



Human Rights Commission

Guide to Human Rights in the Workplace

June 2009

Did You Know...?

The Race Relations Equity and Inclusion (RREI) Unit offer comprehensive training on matters relating to human rights. The unit assists companies, organizations, and government departments in working towards creating respectful workplaces and a more inclusive society, providing services such as:

- human rights education through training, public events, information sessions, publications, and ongoing work with standing committees;
- advising organizations around preventing and dealing with complaints of discrimination; assist in the development and implementation of effective policies;
- resources such as alternative dispute resolution to help organizations resolve complaints of discrimination.
- consultation and advice on policy development as well as customized programs to meet your organization's needs.

Contact the Nova Scotia Human Rights Commission:

Call toll-free 1-877-269-7699 in Nova Scotia, 424-4111 in Halifax and area or 424-3139 (TTY) for assistance.

Email: hrcinquiries@gov.ns.ca

Background

This policy guide will help organizations successfully include human rights at all levels of their work, including in their hiring practices, orientation and training, and service delivery. In this way human rights can be built into the workplace so that it impacts the entire organization.

Staff of the Nova Scotia Human Rights Commission (NSHRC) can provide advice on the content and process.

Note however that the NSHRC does not approve policies.

Also note that using the material in this document does not protect any organization from human rights complaints. It does however go along way toward reducing the likelihood of being named in a complaint.

Our objective: To help organizations review and develop policy from a human rights perspective.

WHAT TO INCLUDE IN YOUR WORKPLACE POLICY:

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- 1.2 Objectives

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1.0 Introduction

1.1 Policy statement

The policy statement is the commitment from senior management that this direction is to be taken seriously and will be enforced. The policy statement should emphasize a zero-tolerance for harassing behavior within the workplace.

1.2 Objectives

The policy objective should state clearly what the employer wants to achieve. It must explain that it is required by law, and state the organization's commitment to human rights.

2.0 Human Rights and the Law

2.1 Human Rights

The NSHRC protects people in Nova Scotia against discrimination using the *Human Rights Act*.

The *Human Rights Act* offers protection on the following grounds: *race/colour, religion/creed, ethnic/national origin, association, retaliation, sex (gender and pregnancy), sexual harassment, physical disability, mental disability, age, source of income, aboriginal origin, sexual orientation, political affiliation, marital status, family status, and irrational fear of contracting an illness or disease.*

These grounds are protected in the following seven areas: getting and keeping a job; access to services and facilities; finding accommodation and living in it; buying and selling property; memberships in professional, business, or trade associations; and working in volunteer public service. It also applies to advertisements and some other publications.

The policy should indicate that the organization will uphold these principles and will not allow discrimination based on any of the protected characteristics. The organization should also indicate that allegations of harassment will be dealt with seriously, quickly and confidentially.

A copy of the Nova Scotia Human Rights Act can be obtained from the Nova Scotia Human Rights Commission.

2.2 Employer's Responsibilities

The policy should clearly outline the responsibilities of the employer, supervisors and all employees.

Employer's responsibilities:

- demonstrate good leadership
- accept the employees request for accommodation in good faith
- create opportunities for open honest communication
- respond to (and address) complaints immediately
- monitor incidents of complaints
- communicate policy to all staff

Supervisors', managers', and employers' responsibilities:

- treat all employees, clients, suppliers, contractors with respect
- accept the employees request for accommodation in good faith
- set a good example
- refuse to tolerate harassment
- investigate all complaints

Employees have the right to a diverse, inclusive and harassment-free workplace

Employees' responsibilities:

- treat other employees with respect
- inform their employer of their need for accommodation
- refuse to tolerate harassment
- speak up when harassment occurs
- report harassment to the appropriate person confidentially
- set a good example

3.0 A Diverse and Inclusive Workplace

3.1 Diverse and Inclusive Workplace policy

Your organization should clearly present its commitment to representing the population it serves. Stating the value placed on diverse and inclusive workplaces is important but not without action to support the words.

In the context of Human Rights, diversity implies a wide range of people who may exhibit *protected characteristics* in *protected areas*

A diverse and inclusive work environment should be a healthy work environment. There are benefits to diversity for the organization and the general public.

The benefits of a healthy work environment are:

- committed members of staff who feel valued
- harmony within the workplace
- a productive workforce
- less absenteeism and higher staff morale

The benefits of a diverse and inclusive work environment are:

- alternative perspectives
- creative problem-solving (different perspectives)
- resources for understanding diverse client-base
- more competitive in a global market environment

Cross-cultural management in a diverse workplace requires interactions with staff from cultural backgrounds other than one's own in a manner that is respectful, and acknowledges the similarities and strengths inherent in differences.

This does not mean that conflict will be absent but rather that steps should be taken to respond appropriately to circumstances as they arise.

3.2 Identifying Harassment

This section describes types of behaviour that may be harassment. As individuals may look at situations in different ways, it is important to provide clear guidelines as to what is, and is not, appropriate behaviour for the workplace.

