

## **CITY OF WELLAND**



### **POLICY ON WORKPLACE DISCRIMINATION, HARASSMENT AND WORKPLACE VIOLENCE**

#### **POLICY STATEMENT:**

In compliance with the Human Rights Code (Ontario) and the Occupational Health and Safety Act, The Corporation of the City of Welland (herein referred to as the City of Welland or "the City"), has an obligation and responsibility to provide a work environment that is free of discrimination, workplace harassment, workplace sexual harassment and workplace violence as defined under the Human Rights Code (also referred to as "the Code" in this document) and the Occupational Health and Safety Act (also referred to as "the OHSA" in this document).

Discrimination, harassment, sexual harassment, and workplace violence are considered to be unacceptable and a form of employment misconduct. The City of Welland will make every reasonable effort to ensure that no one is subject to it. The City takes very seriously its responsibility to foster and maintain a positive working environment with mutual respect for all and wishes to make it clear that it will neither tolerate nor condone behaviour that is likely to undermine the dignity or self-esteem of any individual or create an intimidating, hostile or offensive workplace. Therefore, individuals who violate this Policy are subject to disciplinary and/or corrective action up to and including termination of employment.

This policy will be developed and maintained in consultation with the Joint Health and Safety Committee or a Health and Safety Representative.

#### **INTENT:**

The intent of this policy is to ensure that the City of Welland maintains its adherence to the spirit and provisions of the Human Rights Code and the Occupational Health and Safety Act, to encourage appropriate behaviour in the workplace and provide a mechanism for persons to bring forward concerns and issues related to harassment, sexual harassment, workplace violence and discrimination, should they arise in the workplace.

## **SCOPE OF THIS POLICY:**

This policy applies to all employees of the Corporation of the City of Welland, volunteers, members of Council and anyone involved with the business of the City, to provide assurance that they can undertake their duties in the workplace, free from discrimination, workplace violence, harassment and sexual harassment, as defined under the Human Rights Code and the OHSA.

## **THE WORKPLACE:**

The workplace is not only confined to the various offices and work locations of the City. It also includes washrooms, lunchrooms, outside work sites, on-road vehicles and any other location where the business of the City is being conducted.

Harassment and discrimination which occur outside the workplace (eg: office-related social functions, luncheon meetings, work-related travel) but are an extension of work or duties performed and which can have repercussions in the work environment, are also covered by this policy.

## **RESPONSIBILITIES UNDER THIS POLICY:**

### **The City is responsible for:**

Ensuring that corporate policy, practices and conduct comply with the provisions of the Human Rights Code and the OHSA.

- Making sure that all those protected by the policy are fully aware of the policy, their rights and protections under this policy, the Code and the OHSA.
- Creating an environment that encourages prospective complainants to report all incidents of discrimination and harassment.
- Ensuring that all discrimination and harassment complaints can be and are resolved quickly, fairly and in a sensitive manner.
- Conducting an investigation that is appropriate in the circumstances.

### **Management personnel have the responsibility to:**

- Protect all employees from discrimination and harassment and prohibit such activity from occurring in the workplace.
- Immediately initiate action upon receipt of, or even prior to, any actual complaint, where discrimination or harassment is known to have taken place.
- Take corrective or disciplinary action where a violation of this policy has been found to have occurred.

## **Employees/Council Members/Volunteers/Others:**

All City employees and those persons involved with or undertaking City business have the responsibility of maintaining a positive and business-like workplace and ensuring that the work environment is free from discrimination and harassment. Every employee is discouraged from and directed to not engage in any activity that may be perceived as constituting discrimination or harassment.

## **DEFINITIONS:**

### **Discrimination:**

The Human Rights Code ("the Code") states that it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination.

Section 5(1) of the Code states:

“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 (including pregnancy, gender identity), sexual orientation, age, and record of offences, marital status, family status or handicap.”

The City of Welland is obligated to insure that no discrimination or unequal treatment, based on the prohibited grounds or types of discrimination as outlined above, occurs in the workplace.

Discrimination can be intolerant behaviours towards individuals or groups. The behaviour can be direct (e.g. denying jobs based on colour, race, sex or disability) or systemic (e.g. utilizing job testing that is culturally-biased, height or weight restrictions for particular positions). Discrimination may come from an individual or through systems and attitudes held by an organization. Actions do not have to be intentionally committed to be considered discriminatory or a possible Code violation.

### **Harassment:**

Harassment is one form of discrimination and it is illegal under the Human Rights Code.

Section 5(2) of the Code states:

“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.”

Section 10(1) of the Code defines harassment as meaning:

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

Harassment can also be defined as any objectionable, unwanted or unwelcome attention to a person based on any of the discriminatory grounds.

Harassment can include, but is not limited to, the following:

- Verbal - comments, jokes, propositions and the like.
- Physical - touching, leering, patting, pinching, cornering, actions up to and including assault of a criminal nature.
- Visual - suggestive gestures, displays of racial/hate or pornographic materials, E-mails and other computer generated materials that are intended to intimidate or embarrass.

