

SECTION 11

HUMAN RIGHTS

11.01 Policy for the Prevention and Resolution of Harassment in the Workplace

AUTHORITY: JOINT UNION / MANAGEMENT AGREEMENT

ADMINISTRATION: PEI PUBLIC SERVICE COMMISSION
GOVERNMENT DEPARTMENTS / AGENCIES

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1. PURPOSE

1.01 The Government of Prince Edward Island, as the Employer, and the Union of Public Sector Employees have jointly developed a policy for the Prevention and Resolution of Harassment in the Workplace to:

- Promote, establish and maintain a harassment free workplace.
- Provide procedures for investigating and resolving complaints of harassment, and remedying situations where instances of harassment occur.
- To meet the Government of Prince Edward Island's ethical and legal obligations to provide a harassment free work environment.

2. APPLICATION

2.01 This policy applies to any employee who performs work in any Civil Service workplace. Where applicable, the policy also applies to volunteers, contractors, fee for service individuals and clients.

3. POLICY STATEMENT

3.01 The Government of Prince Edward Island is committed to providing a workplace in which all persons can expect to be treated with dignity and respect. Harassment undermines an individual's self-respect and adversely affects work performance and well-being. It also reduces the productivity and effectiveness of the public service enterprise. The Employer will ensure, as far as reasonably practicable, that no worker will be subjected to harassment, and shall take corrective action respecting any person under the employer's direction who subjects a worker to harassment.

4. DEFINITIONS

Complaint is an allegation of harassment which is based on actions defined as harassment in this policy.

Complainant is an employee who believes that they have been a victim of harassment and who has filed a complaint under this policy.

Day means working days.

Harassment means any inappropriate conduct, comment, display, action or gesture or any bullying that the person responsible for the conduct, comment,

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display, action or gesture or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety.

Harassment in the workplace includes a single or repeated occurrence of personal harassment, sexual harassment and abuse of authority

Without limiting the generality of the above, harassment under this policy includes personal harassment, sexual harassment or abuse of authority as defined below:

a) *Personal Harassment* means any inappropriate conduct, comment, display, action, gesture or bullying that is known or ought reasonably to be known to be unwelcome. It includes any inappropriate comment, conduct, gesture or display that does or is intended to demean, intimidate, bully or cause embarrassment to another person. Personal harassment includes, but is not limited to, harassment on the basis of a person's age, colour, creed, disability, ethnic or national origin, family status, gender expression, gender identity, physical size or weight, marital status, political belief, race, religion, sex, sexual orientation, pregnancy, or source of income.

b) *Sexual harassment* includes inappropriate sexual conduct that is known, or ought reasonably to be known, to the person responsible for the conduct to be unwelcome, including, but not limited to sexual solicitations or advances, sexually suggestive remarks, jokes or gestures, circulating or sharing inappropriate images, or unwanted physical contact and includes conduct that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

c) *Abuse of authority* means an individual's use of power and authority inherent in the position held in a manner which serves no legitimate work purpose and which ought reasonably to be known to be inappropriate. It includes misuses of power which are intimidating, coercive or demeaning.

The legitimate and proper exercise of the employer's right to supervise or manage (for example, performance reviews, work evaluation and disciplinary measures taken for any valid reason) does not constitute harassment under this policy.

Mediation is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.

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Respondent is an employee of the Government of Prince Edward Island who has been accused of Harassment.

Workplace includes but is not limited to the actual work site, lunchrooms or cafeterias, a client's home or work site, training sessions, conferences, business travel, work-related social gatherings, or other location where an employee is engaged in activity associated with employment, such as on-line communication, i.e., emails, etc.

Workplace Conflict is any ongoing inappropriate and disrespectful behavior at the workplace and/or a dispute or a communication breakdown between two or more individuals that impacts their ability to work productively and cooperatively in the workplace, and potentially results in a hostile work environment.

5. RESPONSIBILITIES

While it is recognized that all employees share responsibility for creating a harassment-free workplace, it is important to emphasize that managers/supervisors, by virtue of their authority, carry a greater responsibility for maintaining this type of work environment.

5.01 Deputy Heads and Heads of Agencies

Deputy heads and heads of agencies are responsible for ensuring that the provisions of this policy are implemented in their respective organizations. This responsibility includes:

- a) ensuring that all managers, supervisors and other employees in their organizations are informed of the policy and are advised of their responsibilities and rights;
- b) providing leadership in the prevention of harassment in their workplaces by fostering a climate of mutual respect;
- c) monitoring compliance with the policy in their organizations;
- d) ensuring that prompt and appropriate action is taken when they become aware of instances of harassment;
- e) ensuring fair and equitable procedures for all parties to a complaint of harassment; and
- f) taking disciplinary or other corrective measures, where necessary.

