Workplace Harassment and Discrimination Policy

The Otonabee-South Monaghan Public Library Board recognizes the dignity and worth of every person and is committed to providing a workplace free from discrimination and harassment and ensuring that any complaint is resolved quickly and with fairness and confidentiality.

Board members, employees, and volunteers are expected to uphold this policy. Workplace discrimination or workplace harassment will not be tolerated from any person in the library including members of the board, supervisors, co-workers, volunteers, patrons and family members.

Section 1: Discrimination

1. The Ontario Human Rights Code states that “Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability”. Human Rights Code, R.S.O. 1990, chapter H.19 s. 5 (1).

2. Discrimination may include abuse of authority or position of power as follows:
   a) to endanger an employee’s job
   b) to undermine the performance of that job
   c) to threaten the economic livelihood of an employee
   d) to interfere with or influence the career of an employee in any way

Section 2: Workplace Harassment

1. Within the Ontario Human Rights Code, every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee.

2. The Occupational Health and Safety Act (OHSA) defines “workplace harassment” as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. As of September 2016, workplace harassment includes “workplace sexual harassment”, that is, 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 or making a sexual solicitation or advance and the person knows or ought reasonably to know that the solicitation, advance, comment or conduct is unwelcome.
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3. The Ontario Employment Standards Act (ESA) prohibits employers and anyone acting on their behalf from harassing or penalizing an employee in any way because the employee asks the employer to comply with the ESA or asks the employer about employee rights under the ESA.

4. Harassment may include:
   a) making remarks, joke or innuendos that demean, ridicule, intimidate, or offend
   b) displaying or circulating offensive pictures or materials in print or electronic form
   c) bullying
   d) repeated offensive or intimidating telephone calls or e-mails
   e) inappropriate sexual advances, suggestions or requests

5. Uninvited sexual touching will be considered assault and reported to the police.

6. A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace, within the conditions of the Occupational Health and Safety Act is not workplace harassment.

Section 3: Responsibilities and False Reports

1. The CEO will develop and maintain a workplace discrimination and harassment program in consultation with the joint health and safety committee or health and safety representative. See Appendix A of this policy for a copy of current program.

2. The workplace discrimination and harassment program will set out:
   a) the process for dealing with and investigating complaints including how parties involved will be made aware of outcomes and corrective action and how confidentiality will be maintained
   b) procedures for reporting incidents of workplace discrimination and workplace harassment including measures for reporting incidents to an outside source if necessary
   c) A formalized training program, as required by Bill 132 and
   d) the system for maintaining all associated records should an inspection by the Ministry of Labour or employee inquiries occur, and

3. This policy (HR-07) and the Workplace Discrimination and Harassment Program (HR-07-Appendix A) will be:
   a) reviewed by the library board as often as necessary but at least once a year
   b) posted in the staff room

Related Documents:

Occupational Health and Safety Act, R.S.O. 1990, chapter O.1
Workplace Harassment and Discrimination (continued)

Bill 132: An Act to amend various statutes with respect to sexual violence, sexual harassment domestic violence and related matters (Statutes of Ontario, 2016, Chapter 2)
Bill 168: An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters. (Statutes of Ontario, 2009, Chapter 23)
Trillium Public Library Policy HR-08: Prevention of Workplace Violence
Trillium Public Library Policy OP-02 Safety, Security and Emergency

Appendix A

Program to Address Discrimination and Workplace Harassment

1. Awareness of Discrimination and Workplace Harassment Policy and Program

   The Workplace Harassment and Discrimination Policy (HR-07) will be included in the library’s policy binder and will be posted in the staff area along with this Workplace Harassment Program information.

2. Training on Discrimination and Workplace Harassment Policy and Program

   All employees and volunteers will receive information and instruction on the contents of policy HR-07 and the related program, as part of the initial orientation and renewed on an annual basis. Each person will sign off that they received this training and this information will be included in the training records for library staff.


