

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE**

BY-LAW NO. 5163-19

A BY-LAW TO ENACT POLICY P-CS-19-004 –
HARASSMENT AND DISCRIMINATION - FOR THE
CORPORATION OF THE TOWN OF NIAGARA-ON-THE-
LAKE AND TO REPEAL BY-LAW 4896-16 POLICY P-CS-16-
008

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE
TOWN OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Harassment and Discrimination Policy is a requirement
of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1;
and
1. THAT Harassment and Discrimination Policy P-CS-19-004, be and the same is
hereby approved; and
2. THAT the Lord Mayor and Town Clerk be authorized to affix their hands and
the Corporate Seal; and
3. That By-law 4896-16 be and is hereby repealed; and
4. THAT this by-law shall come into force and take effect immediately upon the
passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 10th DAY
OF JUNE 2019**

LORD MAYOR BETTY DISERO

TOWN CLERK PETER TODD



The Town of Niagara-On-The-Lake

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POLICY

Policy No.: Draft

Approved on:

By-Law No.:

Effective on:

Supersedes:

Report To:	Corporate Services Advisory Committee
Title/Subject:	Harassment & Discrimination

PURPOSE

The purpose of this policy is to outline a fair ethical process for investigating claims of Harassment & Discrimination in the workplace.

POLICY STATEMENT

The Corporation of the Town of Niagara-On-The-Lake (the "Town") is committed to providing employees with a work environment that is based on respect for the dignity and rights of everyone in the organization. It is the Town's goal to meet the requirements of all applicable legislation and to provide a healthy and safe work environment that is free from any form of discrimination or harassment.

SCOPE

This policy applies to employees, contractors, and consultants. It applies in any location in which persons employed by or otherwise associated with the Town are engaged in work-related activities. This includes, but is not limited to:

- any Town workplace
- during work-related travel
- at restaurants, hotels or meeting facilities that are being used for business purposes
- in Town owned or leased facilities
- during telephone, email or other communication; and
- at any work-related social event.

This policy also applies to situations in which persons employed by or otherwise associated with the Town may be discriminated against or harassed in the workplace by

other individuals who may or may not be employees of the Town, such as residents, visitors or suppliers, although the available remedies may be constrained by the situation.

DEFINITIONS

Discrimination

Workplace discrimination includes any distinction, exclusion or preference based on protected grounds that nullifies or impairs equality of opportunity in employment, or equality in the terms and conditions of employment.

The protected grounds of discrimination are:

- race, colour, ancestry, citizenship, ethnic origin or place of origin
- creed or religion
- sex (including pregnancy and breastfeeding)
- gender identity and gender expression
- sexual orientation
- marital status (including same sex-partnership)
- family status
- disability
- age
- record of offences for which a pardon has not been granted

Sexual Harassment

Sexual Harassment is defined 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.

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

Some examples of sexual harassment are:

- sexual advances or demands that the recipient does not welcome or want
- threats, punishments or denial of a benefit for refusing a sexual advance
- offering a benefit in exchange for a sexual favour
- leering or persistent sexual staring
- displaying sexually offensive material such as posters, pictures, calendars or cartoons, screen savers, pornographic or erotic web sites or other electronic materials
- distributing sexually explicit email messages or attachments

- sexually suggestive or obscene comments or gestures
- unwelcome remarks, jokes, innuendos, propositions or taunting about a person's body, clothing or sex
- persistent, unwanted attention after a consensual relationship ends
- physical contact of a sexual nature, such as touching or caressing; and
- sexual assault.

Discriminatory Harassment

Discriminatory harassment includes comments or conducts based on the protected grounds that are vexatious and that the recipient does not welcome or that offends him or her.

Some examples of discriminatory harassment include, without limitation:

- offensive comments, jokes or behaviour that disparage or ridicule a person's inclusion in one of the protected grounds
- imitating a person's accent, speech or mannerism
- persistent or inappropriate questions about whether a person is pregnant, has children or plans to have children
- inappropriate comments or jokes about an individual's age, sexual orientation, personal appearance or weight.

