

## **TOPIC    SEXUAL HARASSMENT POLICY**

**POLICY**    Every employee has a right to a workplace that is free from sexual harassment. Sexual harassment is illegal and will not be tolerated. Every employee has the responsibility to refrain from participating in behaviour which is, or could be perceived to be, sexual harassment.

### **QUESTIONS AND ANSWERS**

1.    What is sexual harassment?
2.    To whom does this policy apply?
3.    How can managers prevent harassment?
4.    What can employees do if they are being harassed?
5.    What is a manager's responsibility regarding sexual harassment?
6.    How should a manager respond to sexual harassment?
7.    What is involved in investigating harassment?
8.    What are the roles of the Employee Assistance Program, Human Resources, employees and the union regarding harassment?
9.    How should a manager communicate with the complainant and the alleged harasser?
10.   Are harassment complaints kept confidential?
11.   What if an employee makes a false allegation?

### **AUTHORITY**

- *The Canadian Human Rights Act*
- The Manitoba Human Rights Code Section 19(1), 19(2)
- Civil Service Regulations 43, Section 17(1) and (2)
- GEMA 51 and other collective agreements
- *The Civil Service Act 24(1)*
- Civil Service Commission Board. Minute CSC1-97/98-8  
    (Approved in principle subject to communication with MGEU)  
    (REVISED Q5, April 30, 1997 based on feedback from MHRC)  
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**Effective date:** April 16, 1997

## QUESTIONS AND ANSWERS

### 1. *What is sexual harassment?*

<The Manitoba Human Rights Code> prohibits sexual harassment including five types of behaviours:

- a <course> of abusive remarks or behaviours based on sex or gender. See <Example 1>.
- a <series> of objectionable sexual solicitations or advances. See <Example 1>.
- a sexual solicitation or advance made by <a person who is in a position to confer or deny an employment benefit> if the person making the advance knows or ought <reasonably> to know that it is unwelcome. See <Example2>
- a reprisal or threat of reprisal for rejecting a sexual solicitation or advance. See <Example-3>.
- reprisal for filing a sexual harassment complaint.

Sexual harassment is not

- the normal exercise of supervisory and management responsibilities, including coaching, performance reviews, work evaluation and disciplinary action.
- voluntary or consensual sexual contact between employees. However managers should note that the Supreme Court has stated that managers who involve themselves with employees do so at their peril, as employees may later indicate that they felt coerced into the relationship even if that was not the manager's intent.
- <systemic discrimination> which is located in an organization's policies and practices. This type of issue should be addressed through the <Removing Employment Barriers> Policy.

### 2. *To whom does this policy apply?*

This policy applies to all employees of the Government of Manitoba including term, departmental, casual and contract employees. It applies to the workplace or activities connected with the workplace such as work sites, washrooms, cafeterias, training sessions, business travel, conferences, work-related social gatherings, the client's home and the client's work site. It applies to relationships between colleagues, between managers and employees and between employees and clients.

### **3. *How can managers prevent harassment?***

To prevent harassment, managers can:

- <inform> employees that harassment will not be tolerated
- <educate> and train all supervisors and employees
- orient all staff to the government's harassment policies
- initiate action quickly without waiting for a complaint when the manager believes harassment is occurring
- ensure the work environment is based on respect
- model respect
- monitor the workplace to ensure no harassment occurs.

### **4. *What can employees do if they are being harassed?***

Based on the severity of the harassing behaviour, the employee's personal comfort and the dynamics of the workplace, an employee may choose a course of action from the following options:

- If comfortable doing so, they may inform the harasser that his or her actions are not welcome.
- contact someone in authority to make it stop: their supervisor, manager, director, Human Resources Branch, or Civil Service Commission
- <file a complaint> verbally or in writing with a person in authority.
- In cases of assault, employees may wish to contact the police.
- discuss the matter with EAP or their union

All harassment complaints must be taken seriously by management. If complainants are not satisfied with the handling of their complaint, they may wish to contact the <Manitoba Human Rights Commission>.