   Any employee or volunteer subjected to discrimination or harassment in the workplace should discuss the situation with the CEO. In the event that there is a complaint against the CEO or a conflict of interest, a complaint shall be filed with the board chair. The library board may conduct an investigation or designate an individual to investigate and issue a report. In the event that the CEO has a complaint, the CEO may seek the assistance of the Chair of Library Board or if there is a conflict of interest, a complaint shall be filed by the CEO with an impartial party.

   At any time during a meeting or interview concerning a complaint, both the employee lodging the complaint and the person against whom the complaint has been lodged has the right to be represented and accompanied by a person of his or her choice.

   Any related documents or materials having to do with the complaint are to be made available and the employee with a complaint must provide written notes about the events leading up to the complaint which include:

   a) What happened – a description of the events or situation
   b) When it happened – dates and times
   c) Where it happened
   d) Who saw the incident, if anyone
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In the case of harassment, information about the incident or complaint, including identifying information about any individual involved will be kept confidential unless disclosure is necessary for the purpose of investigation or taking corrective action, or required by the law.

4. Complaint Investigation and Resolution Procedures

An investigation that is appropriate in the circumstances will be conducted into incidents and complaints of harassment. The CEO will advise the person against whom the complaint has been lodged of the investigation. The library recognizes and acknowledges that, under Bill 132, an inspector from the Ontario Ministry of Labour has the power to order the library board, as employer, to have an impartial third party conduct an investigation, at the library’s expense, and report the outcome of their findings to the complainant.

The CEO, or his or her designate, initiates a confidential investigation immediately and finishes within 90 days. Throughout the process, the investigator keeps all parties informed; interviews the employee concerned and witnesses; collects evidence; prepares a report; and informs the parties, in writing, of the decision and the underlying reasons for the decision.

The CEO is responsible for imposing any disciplinary or corrective measures.

Any employee may file a complaint with the Ontario Human Rights Commission when the harassment or discrimination is related to one or more of the Human Rights Code’s prohibited grounds - race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Revision Policy

This Workplace Harassment and Discrimination Policy will periodically be evaluated and revised as times and circumstances require and the above policy supersedes the Workplace Harassment and Discrimination Policy adopted June 15, 2010.

Date of review/revision: October 18, 2016
Date of original motion: June 15, 2010
Procedures for Resolving Harassment and Discrimination Complaints

Description and Rationale

The objective of a complaint resolution mechanism is to ensure that human rights issues are brought to the attention of Otonabee – South Monaghan Public Library Chief Executive Officer and are appropriately dealt with.

Making a Complaint:

Complainants are encouraged to explain to the person who is harassing or discriminating against them that the conduct is unwelcome, but are not obliged to do so. Indeed, each case is different. If addressing the person responsible could lead to an escalation of the harassment or discrimination, or to safety risks, complainants should not be expected to have to directly interact with that person. If a complainant feels they can safely make it known to the person responsible that the behaviour is unwelcome, of course this may resolve the matter, or may help them later if they make a complaint. However, the complainant should never feel obliged to address their harasser against their better judgment.

If the situation cannot be resolved by speaking to the person responsible, a complaint may be made by speaking with the Chief Executive Officer. Where possible, the complaint should be made in writing, including details of:

- What happened – a description of the events or situation
- When it happened – dates and times of the events or incidents
- Where it happened
- Who saw it happen – the names of any witnesses, if any
- The person receiving the complaint will notify the person(s) complained against (the respondent(s)) of the complaint and provide the respondent(s) with a copy of the written complaint.

If necessary, the complainant or the respondent will be moved to a different location within the library organization, or provided with alternative reporting relationships. The decision will be made on a case-by-case basis, and will reflect the principle that the complainant will not be penalized for making the complaint.

