
New Brunswick Public Service

Harassment in the Workplace Policy

1. Application

This policy applies to all personnel including casuals employed in Parts I, II and III of the New Brunswick Public Service. Where applicable, this policy also applies to volunteers, staff members, contractors, fee for service individuals, those governed under medical staff bylaws, and clients.

2. Authority

Board of Management Minute 93.0625

3 . Policy Statement

3.1 As an employer, the government of New Brunswick is committed to providing a work environment in which all individuals are treated with respect and dignity. It is the employer's responsibility to prevent and eliminate harassment in the workplace.

3.2 Harassment in the workplace is a form of discrimination. It is unwelcome and unwanted. It affects the individual's ability to learn and work. It can also be an expression of abuse of power, authority, or control and can be coercive in nature.

3.3 Managers are responsible to take appropriate preventive or corrective action and to put a stop to any harassment they are aware of, whether or not a complaint is filed. Failure to take appropriate action may result in disciplinary measures being imposed on the manager as well as the offending person.

3.4 Harassment in the workplace will not be tolerated and managers must take appropriate action to protect their employees and others in the workplace. Harassment in the workplace constitutes a disciplinary infraction and shall be dealt with appropriately.

3.5 The abuse of one's authority or position, to intimidate, coerce, or harass is forbidden. All managers and supervisors are responsible for their employees' work environment.

3.6 This policy is not intended to limit or constrain the employer's right to manage. Performance reviews, work evaluation and disciplinary measures taken by the employer for any valid reason do not constitute harassment in the workplace.

3.7 This policy delineates some unacceptable behavior but does not modify any other rights or obligations.

4. Definitions

For the purposes of this policy, harassment in the workplace includes personal and sexual harassment, poisoned work environment and abuse of authority.

4.1 Personal Harassment:

Personal Harassment means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. It includes objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment.

Without limiting the above, personal harassment includes harassment within the meaning of the New Brunswick Human Rights Act, i.e. harassment on the basis of the following prohibited grounds of discrimination: race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

4.2 Sexual harassment:

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or a series of incidents,

- (a) that might reasonably be expected to cause offense or humiliation; or
- (b) that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or promotion, receipt of services or a contract.

Examples of behaviour that can constitute sexual harassment include, but are not limited to:

- unwanted touching, patting or leering
- sexual assault
- inquiries or comments about a person's sex life
- telephone calls with sexual overtones
- gender-based insults or jokes causing embarrassment or humiliation
- repeated unwanted social or sexual invitations
- inappropriate or unwelcome focus/comments on a person's physical attributes or appearance

4.3 Poisoned Work Environment:

A poisoned work environment is characterized by an activity or behaviour, not necessarily directed at anyone in particular that creates a hostile or offensive workplace. Examples of a poisoned work environment include but are not limited to: graffiti, sexual, racial or religious insults or jokes, abusive treatment of an employee and the display of pornographic or other offensive material.

4.4 Abuse of Authority:

Harassment also includes abuse of authority where an individual improperly uses the power and authority inherent in a position to endanger a person's job, undermine the performance of that job, threaten the person's economic livelihood, or in any way interfere with or influence a person's career. It is the exercise of authority in a manner which serves no legitimate work purpose and ought reasonably to be known to be inappropriate. Examples

of abuse of authority include but are not limited to such acts or misuse of power as intimidation, threats, blackmail or coercion.

4.5 Workplace:

The workplace includes but is not limited to the physical work site, washrooms, cafeterias, training sessions, business travel, conferences, work related social gatherings, the employee or client's home or worksite, etc..

4.6 The Complainant is the person who alleges that she/he has been harassed by the respondent.

4.7 The Respondent is the person who is alleged to have harassed the complainant.

4.8 CEO means a Chief Executive Officer or designate and includes Deputy Ministers, Superintendents of Schools, Part I; Chief Executive Officers of Hospital Corporations, Part III; and for the purpose of 5.2.4 or 5.2.5 Executive Director Human Resource Management Division, Department of Finance.

4.9 Manager includes line supervisors, directors, principals of schools, nurse managers, directors of finance and administration, facility managers, human resource directors, human resource personnel and all appropriate persons in the chain of command within the organization. A manager may be designated to be responsible for formal complaints or in any other role as determined by the CEO.

4.10 Parties to the complaint mean the complainant and respondent.

5. PROCEDURE:

Upon becoming aware of any incident which may fall under the definition of harassment nothing precludes a CEO from foregoing the procedure under this policy and taking appropriate action which may include invoking the normal disciplinary procedure.

Informal Procedure

Complainants and managers must use the informal complaint procedure to attempt to resolve workplace harassment unless it is inappropriate to do so.

5.1 Informal Complaint - Mediation

5.1.1 An effective way to end the problem of harassment in the workplace is to communicate concerns directly by telling the person that the behaviour is unwelcome and must stop or by requesting the manager to do so.

5.1.2 A complainant should request the assistance of a manager in the informal resolution of a workplace harassment complaint. If the communication is done orally the complainant should have the manager present. If done in writing, it is advisable to forward a copy to the manager, and to keep a copy of the letter.

The manager may help with other methods of informal resolution such as discussion and mediation, to assist the parties in voluntarily reaching an acceptable solution.

5.1.3 When the facts are not in dispute and it is determined by the CEO that the respondent or any other person has committed an act or acts constituting harassment the CEO shall take appropriate action up to and including dismissal.

5.1.4 Nothing in the informal procedure prevents a manager from recommending the matter be investigated or if the informal complaint procedure is not successful from recommending further action.

