

Harassment Response Policy and Program

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Introduction

Simcoe Muskoka District Health Unit is committed to providing a working environment free of harassment by ensuring that all workplace parties are familiar with the definitions of harassment and understand their individual responsibilities for prevention and corrective action.

Reasonable action including but not limited to employee performance management/evaluation, counselling, warning/forewarnings, discipline and discharge taken by the employer or Supervisor relating to the management and direction of workers or the workplace is not workplace harassment under the Occupational Health and Safety Act. Accordingly, this policy is not intended to interfere with appropriate and constructive feedback provided to employees by their Supervisors or colleagues, nor limit or constrain the exercise of legitimate management functions within the workplace.

Purpose

The purpose of this policy is to define behaviour that constitutes harassment and to define procedures for reporting and resolving incidents of harassment. This policy applies to Simcoe Muskoka District Health Unit Board of Health members, management, employees, students, volunteers and contractors.

Legislative Authority

Ontario Occupational Health and Safety Act

Criminal Code of Canada

Ontario Human Rights Code

Workplace Safety and Insurance Act, 1997

Compensation for Victims of Crime Act

Regulated Health Professions Act

Policy Definitions and Interpretation

Complainant: A worker who alleges that harassment has occurred.

Respondent: The individual(s) who is alleged to be guilty of harassment.

Supervisor: The person to whom an employee directly reports.

Worker(s): Individuals as defined in the Ontario Occupational Health and Safety Act which at the Simcoe Muskoka District Health Unit are the Board of Health members, management, employees, students, volunteers and contractors.

Workplace Harassment: means 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. Workplace sexual harassment means:

- 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;

Policy

The Simcoe Muskoka District Health Unit (SMDHU) is committed to providing a work environment in which all workers are treated with respect and dignity. Workplace harassment will not be tolerated from any person in the workplace (*including vendors, clients, other employers, Supervisors, workers and members of the public*) or at work related activities.

SMDHU Board of Health members, management, employees, students, volunteers and contractors recognize the potential for harassment and will therefore make every reasonable effort to identify all potential sources of harassment to eliminate or minimize these risks.

Harassment perceived or otherwise that cannot be resolved personally must be reported to the appropriate member of management. Management will investigate and deal with all complaints or incidents of workplace harassment, as deemed appropriate in the circumstances, in a fair, respectful and timely manner.

Information provided about an incident or about a complaint will not be disclosed except as necessary to protect workers, to investigate the complaint or incident, to take corrective action or as otherwise required by law.

Acts of harassment are subject to appropriate disciplinary action. SMDHU will not tolerate any retaliation in any way against a person who has complained of harassment or threats, given evidence in a harassment investigation, or been found guilty of harassment. Anyone who retaliates will be subject to discipline in accordance with the health unit policy.

It is assumed that all complaints are filed in good faith. Unfounded and/or repetitive complaints filed by the same individual(s) will be reviewed by the Director of Human Resources and Infrastructure and addressed accordingly. Filing a harassment complaint that the complainant or witness knows to be false (filed in bad faith) or is proven to be false is a serious matter that will subject the complainant to disciplinary action.

Anonymous complaints will not be investigated as they cannot be traced to a particular individual and as such the specific facts in the complaint cannot be challenged.

A worker reporting alleged harassment is not precluded from pursuing their rights under any other legislative or legal authority available to them.

Human Resources will ensure that all management, staff, Board of Health members, students and volunteers of the health unit participate in training on SMDHU's Harassment Response Policy and Program. New staff will receive this training as part of their orientation and contractors will receive a copy of this policy to ensure they are orientated to the policy.

Procedures

Workers are encouraged to report any incidents of workplace harassment to either their Supervisor or Human Resources and if the alleged harasser is their Supervisor to Human Resources.

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.

Workers are expected to adhere to this policy, and will be held responsible by the employer for not following it. Workers are not to be penalized or disciplined for reporting an incident or for participating in an investigation involving workplace harassment.

Should an investigation conclude a worker has been subject to harassment the worker will be supported by SMDHU in dealing with the harassment including referrals to external agencies including the Employee and Family Assistance Program.

If a worker needs any further assistance in dealing with harassment, the worker may contact Human Resources.

