

Human Resources Policy 11 - Discrimination and Harassment in the Workplace

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This policy statement applies to all employees appointed under the [Public Service Act](#) and applies to incidents that occur at or away from the workplace during or outside working hours if a connection exists to the employment relationship. This policy statement supports the core policy objective of “promoting a safe and healthy workplace that supports the well-being of employees” and the objective that “public service employees exhibit the highest standards of conduct.”

As an employer, the Government of British Columbia, in cooperation with its unions and associations will promote a work environment that is free from discrimination and harassment where all employees are treated with respect and dignity. Discrimination and harassment as related to any of the prohibited grounds contained in the [Human Rights Code](#) violate the fundamental rights, dignity and integrity of an individual. Where discrimination or harassment is found to have occurred, the Employer may implement remedial action.

This policy statement promotes the prevention of discrimination and harassment and focuses on the prompt resolution of complaints. This policy statement does not prevent an employee from filing a complaint under [Section 13 of the Human Rights Code](#); however, employees are not entitled to duplication of process. Where an employee directs a complaint of discrimination or sexual harassment to the British Columbia Human Rights Tribunal or where they are included as an element of a grievance, the complaint will not be pursued through the formal process specified in this policy or the applicable collective agreement. All information regarding a complaint is to be treated in the strictest confidence. Information that must be shared will be disclosed on a “need to know” basis.

This policy statement covers the following:

- discrimination and harassment for excluded employees;
- the complaint procedures for excluded employees; and
- the adjudication process for bargaining unit employees.

A provision regarding discrimination and harassment, including the complaint procedures for bargaining unit employees, is contained in each of the applicable collective agreements. If there is a conflict, the collective agreement will take precedence over this policy statement.

An employee who files a written complaint which would be seen by a reasonable person to be frivolous, vindictive or vexatious may be subject to disciplinary action.

Definitions

Discrimination

Discrimination relates to any of the prohibited grounds contained in the *Human Rights Code*. Prohibited conduct may be verbal, non verbal, physical, deliberate or unintended, unsolicited or unwelcome, as determined by a reasonable person. It may be one incident or a series of incidents depending on the context.

Employees have the right to employment without discrimination. Discrimination includes incidences of harassment because of race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, age, sexual orientation, gender identity or expression, political belief or conviction of a criminal or summary conviction offence unrelated to their employment.

Sexual Harassment

Sexual harassment is a form of discrimination and is defined as any unwelcome comment or conduct of a sexual nature that may detrimentally affect the work environment or lead to adverse job related consequences for the victim of the harassment. Examples of sexual harassment include, but are not limited to:

- a person in authority asking an employee for sexual favours in return for being hired or receiving promotions or other employment benefits;
- sexual advances with actual or implied work related consequences;
- unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations;
- verbal abuse, intimidation or threats of a sexual nature;
- leering, staring or making sexual gestures;
- display of pornographic or other sexual materials;
- offensive pictures, graffiti, cartoons or sayings;
- unwanted physical contact such as touching, patting, pinching or hugging; and
- physical assault of a sexual nature.

The definition of sexual harassment is not meant to inhibit interactions or relationships based on mutual consent or normal social contact between employees.

Complaint Procedures for Excluded Employees

These procedures will also apply if either the complainant or the respondent is a Deputy Minister. In such cases, the Deputy Minister to the Premier will assume the function of the Deputy Minister for the purpose of these procedures.

Informal Process

Employees who believe that they have a complaint of discrimination or sexual harassment may approach their supervisory personnel, association representative, or other contact person to discuss potential means of resolving the complaint and to request assistance in resolving the matter. A matter dealt with to the complainant's satisfaction is considered to be resolved.

Management Process

If the matter is not resolved to the complainant's satisfaction, or if the employee chooses not to proceed informally, the employee, within six months of the alleged occurrence, will approach the first level of excluded management not involved in the matter, for assistance in resolving the complaint. The manager will investigate the allegation and take steps to resolve the concern as appropriate within 30 days of the issue being raised by the employee. Employees may wish to have a representative present.

Formal Process

If the resolution proposed as a result of the management review is not acceptable, the complainant may refer the matter, in writing, to the Deputy Minister within 30 days of receiving the manager's written response or when the response was due. The complainant may seek assistance through their human resources personnel or association representative. The written complaint will specify the details of the allegation including:

- name, title and ministry of the respondent;
- a description of the action, conduct, events or circumstances involved in the complaint;
- the specific remedy sought to satisfy the complaint;
- dates of incidents;
- names of witnesses (if any); and
- prior attempts to resolve (if any).

