

Workplace Bullying and Harassment Model Contract Language

Article Workplace Bullying and Harassment

Preamble:

The Employer and the Union are committed to providing a workplace free of harassment, bullying and discrimination. This procedure applies to all complaints of harassment, bullying and discrimination that take place at this workplace and applies to all employees covered by this agreement.

1) Definitions:

Unless specified herein, the following definitions apply to this article only.

Workplace

All Employer facilities and functions including but not limited to areas such as offices, shop floors, rest rooms, cafeterias, lockers, conference rooms and parking lots. This will also include all off site locations where a worker is required to attend in the course of their employment.

Discrimination and Harassment

Discrimination occurs when a person is treated adversely for a reason related to their personal characteristics.

Harassment is a form of discrimination. It involves any unwanted physical or verbal behaviour that offends or humiliates a person. Unwanted in this content means any vexatious comment(s) or conduct(s), against a worker or group of workers in a workplace that is known, or ought reasonably to be known, to be unwelcome.

Examples of Discrimination and Harassment includes, but is not limited to:

- Unwelcome remarks or jokes about race, religion, sex, age, disability or any other of the prohibited grounds of discrimination.
- Unwelcome physical contact, such as touching, patting, pinching or punching, which can also be considered assault.
- The display, circulation, or electronic transmission of pornographic, racist or other offensive or derogatory text or pictures.
- Comments or actions which constitute harassment or discrimination under Human Rights law including, but not limited to, sexual harassment and harassment based on race, religion, ethnic background, gender identity, social and economic class, activism and participation in the union, language or disability.

Bullying and Personal Harassment

Bullying and Personal Harassment include any inappropriate conduct or comment towards a worker that the person knew, or should have known would cause that worker to be humiliated or intimidated. It can come from co-workers, supervisors, employers, or external sources. Examples of bullying or personal harassment include but are not limited to:

- Aggressive/threatening gestures;
- Verbal aggression or name-calling;
- Vandalizing personal belongings;
- Sabotaging work;
- Spreading malicious rumours;
- Humiliating initiation practices/hazing;
- Cyber-bullying;
- Deliberate exclusion;
- Conduct which interferes with a person's work performance or creates an intimidating, hostile or offensive work environment;
- Unfounded complaints which are made in bad faith, in reprisal, frivolously or with malicious intent;
- Interfering with a workplace violence or harassment investigation; intimidating a complainant, respondent or witness; or influencing a person to give false or misleading information;
- Reprisal as defined in this article;
- Any other inappropriate, negative, disrespectful, or unprofessional treatment of others; and/or
- Failure of supervisors, in keeping with their authority, to respond to interpersonal misconduct or allegations of discrimination or harassment. Such failure may be considered as condoning such behaviour and therefore a violation of this Agreement.

2) Management Functions

The parties agree that this article does not prohibit management from carrying out functions which fall within their rights and responsibilities, provided this is done in an appropriate, professional manner which does not constitute an abuse of power. Such functions include, but are not limited to, conducting performance appraisals, addressing performance and conduct issues, delegating work assignments, and determining work locations and schedules for staff.

3) Joint Respectful Workplace Committee

The Employer and the Union agree to form a Joint Respectful Workplace Committee whose function shall be to investigate complaints and help create a respectful workplace.

This committee will comprise of equal number of representatives three (3) selected by the employer and three (3) by the union. At least half of the members of this committee must be women.

The parties agree that the representatives are required to be independent and not responsible for disciplinary decision-making. All Joint Respectful Workplace Committee members (and any subsequent Committee members) shall receive agreed to Workplace Bullying & Harassment Investigation training and any agreed to or needed refresher or advanced training courses.

The names of the Joint Respectful Workplace Committee will be communicated to all Employees and will be posted in a manner that is accessible to the Union.

4) Training

All existing employees will receive Workplace Bullying & Harassment training by (a specific date). The Joint Respectful Workplace Committee will mutually agree to the content, length and style of training.

Training will be provided to all new employees within 6 months of their date of hire.

The Joint Respectful Workplace Committee will review the training on an annual basis to ensure it continues to meet the needs of the organization and remains in compliance with all applicable legislation.

Costs associated with providing training shall be borne by the Employer.

The Union and Employer, in consultation with the Joint Respectful Workplace Committee, will mutually agree on whether to use internal or external trainers.

- When using internal trainers, it is agreed that at least half will be Union members. Appointment of Union trainers will be done by the Union. It is further agreed that no less than half of the internal trainers will be women.
- When using external trainers, all reasonable efforts will be made to engage the services of a unionized training organization.

5) Complaint Process

The following process shall be followed for investigating complaints of workplace harassment, personal harassment, discrimination and/or bullying.

i) Filing a Complaint

If an employee believes they have been harassed, bullied and/or discriminated there are specific actions that may be taken to put a stop to it:

- Request a stop of the unwanted behaviour;
- Inform the individual that is doing the harassing, bullying and/or the discriminating that the behaviour is unwanted and unwelcome;
- Seek assistance from any Union representative;
- Document the events, complete with times, dates, location, witnesses and details; and/or
- Report the incident to the Joint Respectful Workplace Committee.

