

**12 WORKPLACE VIOLENCE AND HARRASSMENT**

With reference to HR Policy 9.1

<b>POLICY:</b> Workplace Discrimination and Harassment Policy and Program	<b>POLICY #: 9.1 NEW (Replaces 833 or 8.7 Workplace Harassment and Discrimination Standard)</b>
<b>SECTION: HEALTH &amp; SAFETY POLICY MANUAL, Section 10, Other Health And Safety Related Programs and HR Manual Health &amp; Safety</b>	<b>EFFECTIVE DATE: September 8, 2016 Original Policy January 1, 2002, then revised Jan 2010, Dec 2012</b>
<b>REVIEWED BY: JHSC, CEO</b>	<b>REVISAL DATE(S):</b>
<b>APPROVED BY: CEO</b>	<b>Pages 1- 44</b>

**PURPOSE:**

The purpose of this policy is to:

- establish a framework for the prevention of workplace discrimination and workplace harassment and effective responses to issues of workplace discrimination and harassment
- provide direction to management and staff, students, and volunteers on compliance with statutory requirements for human rights and health and safety regarding workplace discrimination and harassment.

**POLICY:**

Carefirst Seniors and Community Services Association (Carefirst) is committed to fostering and sustaining an inclusive, diverse, equitable and accessible workplace which is free from discrimination, harassment, and sexual solicitation, and in which all individuals are treated with respect and dignity.

Workplace harassment and violence will not be tolerated from any person in the workplace including clients (which includes program participants/patients), caregivers/families, visitors, other employers, supervisors, workers, and members of the general public.

Carefirst’s policy is to take every reasonable step to:

- cultivate and sustain a supportive work culture
- prevent workplace discrimination and harassment and promote awareness of rights and responsibilities

- identify and eliminate workplace discrimination and harassment in a timely manner
- improve and/or restore work environments and work relationships affected by incidents or allegations of discrimination or harassment.
- comply with the Occupational Health and Safety Act (OHSA) requirement under section 32, which includes employer responsibilities for addressing workplace harassment, and workplace sexual harassment in the workplace
- define behaviour that constitutes harassment in the workplace
- develop and maintain, in consultation with the JHSC, a written program and procedures for minimizing/preventing workplace harassment and unacceptable behaviour in the workplace

Every employee has a right to equal treatment without discrimination and to be free from harassment in the workplace by the employer, agent of the employer, or by another employee because of various prohibited grounds outlined in the applicable human rights legislation. Such grounds include the following:

- Race
- Place of origin
- Citizenship
- Creed
- Record of Offences
- Disability
- Age
- Sexual orientation (and same sex partnership status)
- Ancestry
- Colour
- Ethnic origin
- Sex
- Pregnancy
- Family status
- Marital status
- Gender identity and gender expression
- Multiple /combined grounds of discrimination

In addition, employees have a right to be free of sexual solicitation in the workplace made by a person in a position to confer, grant or deny a benefit or advancement and to be free of reprisal or threat of reprisal for rejecting such sexual solicitation or advance.

Ontario Bill 168, *Occupational Health and Safety Amendment Act* (Violence and Harassment in the Workplace) 2009 extended the definition of workplace harassment beyond what is presently covered under the Ontario Human Rights Code (OHRC). Employers must now treat harassment based on non-protected grounds in the same manner as harassment based on code - protected grounds.

Ontario Bill 132: *Sexual Violence and Harassment Action Plan Act*, which came into force on September 8, 2016, amended the Ontario Health and Safety Act (OHSA) to include an expanded definition for workplace harassment, and introduced definitions for workplace sexual harassment. (See Carefirst's Workplace Violence Prevention Policy and Program.

**This policy complies with both the OHRC and the amendments to the OHSA.**

This means that employees have a right to be free of workplace harassment and

workplace sexual harassment as defined in the OHSA.

Carefirst will make every reasonable effort to ensure that no staff, student and volunteer is discriminated against or harassed in the workplace contrary to law, or sexually solicited, and will take appropriate disciplinary measures against any staff, student and volunteer found to be in violation of this policy, up to and including dismissal.

The policy will be reviewed during orientation, posted at all sites, reviewed and updated as often as necessary but at least annually in accordance with the OHSA.

## **DEFINITIONS**

### **Discrimination**

This policy covers workplace discrimination as prohibited under the OHRC – “the Code.”

For purposes of this policy, *discrimination* is defined as any practice or behaviour, whether intentional or not, which has a negative impact on an individual or group based on one or more of the prohibited grounds under the Code, except where the conduct is permitted under the Code. Discrimination may arise due to unequal treatment or from the same treatment which has an unequal effect on an individual or group protected from discrimination under the Code.

Although not specifically defined in the Code, discrimination is therefore considered to be adverse/unfair treatment based on one or more of the prohibited grounds in the Code. The prohibited grounds of workplace discrimination include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy and gender identity), sexual orientation, age, record of offences, marital status, family status and disability. Please see Appendix A and B for additional information on gender identity. The policy prohibits discrimination on the basis of these grounds, and any combination of these grounds.

Examples of discrimination include:

- Offensive comments, jokes, or behaviour that disparage or ridicule a person’s membership in one of the protected grounds, such as race or religion
- Imitating a person’s accent or speech
- Inappropriate comments or jokes about an individual’s age, sexual orientation, personal appearance
- Refusing to work or converse with someone because of his/her racial or ethnic background

It is important to understand that discrimination may be direct, indirect, or constructive. Please see the fuller definition for discrimination in Appendix A for an explanation of these concepts.

### **Workplace Harassment**

This policy covers workplace harassment as defined and prohibited under the Code *and* the OHSA. Examples of harassment follow the definitions.

**“Workplace harassment”** is defined in the OHSA 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, or
- workplace sexual harassment.

**Workplace Sexual harassment**, is defined in the OHSA as:

- 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
- 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.

The OHRC also states that every person has a right to be free from

- *a reprisal or a threat of reprisal* for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person

A single incident may amount to harassment. See the Definitions in Appendix A for a fuller explanation of what is meant by conduct that is known or ought reasonably to be known to be unwelcome.

See Appendix A and B for additional information on gender identity.

### **What isn't Workplace Harassment**

The OHSA also states that:

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

In other words, reasonable action or conduct by an employer, manager or supervisor that is part of his or her normal work function would not normally be considered workplace harassment. This is the case even if there are sometimes unpleasant consequences for a worker. Examples could include changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, implementation of dress codes and disciplinary action.

Differences of opinion or minor disagreements between co-workers would also not be generally be considered workplace harassment.

In addition, any behaviour that would meet the definition of workplace violence would

not be considered to be workplace harassment.

Note: the above explanation is from *Workplace Violence and Harassment: Understanding the Law*, Ministry of Labour, OHS Branch, 2010.

### **Examples of behaviour that constitute workplace harassment, sexual harassment/solicitation**

Both men and women can be victims of sexual harassment and someone of the same sex or opposite sex can harass you.

Some examples of behaviour that workplace harassment include:

- Gender-related comments about an individual's physical characteristics or mannerisms
- Paternalism based on gender which a person feels undermines his or her self-respect or position of responsibility
- Workplace sexual harassment, including unwelcome solicitation or advances from a manager, supervisor, or another person who has the power to reward or punish the worker
- Sexual advances, flirtations, propositions of physical intimacy, demands for dates or sexual favours that you do 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
- Sexually suggestive or obscene comments, innuendoes or gestures about members of a specific gender
- Unwanted touching, physical contact of a sexual nature such as touching or caressing, or blocking
- Bullying or aggressive behaviour
- Isolating or making fun of a worker because of gender identity
- Staring at or making unwelcome comments about your body
- Subtle pressure for sexual activity
- Offensive or intimidating comments or jokes; offensive jokes or comments of a sexual nature about men, women, an employee or client
- Rough and vulgar humour or language related to gender
- Displaying or circulating (sexually) offensive pictures or material such as posters, pictures of nude people, calendars, cartoons, screen savers, pornographic or erotic web sites or other electronic material
- Distributing sexually explicit e-mail messages or attachments such as pictures or video files
- Leering or inappropriate staring or gestures
- Bragging about sexual prowess or questions or discussions about sexual activities
- Unwelcome sexually-oriented remarks, verbal "kidding", "teasing", jokes about men and women, innuendoes, propositions or taunting about your body, clothing or sex.
- Persistent, unwanted attention after a consensual relationship ends
- Gender-related (i.e. of a sexual nature) verbal abuse, threats, or taunting

- Sexual assault.

**Examples of racial/ethnic harassment e.g.:**

any conduct or comment which causes humiliation to an employee because of their racial or ethnic background, their colour, place of birth, citizenship, or ancestry.

Examples of conduct which may be racial or ethnic harassment include:

- Unwelcome remarks, jokes, or innuendos about a person's racial or ethnic origin;
- Colour, place of birth, citizenship, or ancestry;
- Displaying racist or derogatory pictures or other offensive material;
- Insulting gestures or practical jokes based on racial or ethnic grounds which create awkwardness or embarrassment; and
- Refusing to speak to or work with someone or treating someone differently because of their ethnic or racial background.

**Poisoned work environment:** A negative, hostile or unpleasant workplace due to comments or conduct that tend to be demeaning. A poisoned work environment may result from a serious and single event, remark or action.

Even if no-one is being directly targeted, harassing or discriminatory comments or conduct based on one or more of the prohibited grounds can create a poisoned work environment that affects everyone. Some examples of actions that can create a poisoned work environment include:

- Displaying offensive discriminatory materials such as posters, pictures, calendars, web sites or screen savers
- Distributing offensive or discriminatory e-mail messages or attachments such as pictures or video files on a protected ground
- Jokes or insults that are racist or sexual in nature

See the Definitions in Appendix A for a fuller explanation of what is meant by poisoned work environment.