5.2 Formal Procedure

5.2.1 Where appropriate, the complainant may choose to file a formal complaint.

5.2.2 The employer is committed to responding to all complaints, however, it is in the CEO's discretion whether or not to investigate a complaint if it is not filed within a year of the alleged circumstance leading to the complaint unless:

- a) there is a strong factual and legal case,
- b) there is evidence of substantial loss or damage to the complainant and a clearly identifiable remedy,
- c) there are justifiable reasons beyond the complainant's control for not filing the complaint within the one year limit, and
- d) the respondent will not be unduly prejudiced by the extension.

5.2.3 A formal complaint must be written and signed. It should give an accurate account of the incident or incidents of harassment including times, places and parties involved. When completed, the complaint is submitted to the manager, or Chief Executive Officer (CEO).

5.2.4 If the complainant deems it inappropriate to file a complaint with one of the persons mentioned above, a complaint may be filed with the Executive Director, Human Resource Management Division, Department of Finance.

5.2.5 The CEO shall investigate or shall appoint an investigator or request the Executive Director, Human Resource Management Division, Department of Finance to appoint one to ensure the complaint is investigated in a confidential and expeditious manner.

5.2.6 If at any time a grievance has been filed and the subject matter is the same as, similar in nature or related to the complaint the CEO may suspend or terminate the investigation.

5.2.7 When there is a direct reporting relationship between the complainant and the respondent, it may be in the best interest of all parties for them to be physically and hierarchically removed from one another for the period of the investigation. If there is no reporting relationship, the employer shall determine if the parties should be physically removed from one another for the period of the investigation.

5.2.8 The CEO or the investigator may upon reviewing the written complaint and interviewing the complainant determine whether or not the complainant has a prima facie complaint under this policy which merits further investigation.

The CEO or investigator shall inform the complainant whether or not the investigation will be pursued and may take action to resolve the issue.

5.2.9 The respondent shall be informed of the complaint, presented with a written statement of allegations and afforded an opportunity to respond.

5.2.10 Unless directed otherwise the investigator shall gather and analyze the information, summarize the findings and may propose corrective action or make recommendations.

5.2.11 The investigator shall report the findings and recommendations to the CEO who shall determine whether the respondent has committed an act or acts constituting harassment.

5.2.12 Where it is determined that the respondent has committed an act or acts of harassment, the CEO shall take appropriate action up to and including dismissal.

5.2.13 The CEO may take any other action deemed advisable.

5.2.14 A complaint under this policy that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate disciplinary action.

5.2.15 The parties to the complaint must be informed in writing of the outcome.

6. Other Options

Complaints to the New Brunswick Human Rights Commission

New Brunswick Human Rights Act complaints should normally be filed within one year from the time the harassment occurred. Complaints are investigated by the New Brunswick Human Rights Commission. For more information, call the [New Brunswick Human Rights Commission](#) at (506)453-2301.

Complaints under the Criminal Code

Sexual and other forms of assault are covered under the Criminal Code. In these instances, the police can be asked to lay criminal charges. Sexual and other forms of assault are serious criminal offenses that should be reported to the police.

7. Rights and Responsibilities

7.1 A shared responsibility

While all managers and employees share responsibility for understanding and preventing harassment in the workplace, it is important to recognize that, under law, managers carry more responsibility than other employees.

7.2 Chief Executive Officers or designate

Chief Executive Officers are responsible for the implementation and administration of this

policy. They shall:

- Appoint an investigator or investigators as soon as possible
- Consult with the investigator or investigators to set a reasonable time frame for the completion of the investigation
- Review the findings and recommendations
- Determine the outcome and the appropriate action to be taken
- Ensure the parties are informed of the outcome in a timely fashion

7.3 Managers

Those who have authority to prevent or discourage harassment may be held accountable for failing to do so. This accountability extends to anyone in a management or supervisory position. Departments, Hospital Corporations and School Districts may be responsible for the action or inaction of managers and supervisors. The employer may share liability with managers and others in founded complaints.

Managers are also responsible for ensuring that the rights of both the respondent and the complainant involved in a harassment incident are protected. Fair and equitable procedures must be ensured for all parties.

7.4 Complainants

Complainants have the right:

- a) to make a complaint and to obtain a review of the complaint
- b) to be accompanied by a person of their choice during the interview.
- c) not to be subject to retaliation for the reason of having made a complaint under this policy.

It is the responsibility of the complainants:

- a) to immediately make known, if possible, their disapproval or unease to the individual;
- b) to follow all procedures under this policy; and
- c) to cooperate with all those responsible for dealing with the investigation of the complaint.
- d) to maintain confidentiality.

7.5 Respondents

Respondents have the right:

- a) to be informed that a complaint has been filed;
- b) to be presented with a written statement of allegations and to be afforded an opportunity to respond to them;
- c) to be accompanied by a person of their choice during their interview;

It is the responsibility of the respondents:

- a) to follow all procedures under the policy;
- b) to cooperate with all those responsible for dealing with the investigation of the complaint;
- c) to maintain confidentiality.

7.6 Witnesses

Witnesses have the right:

- a) not to be subject to retaliation because he or she has participated as a witness.

It is the responsibility of the witness:

- a) to meet with the investigator and to cooperate with all those responsible for the investigation of the complaint.
- b) to maintain confidentiality with respect to the investigation.

7.7 Investigator(s)

The investigator shall:

- Ensure the respondent has received a written statement of the allegations;
- Ensure all parties involved have been informed of their rights and responsibilities;
- Interview the parties concerned and any witnesses;
- Collect all pertinent evidence;
- Use a mediation process where appropriate;
- Prepare a report.
- Ensure the investigation is completed in a timely fashion taking into account particular circumstances --(usually up to 3 months)

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