5.02 Employees with Supervisory and/or Management Responsibility

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All managers and supervisors are responsible for incorporating the intent of this policy in their daily activities and ensuring that the policy is adhered to in their areas of responsibility by:

- a) becoming fully informed of the provisions of the policy and of the nature of workplace harassment;
- b) maintaining a high standard of personal conduct in their dealings with all employees and clients;
- c) ensuring that all employees are advised of their rights and responsibilities under this policy and the courses of action open to them; and
- d) providing opportunities for education and training related to workplace harassment to all employees under their supervision.

5.03 All Employees

All employees are responsible for:

- a) treating all persons in the workplace in a manner that is free of harassment and that respects individual differences;
- b) changing their own behaviour when given indications that the behaviour is offensive or harassing to others;
- c) taking action, where possible, should they feel they or another person are being subjected to harassment; and
- d) cooperating fully with all those responsible for dealing with a complaint of harassment.

5.04 Representatives of the Union of Public Sector Employees

All union representatives are responsible for:

- a) treating all persons in the workplace in a manner that is free of harassment and that respects individual differences;
- b) becoming fully informed of the provisions of the policy and of the nature of workplace harassment;
- c) maintaining a high standard of personal conduct in their dealings with all employees and clients.

6. **PRINCIPLES**

- a) All employees shall be treated equitably under this policy, and shall be advised of the provisions of this policy and of the procedures available to

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them. All matters arising under this policy shall be dealt with in a fair, unbiased, and timely manner.

- b) Either party to a complaint may object to the participation of a person in the administration of this policy on grounds of conflict of interest or reasonable apprehension of bias.
- c) Any Complainant who wishes to seek resolution of a complaint through mediation or investigation must be prepared to be identified to the Respondent.
- d) All parties must be given the opportunity to present evidence in support of their positions and to defend themselves against allegations of harassment.
- e) All parties may be represented or accompanied by a union representative throughout the procedures set out in this policy.
- f) All formal complaints, responses, comments, and decisions pursuant to this policy shall be made in writing.
- g) Employees with supervisory and/or management responsibility will take immediate action to report or deal with incidents of harassment that come to their attention, whether or not a formal complaint has been made.
- h) The Employer shall not reprimand, seek reprisal or discriminate against a worker who has made a workplace harassment complaint in good faith.

7. CONFIDENTIALITY

All complaints under this policy, both formal and informal, and any information and materials related to the complaints will be treated on a confidential basis. The Employer shall not disclose any identifying information about a person involved or the circumstances relating to the complaint to any person unless disclosure is necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint or permitted by law.

8. ASSISTANCE

A person who is faced with problems relating to workplace conflict and/or harassment may wish to obtain assistance or advice in deciding the best course of action to follow. Sources of assistance are recommended below.

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8.01 Employees may seek help from any of the following:

- a) their immediate supervisor, if appropriate;
- b) the departmental human resource manager;
- c) a manager, director or the deputy head in the same department or agency;
- d) the Director of Human Resource Management and Labour Relations, P.E.I. Public Service Commission; or
- e) union representative.

It should be recognized that management has an obligation to take follow-up action when instances of possible harassment are brought to its attention. Confidential assistance to employees for a wide range of problems, including workplace harassment, is available from the Employee Assistance Program.

8.02 Clients and others (volunteers, contractors, fee-for-service individuals, or other persons who are not an employee) may seek advice or assistance from:

- a) a supervisor, manager or director in the department or agency providing the service;
- b) the deputy head or chief executive officer of the department or agency.

9. PROCEDURE

9.01 Early & Informal Resolution Process

The objective of early resolution is to resolve any situation or conflict as soon as possible in a fair and respectful manner without having to resort to the formal complaint process. Every effort should be made to resolve problems early, with open communication and in a cooperative manner. The use of problem resolution mechanisms such as coaching, counselling, and mediation can, in many instances, resolve issues and prevent situations from escalating to the point where filing a formal complaint is necessary.

It is important that the Complainant make the issue known to the Respondent as soon as possible in an attempt to resolve the problem.

- a) If the Complainant feels comfortable, they should do so directly, either in person or in writing.

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- b) If the Complainant feels uncomfortable, they should do so with help from a Supervisor or Human Resources staff person.

If the problem is not resolved, the Complainant may meet with their supervisor, or with another person in authority whom they trust, or seek advice from their union or from Human Resources.

9.02 Formal Resolution Process

If early and informal resolution is not successful or is not desired or considered appropriate by either party, the Complainant has the right to file a formal complaint.

Step 1 - Filing a complaint

The Complainant will submit a complaint in writing to the appropriate deputy head or chief executive officer, with a copy to the Director of Human Resource Management and Labour Relations, P.E.I. Public Services Commission.