Poisoned Work Environment

Harassing comments or conduct can poison someone's working environment, making it hostile or uncomfortable place to work, even if the person is not being targeted.

Some examples of actions that can create a poisoned work environment include:

- displaying offensive or sexual materials such as posters, pictures, calendars, websites, or screen savers
- distributing offensive emails or attachments
- practical jokes that embarrass or insult someone; or
- jokes or insults that are offensive, racist or discriminatory in nature

Workplace Harassment or Bullying

The *Occupational Health and Safety Act* defines workplace harassment as a "course of vexatious conduct or comment against a worker in a workplace that is known or ought reasonably to be known to be unwelcome." It is broader than the definition of harassment under the *Human Rights Code*, as it need not be related to one of the protected grounds outlined above.

Workplace harassment, psychological harassment, or bullying, usually has some or all of the following components:

- it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect
- it is hostile, abusive or inappropriate
- it may involve vexatious or inappropriate comments, conducts or displays,

- gestures, actions or some combination or all of these
- it affects the person's dignity or psychological or physical integrity; and
- it results in a poisoned or harmful work environment.

Some examples of workplace harassment are:

- verbally abusive behaviour such as yelling, insults, ridicule and name calling, including remarks, jokes or innuendos that demean, ridicule, intimidate or offend
- workplace pranks, vandalism, bullying, hazing, and horseplay
- gossiping and spreading malicious rumours
- excluding or ignoring someone, including persistent exclusion of a particular person from workplace related social gatherings
- undermining someone else's efforts
- humiliating someone
- sabotaging someone else's work
- displaying or circulating offensive pictures or materials
- offensive or intimidating phone calls or emails
- impeding an individual's efforts at promotions or transfers for non-legitimate reasons; and
- making false allegations about someone.

Even if a person does not state that the behaviour is unwelcome, they may make it clear through their conduct or body language, in which case you must immediately stop.

Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.

What Isn't Harassment

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:

- appropriate direction or delegation by a supervisory employee
- measures to correct performance deficiencies, such as placing someone on a performance improvement plan
- imposing discipline for workplace infractions; and
- requesting medical documents in support of an absence from work.

It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

PROCEDURE:

- 1.0 If you believe you are being harassed or discriminated against, the first thing to do is to tell the person to stop. Do so as soon as you receive an unwelcome conduct or comment. Although this may be difficult to do, telling the person you don't like their actions is often enough to stop the behaviour.

To assist you, here are some examples of the things you can say that might stop the behaviour:

- "I don't want you to do that"

- “Please stop doing or saying.....”
- “It makes me uncomfortable when you....”
- “I don’t find it funny when you.....”

- 2.0 If the behaviour continues after you have confronted the individual, you may want to provide him or her with a written statement of the situation. Include specific details of the behaviours you consider to be harassing, your request to the harasser to stop and your expectations that he or she will stop. Provide details of the next steps you plan to take if the harassment does not stop e.g. filing a formal complaint. Make sure you keep a copy of this statement for yourself.
- 3.0 It helps to keep a record of any incident(s) that you experience. This includes when the harassment started, what happened, whether there were any witnesses and what your response was.
- 4.0 If you believe someone who is not a member of our organization (for example a resident or supplier) has harassed or discriminated against you, please report this to your supervisor as soon as possible. Although the Town has limited control over third parties, we will do our best to address the issue and prevent further problems from arising.