The Deputy Minister will provide a copy of the complaint to the respondent. The Deputy Minister will acknowledge, in writing, receipt of the written complaint, have the matter investigated and take such steps as may be required to resolve the matter.

The employee and association representative, if applicable, will be advised in writing of the proposed resolution within 30 days from the date the Deputy Minister received the written complaint or a later mutually agreed upon date.

Adjudication Process – Bargaining Unit Employees

The following adjudication process is for complaints of discrimination or sexual harassment that have not been resolved using the process set out in the applicable collective agreement:

- BCGEU: Article 1.9
- PEA: Article 1.09
- Nurses: Article 1.06

Referral for Adjudication

When a complaint of discrimination or sexual harassment has not been resolved using the process set out in the collective agreement, the Bargaining Agent may refer the matter to the Employer for adjudication.

The written notice of referral for adjudication must be received by the Employer within 30 days of receipt of the proposal from the Deputy Minister to resolve the complaint made under the formal process for resolving discrimination and sexual harassment complaints. The 30-day period may be extended with the agreement of both the Bargaining Agent and the Employer.

Appointment of Adjudicator

The Employer will appoint an Adjudicator within 10 working days of receiving the written notice of referral for adjudication. The Adjudicator will either be appointed from a mutually agreed upon list, or will be someone who is agreeable to both the Employer and the Bargaining Agent.

Conduct of Adjudication

Adjudication will be conducted in a manner that ensures that those involved receive a fair hearing. The adjudication will be conducted in private, but the Employer has the right to full representation at the hearing.

All information about a complaint is to be treated in strictest confidence and is not to be disclosed to anyone except on a 'need-to-know' basis.

The Adjudicator will determine the adjudication process consistent with the principles of natural justice, and may admit any evidence that the Adjudicator feels is necessary or appropriate.

The Adjudicator may:

- Make findings of fact;
- Decide if, based on the facts, discrimination or sexual harassment has occurred;
- Attempt to mediate a resolution to the complaint; and
- Make recommendations regarding resolution of the complaint, which may include discipline.

The Adjudicator's written findings and recommendations will be forwarded as expeditiously as possible to the:

- Complainant;
- Respondent;
- Deputy Minister; and
- Bargaining Agent.

The Adjudicator's decision about whether discrimination or sexual harassment has occurred is binding on all parties.

Implementation of Recommendations

Pending the outcome of the adjudication process, the Deputy Minister may take interim measures to separate the employees involved. Any actions taken should not be seen as disciplinary or passing judgment on the validity of the complaint. Complainants will not be relocated without their consent.

Once the Adjudicator's report is received, the Deputy Minister will consider the findings and recommendations and determine what action should be taken. All parties will be notified of the action being taken within five working days of receiving the Adjudicator's written report.

Any action taken by the Employer, including discipline, that is consistent with the Adjudicator's findings of fact must be accepted by all parties and is not to be used as the basis for a grievance for bargaining unit staff.

If the Adjudicator determines that discrimination or sexual harassment has occurred, the Employer will document the personnel file of the respondent accordingly.

Responsibilities

Agency Head

- Provide timely advice to managers and employees respecting the application of this policy statement including direction that complaints and investigations be treated in confidence;
- Coordinate the development of awareness, training, and communication programs in support of this policy statement;
- Appoint an adjudicator to hear complaints of discrimination or harassment not resolved following a formal investigation;
- Establish a dispute resolution panel, when required; and
- Conduct formal investigations, when required.

Deputy Ministers

- Promote a work environment that is free of discrimination and harassment;
- Provide for employees attendance at discrimination and harassment awareness sessions;
- Provide employees information of the complaint process established by this policy statement;
- Ensure that complaints raised by ministry employees are investigated and addressed within the time frames established by the policy statement;
- Develop a system that enables all employees to be aware of their responsibilities relevant to this policy statement;
- Ensure that complaints are treated in confidence;
- Ensure that the number and grounds of complaints handled under the policy statement are tracked and reported as required;
- Ensure that resolutions are implemented; and
- Delegate authority and responsibility, where applicable, to apply this policy statement within their organization.