SMDHU will determine the level of investigation be that informal or formal. As such, given the nature of the complaint, SMDHU will determine the level of formality deemed appropriate in the circumstances. SMDHU shall investigate and deal with all concerns or incidents of workplace harassment, as defined within the Occupational Health and Safety Act, as deemed appropriate in the circumstances. All investigations shall be conducted in a fair, and timely manner while respecting employee's privacy as much as possible.

Workers may file a formal complaint under the Formal Compliant Procedures at any time and as a first step. Alternatively, workers may choose to try and resolve the matter by utilizing either the Personal Resolution Procedure, the Informal Consultation procedure or both. If you are not satisfied with the response after either or both of the Personal Resolution or Informal Consultation Procedures you may file a complaint under the Formal Complaint Procedure.

The following steps may be taken to eliminate or minimize the risks of harassment within the workplace:

1. Personal Resolution Procedure

If you are the recipient or witness of an alleged harassment, you may first try to handle the situation yourself.

- a) Request to meet with the respondent to discuss the issue.

- b) Identify clearly what is making you feel uncomfortable. For example, the following could be discussed:
- What specific actions, behaviours, statements, or printed materials are causing you discomfort?
 - What is the situation? What happened?
 - How is this situation making you feel and act? Has it changed the way you are working?
 - Is harassment a part of what happened?
 - How was it expressed?
 - Was the harassment an action, was it words, or was it the posting of offensive material?
 - Who was there when it happened? How were they involved?
 - Do you feel threatened or unsafe?
 - Was malice involved?
 - What would you like to happen to resolve this problem fairly?
- c) Tell the person or the responsible party that the behaviour is unwelcome. Speak in terms of the specific behaviour, statement or situation and how it makes you feel. For example, “When you said ‘you smell bad’, I felt angry and embarrassed” or “The poster you placed on your workstation wall uses language that offends me.”
- d) Give the person an opportunity to respond.
- e) You should have your discussion as soon as possible and in as private a place as possible.
- f) If you do not want to address the situation with the person or party responsible, or if you have taken these steps and are not satisfied with the response, the matter should be referred to either your Supervisor or Human Resources or if the alleged harasser is your Supervisor to Human Resources. You may do so under either the Informal Complaint Procedure or the Formal Complaint Procedure or both.

2. Informal Consultation and Complaint Procedure

If you are the recipient or witness of an alleged harassment, and are not comfortable handling the situation yourself but feel the situation may be resolved informally discuss the issue in full with your Supervisor. If you are not comfortable discussing the matter with your Supervisor you may, as an alternative, discuss the situation with Human Resources.

Human Resources and Supervisors shall use the questions contained within the Harassment Complaint Form HSO112 (F1) when receiving informal harassment complaints.

All allegations of harassment brought forward to either your Supervisor or Human Resources will be acted upon as SMDHU has a legal obligation to do so. Accordingly, workers are not able to bring a complaint forward and ask that nothing be done about it.

The Supervisor will inform Human Resources of the alleged harassment immediately following disclosure from the employee.

In the interest of the Health Unit, Human Resources will determine the formality of the investigation that is appropriate in the circumstances.

The Supervisor or Human Resources will discuss the complaint separately with the complainant, the respondent and the applicable Supervisors in an effort to reach a mutually acceptable resolution. This will be done without recourse to the formal complaint procedures.

3. Formal Complaint Procedures

Workers can report incidents or complaints of workplace harassment verbally or in writing to either their Supervisor or Human Resources and if the alleged harasser is their Supervisor to Human Resources. When submitting a formal written complaint, please use the Harassment Complaint Form HSO112(F1). When reporting verbally, the reporting contact, along with the worker complaining of harassment, will fill out the complaint form.

- a) The complaint will be made in writing using the Harassment Complaint Form HSO112 (F1) as soon as possible after the alleged incident(s) wherever possible.

