

9.3 Sexual Harassment and No Discrimination Policy

Policy Statement

The Government of Nova Scotia and the Nova Scotia Government Employees Union recognize the right of employees to work in an environment free from sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* and are committed to working co-operatively to achieve this environment.

It is the policy of the Government of Nova Scotia that sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* will not be tolerated. Individuals who engage in such behaviour shall be subject to disciplinary action up to and including termination.

Sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* are prohibited whether they occur at the workplace or elsewhere in the course of employment responsibilities or working relationships (for example, at work-related social functions, at work-related conferences or training events, or during work-related travel).

It is management's responsibility to take reasonable measures to ensure that the work environment is free from sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act*; however, achieving this goal depends upon the co-operation and mutual respect of all employees.

A range of informal and formal response options is provided in order to respond sensitively to the needs of complainants.

All sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* complaints and responses shall be treated as confidential matters subject to the requirements of this policy and procedures.

Deputy Ministers and heads of agencies shall ensure that education and training about sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* are made available to staff in accordance with standards determined by the Public Service Commission.

Definitions

HARASSMENT BASED ON THE PROTECTED CHARACTERISTICS SET OUT IN THE NOVA SCOTIA HUMAN RIGHTS ACT

- No person shall discriminate against an individual or class of individuals on account of age, race, colour, religion, creed, sex, sexual orientation, physical disability, or mental disability, an irrational fear of contracting an illness or disease, ethnic, national, or aboriginal origin, family status, marital status, source of income, and political belief, affiliation, or activity.
- A person discriminates where he or she makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in the clause above that has the effect of imposing burdens, obligations, or disadvantages on an individual or class of individuals not imposed upon others or that withholds or limits access to opportunities, benefits, and advantages available to other individuals or classes of individuals in society.

SEXUAL HARASSMENT

- Objectionable, coercive, or vexatious comment or attention of a sexual nature to a person or persons that is known, or ought reasonably to be known, to be unwelcome.
- Actions or communications with a sexual connotation or component that are directed at no person in particular, but that create an intimidating, demeaning, or offensive work environment.

Sexual harassment shall include, but not be limited to the following:

- Any comment, communication, innuendo, or conduct that emphasizes sexuality or sexual orientation in what may be perceived as a humiliating, intimidating, aggravating, demeaning, or offensive manner.
- Unwanted sexual request or advance, inappropriate touching, or sexual assault.
- Any implied or expressed reprisal, or threat of reprisal, or denial of opportunity for refusal to comply with a sexually-oriented request.
- Any implied or expressed reward for complying with a sexually-oriented advance or request.
- Displaying pornographic, offensive, or derogatory pictures or text.
- Any repeated or unwarranted verbal or physical sexual advances, sexually explicit derogatory statements, or sexually discriminatory remarks that are offensive and objectionable to the recipient, that cause the recipient discomfort or humiliation, or that interfere with the recipient's job performance.
- Telephone calls with sexual overtones.

- Persistent, unwanted social invitations.
- Persistent leering at a person's body.
- Reprisal or threat of reprisal against an individual for any action taken by the individual pursuant to this policy and procedures.

Application

This policy applies to all civil servants whose terms and conditions are set out in accordance with the *Civil Service Act* and regulations and all bargaining unit staff who are employed by the Government of Nova Scotia.

Policy Directives

ADVISORY SERVICES

Advisors based in Nova Scotia government departments and agencies, and Employee Relations Officers of the Nova Scotia Government Employees Union, are available to provide confidential assistance and advice to employees on matters related to sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*.

Role of advisors

- to provide, on a confidential basis, information to employees (including complainants, potential complainants, alleged harassers, and witnesses) concerning the policy and procedures on sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act* and optional courses of action available to them
- to be supportive and non-judgmental towards those who seek their advice, whether complainants or alleged harassers.

Referral to Advisors

Employees who wish to contact an advisor may do so by calling either the Public Service Commission or the departmental Human Resources Division/Corporate Services Unit, Director of Human Resources and requesting a referral to an advisor concerning sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*. Employee Relations Officers of the Nova Scotia Government Employees Union are an additional source of advice and assistance for bargaining unit employees and may be contacted directly concerning sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*.