If a Complainant is not comfortable filing a complaint with the deputy head or the chief executive officer, the complaint may be filed directly with the Director of Human Resource Management and Labour Relations, P.E.I. Public Service Commission.

The complaint should include the nature of the allegation; the name of the Respondent; the relationship of the Respondent to the Complainant (for example, supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be precise and describe any attempts to resolve the situation.

Complaints should be submitted in as timely a manner as is comfortable for the Complainant, keeping in mind that the more time that elapses, the more difficult it is to substantiate the complaint. It is the Complainant's responsibility to check the time lines in any other forums they wish to pursue, for example, PEI Human Rights.

The deputy head or the chief executive officer will acknowledge receipt of the complaint, and after consultation with the Director of Human Resource Management and Labour Relations, P.E.I. Public Services Commission, may enact interim measures which may be requested by either the Complainant or the Respondent and may be recommended by the Director

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of Human Resource Management and Labour Relations, P.E.I. Public Services Commission.

Step 2 - Investigation

All investigations will be led by a team of two people. The composition of the team will be decided by departmental management and the Public Service Commission. Factors such as gender, perception of bias and experience & training in investigations will be considered when determining the composition of the team.

Once the team has been appointed, contact will be initiated with the Complainant and the Respondent within 30 days. During the interview process the team will obtain written statements from the Complainant, the Respondent, and any named witnesses.

At the end of the investigation the Team will submit a final report stating whether, on a balance of probabilities, the harassment complaint is substantiated. This report may include recommendations, and will be submitted to the deputy head, copied to the Chief Executive Officer of the Public Service Commission.

Note: Records of a formal complaint and any supporting documentation will be kept in the employee relations files and can only be accessed by the Director of Human Resource Management and Labour Relations, P.E.I. Public Services Commission, and those that need the file for investigative purposes. Only in the event of discipline will any record of the complaint be kept on the applicable personnel file.

Step 3 - Resolution & Corrective Action

a) Remedies

Each case will require individual and impartial consideration. Remedies may include a range of actions. The Complainant shall be given an opportunity to provide a written explanation of how this experience has affected them. This will be considered by the Investigative Team before a recommendation is made to the employer. The employer will make every reasonable effort to remedy the effects of the harassment and to ensure a positive work environment free from harassment.

After reviewing the report submitted by the Investigative Team, the deputy head or chief executive officer will consult with the Director of Human

Resource Management and Labour Relations, P.E.I. Public Services Commission, and departmental management, and will determine the corrective measures to be taken. Other remedial or disciplinary measures will follow when necessary.

b) Mediation

When appropriate or requested, the Investigative Team will initiate a mediation procedure through the Employee Assistance Program, which is the recommended avenue of resolution. Consensual mediation will require the agreement of the Complainant and the Respondent.

- The mediation process and resolution will be kept strictly confidential by all participants;
- Where a resolution is reached, the Complainant and the Respondent must agree in writing to the resolution, and the matter will then be considered concluded.

The referral should, where possible, include a written statement from the Complainant and the Respondent, which succinctly outlines the issue(s) in dispute.

c) Discipline

Any disciplinary action taken will be based on the circumstances surrounding the situation and the severity of the behavior. Penalties can be very serious. In appropriate cases, suspension or dismissal can occur. In all cases where an employee is disciplined, documentation will be placed in the employees personnel file.

Circumstances which could result in disciplinary action include, but are not limited to:

- a finding that harassment has occurred;
- inaction of an employee with supervisory or managerial responsibilities who is aware of a situation of harassment;
- a threat or retaliation against a person who lodges an informal or formal complaint of harassment, or who assists in any way with the administration of this policy;
- a false allegation of harassment that is made in bad faith or is retaliatory in intent.

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Step 4 - Written Decision

The Investigative Team shall forward a written report to the deputy head or the chief executive officer, the departmental human resources manager and to the Director of Human Resource Management and Labour Relations, P.E.I. Public Services Commission. The employer will notify the Complainant and the Respondent of the results of the investigation and will consult with the Public Service Commission on the implementation of recommendations. The union will be notified of the results of the investigation when a corresponding grievance has been filed.

9.03 Appeals

Appeals can be made through the grievance procedure of the applicable Collective Agreement, to the departmental deputy head, or to the Director of Human Resource Management and Labour Relations, P.E.I. Public Services Commission, if the employee is an excluded staff member. In the event of a conflict with the deputy head, another department head will be appointed to hear the grievance.

The Employer's harassment policy is not intended to discourage, prevent or preclude a Complainant from exercising other legal rights pursuant to any other law. If harassment is based on one of the grounds of discrimination prohibited under the Provincial *Human Rights Act*, employees have the right to file a complaint with the Prince Edward Island Human Rights Commission.