Formal Procedure

- 5.0 If the complaint cannot be resolved informally or if it is too serious to handle on an informal basis, you may bring a formal complaint to your director, manager, supervisor, Human Resources and/or the CAO *(If the employee is uncomfortable reporting the incident to someone within his or her department, the employee should notify a senior member of staff with whom they have a comfort level).*
- 6.0 If you bring a formal complaint, the Town will need as much written information as possible, including the name of the person you believe is harassing you, the place, date and time of the incident(s), and the names of any possible witnesses.
- 7.0 It is important that we receive your complaint as soon as possible so that the problem doesn’t escalate or happen again. Once the Town receives your complaint, we will initiate a formal investigation, if it is necessary and appropriate to do so.
- 8.0 Discrimination and harassment are serious matters. Therefore, if you decide not to make a formal complaint, the Town may still need to investigate the matter and take steps to prevent further harassment. For example, we may need to continue with an investigation if the allegations are serious or if there have been previous complaints or incidents involving the respondent.
- 9.0 Please note that it is not our policy to investigate anonymous complaints unless there are extenuating circumstances.

Investigation Steps

- 10.0 An investigation will be commenced as quickly as possible. The Town may choose to conduct an internal investigation or retain an external investigator, depending on the nature of the complaint.
- 11.0 The investigation will include:
- interviewing the complainant and respondent to ascertain all of the facts and circumstances relevant to the complaint, including dates and location
 - interviewing witnesses, if any
 - preparing statements of facts, if appropriate, as further described in section 12.0 below
 - reviewing any related documentation, photographs, video, and physical exhibits; and
 - making detailed notes of the investigation and maintaining them in a confidential file
- 12.0 The complainant, respondent as well as all relevant witnesses will sign any statement of facts that they provide or that are prepared for them by an investigator and confirmed as accurate.
- 13.0 Once the investigation is complete, the investigator will prepare a written report of the findings for the CAO.
- 14.0 A written summary of the results of the investigation will be provided to the complainant and the respondent in writing and will include any corrective action taken that is a result of the investigation and that is designed to prevent a recurrence or continuation of the conduct that is the subject of the complaint. For clarity, a complainant is entitled to know if disciplinary action has been taken against the respondent in accordance with the Town's normal process, but is not entitled to know the details, such as set out in section 19.0 below.
- 15.0 The Town will meet with each of the complainant and respondent to advise them of the outcome of the investigation and to provide each of them with the written summary described in section 14.0 above. The meeting and the written summary are to be kept confidential.
- 16.0 It is the Town's goal to complete any investigation and communicate the results to the complainant and respondent within thirty days after a complaint is received, where possible.
- 17.0 The Town will continue to monitor the working environment at the conclusion of the investigation.

Corrective Action

- 18.0 The CAO will determine what corrective action should be taken as a result of the investigation and will sign off on the written summary described in section 14.0 above.
- 19.0 If a finding of harassment is made, the Town will take appropriate disciplinary or other action in respect of the respondent. This could include, without limitation:

- Discipline, such as a written warning or suspension
- Termination of employment with or without cause
- Referral (through EAP or otherwise) for counselling, anger management training, supervisory skills training or attendance at education programs
- Any other action deemed appropriate in the circumstances

20.0 Any discipline notice received by an employee will be permanently placed in the employee's personnel file.

21.0 Malicious harassment accusations will not be tolerated and may lead to corrective counselling, up to and including employment separation without notice. For clarity, a complaint that does not lead to a finding of harassment will not be found to be malicious unless there is a clear intention on the part of the complainant to abuse the process for completely inappropriate purposes.

Confidentiality

22.0 The Town appreciates the sensitive nature of harassment and discrimination complaints. We will try to keep all complaints confidential to the extent we are able to do so. We will only release as much information as is necessary to investigate and respond to the complaint or situation or if required to do so by law.

Protection from Retaliation

23.0 The Town will not tolerate retaliation, taunts or threats against anyone who complains about harassment or takes part in an investigation. Any person who retaliates against, taunts or threatens anyone in relation to an harassment complaint may be disciplined or terminated from employment.

ATTACHMENTS

WEB ATTACHMENTS

ATTACHMENTS FOR LINK