3.2.1 What is harassment?

Harassment is any behaviour that demeans, humiliates or embarrasses a person, and that a reasonable person should have known would be unwelcome. It includes actions such as touching, pushing, and comments, jokes, name-calling and offensive displays.

Also refer to the *Nova Scotia Human Rights Act*

3.2.2 What is not harassment?

Two or more employees bantering back and forth is not harassment if everyone involved is in agreement. But if any employee feels uncomfortable with this behaviour, and the behaviour continues even after that person has expressed his or her discomfort, or if the others involved should have known the person was uncomfortable, then it is harassment. This type of harassment can create what is known as a "poisoned work environment," where employees do not feel safe and feel constantly humiliated.

Management and supervisors should know that the worker may not object to the behaviour but feels coerced into accepting it because they think the other person has more power in the workplace than they do. This can also be seen as harassment.

Employees flirting with each other, or becoming involved in a romantic or sexual relationship, are not harassing each other, as long as the relationship is consensual. If one of the employees changes her or his mind, and the other person tries to continue the relationship, this is harassment.

3.3 Complaint Procedures

Although much work may go into ensuring employees and employers are aware of issues of harassment and discrimination, situations may still arise where a person or group of persons feels discriminated against. At this point how the employer acts becomes very important.

Having a clear and well-defined policy to deal with complaints helps to resolve the matter quickly, and demonstrates the employer's commitment to providing a healthy workplace.

3.3.1 Complaint Procedures for the employee

[a] Speak up

Employees should know that if someone behaves in a way that offends harms, humiliates or degrades them, they do not have to put up with it. There are actions they can take.

If the employee feels able to speak to the person whose behaviour offends them, they should do so. Let them know how they feel. Tell them the behaviour is inappropriate. If the behaviour continues, or if the employee does not want to speak directly to the person, he or she can do other things. They can speak to an authority with whom they feel comfortable and who would take your complaint seriously, or file a formal complaint with the Nova Scotia Human Rights Commission.

Under the Nova Scotia Human Rights Act, you are protected from retaliation if you speak up and lay a formal complaint against a person or organization that you perceive to have harassed you.

[b] Make notes

An employee could speak to the person directly or write them a letter. If they write a letter, they should date it and keep a copy. If they speak to the person, they may want to tell a trusted friend. They should also make a note of the behaviour, the date it happened, how they felt, what they did about it, and who else saw it. Ideally, the behaviour will stop. If it does not, the employee should continue to keep notes to help with an investigation.

[c] Report it

In this section be sure to include who to approach first, as well as other contacts if the first choice is not available.

It is better to deal with complaints in the workplace, as long as the policy is clear and well understood by everyone. Contact information for the **Nova Scotia Human Rights Commission** should be included as a resource and ultimately for the filing of complaints.

3.3.2 Complaint Procedures for the employer- investigating a complaint

If the situation cannot be resolved informally, there should be procedures for filing a formal complaint. It should be investigated either by a specially-trained person within the organization or by an outside person with the necessary skills. This person would investigate the complaint thoroughly and interview the complainant, the alleged harasser and any witnesses. All employees have a responsibility to cooperate in an investigation.

The investigator will need to know:

- The complainant's name and position;
- the name and position of the alleged harasser;
- details of what happened;
- dates, times, and how often these things occurred;
- where they happened; and
- names of any witnesses

3.4 Complaints settlement, resolution or appeal

This section includes additional details of the process from lodging of complaints to resolution.

[a] Written report

The investigator will submit a written report to the employer's designated person (or to the president of the organization, if the designated person is involved in the complaint). The investigator will decide whether there is enough evidence to conclude that harassment occurred. He or she will also identify all possibilities for resolving the situation, and will recommend courses of action. If harassment has occurred, the management will then decide what remedies will be provided to the victim, the disciplinary action to be imposed on the harasser, and whether they can both continue in their current work areas.

[b] Decision

Management will inform the person who filed the complaint and the harasser of any disciplinary action, remedies, and changes to be made. Corrective action, remedies and changes in the work environment should be instituted in a timely manner after the investigator has handed in the report.

[c] Time limits

The Nova Scotia Human Rights Commission does not have a time limit for the filing of complaints; however, it is advisable not to wait too long as information gathering becomes more difficult over time.

[d] Appeals process

If a party to the complaint is not satisfied with the outcome, there should be avenues to pursue an appeal. For example, they may appeal to the organization's Vice President (or the President, if the Vice President made the initial decision or is a party to the complaint) within a week after learning of the decision. If the Vice President believes there is sufficient reason to reinvestigate or to change the penalty, compensation, or work assignment, he or she may make that decision within one week.

4.0 Policy Implementation

Workplace policies must be carefully implemented and monitored in order to be successful. One person within the organization should be responsible for introducing the policy, and ensuring that all employees, supervisors and the senior managers receive training suited to the organization's needs.

4.1 Communication of the Policy

Include an explanation of how the policy will be communicated to all staff. (E.g., the policy will be posted, every employee will receive a copy and will sign to indicate understanding, the policy will be reviewed at stated intervals). Training sessions during orientation or at other regular intervals are an excellent method of communicating your policy.