Reprisal

Persons who make a complaint, as well as anyone else who is involved, should not face negative consequences for taking part in the complaint process. In other words, they should be free from "reprisal." Protection under the Code from reprisal covers:

1. Complainants
2. Witnesses
3. Advisors
4. Representatives of complainants and witnesses
5. Investigators
6. Decision makers/management.
Procedures for Resolving Harassment and Discrimination Complaints

A person who believes that he or she has been subjected to reprisal should be able to file a complaint under the procedure.

   Every person has a right to claim and enforce their right to a workplace free of harassment and discrimination. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or helping to resolve a complaint. It is a violation of Otonabee – South Monaghan Public Library Board policy to discipline or punish a person because he or she has brought forward a complaint, provided information related to a complaint, or otherwise been involved in the complaint resolution process. Reprisal may be the subject of a complaint under this procedure, and persons engaging in reprisal are subject to disciplinary measures, up to and including termination of employment.

Dispute Resolution

An Alternative Dispute Resolution (ADR) approach will be used as a means of resolving a situation at any stage during the complaint process.

ADR can be a simple, informal procedure using a peer review panel or other trained internal employee. However, the sensitivity of human rights complaints from both an employer/organizational and employee perspective, coupled with the need for strict confidentiality, suggest that a more formalized type of ADR might be more appropriate.

A mediator is a neutral third party who acts as a facilitator to help the parties reach a negotiated settlement that both parties agree to. ADR can take the form of internal or external mediation, depending on whether persons with the needed skills, expertise and neutrality are available within the Library organization.

It is generally good practice for mediation to be separate from the investigation process. Parties may find it easier to speak freely and reach agreement if information from the mediation process is kept separate from any investigation process.

It is important to recognize that ADR will not be appropriate in all cases – for example, in situations where there are significant power imbalances. The OHRC recommends that ADR be offered as a voluntary option.

    Where appropriate, the person receiving the complaint will offer the parties an opportunity to mediate the complaint. No person will be required to undertake mediation. A neutral and expert third-party mediator will conduct mediation. Mediation may take place at any stage during the complaint process.

Appointing an Investigator

OSM Public Library Chief Executive Officer on behalf of the Library Board must take steps to investigate the circumstances of a complaint. In the event that the CEO has a complaint, the Library Board must take steps to investigate the circumstances of the complaint. The person(s) selected to do the investigation should be independent and objective. Wherever possible, the investigator should not be in a position of direct authority over any of the people involved in a
Procedures for Resolving Harassment and Discrimination Complaints

complaint, but should report to someone with the authority to make decisions and have them enforced.

An investigation may be conducted by a member of OSM Public Library, or by someone external. An investigation should not be carried out by anyone who is seen as taking sides with either party. For example, it is not very likely that non-management employees will see a lawyer who often represents management in labour disputes as “objective”. Similarly, the Chief Executive Officer who is normally involved in discipline and termination decisions may not be seen as independent. Also, the investigator should not be someone in a position to have any power or influence over the career progress of either of the parties.

Persons conducting investigations must be knowledgeable about:

1. Human rights issues and principles in general
2. The requirements of the Code
3. The organization’s anti-harassment/anti-discrimination policy and complaints procedure

Similar considerations apply to any person whose role is to mediate or conciliate a complaint.

Where mediation is not appropriate or is not successful, the person receiving the complaint will refer the complaint to an expert external investigator.

Representation

The people involved in an internal complaint resolution process should be allowed to have someone represent them if they wish, whether during mediation or investigation. Representatives may include a colleague.

Complainants and respondents are entitled to seek representation of their choice, including legal counsel, during the complaints process, at their own expense.

Documentation

For everyone involved in the process, it is important to make and keep written notes about the events leading to the complaint. These details should include:

1. What happened – a description of the events or situation
2. When it happened – dates and times of the events or incidents
3. Where it happened
4. Who saw it happen – the names of any witnesses, if any

As well, gather any other documents or materials that may have something to do with the complaint, such as letters, notes, offensive pictures, etc. Note that allegations of systemic discrimination may require OSM Public Library Chief Executive Officer to gather a broad range of documents (for example, you may need to gather and maintain demographic information related to the OSM Public Library).
Procedures for Resolving Harassment and Discrimination Complaints

Documentation related to the investigation should be collected and preserved. This includes witness interviews, notes of meetings, evidence gathered, any investigation report, and documentation on the outcome of the investigation. Safeguard these documents at least until the conclusion of any human rights proceedings or of limitation periods related to human rights proceedings.