Excluded Managers

- Develop workplaces, for which they are responsible, free from discrimination and harassment;
- Inform all employees, for which they are responsible, of this policy statement;
- Investigate and resolve complaints within the time frames established by this policy statement;
- Report complaints that are investigated to the Deputy Minister;

- Treat complaints and investigations in confidence as appropriate; and
- Follow up on resolutions to ensure that they have been implemented and are working.

Employees

- Treat fellow employees with respect and dignity;
- Refrain from discrimination and harassment as defined by the policy statement;
- Ensure that complaints are treated in confidence; and
- Meet the time frames specified in this policy statement.

Frequently Asked Questions

Does this policy also apply to gender and gender identity?

Yes. The policy has embraced the jurisprudence of the *Charter of Rights and Freedoms* as well as the *BC Human Rights Code* rulings on gender and gender identity or expression, including those who identify as lesbian, gay, bisexual, transgender or transsexual.

What should I do if I witness, or feel I am the victim of, harassment or discrimination?

The following are guidelines. Please refer to the formal procedures for [excluded employees](#) and [bargaining unit employees](#).

If you think you have witnessed, or have been the victim of, discrimination or harassment by a **peer** (someone with whom you are not in a reporting relationship), try speaking with the person and explain how you perceive their actions. If this is not possible, talk to your supervisor immediately. Supervisors are responsible for taking swift and appropriate action to investigate and remedy substantiated complaints.

If the conduct you are uncomfortable with has been carried out by a person to whom you report, depending on the extremity of the situation, consider using any or all of these options:

- Request a meeting with your supervisor to discuss your discomfort and how you feel you are being bullied. You may wish to call **Homewood Human Solutions** (1-800-655-5004) for advice and counselling to help you prepare for the discussion. Bargaining unit members can also consult with their local union representative.
- If a meeting with your supervisor is out of the question, go to another excluded manager whom you trust and believe could help resolve the situation.
- If the situation cannot be addressed at the first or second levels, it should be referred to the BC Public Service Agency or your union representative.

What is 'consent'?

Consent refers to the provision of approval or agreement, particularly and especially after thoughtful consideration.

The following are described by the Canadian Criminal Code as situations in which consent cannot be obtained:

- Force is applied.
- Force is threatened to be applied to the victim or to another person.
- The accused is in a position of authority over the victim.

Consent cannot be based on the words or conduct of someone other than the victim, nor can consent be obtained when:

- The victim is incapable of consenting (due to mental incapacity, for example);
- The accused is in a position of trust, power or authority over the victim;
- The victim expresses a lack of consent; or
- The victim, having initially consented, expresses a change of mind.

What's an example of something that might be perceived as harassment, but is not?

Feedback on performance is not considered harassment if it:

- Is delivered in a respectful and professional manner;
- Serves a legitimate purpose; and
- Is meant to improve performance.

What is 'indirect' discrimination?

In the absence of a bona fide occupational requirement, 'indirect' or adverse effect discrimination exists where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which applies equally to all employees, but which has a discriminatory effect on a prohibited ground on one employee or group of employees. For example:

- Establishing a schedule where employees are required to work on Saturdays may conflict with the religious beliefs of an employee who is an observant Jew.
- Adopting a standard work uniform which includes specified headgear may conflict with the rights of an employee of the Sikh faith whose religious practice includes the wearing of a turban.
- Enforcing a work rule which requires employees to stand for extended periods of time may indirectly discriminate against physically disabled employees.

What is racism and racial discrimination?

Racism is a belief that some people are better than other people because they belong to a particular race or ethnic group. Racial discrimination occurs when someone actually does something based on racist beliefs by treating some people differently and poorly because of their race, colour, ancestry, or place of origin.

In British Columbia, the Human Rights Code makes it illegal to treat someone differently and poorly, or to harass or insult someone, because of their race, colour, ancestry, or place of origin. Examples of racial discrimination include:

- Hiring many people of colour to work in lower-paid jobs. While white employees are trained and promoted, employees of colour are never promoted, although they are just as qualified and experienced.
- Setting job standards that are different for certain employees because they appear to have a particular ancestry.
- Posting publications or displays that criticize people of a particular race, colour, ancestry, or place of origin

Is there a time limit for filing a human rights complaint?

For more information, refer to the [Complaint Procedures for Excluded Employees](#) and [Adjudication Process for Bargaining Unit Employees](#).