### **5. *What is a manager's responsibility regarding sexual harassment?***

Managers are responsible to prevent harassment. A manager who knows, or ought reasonably to know, that harassment is occurring but fails to take appropriate action will be disciplined. Moreover, if an employee files a human rights complaint and it is proven that the manager knew of the harassment and failed to act, the manager as well as the employer may be subject to sanctions.

Managers and supervisors should:

- provide a respectful work environment that is free from harassment
- <prevent harassment>
- manage the situation when harassment has occurred. This requires that a manager:
  - make a quick assessment of the <severity> of the situation and <safeguard against further harassment>
  - <review> and <respond> to sexual harassment situations using the guidelines in <Question 6>.
- ensure there are no reprisals against staff for making complaints or participating in investigations.

Managers should not:

- require an employee to file a grievance or a written statement before acting on an allegation of harassment
- <require that a complainant confront the alleged harasser> before taking action on a complaint of harassment
- advise any employee to tolerate harassment
- conduct investigations or take disciplinary action without first consulting Human Resources
- mediate without first consulting <EAP>
- attempt to avoid the issues by simply advancing it to the next level of management.

## **6. How should a manager respond to sexual harassment?**

Sexual harassment covers a broad continuum of behaviours. A range of responses and resolutions are available. The following table provides a guideline to assist managers <respond> appropriately to the <severity> of the harassment. The guiding principle is that the response is <fair> and <reasonably> appropriate to the harassment. For example, you would not <investigate> where an employee told one offensive joke but you would speak with the employee. You would investigate where an employee is alleged to have made repeated unwelcome propositions. Managers must consult Human Resources on all serious allegations of sexual harassment before taking action.

TYPE OF CONDUCT	MANAGERS MUST
1) A manager notices sexual jokes, innuendo, cartoons circulating in the office. Complaints may be made.	<ul style="list-style-type: none"> <li>• &lt;educate&gt; staff</li> <li>• remove any offensive materials and make it clear they are unacceptable</li> <li>• establish respectful workplace guidelines</li> </ul>
2) An employee makes a single comment or joke which another employee finds offensive	<ul style="list-style-type: none"> <li>• caution the employee</li> <li>• &lt;educate&gt; employee</li> <li>• provide the policy</li> </ul>
3) A request for a date from one employee to another is received as unwelcome. Also leering, gestures.	<ul style="list-style-type: none"> <li>• encourage recipient to clearly state they want behaviour to stop</li> <li>• caution the employee that further requests will result in discipline</li> </ul>
4) A request for a date from a supervisor, is received as unwelcome	<ul style="list-style-type: none"> <li>• consult Human Resources</li> <li>• advise the supervisor to stop. Caution that further requests will result in discipline</li> </ul>
5) Two employees involved in a relationship bring personal details or behaviours into the workplace, causing others to be uncomfortable  or employees, formerly involved, bring personal animosity into the workplace, causing one another or others to be uncomfortable	<ul style="list-style-type: none"> <li>• caution employees that they are creating a poisoned work environment</li> <li>• advise them to keep the personal relationship separate from the professional</li> </ul>
6) Employees in a workplace retaliate against a colleague because he or she made a sexual harassment complaint	<ul style="list-style-type: none"> <li>• caution employees that retaliation for a complaint constitutes harassment and will lead to discipline</li> <li>• invite EAP to intervene</li> </ul>
7) Repeat behaviour as outlined in 1-6 above despite direction to stop	<ul style="list-style-type: none"> <li>• consult Human Resources</li> <li>• initiate progressive discipline</li> </ul>
8) A supervisor coerces or threatens another employee into a sexual relationship.	<ul style="list-style-type: none"> <li>• consult Human Resources immediately</li> <li>• &lt;investigate&gt;</li> <li>• significant discipline up to dismissal if proven</li> </ul>
9) Sexual assault involving any unwanted physical contact of a sexual nature	<ul style="list-style-type: none"> <li>• consult Human Resources immediately</li> <li>• &lt;investigate&gt;</li> <li>• significant discipline up to dismissal if proven</li> <li>• criminal charges may be placed</li> </ul>

**Note:** In all cases of suspected sexual harassment, managers make the parties aware of the Employee Assistance Program. EAP is also available for <workplace intervention> where sexual harassment has affected the work group.