The report of the incident must include the following information:

- Name(s) of the worker who has allegedly experienced workplace harassment and contact information.
 - Name of the alleged harasser(s), position and contact information (if known).
 - Names of the witness(es) (if any) or other person(s) with relevant information to provide about the incident (if any) and contact information (if known).
 - Details of what happened including date(s), frequency and location(s) of the alleged incident(s).
 - Any supporting documents the worker who complains of harassment may have in their possession that are relevant to the complaint.
 - List any documents a witness, another person or the alleged harasser may have in their possession that are relevant to the complaint.
- b) The complaint must be signed and dated by the complainant and it must indicate what is an acceptable resolution to the complainant that would satisfactorily resolve the matter. Notwithstanding the complainant's input, the final determination of what is deemed to be an acceptable resolution of a complaint lies with SMDHU.
 - c) Any Supervisor who receives a formal, written complaint or report of harassment will immediately forward the complaint to Human Resources and the Department Director.
 - d) When Human Resources receives a complaint either directly or through a Supervisor Human Resources will provide a copy of the complaint to the respondent, Supervisor(s) and Department Director(s).

- e) The respondent is provided the opportunity to respond to the allegation in writing with a copy to the complainant and involved Supervisor(s), Department Director(s) and Human Resources.
- f) A respondent who acknowledges wrong doing will be subject to corrective action as deemed appropriate (see below).
- g) If a respondent does not acknowledge any wrong doing, Human Resources may recommend to the Medical Officer of Health (or designate) that an investigation commence the formality of which shall be appropriate in the circumstances and may be either informal or formal.

4. Investigation

Prior to the investigation process commencing or at any time during or after such process the complainant may be offered the opportunity to attempt to resolve the matter through an internal mediation process facilitated either by Human Resources or, if deemed necessary by Human Resources, by an external mediation.

In addition SMDHU reserves the right, depending upon the circumstances to take appropriate interim measures during the complaint investigation process such as but not limited to separating or transferring the complainant and alleged harasser such as to limit contact between them.

While the investigation is ongoing the worker who has allegedly experienced harassment, the alleged harasser(s) and any witnesses will be instructed not to discuss the complaint, incident or the investigation with anyone including: other workers, witnesses, members of the public, media or in any social media forum, unless they are obtaining personal legal advice in confidence about their rights.

Depending on the nature of the complaint SMDHU reserves the right to determine the formality of the investigation process which is appropriate in the circumstances. Accordingly investigations may be informal or formal with different degrees of formality. A formal investigation is initiated by the Medical Officer of Health (or designate) upon the recommendation of Human Resources. All allegations will be treated seriously, dealt with promptly, with sensitivity and with a target completion date of a maximum of 90 days, where possible, from receipt of the harassment complaint by a member of management or Human Resources. An informal process may be coordinated by Human Resources in specific situations and may or may not follow the exact formal investigation guidelines within this policy, however the general guidelines for a formal investigation are as follows and will be adhered to:

- a) The Investigator or Investigation Team whether internal or external will be deemed experienced and competent by Human Resources to do so, be free of any bias and at a minimum will:
 - Interview all parties/witnesses identified separately in the complaint. The alleged harasser(s) will be made aware of the allegation and given the opportunity to present their side of the story.
 - Explain the investigation process, what they will receive at the end and who will decide on the matter.

- Assure the parties to the complaint that if the allegation is found to be confirmed then SMDHU will take the deemed necessary corrective action and the complainant will be advised of this and they will both be informed of the results of the investigation. All parties are expected to cooperate in the investigation and any efforts taken to resolve the complaint. SMDHU will try for but cannot guarantee confidentiality as the alleged harasser(s) has the right to respond to the allegations.

The investigator must:

- Ensure the investigation is kept confidential and identifying information is not disclosed unless necessary to conduct the investigation and remind the parties of this confidentiality obligation at the beginning of the investigation.
- Thoroughly interview the worker who allegedly experienced the workplace harassment and the alleged harasser(s), if the alleged harasser is a worker of the employer. If the alleged harasser is not a worker of the employer, the investigator should make reasonable efforts to interview the alleged harasser.
- Ensure the alleged harasser(s) is given the opportunity to respond to the specific allegations raised by the worker. In some circumstances, the worker who allegedly experienced the workplace harassment should be given a reasonable opportunity to reply.
- Interview any relevant witnesses employed by the employer who may be identified by either the worker 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 the employer if there are any identified.
- Collect and review any relevant documents.
- Take appropriate notes and statements during interviews with the worker who allegedly experienced workplace harassment, the alleged harasser and any witnesses.
- Prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the worker 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 found to have taken place.

