

Administrative Procedure 160

DISCRIMINATION/HARASSMENT/WORKPLACE VIOLENCE

Background

The Division believes that every employee is entitled to employment free of discrimination, harassment, and workplace violence. The Division has a responsibility, insofar as reasonably practicable, to ensure that no employee will be subjected to discrimination, harassment, or workplace violence with respect to any matter or circumstance arising out of employment.

Discrimination, harassment and workplace violence constitute a disciplinary infraction that shall be dealt with through the appropriate measures. Disciplinary actions for violations will take into consideration the nature and impact of the violations. Appropriate measures could range from written reprimands up to and including termination.

This Administrative Procedure does not restrict or inhibit the right of employees to file a complaint with other authorities such as the Saskatchewan Human Rights Commission and Saskatchewan Labour, Occupational Health and Safety Branch. In the event of a conflict between any provision of this administrative procedure and applicable law, the applicable law shall apply.

This Administrative Procedure outlines the procedures to be followed regarding allegations of discrimination, harassment, and workplace violence so that employees will know that complaints will be treated in a confidential, consistent and effective manner and that incidents may be reported without fear of retaliation or reprisal.

Procedures

1. Definitions

- 1.1 **Discrimination:** is unfair action taken against others because they belong to a certain group. It denies people benefits and opportunities that are necessary for a decent life. Discrimination can flow from prejudice, negative stereotypes, or a failure to consider the needs of others. It is against the law for someone to discriminate in the workplace based on the prohibited grounds including race or perceived race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age (over 18 years), nationality, ancestry, place of origin or receipt of public assistance
- 1.2 **Harassment:** is defined as any inappropriate conduct, comment, display, action or gesture by a person that either:
 - 1.2.1 Is based on any of the prohibited grounds of discrimination; or
 - 1.2.2 Has a lasting, harmful effect on the employee that adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; or

1.2.3 Constitutes a threat to the health and safety of the worker.

To constitute harassment there must be:

- Repeated conduct, comments, displays, actions or gestures must be established; or
- A single, serious occurrence of conduct, or a single serious comment, display, action or gesture that has a lasting, harmful effect on the worker must be established.

Harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer's workers or the place of employment.

- 1.3 Sexual Harassment: is a form of discrimination. It is unwarranted sexual conduct that interferes with rights guaranteed by [The Saskatchewan Human Rights Code](#). It may be verbal, physical or visual. It may be one incident or a series of incidents. It is always unsolicited and unwelcome behaviour, and can take many forms.
- 1.4 Workplace Violence: means the attempted, threatened or actual conduct of a person that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives an employee reasonable cause to believe they are at risk of injury.
- 1.5 Personal Harassment or "Bullying": is an extreme form of workplace violence. It is a form of non-physical violence which can lead to physical violence. It is psychological warfare. It is intended to intimidate, offend, humiliate, degrade or demean. Sometimes it's directed at one employee; at other times it's not aimed at anyone in particular but is part of generally hostile behaviour that has a toxic effect on the workplace. The "bully" can be a supervisor or any other employee and is not gender specific.

2. Scope

- 2.1 This administrative procedure applies to all employees.
- 2.2 Not only during working time, but to any activities on or off school division premises which could reasonably be associated with the workplace.

3. Responsibility

- 3.1 All employees, and particularly employees in management and supervisory positions, are responsible for ensuring discrimination; harassment and workplace violence are not tolerated and, where possible, are redressed.
- 3.2 Any employee who becomes aware of situations where discrimination, harassment or workplace violence may be occurring is requested to notify their manager or supervisor and proceed through the concern protocol in Administrative Procedure 153.
- 3.3 All employees are responsible for being sensitive to the impact as well as the intent of their actions and are required to: refrain from participating in discrimination, harassment and workplace violence; and cooperate with any person investigating and /or seeking to resolve complaints filed under this policy.
- 3.4 Managers and supervisors are responsible for providing a work environment that is free from discrimination, harassment and workplace violence. This responsibility includes actively promoting a positive, harassment-free work environment and intervening when problems occur. Additionally, managers and supervisors are responsible for dealing with inappropriate actions of others that come to their attention.