Employees need not identify themselves when contacting any of the above referral or advisory resources.

RECORD KEEPING

Employees who experience sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* should keep accurate records of incidents comprising the alleged harassment, including dates, times, reference to actions taken by the complainant, responses of the alleged harasser, responses of managers and witnesses, and any other relevant information. It is not a requirement in order to proceed with a formal complaint; however, such documentation could be vital component of any further action that may be required.

PROCEDURES

Informal Resolution Options

The following informal resolution options are available to both bargaining unit and excluded employees. Selection of either option does not supersede or eliminate the right of bargaining unit employees to the grievance procedure.

Communicating concerns directly to the alleged harasser

If circumstances permit, communicating directly with the person concerned can be an effective way to end the harassment. The employee who is being harassed should inform the person clearly and directly that their behaviour is unwelcome and must stop. If done verbally, it may be useful to have a witness present and to make note of the conversation afterward. If done in writing, a copy of the letter should be kept by the complainant.

Communicating concerns to managers

All managers have an obligation to take reasonable measures to provide a work environment that is free from sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* and to take corrective action should harassment occur. If the complainant feels comfortable doing so, it may be helpful to discuss concerns relating to sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* with their immediate supervisor or with another person in a position of authority and to request their assistance in resolving the situation. As in the case of the first option, the complainant may find it helpful to be accompanied by another person and to keep a record of the discussion and, if the concerns are communicated in writing, to keep a copy of the correspondence.

Formal Complaint Options

If informal processes are not effective in resolving the situation to the satisfaction of the complainant or if the complainant prefers to file a formal complaint immediately, the following options are available:

- the complaint procedure, which applies to all employees, whether bargaining unit or excluded
- the grievance procedure, which applies only to bargaining unit employees.

In the case of bargaining unit employees, selection of the complaint procedure does not supersede or eliminate their right to the grievance procedure.

Complaint Procedure

An investigative committee, composed of individuals selected from various departments and agencies, is responsible for the investigation of complaints filed under this procedure. The process is as follows:

1. Formal complaints must be filed in writing and signed by the complainant. Forms for this purpose may be obtained from advisors on sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*, Public Service Commission, or the Nova Scotia Government Employees Union.
2. The completed complaint form is sent to the Chair, Investigative Committee on actual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*, c/o Public Service Commission, marked "Personal and Confidential."
3. Upon receipt of the complaint, the chair of the committee will inform the Deputy Minister(s) of the department(s) of the complainant and the alleged harasser that the complaint has been filed and that an investigation will take place.
4. The chair of the committee assigns the investigation of the complaint to two members of the committee, one male and one female, neither of whom is an employee in the same department or agency as the complainant or the alleged harasser.
5. The investigators inform the alleged harasser that a complaint has been filed and provide him or her with a copy of the complaint.

6. The investigators interview the complainant, the alleged harasser, and any witnesses and review all documentation. Both the complainant and the alleged harasser will be advised that they have the right to be accompanied during the interview by a union official (in the case of bargaining unit employees), a co-worker, or another support person.
7. The investigators must complete their investigation and file a report and recommendations to the Deputy Minister(s) concerned within 30 days of receiving the complaint.
8. The Deputy Minister of the alleged harasser's department determines on the basis of the investigators' report what action, including appropriate disciplinary action if any, is to be taken. This decision and the rationale for the decision shall be communicated in writing to the complainant, the alleged harasser, the investigator, and the chair of the investigative committee.
9. If at any time after filing a complaint the complainant wishes to abandon the complaint and investigation process, he or she must communicate this in writing to the chair of the investigative committee who shall decide whether the investigation is to be continued.

Grievance Procedure

Bargaining unit employees may, in addition to or instead of the government's formal complaint procedure, file a grievance pursuant to the applicable collective agreement.

The collective agreements provide for grievances concerning sexual harassment to be filed by the griever and/or the union at step three of the grievance procedure, that is at the Deputy Minister level, and for grievances of this nature to be treated in strict confidence by both the union and the employer.