**Workplace Harassment** under the *Occupational Health and Safety Act* is defined as:

*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.*

Some examples of **workplace harassment** are:

- verbally abusive behaviour such as yelling, insults, ridicule and name-calling, including remarks, jokes or innuendos that demean, ridicule, intimidate or offend
- workplace pranks, vandalism, bullying and hazing
- gossiping or spreading rumours, regardless of whether they are malicious
- excluding or ignoring someone, such as persistent exclusion of a particular person from workplace-related social gatherings
- workplace supervision done in a demeaning or abusive manner
- humiliating someone
- sabotaging someone else's work
- displaying or circulating offensive pictures or materials
- offensive or intimidating phone calls, emails, texts or social media communications
- a supervisor/manager impeding an individual's efforts at promotions or transfers for reasons that are not legitimate
- making false allegations about someone in memos or other work-related documents

- menacing behaviours including staring, glaring, inappropriate gestures or unwelcome physical closeness
- taunting and intimidation

### **The Test of Harassment**

It does not matter whether you intended to offend someone. The test of harassment is whether you knew or should have known that the comments or conduct were unwelcome to the other person. For example, someone may make it clear through their conduct or body language that the behaviour is unwelcome, in which case you must immediately stop that behaviour.

Although it is commonly the case, the harasser does not necessarily have to have power or authority over the recipient. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.

Respect in the workplace is everyone's responsibility. Any acts that demean, harm or exclude are counter to our culture and should be addressed promptly in accordance with the procedures set out below.

### **Poisoned Work Environment:**

Even if no one is being directly targeted, harassing comments or conduct can poison the work environment, making it a hostile or uncomfortable place in which to work. This is also a form of harassment. Some examples of actions that can create a poisoned work environment include:

- displaying offensive or sexual materials such as posters, pictures, calendars, web sites or screen savers
- distributing offensive e-mail messages, or attachments such as pictures or video files
- practical jokes that embarrass or insult someone; or
- jokes or insults that is offensive, racist or discriminatory in nature.

### **What Is Not Harassment?**

#### **The Occupational Health and Safety Act states:**

*A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.*

Therefore, workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work functions, including but not limited to:

- measures to correct performance deficiencies, such as placing someone on a performance improvement plan
- imposing discipline for workplace infractions
- requesting medical documents in support of an absence from work
- enforcement of workplace rules and policies

It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

Workplace and domestic violence that may occur in the workplace are health and safety issues, which are covered under the *Occupational Health and Safety Act*.

### **Sexual Harassment under the Code and the OHSA:**

Sections 7(2) and 7(3) of the Code, state that sexual harassment is a very specific form of illegal discrimination and that employees have the right to be free from harassment in the workplace because of sex.

The Code clearly defines the following activities and behaviours as sexual harassment:

- a) Sexual Solicitations, Advances and Unwanted Attention - made by a person in a position to confer, grant or deny a benefit or advancement, of a persistent or abusive nature, where the person knows or ought reasonably to know that such attention is unwanted or unwelcome.
- b) Implied or Expressed Promise of Reward - for complying with a sexual request or favour.
- c) Threat Of or Actual Reprisal for Refusal - implied or actual reprisal or denial of opportunity for refusal to comply with a sexually oriented request.
- d) Poison or Hostile Work Environment - remarks, behaviour and activities of a sexual nature, not necessarily directed to any one person, which may be perceived to create a negative, intimidating, uncomfortable or offensive workplace or environment. May include a one-time incident as opposed to a "course of" or ongoing harassment, but is of such a severity or weight it taints or poisons the environment.

Examples can include: jokes, pin-ups, T-shirts with inappropriate comments, circulation of offensive materials, E-mails etc. or a one-time comment from a person in authority to the effect "we will never hire woman here for that type of work."

**Workplace Sexual Harassment under The Occupational Health and Safety Act** is defined as:

- (i) *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*
- (ii) *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.*

Both men and women can be victims of sexual or gender-based harassment, and someone of the same or opposite sex can harass someone else. Some examples of sexual or gender-based harassment are:

- sexual advances or demands that the recipient does not welcome or want
- threats, punishment or denial of a benefit for refusing a sexual advance
- offering a benefit in exchange for a sexual favour
- leering (persistent inappropriate staring)
- displaying sexually offensive material such as posters, pictures, calendars, cartoons, screen savers, pornographic or erotic websites or other electronic material
- distributing sexually explicit e-mail messages or attachments such as pictures or video files
- sexually suggestive or obscene comments or gestures
- unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, clothing or sex
- persistent, unwanted attention after a consensual relationship ends
- physical contact of a sexual nature, such as touching or caressing
- gossip or rumours regarding a person's sexual activities or relationships, regardless of whether they are malicious; and
- sexual assault

**Workplace Violence** under the *Occupational Health and Safety Act* is defined as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker
- a statement or behavior that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

It is defined broadly enough to include acts that may be considered criminal. Workplace violence includes:

- physically threatening behaviour such as shaking a fist at someone, finger pointing, destroying property, throwing objects
- verbal or written threats to physically attack a worker
- leaving threatening notes or sending threatening emails
- wielding a weapon at work
- stalking someone; and
- physically aggressive behaviours including hitting, shoving, standing excessively close to someone in an aggressive manner, pushing, kicking, throwing an object at someone, physically restraining someone or any other form of physical or sexual assault.