Every person who believes he or she has experienced harassment or discrimination, as well as every person who has been notified of a complaint against them, is advised to create and keep written notes about the events at issue, and to maintain any relevant written documentation.

Confidentiality and Privacy

It may be very difficult to bring forward a complaint of harassment or discrimination. Protecting confidentiality and privacy is important, both to the person bringing forward the complaint, and the person(s) the complaint is made against.

Only share information about the complaint with people who need to know about it. For example, the person the complaint is against will need to know about the particulars of the complaint to respond to it. Witnesses will need some information about the incidents they are said to have been involved in or allegations they have knowledge of.

Investigators, mediators, advisors and any other persons involved with the complaints process should protect confidentiality and privacy, and maintain the security of all documents related to complaints, including contents of meetings, interviews and investigation reports.

Advisors, investigators, mediators and persons receiving complaints will, to the extent possible, protect the confidentiality and privacy of persons involved in a complaint, subject to the requirements of a fair investigation and resolution process.

All documents related to a complaint, including the written complaint, witness statements, investigation notes and reports, and documents related to the complaint, will be securely maintained by the Chief Executive Officer, separate from personnel files. The CEO will refer to Otonabee-South Monaghan Public Library Employee Document Retention Guidelines (Appendix B)

Investigation Processes

The investigation of the complainant must be impartial, timely, fair, and address all relevant issues.

The investigator should thoroughly interview both the complainant and the person(s) alleged to have engaged in harassment or discrimination against the complainant. The respondents should be given the opportunity to respond to each of the specific allegations raised by the complainant. The investigator should also interview any relevant witnesses identified by either the complainant or the respondent(s), and gather any relevant documents. Proper notes should be taken during interviews.
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The investigator should prepare a report summarizing the allegations, the steps taken during the investigation, and the evidence gathered. The report may make findings of fact and recommendations for further action, or these functions may be assigned elsewhere.

In most cases, investigations should start immediately after an investigator is chosen, and finish within a fixed time frame (for example, 90 days).

The investigator is responsible for ensuring a thorough, fair and impartial investigation of the allegations in the complaint. The investigator will interview the complainant, the respondent(s), and relevant witnesses suggested by the complainant or respondent(s), as well as gather documents relevant to the matters in the complaint.

All staff of OSM Public Library are required to cooperate with the investigator.

The investigator will, wherever possible, complete the investigation within 90 days of receiving the assignment.

At the conclusion of the investigation, the investigator will prepare a written report summarizing the allegations and the investigation results, and will forward the report to the Chief Executive Officer. Then the Chief Executive Officer will present the report to OSM Public Library Board in a closed session.

Potential Outcomes

Based on the findings of the investigation and human rights law and policy, a decision must be made about whether the complaint is well founded. If the complaint is well founded, OSM Public Library must take steps to address the human rights violations and prevent future occurrences.

Human rights laws are preventive and remedial rather than punitive, and this should be reflected in the outcomes of substantiated complaints.

Where harassment or discrimination is found to have occurred, make sure that steps are taken to ensure that the complainant is, to the extent possible, “made whole” and the effects of the discrimination remedied.

Persons who violate the anti-discrimination/anti-harassment policy may face a range of consequences, including an apology, education, counselling, reprimands, suspension, transfer or termination of employment, depending on the nature and severity of the behaviour.