The investigation report will include at least the following:

- Background/context of the complaint
- Allegations and responses
- Scope of the investigation
- Review of witness statements and supporting documentation
- Comparison of the evidence with relevant policy and legislation
- Impact on the parties and the work environment

- Findings
- b) Results of the investigation
- Within 14 days of the investigation being completed, the worker who allegedly experienced the workplace harassment and the alleged harasser, if the alleged harasser is a worker of the employer, will be informed in writing of the results of the investigation and any corrective action taken or that will be taken by the employer to address workplace harassment when harassment has been found to have occurred.
- c) A person directly involved in the complaint may appeal the investigation team's findings to the Medical Officer of Health (or designate) within two weeks of learning of the decision. The Medical Officer of Health (or designate) will make a decision within two weeks whether there is sufficient reason to re-investigate.
- d) The Medical Officer of Health (or designate) will render a decision on the corrective action to be taken and inform the complainant, respondent, Supervisor(s), Department Director(s) and Human Resources of the decision in writing.
- e) If the resolution is acceptable to the complainant the complainant will be requested to sign off their agreement in writing to the resolution. Should a complainant not agree with the proposed resolution the final determination of what is deemed to be an acceptable resolution of the matter lies with SMDHU.
- f) Investigation documents are kept sealed and stored in Human Resources and are only accessible by Human Resources or the Medical Officer of Health.
- g) When harassment has been found to occur corrective action documentation will be filed in the respondent's employment file. However, if the investigator or investigation team does not find evidence to support the allegation, there will be no documentation concerning the complaint in the alleged respondent's employment file.

5. Corrective Action When Harassment Has Been Found to Have Occurred

In determining corrective action, the following will be considered:

- The degree to which the incident undermines personal dignity, work relationships, working climate and/or degree of threat.
- Any record of previous offences, their nature and degree of severity.
- The effectiveness of the corrective measure in preventing repetition of the behaviour.
- The working relationship of the complainant and the respondent.
- The effects of the harassment on the complainant.

Corrective action may include but not be limited to one or more of the following, depending on the severity of the harassment (may involve more than one corrective action; not necessarily in this order):

- A formal apology from the respondent.
- Reassignment, change in working relationships or locations.
- Counselling the respondent about inappropriate behaviour.
- Training provided to the respondent.

- Conditional, monitored or restricted access to the workplace.
- Disciplinary action as deemed appropriate up to and including termination.

A worker who has allegedly experienced workplace harassment as defined by this policy along with the alleged harasser, if the alleged harasser is an employee of SMDHU, will be informed of the results of the investigation and of any corrective action in writing that has been taken as a result of the investigation.

6. Follow-Up

Human Resources will initiate on-going follow-ups to the investigation within a period of three months in order to:

- Ensure the harassment has stopped;
- Ensure there are no incidents of reprisal; and,
- Assure the parties involved of the Agency's ongoing support, which could include personal development or additional training.

7. Mediation

Mediation facilitated internally by or coordinated externally through Human Resources may be considered after the Medical Officer of Health (or designate) renders a decision in order to assist the parties involved in returning to a positive working environment or as a mechanism to try and resolve the complaint before, during or after the investigation process.

8. Confidentiality

Information provided about an incident or about a complaint will not be disclosed except as necessary to protect workers, to investigate the complaint or incident, to take corrective action or as otherwise required by law. All records of the investigation will be kept confidential.

9. Record Keeping

Human Resources will keep records of the investigation including:

- a) An original copy of the complaint or details about the incident;
- b) An original record of the investigation including notes;
- c) An original copy of the investigation report (if any);
- d) A summary of the results of the investigation that was provided to the worker who allegedly experienced the workplace harassment and the alleged harasser, if a worker of the employer;
- 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, including the investigation report will 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 10 years after conclusion of the formal investigation

Related Policies

HS0109 Workplace Violence
HR0305 Grievance
HS0101 Health & Safety
HR0101 Employee Conduct

Related Forms

HS0112(F1) Harassment Complaint Form
HSO112(F2) Harassment Investigation Form

Final Approval Signature: _____

Review/Revision History:

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