## **7. *What is involved in investigating harassment?***

Not every complaint of harassment warrants an investigation. However in situations where allegations are denied or discipline is likely, an investigation may be appropriate to determine the facts.

An investigation generally includes the following:

- interviewing the complainant
- meeting with the alleged harassers and their representatives to present the complaint and hear the response
- interviewing witnesses
- determining the facts to decide what response is appropriate
- providing findings to the manager.

An investigation may result in one of the following conclusions:

- Evidence and the <balance of probability> standard of proof show that harassment occurred, and <an appropriate course of action> is determined.
- Evidence shows that harassment did not occur, but actions may be recommended, such as workplace <mediation> or <education>.
- Evidence shows the accusation was vexatious and malicious. Discipline against the complainant may be recommended. (Note: These cases are extremely rare.)
- Evidence was insufficient to draw a conclusion but actions may be recommended including education and <debriefing>.

## **8. *What are the roles of the Employee Assistance Program, Human Resources, employees and the union regarding harassment?***

The Employee Assistance Program (EAP) has the following responsibilities:

- responds to questions regarding harassment
- helps individuals who wish to confront a harasser
- provides advice for dealing with backlash in the workplace
- counsels the complainant
- counsels and educates the harasser
- provides <mediation> services
- facilitates <debriefing> in the workplace to manage reactions to the complaint and its outcome.

Human Resources and the Civil Service Commission have the following responsibilities:

- advise and consult with managers
- advise and counsel employees
- receive complaints
- conduct <investigations>
- refer employees to EAP
- ensure consistency in applying this policy.

Employees have the following responsibilities:

- respect the rights of others
- maintain a work environment free from deliberate or unintentional actions that might be perceived as harassment
- call it when they see it. Raise the matter with the harasser or with a person in authority if they know that harassment is occurring.

The union's role includes:

- advising the complainant and the alleged harasser
- providing representation as deemed appropriate by the union.

## **9. *How should a manager communicate with the complainant and alleged harasser?***

The manager communicates with the complainant by:

- listening to the complainant and taking the issues seriously
- <discussing the process> to be followed
- informing and supporting the complainant as the process unfolds
- informing the complainant of the outcome of the complaint
- advising the complainant to keep the matter confidential during the investigation.

The manager communicates with an alleged harasser by:

- informing the alleged harasser of the complaint
- advising the alleged harasser of their right to have a representative present
- providing alleged harassers an opportunity to explain their side and listening carefully
- directing the alleged harasser to keep the matter confidential
- informing the alleged harasser of the outcome of the investigation

## **10. *Are harassment complaints kept confidential?***

Managers, Human Resources and investigators keep the details of a complaint confidential to the best of their ability. However, confidentiality does not mean anonymity. Complainants should be aware that confidentiality is subject to the following limitations:

- A manager is responsible to address every complaint
- The alleged harasser is informed of the nature of the complaint
- It may be necessary to interview witnesses
- If the situation leads to discipline, the disciplined employee has a right to grieve. This may result in an arbitration hearing in which the employer presents its case through witnesses, including the complainant, to establish there was just cause for the discipline.

These limitations on confidentiality should not discourage employees from making a complaint. Many complaints are resolved without a formal investigation or arbitration. Employees are encouraged to raise issues as early as possible so that management can resolve them. Written complaints are not placed on the complainant's file.

Employees who wish to discuss harassment in complete confidence can contact Employee Assistance Program (Telephone 945-5786, Toll-free:1-800-282-8069).

### **11. *What if an employee makes a false allegation?***

If the investigation proves that the complaint was made for frivolous or vindictive reasons, the complainant is subject to discipline. This does not apply to complaints made in good faith but which are not proven.