It is agreed that some victims of bullying, discrimination and/or harassment are reluctant to confront their harasser or bully. It is further agreed that they may fear reprisals, lack of support from their work group, or disbelief by their supervisor or others. Therefore, it is agreed that the victim may seek assistance by reporting the incident directly to any Union representative, manager or any member of the Joint Respectful Workplace Committee and will not be required to speak directly to the harasser or bully. The Union representative, manager or Joint Respectful Workplace Committee member will act upon the complaint without delay.

ii) Investigation

Upon receipt of the complaint, either in writing or verbal, the contacted Union representative, manager or Joint Respectful Workplace Committee member will immediately inform their Union or Employer counterpart. Two members of the Joint Respectful Workplace Committee will interview the complainant(s) and respondent(s), to do a cursory investigation.

The two members of the Joint Respectful Workplace Committee will issue an initial report, which will detail the allegations and determine if there are sufficient grounds to proceed with a Formal Investigation or if an Informal Resolution is appropriate. They will share their findings with the complainant and respondent, explaining their decision.

iii) Informal Resolution

Often incidents of harassment, discrimination and bullying can be resolved through an informal resolution. The Joint Respectful Workplace Committee will determine if this process is appropriate in each situation.

iv) Formal Investigation

Should the Joint Respectful Workplace Committee determine a formal investigation of the complaint is required, a Joint Investigation Committee shall be struck.

The individuals involved with the initial investigation will not take part in the formal investigation and will not be part of the Joint Investigation Committee. The investigation will proceed as follows:

- (1) The Joint Investigation Committee will determine any preliminary matters. This committee will appoint at least one (1) representative selected by the Employer and at least one (1) representative selected by the Union from the trained committee members each side have available to conduct investigations. The Joint Investigation Committee must meet to begin their investigation as soon as possible but no later than five (5) business days after determining a formal investigation is required. All investigation meetings and or work shall be done on Employer paid time.
- (2) Any Employee who is to appear before the Joint Investigative Committee, whether they are the complainant(s), respondent(s) or witness(es), may request to have union representation during any part of the investigation.
- (3) Time required to appear before the Joint Investigation Committee shall be on paid time.
- (4) Each complainant, respondent and witness shall be entitled to at least one (hour) of paid time immediately prior to appearing before the Joint Investigation Committee to prepare for their interview. Additional time beyond one (1) hour may be requested in writing to the Employer, no less than one (1) business day prior to being called to appear before the committee. The Employer will not unreasonable withhold its consent for additional time.
- (5) Where the complainant is a woman and the complaint involves sexual harassment or gender discrimination, the Joint Investigation Committee will include at least one woman from each side.
- (6) The complaint shall be handled with utmost confidentiality. It is agreed that investigations should be resolved within ten (10) business days of striking the Joint Investigation Committee. Once the Joint Investigation Committee has finalized their investigation, a written statement of their findings shall be given to the human resources manager for resolution. Copies shall be provided to the Union, the complainant(s) and the respondent(s). This report and all related documents and statements will be deemed confidential and will be treated as such, unless required to be produced by law or by an arbitrator.

- (7) All documents related to the investigation will be stored in a secured location by the Employer for no less than 2 years.
- (8) The Joint Investigation Committee and the Joint Respectful Workplace Committee shall not be used to determine discipline in any way. Any discipline implemented by the Employer that is based on the report shall be in accordance with Article [REDACTED] of this Agreement.
- (9) If the Joint Investigation Committee cannot reach a consensus, the complaint will be inserted into step three (or last step) of the grievance and arbitration procedure as per Article [REDACTED] .
- (10) It is agreed that the grievance procedure is put in abeyance until such time that the Joint Investigation Committee reports to the manager of Human Resources and the Employer determines any further course of action.
- (11) The Complainant(s) and Respondent(s) shall have the right to grievance process as per Article [REDACTED] of this Agreement.
- (12) The parties agree that this procedure is an alternative complaint resolution mechanism. The parties further acknowledge the right of individuals to file a complaint with the appropriate Federal/Provincial bodies to seek redress.

6) Rights of the Respondent

It is agreed that all employees have the right to natural justice, even when they have been accused of harassment, bullying or discrimination. Therefore, the following applies to all respondents:

- Respondents shall be considered innocent of wrong-doing until such time that evidence proves otherwise.
- The Respondent(s) will be provided with sufficient details of the allegations, in writing, to formulate an appropriate response to the allegations and give their version of events.
- The Respondent(s) will have the right to Union representation, which will be separate and apart from the investigation, the Joint Respectful Workplace Committee and the complainant.
- The Respondent(s) will have access to the grievance process as per Article [REDACTED] .

7) Unsubstantiated Complaints

If a person, in good faith, files a complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed. If it is determined that the complaint was made in good faith, no action will be taken against the complainant.

8) Malicious Complaints

Malicious complaints will not be tolerated. This could include complaints made deliberately to humiliate or harm another. If it is believed that a malicious complaint has been filed, the Joint Respectful Workplace Committee and/or the Joint Investigation Committee will advise the Employer and the Union immediately.

9) Retaliation

Retaliation against a complainant, witness or respondent will not be tolerated.

10) Reprisal

Refers to a negative action or omission against anyone who:

- Invokes the provisions of this Article, whether on behalf of oneself or another person;
- Participates or co-operates in any inquiry under this Article;
- Associates with a person who has invoked this Article or participated in its procedures; and/or
- Performs a legitimate role under this Article.

Any form of reprisal will not be tolerated.