYZ Firm if there are any identified.
- e. Collect and review any relevant documents.
- f. Take appropriate notes and statements during interviews with the individual who allegedly experienced workplace harassment, the alleged harasser, and any witnesses.



- g. Prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the person who allegedly experienced the workplace harassment, the response from the alleged harasser, the evidence of any witnesses, and the evidence gathered. The report must set out findings of fact and come to a conclusion about whether workplace harassment was found or not.

## **8. Results of the Investigation**

Within 10 days of the investigation being completed, the employee or person who allegedly experienced the workplace harassment and the respondent, if they are an employee of XYZ, will be informed in writing of the results of the investigation and any corrective action taken or that will be taken by XYZ to address workplace harassment.

## **9. Handling Complaints, Including Interim Measures**

It may be necessary to take interim measures during the investigation, including having persons involved in the investigation to move workstations, or in the case of serious allegations, remain off work.

If the investigator concludes that harassment occurred, the individual found to be in violation of the policy may be disciplined, up to and including termination of employment.

## **10. Record Keeping**

The **[designated person at the workplace]** will keep records of the investigation including:

- a) A copy of the complaint or details about the incident;
- b) A record of the investigation, including notes;
- c) A copy of the investigation report (if any);
- d) A summary of the results of the investigation that was provided to the employee or partner who allegedly experienced the workplace harassment and to the respondent, if a partner or employee of the XYZ; and
- e) A copy of any corrective action taken to address the complaint or incident of workplace harassment.

All records of the investigation will be kept confidential. The investigation documents should not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, take corrective action, or otherwise as required by law. Records will be kept for a minimum of one year after the conclusion of the investigation.

## **MEDIATION**

Where appropriate, the **[designated person at the workplace]** will offer the parties an opportunity to mediate the complaint. No person will be required to undertake mediation. Mediation will be conducted by a neutral and expert third-party mediator. Mediation may take place at any stage during the complaint process.

## **ANNUAL REVIEW & TRAINING**

Each year (at a minimum), XYZ will review this policy and provide training to all XYZ partners and staff on this policy.

## **INQUIRIES**

inquiries about this policy should be addressed to the **[designated workplace representative]**.