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## COMMENT BOXES

**A reasonable person** The "reasonable person standard" refers to an objective assessment of how a specific behaviour might generally be received. The "reasonable person standard" for determining what types of conduct are offensive is drawn from the perspective of the person being harassed. It is not drawn from the perspective of the harasser. In cases of sexual harassment, where a woman has been harassed, the case is now generally viewed from the perspective of a "reasonable woman".

To decide if their behaviour is harassment, employees should ask themselves if the recipient might consider it unwelcome or offensive. Behaviour is harassment when the recipient finds it unwelcome, based on the reasonable person standard.

**Series** Generally, sexual harassment is a series of incidents or behaviours. One minor incident alone generally does not constitute harassment. In exceptional circumstances, however, a single critical incident such as sexual assault constitutes sexual harassment.

**Educate** Contact Organization and Staff Development for seminars and courses related to recognizing and preventing sexual harassment. Employees disciplined for harassment can receive an educational counselling from EAP.

**Example-1** A poisoned work environment is characterized by pervasive sexually oriented remarks or behaviour, not necessarily directed at anyone in particular, that creates a negative psychological and emotional work environment for some employees.

Examples:

1. A male co-worker continually brags about his sexual prowess and uses rough and vulgar humour in conversation.
2. A manager condones, by words and actions, a work environment in which male employees are allowed to make sexual innuendos to female clerical staff.
3. The display of sexual material.
4. An employee repeatedly asks a co-worker for a date even though these requests have been clearly and consistently refused.

**Example-2** Situations where a manager promises rewards in exchange for sex

or threatens consequences for rejecting a sexual advance are called *quid pro quo*, which means "this for that". Some examples of *quid pro quo* type of sexual harassment are:

1. A manager makes advances to an employee, implying that the employee's reclassification may not go forward if the advance is denied.
2. An employee who ends a sexual relationship with a supervisor is disciplined or fired.
3. Performance expectations are changed after an employee refuses the supervisor's repeated requests for a date.
4. A supervisor denies a promotion because an employee refuses a sexual proposition.

### **Example-3**

A probationary employee who complains of the pervasive sexual discussion in the workplace is told to "go along with it" if she wishes to "fit in".

### **Safeguard against further harassment**

Managers must provide a safe work environment for their employees. If the complaint is of a serious nature, involving threats of reprisal or risk of recurrence, or if the complainant is clearly fearful or intimidated, the manager immediately contacts Human Resources to discuss a course of action for accommodating the complainant.

The following options can be considered:

- direct the alleged harasser to have no contact with the complainant, and change shifts or hours of work if required
- separate the employees, generally by moving the alleged harasser
- place the alleged harasser on leave without pay pending an investigation
- increase supervision
- direct the alleged harasser to keep the matter confidential.

### **Workplace Intervention**

#### **Debriefing**

Employee Assistance Program is available to consult with groups of employees who have been affected directly or indirectly by sexual harassment. This service helps clear the air and conclude the issue.

## **Balance of probability**

Balance of probability refers to the standard of proof in civil proceedings and arbitration cases. This standard requires a party to establish its case by the greater weight of evidence. Given the facts of the case, is it more likely than not that the allegations are true. This "balance of probability" standard is not as stringent as the "beyond reasonable doubt" standard which applies in criminal cases.

Serious misconduct such as sexual harassment rarely takes place in front of witnesses. However, this does not mean that an investigator cannot establish sufficient evidence to draw a conclusion and recommend discipline, including dismissal. The investigator considers factors such as similar fact evidence and credibility and determines if, based on the weight of the evidence, the alleged misconduct took place.

## **Person who is in a position to confer...**

### **A manager who sexually harasses...**

*Quid pro quo* means "this for that" and refers to situations where a manager either promises rewards in exchange for sex, or threatens consequences to an employee who rejects a sexual advance. See also <Example 3>.