## **SCOPE AND APPLICATION**

This policy applies to all Carefirst staff, students, and volunteers, (including contract, and temporary staff), agents/service providers, other employers, clients (including program participants/patients), caregivers/their families, visitors, and members of the general public.

This policy covers harassment occurring at Carefirst workplaces and work-related locations for conducting business, which include, but are not limited to lunchrooms, a client's home or worksites, vehicles, conferences, training venues, business travel, and work-related social events. (See Definitions in Appendix for fuller definition of Workplace).

Members of the public, including clients and their family, visitors, etc, are expected to refrain from discrimination or harassment of employees, other workers, and members of the public.

For policy direction on preventing and effectively responding to workplace violence, consult Carefirst's Workplace Violence Prevention Policy and Program.

Workplace harassment provisions outlined under this policy also apply to workers as defined in the *Occupational Health and Safety Act (OHS)*.

This policy supports and complements other human resource policies that promote and sustain an inclusive workplace (e.g. the *Accessibility for Ontarians with Disabilities* policy).

This policy upholds the *Human Rights Code (Code)* and is a requirement under section 32. of the OHS. In addition, this policy must be applied in accordance with other applicable legislation (including the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Criminal Code of Canada*).

This policy does not override or limit other legislation. Employees and former employees may file complaints under this policy within six months of the alleged discrimination or harassment incident. Subject to stipulated time limits, employees, former employees, and other workers where applicable, may also apply to the Human Rights Tribunal of Ontario, or file an assault or domestic abuse complaint with the police under the Criminal Code.)

## **PRINCIPLES**

- Carefirst is committed to an inclusive, diverse, equitable and accessible work environment and will not tolerate workplace discrimination or harassment
- Every staff, student and volunteer has the right to work in an inclusive, respectful workplace free of discrimination and harassment
- All staff, students and volunteers are responsible for respecting the dignity and rights of co-workers and the clients they serve
- The prevention of discrimination and harassment is an integral part of all workplace activities, and a shared responsibility requiring cooperation between the employer and all staff, students and volunteers
- Effective education and training about rights and responsibilities under this policy are required to fulfill obligations under statute and policy
- Strategies designed to prevent discrimination and harassment are proactive, cost-effective, reflect Carefirst organizational values of trust, fairness, diversity, excellence, creativity, collaboration, efficiency and responsiveness, and support ethical behaviour

- Effective prevention strategies are based on workforce data, the various dimensions of diversity (e.g. race, age, disability, sexual orientation) and policy and program measures
- All allegations of discrimination and harassment are treated seriously and handled on a confidential basis to the extent possible in accordance with this policy and applicable law, with an aim to preserve the dignity, self-respect and rights of all parties
- Responses to discrimination and harassment:
  - Will be provided in a timely manner
  - Correct identified problems
  - Restore positive and productive work environments
  - Prevent future violations of this policy, and
  - Hold accountable those who fail to abide by this policy.
- The needs of persons with disabilities are accommodated to enable full participation in prevention and resolution processes, in accordance with applicable statutes and policies
- Policy enforcement adheres to the principles of procedural fairness and progressive discipline. Disciplinary decisions are consistent, fair and consider mitigating circumstances.

## **CONFIDENTIALITY**

Carefirst recognizes the sensitive nature of discrimination complaints and will keep complaints confidential, to the extent possible, and will only release as much information as is necessary to investigate and respond to a complaint. Names and circumstances relating to a report will not be disclosed or discussed with anyone except when disclosure is necessary for the following reasons:

- to investigate a complaint/incident/report or take appropriate action
- to administer corrective/disciplinary measures
- to protect employees, or
- as otherwise required by law.

Information must remain confidential, subject to the situations listed below:

- Complainants, respondents and witnesses must have access to statements they have made and personal information which they have provided.
- Complainants and respondents must have access to enough information about the allegations and responses of other parties and witnesses to enable them to make a full response.
- If confidential information is provided which may impede the investigation, or may be slanderous and malicious to an employee, the information may be disclosed and the conduct may be subject to discipline by Carefirst and/or the offended party may take civil action.

- Disclosure of information may also be required as part of an alternative process and/or where sharing information is otherwise required by law e.g. Human Rights Tribunal of Ontario.
- There will be no reference to a complaint under this Policy in a staff, student or volunteer human resource file, unless disciplinary action was taken against the staff, student or volunteer (e.g. if the staff, student or volunteer was in violation of the policy, filed a frivolous, vexatious, malicious complaint).
- All complaints will be documented (on an aggregate basis as appropriate) in order to track and address complaints of this nature. The parameters of confidentiality (above) will be followed when documenting such incidents.

All persons involved with a complaint are expected to treat the matter as confidential. Staff, students and volunteers may be disciplined if confidentiality is breached.

## **NO REPRISAL**

This policy prohibits reprisals or any act of retaliation, either direct or indirect, against individuals who are acting in good faith by reporting incidents of harassment.

A staff, student or volunteer filing a complaint under this policy or interviewed in connection with the investigation of a complaint, or serving as an investigator, is assured that no threat of reprisal will be taken or made against them.

Any staff, student or volunteer who believes that any such reprisal or threat of reprisal has been made or taken should immediately contact their manager (unless the complaint concerns that particular individual, in which case the complaint is brought forward to a higher level director/manager), so that the situation can be investigated and appropriate remedial action taken. Retaliation or attempted retaliation is a violation of this policy and anyone who does so will be subject to appropriate disciplinary action, up to and including dismissal.

## **POLICY VIOLATIONS**

Engaging in workplace discrimination or harassment, as defined above, is a violation of this policy. Policy violations also include, but are not limited to, engagement in the following discriminatory and harassing behaviours and practices:

- discrimination or harassment in any aspect of employment, which may include, but is not limited to, recruitment, selection, promotion, learning and development, performance management, redeployment, layoff, pay and benefits, termination, job assignment, and granting leaves of absence
- workplace discrimination or harassment of an individual or group that occurs within the workplace or during work-related activities or events outside of the workplace
- workplace discrimination or harassment of an individual or group based on relationship, association, or dealings with a person or group identified by a prohibited ground under the Code, or because the individual or group is believed to be a member of a group covered by a prohibited ground under the Code
- sexual harassment as outlined under the Code

- sexual solicitation and related reprisal as outlined under the Code
- hate activity
- failure to offer effective or appropriate accommodation short of undue hardship in keeping with the Code, and other applicable legislation
- creating, contributing to, or condoning a poisoned work environment (includes engaging in discrimination or harassment through the use of Carefirst property such as information technology resources, and the public display of materials that create a negative, hostile or unpleasant workplace)
- failure of management, in keeping with its authority, to respond appropriately to information about discrimination, harassment or a poisoned work environment
- interference with an investigation, including intimidating a complainant, respondent or witness, or influencing a person to give false or misleading information
- threatening or retaliating against a staff, student or volunteer for exercising a right under this policy, or against any other person who is performing a legitimate role under this policy (appropriate management response to a staff, student or volunteer acting abusively or unacceptably is not considered to be retaliation contrary to this policy)
- frivolous or bad faith allegations, complaints, or accusations.

## **CONSEQUENCES FOR POLICY VIOLATION**

Employees found to have violated this policy may be subject to discipline up to and including dismissal. Directors, Managers, and Supervisors who fail to take appropriate action to resolve complaints, or who fail to act appropriately on findings of discrimination or harassment, may be subject to discipline up to and including dismissal.

Directors/Managers must:

- Consider providing appropriate remedial education or training to staff, students and volunteers who are found to have violated this policy
- Monitor future behaviour within the scope of the performance management program i.e. employee performance reviews and evaluations.

## **TIMEFRAMES**

Each timeframe outlined under this policy is considered to be the maximum time allowed for each activity. All parties involved in the resolution of discrimination or harassment issues or complaints, are expected to make every effort to act as quickly as possible and to demonstrate full and complete cooperation in the resolution of issues or complaints.

A complaint should be brought forward as soon as possible and in any event no later than six months of the last incident of discrimination and harassment, unless the delay in bringing the complaint was incurred in good faith and the delay does not affect any of the parties' ability to respond to the allegations. Where failure to bring a timely complaint affects Carefirst's ability to conduct a full and complete investigation, Carefirst may decline to deal with the complaint.

Every effort must be made to comply with the timeframes outlined in this policy. Timeframes, including those related to raising complaints under this policy, may be exceeded in extenuating circumstances (e.g. if warranted by the complexity of the case) without voiding the process. See **Addressing discrimination or harassment concerns** below for specific timeframes associated with each step of the resolution process.

## **ADDRESSING DISCRIMINATION AND HARASSMENT CONCERNS**

This section sets out the overall approaches for addressing discrimination and harassment concerns. Informal and formal options are then described in the following section, Resolution Mechanisms and Procedures.

### **Employee and Management Response**

Employees are encouraged, when possible, to tell alleged offenders about unwelcome conduct or actions perceived to be discriminatory or harassing, and to ask the alleged offender to stop. Other workers are encouraged, when possible, to tell alleged offenders about unwelcome conduct or actions perceived to be harassing and to ask the alleged offender to stop.

Employees and other workers are encouraged to quickly notify the director/manager/team lead not yet involved in the complaint, about alleged violations of this policy. Directors/managers must consult the CEO upon receipt of a complaint or becoming aware of a potential violation of this policy.