As well, consider whether the complaint (whether it is determined to be founded or unfounded) reveals any broader issues that OSM Public Library should address. The investigation may, for example, point to specific barriers in the workplace, a perception of systemic discrimination, or a need for further training on particular human rights issues. If so, take steps to remedy the problem.
**Procedures for Resolving Harassment and Discrimination Complaints**

Complainants should not be automatically penalized where a complaint is determined to be unfounded, as this may deter people from making valid complaints. There may be rare cases, however, where there is objective evidence to show that the complaint was maliciously filed, with deliberate intent to injure or mislead. Only where the evidence of malice in bringing a complaint is compelling and undeniable should disciplinary measures of any sort apply to complainants.

Based on the findings in the investigator’s report, the Chief Executive Officer will decide whether the policy has been violated.

If the policy has been violated, the Chief Executive Officer will determine the appropriate consequences for the person(s) who violated the policy. These may include:

- An apology
- Counselling
- Education and training
- Verbal or written reprimand
- Suspension with pay
- Suspension without pay
- Transfer
- Termination of employment.

In determining the appropriate consequences, the Chief Executive Officer will take into account the nature of the violation of the policy, its severity, and whether the individual has previously violated the policy.

Where a violation of the policy is found, the Chief Executive Officer will also take any steps necessary to repair the effects of the discrimination or harassment on the complainant, and to prevent any further recurrences of harassment or discrimination within OSM Public Library.

The Chief Executive Officer will be responsible for monitoring the outcome of the complaint.

**Communication**

The complainant and the respondent(s) must be apprised of the outcome of the investigation, and in particular, whether the policy was found to have been violated, and any actions that will be taken as a result.

The complainant and the respondent(s) will each be provided with a copy of the investigator’s report, and with the Chief Executive Officer’s decision regarding outcomes.

Where a complainant is dissatisfied with the outcome of the complaint, he or she will be reminded of his or her rights under the Ontario *Human Rights Code*. 
Appendix B

Otonabee-South Monaghan Public Library Employee Document Retention Guidelines

Different statutes set out different retention obligations. For example:

- Under the Employment Standards Act, employee records must be kept for at least 2 years after termination of employment.
- Under privacy legislation, any employee personal information upon which a decision was made affecting the employee must be retained for at least 1 year.
- Privacy legislation also requires private employers to destroy records containing employee personal information as soon as retention is no longer necessary for legal or business purposes.

Employers must also keep in mind the limitation periods for lawsuits. Generally speaking, there is a six-year limitation period for an employee to bring an action against his or her former employer for breaching the employment contract (e.g. wrongful dismissal). Limitation periods are shorter for human rights and employment standards complaints and for actions against municipal employers. If an employee has left in circumstances that could give rise to a wrongful dismissal action, the employer should keep all the records for six years following the date of termination.

**Best Practices**

It is recommended that employers adopt a few basic practices in organizing and maintaining employee files:

- To the extent possible, keep employee files in a fire and flood-proof location. Computer records must safely stored with a secure backup system.
- Organize files into separate and clearly marked chronological sub-files dealing with different aspects of employment. For example, maintain sub-files such as:
  - Employment Standards Act records
  - Hiring, promotion, pay adjustments, and termination documents
  - Performance and discipline
  - Medical issues/workers’ compensation documents
  - Legal issues
- Allow employees to see the information that they are entitled to see in their files on request, under supervision. However:
  - do not allow employees to take their files home.
  - do not allow employees to see privileged information in their file, such as any legal advice received about the employee.
  - do not allow employees to see file information which contains the personal information of other employees; screen the employee file well before handing it over.
- Keep only original documents or copies of signed final documents in files; do not keep drafts. Stamp all documents with the dates sent/received.
- Keep hand-written notes but make sure they are identified by date, author, and subject matter.
• Always document discipline, even if it is delivered verbally; make a note of verbal discipline.
• Document all significant meetings with employees, even non-disciplinary ones.
• Don’t retain employee files forever. Keep the file for six years if there may be a wrongful dismissal claim. If there is no possible claim, the file should only be retained for two years from the date of termination in order to comply with the Employment Standards Act.