4. Confidentiality

- 4.1 All complaints will be handled in a confidential manner with the understanding that respondents named in a complaint have the right to know the allegations being made against them.
- 4.2 The investigation will be limited to only those individuals who must be contacted to fulfill the Employer's legal duty to investigate and to resolve the situation.

- 4.3 Those involved in the investigation are prohibited from discussing the complaint outside the official restorative or investigative process. Breaches of confidentiality may result in disciplinary action up to and including termination.
 - 4.4 Information concerning a complaint, or action taken as a result of the investigation, will not be released to anyone who is not involved with the investigation.
 - 4.5 Notwithstanding the above clauses, information relating to the investigation may be subject to subpoena for court, legal or arbitral purposes.
5. Correspondence
 - 5.1 All correspondence and reports relative to alleged infraction(s) shall be held separately in a confidential file to be retained by the Manager of Human Resources.
 - 5.2 If allegations are not supported, the file shall be destroyed one (1) year after the person in authority's ruling is rendered.
 - 5.3 If the investigation supports the allegations, copies of all supporting documentation shall be placed on the offender's personnel file in a sealed envelope with restricted access.
6. Unsubstantiated Complaints
 - 6.1 Where a complaint has not been substantiated, no action will be taken against an employee who has made a complaint in good faith. It is important to note that an unproven allegation does not mean that discrimination, harassment or workplace violence did not occur or that there was a deliberate false allegation. It simply means that there is insufficient evidentiary basis to proceed or that while the complainant may have genuinely had reason to believe that there was discrimination, harassment or workplace violence, investigation has not borne out the complaint
 - 6.2 If, upon investigation, it is found that false accusations were made knowingly and with malice, the Director may impose disciplinary action upon the employee making the false accusations up to and including termination.
7. Steps to Follow
 - 7.1 Step 1: Individual Problem Solving and Resolution

Employees are encouraged to attempt to resolve their concerns by direct communication with the person(s) engaging in the unwelcome conduct.

 - 7.1.1 Where employees feel confident or comfortable in doing so, clearly make known to the person(s) whose conduct or comments are offensive that the behaviour is objectionable and must stop.
 - 7.1.2 Keep a written record of the date, time, details of the conduct, and witnesses, if any.
 - 7.1.3 If resolution is achieved, both the complainant and the respondent should keep a record of the agreed-to resolution.
 - 7.2 Step 2: Management Support and Intervention

Employees who are not confident or comfortable with Step 1 and who believe they are victims of discrimination, harassment or workplace violence, or become aware of situations where such conduct may be occurring, are encouraged to report these matters to any of the following: the employee's manager or supervisor, the Manager of Human Resources, or the Director.

 - 7.2.1 The person in authority who receives an informal verbal complaint shall take action to ensure the complaint is addressed, or at minimum is being investigated, within ten (10) working days from the date the complaint was received.
 - 7.2.2 The person in authority shall take the following actions:
 - 7.2.2.1 Provide the complainant and respondent with information regarding discrimination, harassment, or workplace violence.
 - 7.2.2.2 Discuss issues of confidentiality and limits to confidentiality when a complaint is received.

- 7.2.2.3 Attempt to bring resolution to the situation by:
- Assisting the complainant in speaking to the respondent directly; or
 - Speaking to the respondent directly on the complainant's behalf to outline the allegations and attempt to resolve the complaint informally; or
 - If both parties are willing to enter into voluntary mediation, the person in authority shall act as or appoint a neutral third party acceptable to both.
- 7.2.2.4 If an acceptable resolution is achieved, the person in authority shall monitor the status of the resolution to ensure it is satisfactorily implemented and maintained.
- 7.2.2.5 If an acceptable resolution is not achieved, a formal investigation may be initiated.
- 7.2.2.6 As part of the Step 2 process the following documentation will be held separately in a confidential file:
- The names of the complainant and respondent;
 - The nature of the alleged infraction;
 - A record of all meeting dates and attendees; and
 - The present disposition of the complaint.

7.3 Step 3: Formal Complaint

If informal attempts at resolving the issue are not appropriate, or proving to be ineffective, a formal complaint may be filed. To file a formal complaint:

- 7.3.1 Provide a letter of complaint that contains a detailed account of the offensive incident(s) including:
- 7.3.1.1 Name of Complainant.
- 7.3.1.2 Home and Work phone numbers of the complainant.
- 7.3.1.3 Type of Harassment (on what prohibited grounds did the harassment occur).
- 7.3.1.4 Respondent: alleged harassers' name.
- 7.3.1.5 Details of the complaint, including:
- Dates, times and location of each occurrence;
 - The persons involved, and names of witnesses, if any
 - What has been done in response to the behaviour;
 - Has the respondent or another appropriate person been advised that the behaviour is objectionable and must stop;
 - Any other details of the incident(s); and
 - The remedy sought.
- 7.3.1.6 The formal written complaint must be signed and dated by the complainant. By signing a formal complaint, the complainant is agreeing to have the actual complaint provided to the respondent.
- 7.3.2 A formal complaint is to be filed with the Manager of Human Resources.
- 7.3.2.1 The person receiving the complaint, if other than the Director, shall immediately report the complaint to the Director.
- 7.3.2.2 In the event the Director is the subject of the complaint or is the complainant, the person receiving the complaint shall report it directly to the Board Chair who shall immediately bring it to the attention of the Board.
- 7.3.2.3 The Manager of Human Resources shall facilitate investigation of the complaint immediately upon receipt of the complaint. This may include:
- Contracting out the investigation;
 - Appointment of an out-of-scope staff member; or
 - Investigation by the Manager of Human Resources.

- 7.3.2.4 In the event the Director is the subject of the complaint or is the complainant; the Chair of the Board shall appoint another person to be in charge of the investigation.
 - 7.3.3 The person who investigates the complaint shall ensure that the following is completed:
 - 7.3.3.1 Notify and provide a copy of the complaint to the respondent;
 - 7.3.3.2 Request the respondent to respond in writing to the complaint;
 - 7.3.3.3 Interview the complainant, the respondent and any relevant witnesses (witnesses must be informed that the evidence provided will be shared with the complainant and respondent);
 - 7.3.3.4 Collect relevant documents or other physical evidence.
 - 7.3.4 The investigator will submit a written report to the Director. The report will detail the following:
 - 7.3.4.1 The complaint;
 - 7.3.4.2 Statement of respondent(s);
 - 7.3.4.3 A list of witnesses;
 - 7.3.4.4 Witness statements;
 - 7.3.4.5 Relevant documents;
 - 7.3.4.6 Findings of the investigation; and
 - 7.3.4.7 The investigator's conclusion as to whether harassment, discrimination or workplace violence did or did not occur.
- NOTE:** The investigator's report will not include recommendations regarding disciplinary action. Disciplinary action will be determined by the Director or Board as appropriate.
- 7.3.5 Both the complainant and the respondent shall have the opportunity to have someone present to provide advice or assistance throughout the investigation.
 - 7.3.6 Either party may, after receiving the results of the investigation, appeal to the Board if dissatisfied with the resolution of a formal complaint.
 - 7.3.7 All records relating to the complaint and investigation shall be kept in a confidential file to be retained by the Manager of Human Resources.

Reference: *Occupational Health and Safety Act*
Saskatchewan Human Rights Code Act
 Section 85, 87, 108, 109, 175, *The Education Act, 1995*
 Canada Criminal Code
 Canada Labour Code
 Canadian Charter of Rights and Freedoms
 STF Code of Ethics
 Child Welfare Act

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