All of the above activities are considered inappropriate. Therefore, a violation of this policy, the Code and the OHS Act will not be condoned by the City.

Further, it is also a violation of the Policy for anyone to knowingly make a false complaint of harassment or violence, such as when a complaint is found to be frivolous, vexatious or made in bad faith with fraudulent or malicious intent, or to provide false information about a complaint.

Violence that occurs outside the normal workplace but which has an impact on the working environment, including working relationships, may also be considered violence in the workplace.



Workplace violence may come from many different sources:

- strangers or people with no ties to the workplace
- clients, customers or patients
- other employees
- intimate relationships outside of work (such as intimate partners, family, friends)

### **MAKING A COMPLAINT OF DISCRIMINATION OR HARASSMENT:**

Employees or persons involved in City business are encouraged to bring forward any incidents of discrimination, workplace violence, harassment or sexual harassment that they may encounter in the workplace and should do so in a timely fashion.

Complaints of discrimination, workplace violence, harassment or sexual harassment may be reported to any of the following people:

- Manager, Human Resources
- Chief Administrative Officer
- Department Manager

A union employee may consider seeking the assistance of his/her union. Any union employee who wishes to report a complaint of discrimination, workplace violence, harassment or sexual harassment or who has been accused of a possible violation, is entitled to union representation.

All complaints will be dealt with in a most serious manner and as promptly and discreetly as possible, with due regard for the rights of all parties.

A person always retains the right to file a complaint with the Ontario Human Rights Commission, should they choose to do so.

### **CONFIDENTIALITY:**

Confidentiality during the complaint process will be maintained at all times as practicable and appropriate under the circumstances for each case and except where disclosure of names is necessary for purposes of investigating the complaint or taking discipline in relation to the complaint.

### **COMPLAINT RESOLUTION:**

Complaints may be dealt with in a number of ways (early dispute resolution, informal, mediation, formal investigation) and as expeditiously as possible. However, if evidence of discrimination, workplace violence, harassment or sexual harassment is found

(considered a form of employee misconduct), corrective or disciplinary measures will be taken as appropriate.

Discipline could involve reprimands or suspensions and depending on the severity of the situation, may result in more serious actions being taken, including discharge or termination for cause. Steps will also be taken to prevent any further reoccurrence of the discrimination or harassment and provide additional support or assistance to those affected.

If the complaint is not supported or substantiated, no documentation of the complaint will be placed with the file of the person alleged to have done the discriminating or harassing.

### **INVESTIGATION:**

The City has discretion to use either an internal or external investigator to conduct an investigation, depending on the nature of the incident.

The investigation may include:

- conducting interviews of relevant individuals to ascertain all of the facts and circumstances relevant to the incident or complaint, including dates and locations
- reviewing any related documentation
- making detailed notes of the investigation and maintaining them in a confidential file

Once the investigation is complete, the investigator(s) will prepare a detailed report of the findings. The goal is to complete any investigation and communicate the results to the complainant and respondent within a reasonable time frame after becoming aware of an incident or a complaint is received, where possible. The timeframe within which an investigation can be completed varies depending on the circumstances of each investigation.

### **LIABILITY UNDER THE HUMAN RIGHTS CODE:**

Whether committed by a co-worker or a supervisor, acts of harassment and discrimination are not only considered a form of employee misconduct, but are also illegal under the Code. Persons engaging in discriminatory actions or harassment of others may be personally liable under the Code. In addition, those in a position of authority who know about such behaviour or ought to know and by omission or failure to take appropriate action, tolerate it, are also guilty of misconduct and could be named and liable in a complaint filed with the Ontario Human Rights Commission.

**NO REPRISAL UNDER THE CODE AND THE OHSA:**

Section 8 of the Human Rights Code states:

*Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe the rights of another person under this Act, without reprisal or threat of reprisal for so doing.*

Section 50 (1) of the OHSA states:

“No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations....”

All levels of Management will insure that no reprisals or retaliation stem from the filing of complaints with respect to the person making the complaint, the accused or any witness. Any form of retaliation or reprisal is considered a serious violation of this policy. Such actions will be subject to disciplinary action.

Persons who make legitimate or "good faith" complaints will not have their employment affected in any way as a result of their complaint.

It is also recognized that false, fabricated or malicious accusations of harassment or discrimination can have serious affects on innocent people. Such accusations or false reporting will not be tolerated and will be regarded as a violation of this policy.

**REVIEW**

The City will review this policy when necessary. At a minimum, the policy will be reviewed annually, and revised accordingly.

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