In addition to sexual harassment, this type of behaviour represents conflict of interest because it uses the authority of one's position for personal gain. Managers should note that even apparent consensual sexual relationships between a manager and an employee become very complicated because it is difficult to know whether the employee is a willing participant or feels coerced into the relationship. The Supreme Court, in a recent case, cautioned that supervisors who involve themselves with employees do so at their peril.

## **Require that a complainant confront the alleged harasser**

You may wish to ask the complainant if they wish to discuss the issue with the other party. But don't force it. It would be inappropriate to suggest direct communication:

- if the harassment was severe
- if the harassment has caused the complainant to be fearful or
- if the alleged harasser supervises the complainant.

Managers consult EAP or Human Resources about the

appropriateness of this type of action.

### **Inform**

Managers can inform employees on government's policy on harassment by:

- distributing the policy statements on harassment to each staff. Post policies on the bulletin board
- distribute the brochure on harassment to staff. The brochure is available from the Civil Service Commission
- putting up posters with anti-harassment messages
- arranging for an <education> session.

### **Mediation**

Mediation is appropriate only when both parties are willing to participate and when there is a balance of power between the complainant and the alleged harasser. Mediation works best in situations of poisoned work environment. It should not be used to deal with harassment by a person in authority or assault. Consult EAP to assess the appropriateness of mediation and to provide mediation services. Managers and Human Resources should not attempt to mediate without a clinical assessment of both parties by <EAP>.

Mediation enables both parties to appreciate the other's point of view. The goal is to enable the complainant and harasser to work together constructively in the future.

Preparation for mediation is designed to empower complainants to confront offensive behaviour constructively and to educate and sensitize the harasser regarding the impact of their behaviour.

**Appropriate Course of Action**      [Link to Question 6](#)

**Investigate**      [Link to Question 7](#)

### **Discussing the process**

Managers ask the complainants how they want the complaint resolved. The complainant is informed that ultimately management determines the process and outcome. For example, despite the fact that complainants indicate that they do not wish the harasser to "get into trouble", but just "want it to stop", the manager may have to take more serious action.

### **Employee Assistance Program**

[Link to Question 8.](#)

**Review** A manager reviews the situation by:

- listening carefully to anyone raising harassment issues, asking for specific details and facts
- advising the employee that details of the complaint will be kept as <confidential as possible> (link to Q.10)
- determining if the employee needs to be safeguarded and if working arrangements need to be modified
- quickly assess the <severity> of the alleged harassment.

**Severity** Link to Question 6

**Respond** A manager responds to allegations of harassment by:

- advising the complainant of EAP as a resource
- reassuring the employee that you will make resolving the issue a priority
- <discussing the process> with the employee
- ensuring there is no reprisal in any form against the complainant(s)
- informing the employee of the action being taken and the final outcome.

**File a complaint** It is best if employees who believe they have been harassed can deal with it quickly. Employees may file a complaint by describing the harassment, verbally or in writing, to a person in authority: their supervisor, manager, director, Human Resources or the Civil Service Commission. It is not necessary to put a complaint in writing. Employees who are unsure about filing a complaint can discuss the issue with <Employee Assistance Program>. Where possible, the employee can attempt to stop the harassment by telling the harasser that the behaviour is unwelcome. If the behaviour persists or if the employee is unable to speak directly to the harasser, the employee should file a complaint.

**Prevent Harassment** Link to Q.3, this policy.

**Fair** Link to OVERVIEW, 0-2, "fairness"

### **Manitoba Human Rights Commission**

Manitoba Human Rights Commission  
7<sup>th</sup> Floor - 175 Hargrave Street  
Winnipeg MB R3C 3R8

Telephone: 945-3007  
1-888-884-8681  
TTY 945-3442

Brandon 1-800-201-2551 or 726-6261  
The Pas 1-800-676-7084 or 627-8270

**Manitoba Human Rights Code** [Link to Code 19\(1\)\(2\)](#)

**Systemic discrimination** [Defined in Removing Barriers Policy](#)

**Removing Barriers Policy** [Link to policy](#)