Complainants and respondents have the right to be accompanied by another person or representative where applicable, during complaint resolution processes related to this policy, subject to certain conditions. If the “supporter” is a co-worker, and the interview is scheduled during the co-worker’s office hours, the “supporter” may attend at the discretion of their director/manager. If the “supporter” is a potential witness, the director/manager may refuse the request in order to conduct a separate interview as part of the investigative process.

Confidential counselling concerning discrimination or harassment issues may be made available as applicable to Carefirst employees (e.g. through the Employee Assistance Plan).

Directors/managers must act immediately upon becoming aware of potential policy violations, whether or not a complaint has been filed, including:

- intervening to stop unacceptable behaviour
- contacting the CEO for advice and assistance, and/or to initiate the completion of a preliminary assessment, interview, or complaint.

It should be noted that there may be situations (e.g. the victim is afraid, seriousness of the incident, actual or potential impact of the offense) where the CEO decides that direct management action is the appropriate resolution mechanism to resolve the complaint or issue. Direct management action should be completed within thirty (30) days after an initial review of the situation and may include remedial or disciplinary action as set out in policy requirements. Respondents must be given the opportunity to respond to allegations before remedial or disciplinary action is taken.

Directors/managers must declare any potential conflict of interest in relation to an alleged violation of this policy when they are, or may be perceived to be, either condoning or directly involved with an alleged violation. In such a case, the CEO must assume responsibilities associated with a resolution. If the CEO is the subject of the complaint, the Chair of the Board will assume responsibilities (see also Carefirst's Conflict Resolution Policy). When appropriate, the CEO or Board may seek outside or independent assistance in resolving the complaint. During the resolution of discrimination or harassment issues, the CEO must determine, where appropriate, whether a complainant or respondent should be placed on a paid or unpaid leave, relocated within Carefirst, provided with an alternate reporting relationship, or whether other similar and appropriate action should be taken.

### **Employer Duties Concerning Workplace Harassment**

To protect a worker from workplace harassment, Carefirst will ensure that an investigation is conducted into incidents and complaints of workplace harassment. The investigation must be appropriate in the circumstances.

An employer must ensure an investigation appropriate in the circumstances is conducted when:

- the employer or a manager/supervisor becomes aware of an incident of workplace harassment by the complainant or another worker, whether a worker has formally or informally made a complaint, or the employer is otherwise aware of an incident(s) (for example, if a supervisor witnessed it or learned about it from a third party).
- a complaint, whether in writing or verbal, of workplace harassment is made to the employer, director/manager/team lead.

The investigation must be objective. The person conducting the investigation, whether internal or external to the workplace, must not be directly involved in the incident or complaint, and must not be under the direct control of the alleged respondent/harasser. This person should have knowledge of how to conduct an investigation appropriate in the circumstances.

Some matters will not require a lengthy investigation (for example, if there is a complaint that does not, on its face, pertain to workplace harassment). Other situations, such as those involving allegations of sexual harassment by a co-worker over a period of time, may be more complex. The parties to the complaint should be updated periodically on the status of the investigation.

## **How to File a Formal Complaint**

Incidents or complaints of workplace harassment may be made verbally or in writing. When submitting a written complaint, please use the workplace harassment complaint/incident form which can be used to report workplace harassment, discrimination, and other complaints. (Appendix D). When reporting verbally, the reporting contact, along with the worker complaining of harassment, will fill out the complaint form.

The report of the incident should 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 his/her 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.

Formal complaints under this policy must be filed in writing, within six months of the alleged discrimination or harassment incident, and submitted to the next level manager/or delegate not involved in the alleged incident or conduct, CEO, or the Chair of the Board, if the CEO is the subject of the complaint.

Please see below for further information regarding formal and informal complaints.

### **Alternative Dispute Resolution**

Although the policy includes four practical resolution mechanisms ranging from the informal to formal, Alternative Dispute Resolution (ADR) may very occasionally be another option for consideration, taking into consideration factors such as cost, balance of power, time, etc. However, the employer must still ensure that an investigation is conducted that is appropriate in the circumstances. Alternative dispute resolution or mediation cannot replace the investigation.

It may be possible, if the parties agree, for alternative dispute resolution to form part of the resolution of the complaint after the investigation is completed. The process and results should be documented.

The employer would still have to provide the results of the investigation, in writing, to the appropriate workers.

If the CEO or Board determines that ADR is the appropriate resolution mechanism after completion of the investigation, he/she must seek the agreement of the complainant and the respondent within five (5) working days. ADR must only proceed with the expressed agreement of the complainant, respondent and manager responsible for addressing the complaint.

The case must be assigned to an ADR resource within fifteen (15) working days of the parties agreeing to pursue ADR. ADR must be completed within thirty (30) working days of the assignment of a complaint to an ADR resource. When ADR is not effective or appropriate, the manager must take direct management action to resolve the complaint.

## **RESOLUTION MECHANISMS & PROCEDURES**

### **Options for Dealing with a Complaint (Complainant)**

An incident or a complaint of workplace discrimination/harassment should be dealt with/reported as soon as possible after experiencing or witnessing an incident. This allows the incident to be resolved and/or investigated in a timely manner.

There are four ways an employee may choose to deal with a complaint or concern under this policy, ranging from the informal to the formal. They include: deal directly with the offender, seek assistance, file a formal complaint, or pursue other complaint avenues.

#### **i) Deal Directly With the Offender**

Carefirst employees who experience harassment or discrimination are encouraged to make it known to the individual(s) responsible that the behaviour is offensive, contrary to Carefirst's policy, and request that it stop. The offender may not realize that their behaviour is unwelcome and offensive. In many instances this will stop the offensive behaviour.

It is recognized that in some situations, this may be difficult or inappropriate, or the individual may have told the offender to stop but the offensive behaviour continues. In this situation the employee may choose one of the other three methods of resolving the situation.

#### **ii) Seek Advice and Assistance**

A staff, student and volunteer who has experienced harassment or discrimination and has unsuccessfully tried to deal directly with the offender, or who feels that a direct approach is inappropriate, may discuss the incident within a reasonable time with their director/manager/team lead. If it is inappropriate to discuss the issue with an immediate director/manager (e.g., the employer director/ manager to whom the person reports is the person engaging in the harassment or discrimination, and there is a conflict of

interest) the employee may discuss the issue with another director/manager, or with Human Resources, or with a JHSC representative as appropriate.

It is not considered a formal complaint at this time. The purpose of this step is to provide a means of obtaining information or advice to assist in addressing the issue.

Depending upon the circumstances, it is often possible to resolve a complaint without an extensive investigation. With assistance, the problem may be readily identified and produce a quick and simple solution without having to engage in a full investigation.

The director/manager or delegate shall interview the complainant and record the contents of the interview on the **Initial Interview Form** (Appendix C). A copy of this form should be forwarded to the CEO.

### **iii) File a Formal Complaint**

Where informal means of resolving a situation are not effective or appropriate, a formal complaint form (Appendix D) may be filed and submitted to the Director/Manager/CEO. If the employer manager/senior manager to whom the person reports is the person engaging in the harassment or discrimination, the employee may submit the complaint to the next most senior Director/Manager, or another Manager/Senior Manager, or with Human Resources. (Note: The person designated as the reporting contact should not be under the direct control of the alleged harasser.)

If the CEO is the subject of the complaint, the formal complaint form should be submitted to the Chair of the Board.

Where the formal complaint is received by a director/manager, it is his/her responsibility to ensure that the CEO is notified about the formal complaint within two (2) days of receiving the complaint. This may be done by e-mail or memo. Human Resources will also be notified of the incident or complaint so that they can ensure an investigation is conducted that is appropriate in the circumstances. For example, if the incident or complaint involves the CEO, Directors, or Managers, an external person qualified to conduct a workplace harassment investigation with knowledge of the relevant workplace harassment laws may be retained to conduct the investigation.

The person receiving the formal complaint i.e. director/manager, or CEO, is responsible for the completion of the Initial Interview Form and the Complaint/Incident Form. These two forms should be completed and forwarded to the Director/Manager/CEO within five (5) working days of receiving the complaint. The Director/Manager/CEO and/or Human Resources will then assess the complaint to determine if there is reasonable cause to proceed with an investigation. Carefirst will ensure that an investigation appropriate in the circumstances is conducted when the CEO, Human Resources, or a Director/Manager become aware of an incident of harassment or receive a complaint of workplace harassment.

Upon receipt of a formal complaint either through a Director/Manager/Team Lead, or directly to the CEO, the investigative process may then be initiated by the Director/Manager/CEO. The complaint/incident form must be signed and include: a description of the incident, and steps, if any, already taken to resolve the matter. The following details must be included in the written complaint:

- name(s) of the complainant, respondent and witness (if any)
- date and location of the alleged incident or conduct
- description of the event or situation giving rise to the complaint
- alleged policy violation including the identification of prohibited ground(s) under the Code, and the OHSA if applicable
- steps, if any, already taken to resolve the matter
- description of other proceedings underway
- resolution sought.

An interview will be scheduled with the Complainant to discuss and clarify the incident and identify steps they have taken so far to resolve the matter. The Complainant may be assisted by a person of his or her choice (subject to certain conditions – see page 17 regarding the investigative process).

Complaints may be received from employees who are directly and personally affected by the incident(s) being reported. Or, complaints may be received from employees who are not being harassed or discriminated against directly but where there is a direct and personal impact as a result of harassment or discrimination involving others.

Anonymous complaints will not be accepted. However, directors/managers/team leads should not ignore these situations and should discuss them with the CEO and seek advice regarding how to proceed.

See below for more information regarding the Investigation Process.

#### **iv) Pursue Other Complaint Avenues**

Depending on the circumstances, employees have a right to pursue a human rights concern under a variety of complaint avenues, including the Ontario Human Rights Legal Support Centre/Ontario Human Rights Tribunal, a criminal complaint with the Police, or independent legal counsel (at his or her own expense).

#### **Options for Dealing with a Complaint (Alleged Respondent/Alleged Harasser)**

If an employee is asked by a co-worker to stop behaviour which constitutes harassment or discrimination, the employee is advised to seriously assess their behaviour. The individual should understand that even if he or she did not mean to offend, their behaviour has been perceived as offensive. The individual should stop the behaviour that is offensive and apologize. Failure to stop this behaviour will leave the employee more vulnerable to a formal complaint, which could lead to disciplinary action if the complaint is substantiated.

A Respondent will be notified of the complaint within five (5) working days following the receipt of the complaint by the Director/Manager.

If the employee accused of harassment or discrimination believes the complaint is unfounded or has been made in bad faith, they should discuss this with the Director/ Manager. The Respondent is entitled to know the allegations against him or her and to have an opportunity to respond. The employee is also entitled to representation or accompaniment at meetings, subject to certain conditions/factors during the investigative process; if the “supporter” is a co-worker, and the interview is scheduled during the co-worker’s office hours, that person may attend at the discretion of the manager/senior manager. If the “supporter” is a potential witness, the manager/senior manager may refuse the request in order to conduct a separate interview.

The Respondent is advised to document their version of the alleged incident, including times, places, events, and any witnesses.

Respondents to complaints of harassment or discrimination can access information or advice from the following sources: their Director, Manager/, CEO, Human Resources, independent legal advice at his or her own expense, the Ontario Human Rights Legal Support Centre/Human Rights Tribunal, or other designated person.

### **Handling Complaints**

Carefirst will determine any interim measures that may be taken after the complaint is received and during the investigation, and inform the relevant parties. Carefirst must also set out how it may deal with the complaint if it is substantiated. This may include discipline up to and including termination (for further information see the Investigation Outcomes, “Complaint Supported” section below).

### **Investigation of Complaints**

Carefirst will ensure that an investigation is conducted in a timely manner into incidents and complaints of workplace harassment that is appropriate in the circumstances.

In accordance with the OHSA, Carefirst will ensure that the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation.

Carefirst reserves the right to refuse to investigate, or may discontinue an investigation where an adequate remedy already exists, the complaint is frivolous, vexatious or not made in good faith or if a complaint was made without having regard for all of the circumstances.

If a complaint is withdrawn, the reasons for the withdrawal of the complaint will be

determined and documented. Carefirst may still elect to pursue an investigation.

Where it is determined that reasonable cause exists, the Director/Manager/ CEO, and/Human Resources, will investigate complaints or will arrange to have the investigation carried out by a neutral third party.

Full and complete cooperation in the investigation of workplace discrimination or harassment is required when an internal or external investigation is determined by the Director/manager, CEO, Human Resources, or Chair of the Board to be the appropriate resolution mechanism.

An investigation must be assigned to an internal resource or external investigator within fifteen (15) working days of management's decision that a complaint will be investigated.

An *internal* investigation must be completed within sixty (60) calendar days of assigning a complaint to an internal resource, unless there are extenuating circumstances warranting a longer investigation (e.g., more than five witnesses, key witness unavailable due to illness).

The Director/ manager/CEO or Chair of the Board responsible for deciding discipline resulting from internal investigations must decide on appropriate remedies, and notify the parties who are employees, in writing of the outcome of the internal investigation, and of any corrective action that has been taken or will be taken as a result of the investigation within fifteen (15) working days of the completion of the investigation.

An *external* investigation must be completed, and a final report submitted, within ninety (90) working days of assigning a complaint to an external investigator, unless there are extenuating circumstances.

The Director/manager/CEO or Chair of the Board responsible for deciding discipline resulting from external investigations must decide on appropriate remedies and notify the parties who are employees in writing of the outcome of the external investigation, and of any corrective action that has been taken or will be taken as a result of the investigation within thirty (30) working days of receiving the final report.

**The investigative process involves five primary steps.**

**i) Notification**

The Manager will notify the Director/CEO/Chair of the Board of any formal complaint received. Individual respondents to a complaint will be notified within five (5) days of receipt of the complaint by the Director/Manager.

The investigator must ensure the investigation is kept confidential to the extent possible and that identifying information is not disclosed unless necessary to conduct the

investigation or as required by law. The investigator will remind the parties of this confidentiality obligation at the beginning of the investigation.

During the investigation, the complainant, the alleged respondent, and any witnesses should not to discuss the incident or complaint or the investigation with each other or other workers or witnesses unless necessary to obtain advice about their rights. The investigator may discuss the investigation and disclose the incident or complaint-related information only as necessary to conduct the investigation, keeping the records of the investigation confidential.

Some matters will not require a lengthy investigation while others may be more complex. The parties to the complaint should be updated periodically on the status of the investigation.

## **ii) Fact Finding**

The Director/Manager, Human Resources, (or a neutral third party) will conduct confidential, thorough interviews with the complainant, alleged respondent, and other relevant parties to obtain information and clarity on the details of the reported complaint. The complainant and alleged respondent must both have an opportunity to identify witnesses or others to be interviewed. In the event that the alleged respondent is not a worker, the investigator will make reasonable efforts to interview the alleged harasser (respondent). The alleged respondent(s) must be given the opportunity to respond to the specific allegations that have been raised. In some circumstances, the complainant who allegedly experienced the workplace harassment should be given a reasonable opportunity to reply.

Where witnesses are not identified, or where appropriate, co-workers may be interviewed.

The investigator must separately interview any relevant witnesses employed by the employer who may be identified by either the worker who allegedly experienced the workplace harassment, the alleged respondent, 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.

As noted earlier in the policy, the alleged respondent, as well the complainant, are entitled to representation or accompaniment at meetings, subject to certain conditions/factors during the investigative process. If the “supporter” is a co-worker, and the interview is scheduled during the co-worker’s office hours, that person may attend at the discretion of the manager/senior manager. If the “supporter” is a potential witness, the investigator may refuse the request in order to conduct a separate interview.

The investigator has the authority to speak with anyone, examine any documents and enter any work locations which are relevant to the complaint.

The investigator must collect and review any relevant documents before and/or during the investigation as appropriate.

The investigator must take appropriate notes and statements during interviews with all parties.

The results and conclusions of the investigation will be documented after interviewing the complainant, alleged respondent and any relevant witnesses.

The investigator must prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the complainant, the response from the alleged respondent, 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. The report must be provided to the employer, manager/supervisor or designate to take appropriate action. (An Investigation Template is attached, Appendix F)

### **iii) Preliminary Findings**

Where the information revealed early in the investigation suggests a reasonable possibility of resolution, the Director/Manager/CEO/investigator may decide to propose an early settlement prior to concluding the entire investigation. In these instances, a meeting will be convened with the parties involved to discuss preliminary findings of the investigation and inform participants of the possibility and nature of an early settlement. This stage allows all parties to become aware of the tentative findings and presents an opportunity, based on the information, to resolve the matter upon agreement of all parties without further investigation.

Where agreement is reached and the matter deemed resolved, the Director/Manager/CEO/investigator will prepare a summary report for the CEO, the Complainant, and the Respondent, and advise the Chair of the Board of the result.

### **iv) Further Investigations**

Where, as a result of preliminary findings, a resolution cannot be reasonably proposed or achieved, or where it is determined that file closure at this point would not be appropriate, further investigations will be conducted.

### **v) Discussion of Results**

Within ten (10) calendar days upon completion of the investigation, the Director/Manager/CEO/ will schedule meetings with the Complainant, Respondent (if he/she is a worker of Carefirst), and appropriate manager or designate as appropriate, to present and discuss the results of the investigation, and any corrective action taken or that will be taken by the employer to address workplace harassment.

If the investigation reveals that a criminal offence has occurred, local police will be notified, and investigation findings shared with them. Otherwise, the investigator will recommend actions to address the incident, consistent with Carefirst's Discipline Policy, up to and including dismissal for cause.

The amount of information provided about the corrective action will depend on the circumstances but must indicate what steps the employer has taken or will take to prevent a similar incident of workplace harassment if workplace harassment was found.

**The results of the investigation are not the same as the investigation report.** The results of the investigation are a summary of the findings of the investigation. If the investigation concluded that workplace harassment occurred, information about corrective actions taken must be included.

A written summary of the complaint and results of the investigation will be signed by the investigator and provided to the Director/ Manager/ CEO (as appropriate) and the parties affected by the outcome e.g. the complainant and alleged respondent.

### **Investigation Outcomes**

The final decision on how to act on the recommendations resulting from a complaint and subsequent investigation will be made by the Director/Manager/CEO/Human Resources (and/or in collaboration with the Chair of the Board as appropriate).

#### **i) Complaint Supported**

Where the results of the investigation support a specific complaint of harassment or discrimination, or where the results suggest the existence of systemic problem(s) in the work environment which caused or contributed to the incident, the following (without limitation) may be the recommended forms of remedial action:

- Education and training
- Review and modification of policies, procedures and practices
- Disciplinary action up to and including dismissal
- Continuous monitoring

Where deemed reasonable and appropriate, the Director/Manager/CEO/Human Resources, in consultation with the parties involved in the complaint, may propose and develop a more comprehensive strategy for the elimination or prevention of harassment and discrimination to improve the overall workplace.

Where the harassment arises from clients (including program participants/patients), or the public towards a worker, Carefirst could deal with the incident of workplace harassment by modifying its service (such as using the telephone or email as the primary means of contact), or even, in some cases, a refusal of service depending upon the circumstances.

Where the investigation finds that harassment arises from a worker, supervisor, or other person associated with the workplace, there can be consequences for the individual (such as apologies, education, counselling, shift changes, reprimands, suspension, job transfer, or termination) depending on the policy, the nature or severity of the behaviour and the circumstances. Actions may also be broader, especially where the investigation of an incident or complaint shows that workplace harassment is prevalent or commonplace. An example of action taken could be training for everyone in the workplace or in a department on what is unacceptable behaviour in the workplace.

There will be no reference to a complaint under this policy in a staff, student or volunteer's human resource file unless disciplinary action was taken against the employee (e.g. if the employee was in violation of the policy, filed a frivolous, vexatious, malicious complaint).

Employees in management or designated positions who fail to take action when advised of or they become aware of harassment or discrimination may be subject to disciplinary action.

The investigation file will remain open for a reasonable period of time to allow for the monitoring of actions to be taken and subsequent reports to be placed on the file.

## **ii) Complaint Unsupported**

- a) Where the results of the investigation do not support the allegations of harassment and/or discrimination made by the Complainant, the complaint shall not proceed.
- b) The Director/Manager/CEO/Human Resources/investigator may make recommendations for change or further investigation of a systemic nature where the results of the investigation do not support the specific complaint, but where the investigation suggests the existence of systemic problems in the work environment. These problems may cause, contribute to, or encourage harassment or discrimination. This may include poor management practices which are directly related to harassment/discrimination.

## **iii) Malicious Complaints**

As a result of an investigation and/or the Respondent alleges a malicious complaint, and where it is concluded that the complaint was made maliciously – with a specific and direct intent to harm – or made in bad faith with reasonable knowledge of, and intent to harm, formal disciplinary action may be taken against the complainant. Documentation regarding the disciplinary action will be placed in the staff, students or volunteer's personal file.

The Complainant (now the respondent to an allegation of malicious complaint) has the right to be notified in writing of this decision/conclusion including the reasons and

grounds, to prepare and submit a response, and to be represented at all proceedings.

## **6. Post Investigation Issues**

### **i) Reprisals**

It is a violation of Carefirst's Discrimination and Harassment Policy to retaliate against an individual for pursuing their rights under this policy, initiating a complaint, participating as a witness in an investigation or having been associated with a complainant or witness. Allegations of such behaviour will be investigated and dealt with as a complaint under this policy.

### **ii) File Retention and Disposal**

Upon determination and notification of a support or non-support decision, the file will be closed and retained by Carefirst Human Resources in the administrative office for a period not less than seven years after the employee has left Carefirst.

The employer (Human Resources or designated person) will keep records of the investigation including:

- a copy of the complaint or details about the incident;
- a record of the investigation including notes;
- a copy of the investigation report (if any);
- a summary of the results of the investigation that was provided to the complainant who allegedly experienced the workplace harassment and the alleged harasser, if a worker of the employer;
- 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 this report should not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, take corrective action or otherwise as required by law.

Closed investigative files will be disposed of in an appropriate manner as prescribed in Carefirst's Record Retention Policy and Procedures. Notations on personnel files will be removed as per existing procedures or provisions.

### **iii) Reopening of Files**

A request for reopening a closed file may be made upon written request to the Director/Manager/CEO/Human Resources under the following circumstances:

- New and relevant information regarding a closed case
- A new incident of harassment/discrimination post-closure by the same respondent
- A reprisal is alleged to have occurred.

#### **iv) Monitoring**

Once a resolution of the complaint has occurred the appropriate Director/Manager will monitor the situation. Follow-up is a critical component of effective complaint resolution. In most cases, follow-up should occur periodically over a minimum six month period from the date of resolution. If the complaint has been dismissed there is no monitoring.

To ensure that monitoring is effective, it is advisable to develop a monitoring plan which defines how the monitoring will be done, assigns responsibilities and sets out progress measures.

All follow-up interviews (e.g. conducted by the Director/Manager/CEO, must be documented. If appropriate, the documentation may be forwarded to the CEO. This documentation should include the date of the follow-up interview, comments regarding the status of each of the recommendations, the need for further intervention, if any and positive or negative outcomes of the investigation.

#### **v) Post Investigation Recommendations and Workplace Restoration**

Appropriate steps must be taken to improve and/or restore work environments and work relationships affected by incidents or allegations of discrimination or harassment by employing workplace restoration strategies.

The Directors/Managers must review workplaces affected by incidents or allegations of discrimination or harassment no later than six months after the conclusion of the complaint resolution process to determine whether additional workplace restoration strategies should be engaged.

Where, as a result of the monitoring process, or through other means, it is determined that there are difficulties in implementing or executing the solutions recommended from the investigation, or where actions have been taken but are deemed ineffective, inappropriate or untimely, the Director/CEO in consultation with Human Resources and the Chair (as appropriate), shall determine what further actions or support can be provided to ensure that the policy objectives and terms of resolution can be met effectively and efficiently. For further guidance see the *Carefirst Guide to Restoring the Workplace After a Discrimination or Harassment Complaint*.

### **7. Time Limits**

The time limit for the filing of complaints under this policy is six months from the time of the alleged discrimination or harassment. Exceptions may be made in extenuating circumstances.

## **ROLES AND RESPONSIBILITIES**

## **Employer and Management**

- Provide leadership in fostering and sustaining an inclusive, diverse, equitable, accessible and respectful workplace free from discrimination and harassment through compliance with the Code, the OHSA and its regulations, other relevant legislation, this policy and other policies, programs and procedures
- Develop, maintain, implement, and monitor a discrimination and harassment prevention policy and program
- In consultation with the JHSC, develop and maintain a written program to implement the policy with respect to workplace harassment required under clause 32.0.1 (1) (b).; Feedback should be documented and may be included in meeting minutes for the joint health and safety committee.
- Demonstrate standards of behaviour consistent with the principles outlined in this policy
- Complete education and/or training on the content of this policy.
- Provide workers as defined by the OHSA (e.g. regular workers, new hires, contract, casual, temporary, part-time and student workers) with information and instruction that is appropriate for the worker (in a manner and language that they would reasonably understand) on the contents of the policy and program regarding workplace harassment
- Provide directors, managers, team leads with additional information and instruction on how to recognize workplace harassment and how to recognize and handle a complaint of workplace harassment so that workplace harassment does not go unaddressed. (Workplace harassment that is not addressed may escalate into workplace violence)
- Ensure that investigators, whether directors/managers/delegates, human resource representatives, or person(s) designated by the employer, receive information and instruction on how to conduct an investigation appropriate in the circumstances including not to disclose identifying information unless it is necessary to conduct the investigation, take corrective action or otherwise required by law.
- Provide additional training regarding substantial changes to legislation, policies, procedures, and practices, and the program as required.
- Keep documentation of information and instruction provided to workers for at least one year.
- Newly appointed managers must complete this education and/or training within six months of being assigned to a management position
- Inform staff, students and volunteers that discrimination and harassment will not be tolerated
- Adhere to the policy and ensure compliance with the policy and that all parties are accountable for their role in preventing and resolving issues
- Inform staff, students and volunteers of their rights and responsibilities under this policy, including ways in which incidents or allegations of discrimination and harassment can be resolved
- Advise members of the public, including clients, family or visitors to Carefirst facilities or individuals conducting business with Carefirst that they are expected to refrain

from discrimination or harassment of employees, other workers, and other members of the public when appropriate

- Monitor and maintain awareness of potential discrimination or harassment issues in the workplace and take proactive steps to prevent or address these issues
- Manage the process for resolving allegations of discrimination, harassment or other policy violations as soon as becoming aware of them, whether or not a complaint has been written
- Respond immediately to, and document reports of, workplace discrimination and harassment
- Ensure that an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances
- Investigate, and deal with all complaints or incidents of workplace harassment in a fair, respectful, and timely manner
- Ensure that the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation
- Ensure that the JHSC receives information and instruction on Carefirst's workplace harassment program including how to help a worker report an incident of workplace harassment and resources available to a worker who has allegedly experienced harassment.
- Take appropriate action to resolve complaints within the policy timeframes
- Receive, review and act on reports arising from external investigations
- Ensure effective implementation of settlements, remedies, and corrective actions
- Inform the Chair of the Board of policy breaches and remedies applied.
- Advise workers not to threaten or retaliate against a complainant, respondent or witness to a complaint if they become aware of an issue or complaint
- Do not threaten, intimidate or retaliate against a worker for exercising a right under this policy or participating in an investigation or resolution approach
- Take reasonable actions to prevent retribution against individuals who have reported harassment.
- Declare any potential conflict of interest in relation to an alleged violation of this policy when he or she may be perceived to be either condoning or directly involved with an alleged violation
- Cooperate fully and completely with investigators, including making witnesses available, upon request, and maintaining the strict confidentiality of information related to the complaint or allegation in accordance with this policy
- Facilitate the restoration or improvement of workplaces disrupted by alleged policy violations, actual policy violations, or complaint resolutions
- Meet performance commitments associated with workplace discrimination and harassment prevention
- Integrate discrimination and harassment prevention responsibilities into employee performance commitments and reviews
- Establish a process for monitoring and trends analysis of workplace occurrences for reports to management, the JHSC, the board, and staff

- Ensure the policy and program is reviewed at least annually and updated as often as necessary when any gaps or deficiencies in the program are identified as a result of an investigation, and posted in the workplace, in accordance with the OHSA.

### **Employees**

- Comply with obligations under the Code, the OHSA, regulations, other relevant legislation, this policy and other policies, programs and procedures that support an inclusive, respectful workplace free from discrimination and harassment
- Participate in education and awareness programs related to this policy.
- Employees and other workers who are new to Carefirst must complete this education and/or training as part of orientation
- Tell alleged offenders, when possible, about unwelcome conduct or actions perceived to be harassing or discriminatory, and ask the alleged offender to stop
- Report alleged policy violations they have witnessed or experienced to a director/manager/team lead
- Raise complaints under this policy within six months of the alleged incident unless there are compelling and extenuating circumstances
- Follow the complaint protocols outlined under this policy, and advise the director/manager of related proceedings
- Cooperate fully and completely in the investigation of workplace discrimination or harassment
- Not threaten, intimidate or retaliate against another employee or worker for exercising a right under this policy or participating in an investigation or resolution approach
- Exercise rights under this policy in good faith
- Meet performance commitments associated with workplace discrimination and harassment prevention

Signed and dated Scarborough, Ontario on this 8th Day of September 2016.

---

Helen Leung  
Chief Executive Officer  
Carefirst Seniors and Community Services Association

### **RELATED POLICIES**

1. HS – 1-200 Carefirst Workplace Violence Prevention Policy and Program
2. Confidentiality
3. Conflict Resolution
4. PHIPPA/Privacy Policies
5. AODA Policy
6. Progressive Discipline

7. Social Media
8. Ethical Code of Conduct Policy
9. *Carefirst Guide to Restoring the Workplace After a Discrimination or Harassment Complaint*

## REFERENCES

- It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment*, December, 2014, Government of Ontario
- Ontario Bill 132: Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment*
- OHSA Occupational Health and Safety Act (OHSA) R.S.O. 1990
- Code of Practice to Address Workplace Harassment under Ontario's Occupational Health and Safety Act*, August 12, 2016
- <https://www.labour.gov.on.ca/english/hs/pubs/harassment/index.php>
- Workplace Violence and Harassment: Understanding the Law, September 13, 2016
- <https://www.labour.gov.on.ca/english/hs/pubs/wpvh/index.php>
- Public Services Health and Safety Association (PSHSA) fast facts/guidelines (e.g. Assessing Violence in the Community, Bullying in the Workplace, Domestic Violence in the Workplace, etc.)
- HR Downloads Workplace Violence and Harassment Investigation Checklist
- Policy on preventing sexual and gender-based harassment*, OHRC Website
- Guidelines on Developing Human Rights Policies and Procedures*, Revised January 2008, OHRC
- Ontario Human Rights Code
- CHATS Harassment and Discrimination Policy, Revised June 2010
- York Region Respect in the Workplace Process Guide
- Workplace Harassment & Discrimination Prevention*, 2007, Clinton Family Health Team
- Accessibility for Ontarians with Disabilities Act, 2005*
- Restoring The Workplace Following A Harassment Complaint: A Manager's Guide*, February, 2013, Treasury Board of Canada
- Personal Health Information Protection Act, 2004 (PHIPA)*

## APPENDIX A DEFINITIONS

For purposes of this policy, and in accordance with the *Human Rights Code*, the *Occupational Health and Safety Act* and other legislation, these terms have the following meaning:

**Accessibility for Ontarians with Disabilities Act, 2005:** Ontario law intended to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025, by developing, implementing and enforcing accessibility standards.

**Age:** an age that is 18 years or more

**Annual Review:** review by the employer of its workplace harassment policy in compliance with section 32.0.7 of the OHSA.

**Alternate Dispute Resolution:** interest-based resolution process where, through mutual agreement, parties attempt to resolve disputes using a variety of approaches facilitated by a neutral individual.

**Complainant:** The person who alleges that he or she is a victim of violence, discrimination or harassment.

**Corrective Action:**

Corrective action taken (such as apologies, education, counselling, shift changes, reprimands, suspension, job transfer, or termination) depend on the employer's policy, and the nature or severity of the behaviour. The following factors may be considered:

- The nature of the complaint
- verbal or physical mistreatment
- degree of aggressiveness and physical contact
- time period and frequency of offense
- whether or not there was coercion
- length of service, disciplinary record, and any other mitigating factors.

Corrective action could also be broader, especially where the investigation of an incident or complaint shows that workplace harassment is prevalent or commonplace. An example would be training for everyone in the workplace or in a unit on workplace harassment, causes and solutions.

If the investigation of an incident or complaint finds that there were shortcomings in the workplace harassment policy or program, corrective action could include revising the policy or program.

**Disability:**

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other

- remedial appliance or device,
- b) a condition of mental impairment or a developmental disability,
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d) a mental disorder, or
- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997

**Past and presumed disabilities:**

The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability.

**Discrimination:** any practice or behaviour, whether intentional or not, which has a negative impact on an individual or group based on one or more of the prohibited grounds under the Human Rights Code, except where the conduct is permitted under the Human Rights Code. Discrimination may arise due to unequal treatment or from the same treatment which has an unequal effect on an individual or group protected from discrimination under the Human Rights Code.

It is important to understand that discrimination may be direct, indirect, or constructive. For example, if an employer says to a prospective job applicant “Sorry, we don’t hire ‘gays’”, this is direct discrimination. Indirect discrimination would be when an employer gives instructions to someone else to discriminate; for example, if a Board member went to the CEO and said “I don’t want you to include MSW applicants over 50 years of age so screen them out”. The Board member is indirectly discriminating, the CEO then directly discriminates. Constructive discrimination is more subtle but still illegal as defined in the Code Section 11.

Constructive discrimination could be the use of a rule, policy or practice that has an unfair effect on a person or group covered under the Code that may constitute discrimination, whether or not that is the intent. Policies or practices may not be intentionally or obviously discriminatory. For example, a policy limiting the number of people in a three bedroom apartment to five may not be intentionally discriminatory, but it has a negative, discriminatory effect on larger families and would be considered constructive discrimination. There is an important qualification to constructive discrimination. The discriminatory policy or practice will not be held to violate the Code if it would impose an undue hardship to accommodate the needs of the affected group or groups.

In other words, if a person is unable or incapable of fulfilling job requirements, it is not discriminatory if the employer chooses not to hire the person –BUT- prior to making that decision the employer must be sure that he/she cannot accommodate that person without undue hardship. Although there are currently no regulations that speak to criteria for determining undue hardship, a tribunal or court would consider the OHRC Guidelines on Disability and the Duty to Accommodate (found on the OHRC website).

**Diversity:** presence of a wide range of human qualities and attributes within a group or an organization including, but not limited to, age, gender, race, ethnicity, physical and intellectual ability, religion, sexual orientation, educational background, expertise, and experiences.

**Domestic violence:** a person who has a personal relationship with a worker—such as a spouse or former spouse, current or former intimate partner or a family member—may physically harm, or attempt or threaten to physically harm, that worker at work. In these situations, domestic violence is considered workplace violence. (see Workplace Violence Policy for fuller definition)

**Employer,** as defined in the OHSA, means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

**Equal** in the Code means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination

**Family status:** the status of being in a parent and child relationship

**Gender identity and Gender Expression (high level definitions)**

Gender identity is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.

Gender expression is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.

**Gender identity (more detail):**

Gender identity is linked to an individual's intrinsic sense of self and, particularly the sense of being male or female. Gender identity may or may not conform to a person's birth-assigned sex. The personal characteristics that are associated with gender identity include self-image, physical and biological appearance, expression, behaviour and conduct, as they relate to gender.

At birth, a child is assigned a gender by a health care professional based on observation of the child's genitalia. Society makes the assumption that based on this medical assessment a child will grow up to exhibit correspondingly masculine or feminine behaviours and appearances. However, this is not always the case. A person's felt identity or core identity may differ in part or in whole from their birth assigned sex. Individuals whose birth-assigned sex does not conform to their gender identity include transsexuals, transgenderists, intersexed persons and cross-dressers.

A person's gender identity is fundamentally different from and not determinative of their sexual orientation. See also the glossary at the end of this definition section which expands on concepts and terms related to gender identity.

**Harassment:** engaging in a course of vexatious comment or conduct against an employee or other worker in the workplace that is known or ought reasonably to be known to be unwelcome.

This definition guides the OHRC, the Tribunal, other tribunals and courts, and all Ontarians in determining what forms of behaviour are inappropriate under the Code. The reference to comment or conduct that is known or ought reasonably to be known to be unwelcome establishes an objective test for harassment:

- In some situations, it should be obvious that the conduct or comments will be offensive or unwelcome.
- Since the individual may be in a vulnerable situation, there is no requirement that the individual object to the behaviour in order for there to be a violation of the Code. It may be unrealistic to require an individual who is the target of harassment to object to the offensive treatment as a condition of being able to claim a right to be free from such treatment.
- Conduct or comments which relate to a person's gender identity may not, on their face, be offensive. However, they may still be unwelcome from the perspective of the particular individual. If the individual objects and if similar behaviour is repeated, it may constitute a violation of the Code.

Each situation that is brought to the attention of the Tribunal through a human rights application will be assessed on its own merits.

**Hate activity:** comment or actions against a person or group motivated by bias, prejudice or hate based on race, ancestry, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, marital status, family status, sexual orientation or any other similar factor. Includes, but is not limited to, hate crime, hate propaganda, advocating genocide, telephone/electronic communications promoting hate, and the public display of hate through any notice, sign, symbol, emblem.

**Human Rights Code, R.S.O. 1990, c.H.19:** Ontario law that protects persons from employment-related discrimination and harassment based on prohibited grounds and recognizes the dignity and worth of every person.

**Investigation:** thorough, systematic attempt to learn the facts about a complaint under this policy to determine whether the policy has been violated.

**Manager:** individual to whom human resource management powers, duties or functions have been delegated, including hiring and terminating.

**Marital status:** the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage

**Occupational Health and Safety Act R.S.O. 1990, c.0.1 and its regulations:** Ontario law that outlines legislative obligations to protect workers, roles and responsibilities for all parties, and penalties for unsafe working conditions and practices.

**Ontarians with Disabilities Act, 2001:** Ontario law that requires Ontario government ministries and public bodies to develop and make public annual accessibility plans that identify, remove and prevent barriers to accessibility in all aspects of the organization's operations including legislation, policies, programs, practices and services.

**Poisoned work environment:** A negative, hostile or unpleasant workplace due to

comments or conduct that tend to be demeaning. A poisoned work environment may result from a serious and single event, remark or action.

For example, a single instance of harassment because of gender identity may not fall within the definition of harassment under the Code. However, there could be circumstances in which a single incident of inappropriate behaviour may be significant or substantial enough to constitute a breach of the Code by creating a poisoned environment for individuals because of their gender identity. In other words, there could be circumstances in which unequal treatment does not have to occur continually or repeatedly in order for a violation of the Code to occur.

A consequence of creating a poisoned environment is that certain individuals are subjected to terms and conditions of employment, tenancy, services, etc. that are quite different from those experienced by individuals who are not subjected to these comments or conduct. In such instances, the right to equal treatment may be violated. Demeaning remarks, jokes or innuendo based on gender identity not only poison the environment for transgenderists and transsexuals but affect everyone's environment. The conduct at issue must be objectively evaluated. It must be of such a nature and degree so as to amount to a denial of equality through the creation of a poisoned environment.

**Pregnancy:** The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant

**Preliminary assessment:** initial review of issues, allegations, or complaints under this policy to clarify details, consider whether there has been a potential policy violation, and determine appropriate resolution mechanisms or other actions.

**Prohibited (or protected) grounds:** personal attributes that are recognized as the targets of harassing and discriminatory actions under the Code.

**Record of offences:** a conviction for,

(a) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment

**Respondent:** The person alleged to have committed an act of violence, discrimination or harassment against the complainant.

**Restoring the workplace:** the establishment or re-establishment of harmonious working relationships amongst individuals and within the team, group or unit, following the formal submission of a harassment complaint.

**Sexual harassment:** course of comment or conduct based on sex or gender that is unwelcome or should be reasonably known to be unwelcome.

**Sexual solicitation and related reprisal:** solicitation or advance made by an employee in a position to confer, grant, or deny a benefit or advancement to another employee, where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by an employee in a position to confer, grant or deny a benefit or advancement.

**Spouse:** the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

**Supervisor,** as defined in the OHSA, means a person who has charge of a workplace or authority over a worker;

**Worker,** as defined in the OHSA, means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

- A person who performs work or supplies services for monetary compensation.
- A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
- A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
- A person who receives training from an employer, but who, under the Employment Standards Act, 2000, is not an employee for the purposes of that Act because the conditions set out in subsection 1 (2) of that Act have been met.
- Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation;

**Workplace,** as defined in the OHSA, means any land, premises, location or thing at, upon, in or near which a worker works. For the purposes of this policy, harassment and bullying can occur:

- At the workplace;
- At employment-related social functions;
- In the course of work assignments outside the workplace;
- During work-related travel;
- Over the telephone, if the conversation is work-related; or
- Elsewhere, if the person is there as a result of work-related responsibilities or a work-related relationship.

**“Workplace harassment”:** as defined in the OHSA 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.
- **Subsection 1 (4)** of the OHSA states that a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

**Workplace sexual harassment:** as defined in the OHSA means:

- 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
- 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.

**Workplace restoration:** promoting and/or restoring positive and respectful workplace relationships following a complaint of discrimination or harassment.

## APPENDIX B ADDITIONAL INFORMATION RE GENDER IDENTITY

The following glossary was developed based on the OHRC's research for this policy and for the discussion paper, *Toward a Commission Policy on Gender Identity*. The glossary is intended to provide general information on the terminology related to gender identity and is not intended to be an exhaustive or authoritative guide on the subject.

**Cross-dresser** refers to people who dress in the clothes of the opposite sex for emotional satisfaction and psychological well being. Cross-dresser is preferred over the term 'transvestite' which is seen as a diagnostic term associated with medical identity.

**Gender** may be defined in various ways and could include any or all of the following categories: physical anatomy (or sex organs), secondary sex characteristics that develop at and after puberty, behaviour and conduct, the mind, and fashion choices.

**Intersexed** means being born with the (full or partial) sex organs of both genders, or with underdeveloped or ambiguous sex organs. About 4 per cent of all births may be intersexed to some degree. This word replaces the inappropriate term 'hermaphrodite'.

**Sexual orientation** is more than simply a status that an individual possesses; it is an immutable personal characteristic that forms part of an individual's core identity. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.

**Sex-reassignment surgery (SRS)** is the medical procedure by which an individual is surgically altered to create the physical appearance of the opposite sex.

**Transgendered** describes individuals who are not comfortable with, or who reject, in whole or in part, their birth assigned gender identities. The word transgendered is generally viewed as an umbrella term that unifies people who identify as transsexual, transgenderist, intersexed, transvestite or as a cross-dresser.

**Transgenderists** self-identify and live as the opposite gender but have decided not to undergo sex reassignment surgery.

**Transition** is the process of changing sex, including hormones, cross living, and surgery. A practical minimum duration for this process is about two years but it is not unusual for it to take longer.

**Transphobia** is the unrealistic or irrational fear and hatred of cross-dressers, transsexuals and transgenderists. Like all prejudices, it is based on negative stereotypes and misconceptions that are then used to justify and support hatred, discrimination, harassment, and violence toward people who are transgendered.

**Transsexuals** are individuals who have a strong and persistent feeling that they are living in the wrong sex. This term is normally used to describe individuals who have undergone sex-reassignment surgery. A male transsexual has a need to live as a man and a female transsexual has a need to live as a woman.

**APPENDIX C**

**Confidential**

**Initial Interview Form**

Name of Complainant:		Date of Interview:	
Others Present During Interview:	1.	Title:	
	2.	Title:	
Description of the Behaviour: (attach additional pages if required)			
Name of Alleged Respondent:		Department:	
Date(s), Time(s) & Place(s) Where the Behaviour Took Place:			
What Did the Complainant Do or Say to Alleged Offender?			
Name of Witness:	Department/Location:	Phone:	
Complainant Requested to Complete <b>Complaint Form</b> :    Yes <input type="checkbox"/> No <input type="checkbox"/>			
Description of the Complainant's Behaviour During the Interview:			
Did Complainant Return to Work Following the Interview?                      Yes <input type="checkbox"/> No <input type="checkbox"/>			
<b>If No, What Happened:</b>			
Complainant offered assistance: Yes <input type="checkbox"/> No <input type="checkbox"/>		Informed of Process if Reprisals:    Yes <input type="checkbox"/> No <input type="checkbox"/>	
Confidentiality Explained: Yes <input type="checkbox"/> No <input type="checkbox"/>		Informed of Right to other options e.g tribunal, lawyer: Yes <input type="checkbox"/> No <input type="checkbox"/>	

<b>Next Steps by Management:</b> 1. 2.	
Complainant Informed of <b>Next Step &amp; Time Frame</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>

Name of Manager/Supervisor  
(Please Print)

Signature of Manager/Supervisor

Date

**\*\* Alleged Respondent must be informed of the complaint \*\*\***

**APPENDIX D**

**Confidential**

**Complaint/Incident Form**

**Name of Complainant/Alleged Victim  
Location**

**Phone**

**Describe in detail the behaviour and/or words used, and individuals involved in the incident(s)** (Include dates, time & place), along with any relevant details and attach additional pages if required. Attach any supporting documents, such as emails, handwritten notes, or photographs. Physical evidence, such as vandalized personal belongings, can also be submitted. If you are not able to attach documents and they are relevant to your complaint, please list the documents below. If someone else has relevant documents, please note that below.

**Name of the Alleged Respondent (Alleged harasser(s)):  
Location**

**Phone**

**Your suggestion(s) to solve the problem and steps already taken (if any):**

- 1.
- 2.
- 3.

**Name(s) of any witnesses:**

- 1.
- 2.
- 3.

**Name of Immediate Manager/Supervisor**

**Did you report this behaviour to a manager?**

No

Yes

**If Yes,**

**Name of Manager/Supervisor**

**Date of Reporting:**

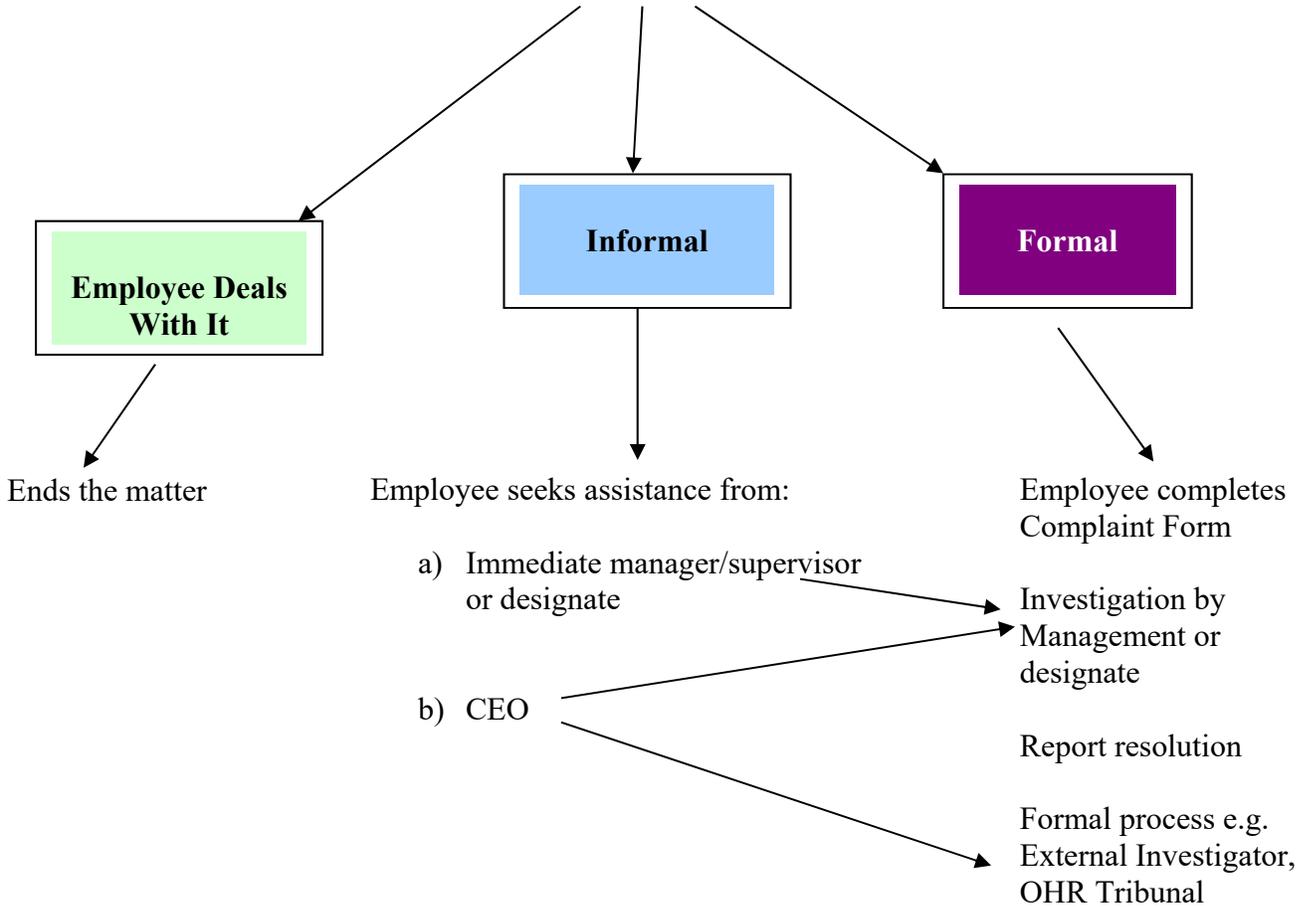
**Date:**

\_\_\_\_\_  
**Signature of Complainant**

## APPENDIX E COMPLAINT PROCESS

### COMPLAINT

---



### General Role of Management in Informal Process

- Interview employee (Complainant)
- Determine what remedy employee is seeking
- Review options with employee (Complainant)
- Interview other employee (Alleged Respondent)
- Investigate complaint. Speak with witnesses
- Attempt, if possible to resolve issue (e.g. through counselling)
- Maintain detailed notes of interviews and the resolution

### Role of Management in Formal Process

- In the event of a serious allegation(s) and/or a complex investigation, the CEO/Director/Manager may decide/request the formal complaint process, which then allows for CEO, Board, external investigative service involvement

## **APPENDIX F INVESTIGATION TEMPLATE**

This template may be used for guidance in investigating workplace harassment incidents or complaints. It may not be appropriate for complex workplace harassment investigations. The person conducting the investigation must not have been involved in the incident or complaint of workplace harassment and must not be under the direct control of the alleged harasser.

**Name of investigator:**

**Date of investigation:**

### **A. Background Information**

Who are the people involved? Are they workers as defined by Occupational Health and Safety Act (OHSA)? Who reported and when?

1. Name of person who reported workplace harassment
2. If not the same person as above, name of person who allegedly experienced workplace harassment
3. Date complaint/concern raised and how
4. Name of worker(s) (complaining or possibly exposed to workplace harassment):  
Position/Department
5. Name of respondent(s) (alleged harasser); Position/ Department  
If not a worker – provide details

### **B. Investigation Plan**

Plan and conduct the investigation:

1. Obtain the worker(s) concerns of harassment in writing, if possible. Assistance should be provided in completing the form where necessary.
2. An investigator needs to interview the worker who allegedly experienced workplace harassment and the alleged harasser (if a worker of the employer). If the alleged harasser is not a worker of the employer, the investigator should make reasonable efforts to interview him or her.
3. Make a list of possible relevant witnesses. The worker who allegedly experienced workplace harassment and the alleged harasser should be asked for names of any relevant witnesses.
4. Interview relevant witnesses. Ask specific questions about what they have observed, are aware of or have personally experienced. If the witnesses are not workers of the employer, the investigator should make reasonable efforts to interview those witnesses.
5. Collect and review relevant documents from the worker, alleged harasser, witnesses and the employer.
6. Take detailed notes.
7. Keep the investigation confidential. Instruct the worker who allegedly experienced workplace harassment, the alleged harasser and witnesses not to

talk to others about the investigation unless it is necessary, for instance, to obtain advice or counselling.

**C. Worker(s) Concerns/Workplace Harassment Allegations**

When did the incident(s) occur? Confirm date of first incident and any subsequent behaviours or conduct. Note that recalling events of harassment can be stressful for the complainant.

Date of first incident:

Date of last incident:

Date of other incident(s):

**D. Alleged Harasser(s) Response**

The alleged harasser(s) will likely need details of the allegation of harassment to be able to respond.

**E. Interview Relevant Witnesses**

List witnesses. Interview relevant witnesses and make notes.

**F. Collected documentation**

List the documents collected for the investigation and how or from whom they were obtained.

**G. Investigation Result(s)**

The investigator's summary report should set out who was interviewed, what evidence was obtained and an analysis of the evidence to determine whether workplace harassment occurred.

**Summary of key evidence:**

**Recommended next steps:**

**Report provided to:**

## **APPENDIX G INVESTIGATION CHECKLIST**

This checklist may be used for guidance in investigating workplace harassment incidents or complaints. It may not be appropriate for complex workplace harassment investigations. The person conducting the investigation must not have been involved in the incident or complaint of workplace harassment and must not be under the direct control of the alleged harasser.

### **Obtain a Description of the Incident / Claim**

- Listen to the employee, and ensure that they provide a full account of the incident(s).
- Ensure that you treat the matter seriously, using a professional manner and avoid discounting their difficulties in coming forward and telling the story.
- Contact the Director, Manager/Human Resources as appropriate when where it appears that the situation may require legal action.
- Obtain a written, signed and dated statement from the claimant.
- Ensure that the employee is free from retaliation as a result of their coming forward.
- Ask the employee if there is a resolution that can be reached.
- Inform the employee that they may wish to file a complaint with the authorities.

### **Conduct an Investigation into the Incident / Claim**

- Conduct your investigation immediately after learning of the complaint.
- Ensure that the investigation remains confidential to the extent possible, and that all information gathered remains confidential. Information should be shared only where necessary, and with appropriate parties. They must also be informed of the need to remain confidential.
- Investigate all claims seriously.
- Document all information appropriately.
- Contact the authorities where appropriate.

### **Interviewing the Complainant**

- Obtain a full account of the incident, and document all details provided.
- Determine any potential pattern involved, or if the incident was a singular occurrence.
- Determine if the incident was influenced by any contextual factors.
- Identify any reporting relationships, or hierarchical structures that may have influenced the incident(s).
- Determine a timeline of events associated with the incident, and what the job duties of each party were at the time of the incident, and what their expected locations were.
- Examine the potential of a charge made under false pretenses, and any motivating factors that may be involved. Work to rule out these potential elements.
- Inform the complainant that a thorough investigation will take place.
- Obtain a written, signed and dated statement from the claimant.
- Ensure that the employee is free from retaliation as a result of their coming forward.

### **Interview the Accused**

- Obtain a written, signed and dated statement from the claimant.
- Describe the details of the accusation, and ask for clarification on any discrepancies between the two stories.
- Identify any reporting relationships, or hierarchical structures that exist between the parties. Determine a time-line of events associated with the incident, and what the job duties of each party were at the time of the incident, and what their expected locations were.
- Determine any potential for retaliation or reprisal, and inform the accused that this would be unacceptable.
- Document all pertinent details of the interview, including observations of behaviour displayed and their account of the incident.

### **Interviewing Witnesses**

- Obtain written, dated and signed statements from any witnesses.
- Ensure that the employee is free from retaliation as a result of their coming forward.

### **Resolve the Complaint**

- Where a transfer is either requested or required, ensure that it does not create a negative impact on their employment.
- Where disciplinary action is required, determine the level of discipline based on the severity of the incident, previous action taken in similar circumstances, the employees previous history, and the frequency.
- Review, revise and re-communicate company policy on violence.
- Place documentation of the complaint, investigation, rulings, discipline imposed, and any actions taken into confidential files.
- Follow up with the complainant and alleged respondent to provide details of the actions being taken in response to the findings of the investigation.