4.2 Monitoring of the policy

It is important to identify someone to monitor the implementation of policy .

The policy should be monitored by an individual who has seniority (preferably a senior manager).

It is also important to ensure that reviews of the policy are done at regularly scheduled intervals to ensure that it is up-to-date and reflects any changes within the workplace.

As part of the review of the policy you should ensure that:

- the policy was understood, trusted and used by employees;
- complaints were dealt with quickly, thoroughly and effectively; and
- there was no retaliation against individuals who filed a complaint or cooperated in the investigation of a complaint.

4.3 Enquiries

The policy should state who employees can contact with questions regarding the policy.

Also include the **date** the policy was created and began to be used, **who created it**, and **who approved** the policy.

NOTE - prohibition of retaliation

Prohibition of retaliation

11 No person shall evict, discharge, suspend, expel or otherwise retaliate against any person on account of a complaint or an expressed intention to complain or on account of evidence or assistance given in any way in respect of the initiation, inquiry or prosecution of a complaint or other proceeding under this Act. 1991, c. 12, s. 1.

12 to 20 repealed 1991, c. 12, s. 1.

Definitions

It is important to include a section on definitions. Some examples of key terms you may want to include are:

Aboriginal Peoples: Those native to a country, i.e., in Canada, Mi'kmaq, Inuit, Métis, Iroquois, etc. The terms "Native" or "First Nations people" are also used to refer to Aboriginal people.

Accommodation: The adjustment of a rule, practice, condition or requirement to take into account the specific needs of an individual or group. Different treatment to adjust for a disability, religious belief, etc., is legally required if the accommodation is needed to ensure that the person has the opportunity to participate fully and equally. Employers, landlords and businesses are required to reasonably accommodate the special needs of individuals where these needs stem from the group of factors specified in the *Act*.

Culture: Group of people living in the same place during the same time sharing common values, beliefs and assumptions which they transfer from one generation to the next. Each culture develops a framework for making sense of the world. Within this framework are expected and accepted behaviors which reflect values and beliefs. These eventually become traditions.

Discrimination: Making a distinction, intentionally or unintentionally, which imposes burdens, obligations or disadvantages on an individual or a group of individuals sharing the same characteristics which are not imposed on others; or withholding opportunities, benefits or advantages from an individual or a group of individuals which are available to others. Discrimination may be based on a number of characteristics such as race, religion, sex (gender), sexual orientation, mental or physical disability, family status, marital status, age.

Equal Opportunity: When an individual or a group of people is treated differently from others, resulting in the limitation of their job opportunities. Studies have shown that racial and ethnic minorities, women, people with disabilities and new Canadians earn less, have higher rates of unemployment and are less likely to find employment in their chosen field. An Affirmative Action Program helps to pave the way for those persons who have historically been denied equal access to job opportunities.

Harassment

Recent amendments to the Nova Scotia Human Rights Act distinctly recognize harassment as a separate form of discrimination that is prohibited in addition to discrimination based on the identified protected characteristics, (See Section 5.(3) in the Act). In Section 3 (ha) of the Act, harassment is defined thus

(ha) ...to engage in a course of vexatious conduct or comment known or ought reasonably to be known to be unwelcome

Sexual Harassment: The Nova Scotia *Human Rights Act* prohibits sexual harassment. In Section 3 (o) of the Act, sexual harassment is defined thus:

3 (o) "*Sexual harassment means*

(1) vexatious sexual conduct or a course of comment that is known or ought

reasonably to be known as unwelcome,

(ii) a sexual solicitation or advance made to an individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or

(iii) a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance. 1991, c.12, s. 1.

Systemic Discrimination: A continuing pattern of unequal treatment affecting an individual or group of individuals caused by existing rules, beliefs and accepted behaviour within an organization.

Systemic discrimination can be intentional or unintentional, and prevents full participation or advancement for the individual or group of individuals. It can include intentional discrimination which takes place in the open or more subtly.

Undue Hardship: In order to prove accommodating an individual would pose an undue hardship, the respondent organization must show that it would experience more than a minor inconvenience by making changes to meet the individual's needs. Factors used to determine undue hardship can include:

- cost disruption of a collective agreement
- disruption of services to the public
- how easy or difficult it is to make changes in jobs or to the job site for the workforce and facilities
- safety interference in the operation of the employer's business

Xenophobia Fear or hatred of strangers, people from other countries or of anything that is unfamiliar or different. This can include racism, sexism, homophobia and religious intolerance.

References

Canadian Human Rights Commission (March 2007). **Anti-Harassment Policies for the Workplace: An Employers' Guide.**

Nova Scotia Human Rights Commission (June 2008). **Creating Cultural and Organizational Change Manual.**

Nova Scotia Human Rights Commission (February 2007). **Affirmative Action Resource Guide**, Appendix B.

Nova Scotia Public Service Commission (2007). **Manual 500 Human Resources Management.**

Nova Scotia Human Rights Act Amended June 30 2008.