For additional information about the grievance procedure, employees may contact the Nova Scotia Government Employees Union.

External Options for Complainants

The following external complaint options are also available to employees:

- complaint to the Nova Scotia Human Rights Commission
- complaint under the Criminal Code; unwanted physical contact may constitute sexual assault, with proceedings under the Criminal Code.

Accountability

DEPUTY HEAD

Each deputy head is responsible for ensuring the consistent application of this policy.

MANAGERS/SUPERVISORS

Managers and supervisors are responsible for taking all reasonable measures to ensure that the work environment is free from sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*, whether or not a formal complaint has been lodged. The following are some specific suggestions for carrying out this role.

1. Take preventive action.
 - Show that you take the issue seriously. Discuss the policy at staff meetings and make sure that all employees and supervisory staff who report to you are aware of what action to take if harassment occurs.
 - Set an appropriate standard of conduct through your own behaviour. Treat all employees with respect.
 - Actively maintain a harassment-free workplace. Put a stop to offensive jokes or comments, remove unacceptable posters, cartoons, or objects from the workplace.
 - Include discussion of the policy and procedures in orientation sessions for new staff.
2. When approached by an employee with a complaint of sexual harassment and any harassment based on the protected characteristics set out in the *Nova Scotia Human Rights Act*, listen carefully; be supportive and respectful.
 - Explain what options are available and how to contact an advisor if the complainant wishes to do so.
 - Find out about the employee's preferences for dealing with the situation.
 - Address any concerns that the employee may have about filing a formal complaint; for example, provide reassurance about protection from reprisal, advise them about their right to be accompanied during investigative interviews by a union official or other support person.
 - If appropriate, allow time for the employee to consider how he/she wishes to proceed and arrange for a follow-up meeting.
 - Keep a confidential record of all information pertaining to the complaint in a secure place.

3. If the employee files a formal complaint:
 - Provide any assistance that may be required (in obtaining complaint forms, etc.) and indicate that you will be available to discuss any concerns that the employee may have as the formal investigation proceeds.
 - Co-operate with the members of the investigative committee assigned to conduct the formal investigation.
4. Following investigation of whether a formal or informal complaint:
 - Stay in touch with the employee throughout and following the investigation to ensure that he/she is not subject to reprisals as a result of initiating the complaint or taking part in the investigation; if reprisals occur, investigate and recommend appropriate action.
5. If the employee chooses not to file a formal complaint:
 - Explain to the employee that as a manager, you are required under the policy to take action in response to allegations of sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* even in the absence of a formal complaint.
 - If the allegation relates to a very minor form of sexual harassment that can be readily substantiated without formal investigation, and would be unlikely to result in disciplinary action more serious than a verbal reprimand, it may be appropriate for you to resolve the situation informally (e.g., through counselling, awareness training, etc.). Before proceeding, confirm your assessment of the situation by consulting either with your departmental Human Resources Division/Corporate Services Unit or with the Public Service Commission, maintaining confidentiality to the greatest extent possible.
 - If the allegation relates to a form of sexual harassment and any harassment based on the protected characteristics set out in the Nova Scotia *Human Rights Act* that if substantiated would result in a more serious form of disciplinary action, a formal investigation must be undertaken as in the case of any other disciplinary matter. Before proceeding, contact your departmental Human Resources Division/Corporate Services Unit, Director of Human Resources or the Public Service Commission for advice and assistance, again taking appropriate measures to ensure confidentiality.
 - Inform the employee about what action will be taken and address any concerns that they may have.

EMPLOYEES

Employees are responsible for acting in accordance with this policy.

Monitoring

Departments are responsible for complying with the terms of this policy. The Public Service Commission may periodically conduct audits of departmental practices to ascertain compliance by departments with this policy.

References

Criminal Code of Canada

Government of Nova Scotia Employee Personal Records Policy

Government of Nova Scotia Personal Protection Policy

Enquiries

General Enquiries, Public Service Commission (902) 424-7660

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Most recent review:
