

 M O N C T O N	POLICY	Owner Department: Human Resources
	Respectful Workplace Policy	
Effective Date: September 2, 2014	Last Reviewed Date: November 21, 2022	City Council Approval Dates: November 21, 2022
Approving Authority: Moncton City Council	Replaces No.: Policy 0809	

1. Purpose Statement

The City of Moncton ("City" or "employer") supports a respectful workplace and will not accept any form of harassment in the workplace.

This Policy is subject to ongoing review and may be amended from time to time as deemed necessary to respond to current circumstances and evolving needs of the City

2. Application

This Policy applies to all employees of the City of Moncton and to members of Moncton City Council, unless specified otherwise herein.

3. Definitions

“employee” includes all regular full-time, part-time, seasonal, temporary, contract, casual and fixed-term employees, as well as students and volunteers of the City, but excludes members of Moncton City Council.

"harassment" means any objectionable or offensive behavior that is known or ought reasonably to be known to be unwelcome, including bullying or any other conduct, comment or display made on either a one-time or repeated basis that threatens the health or safety of an employee, and includes sexual harassment, but does not include reasonable conduct of an employer in respect of the management and direction of employees at the place of employment.

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Examples of behavior that can constitute harassment include, but are not limited to:

- Offensive or intimidating comments or jokes
- Bullying or aggressive behavior
- Displaying or circulating offensive pictures or materials
- Inappropriate staring
- Workplace sexual harassment
- Isolating or making fun of a worker because of personal characteristics
- Abuse of authority

"**poisoned work environment**" refers to any activity or behavior, not necessarily directed at anyone in particular, that creates a hostile or offensive workplace. A poisoned work environment can exist even if employees agree to participate in demeaning behavior or voice no objections.

Examples of a poisoned work environment include, but are not limited to:

- graffiti, sexual, racial or religious insults or jokes
- abusive treatment of an employee
- the display of pornographic or other offensive material

"**workplace**" includes but is not limited to the physical work site, washrooms, cafeterias, training sessions, business travel, conferences, work-related social gatherings, locker rooms and vehicles. The workplace also includes any place where actions of an employee, whether on duty or not, will have such serious repercussions on the work environment as to seriously affect relationships between employees. If the conduct creates a connection to the workplace, it may be subject to examination by the employer.

4. Policy

The following are the Policy statements:

- a) General Statement. Every employee is entitled to work free of harassment. As an employer, the City has an obligation pursuant to the New Brunswick *Occupational Health and Safety Act* to provide a workplace that is free of harassment.
- b) Commitment. The City is committed to providing a work environment in which all individuals are treated with respect and dignity. It is the employer's responsibility to act with due diligence to prevent and eliminate harassment in the workplace or a poisoned work environment, and to provide a timely response to all complaints. Managers and Supervisors are responsible to maintain and create a respectful workplace.

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- c) Prevention. Preventing and reporting disrespectful conduct is the responsibility of all employees. Any person who believes that an employee has experienced, or is experiencing, workplace harassment, or retaliation for having brought forward a complaint, must report these incidents to his/her supervisor, manager, or human resources contact person as soon as the circumstances permit.
- d) Manager Obligations. Managers are responsible to take appropriate preventive or corrective action and to put a stop to any harassment they are aware of, whether or not a complaint is filed. Failure to take appropriate action may result in disciplinary measures being imposed on the manager as well as the offending person.
- e) Retaliation. Retaliation in any form, against an employee who complains of harassment is strictly prohibited. This includes ostracism of the complainant, or limiting a complainant's ability to compete fairly for promotions, preferred assignments, or other employment-related opportunities.
- f) Management's Right. This Policy is not intended to limit or constrain the employer's right to manage. Performance reviews, work evaluation and disciplinary measures taken by the employer for any valid reason do not constitute harassment in the workplace.

1. OBJECTIVES

The following are the Policy's objectives:

- a) To maintain a working environment that is free from all types of harassment.
- b) To inform all employees and members of Moncton City Council that workplace harassment is strictly prohibited.
- c) To identify the types of behavior that may be considered offensive.
- d) To establish a process for receiving complaints of harassment and to provide a mechanism to deal with those complaints effectively.

2. COMPLAINT PROCEDURE

An employee who believes they have been harassed by another employee shall document all instances including time, date, place and what was said to whom, and shall report any incident of harassment to the employer, as established below, as soon as the circumstances permit.

An employee who believes they have been harassed by a member of City Council shall document all instances including time, date, place and what was said to whom, and shall report any incident of harassment to his or her Supervisor and/or the Director of Human Resources. The Supervisor and/or the

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Director of Human Resources will immediately send a copy of the complaint to the City Manager and the Mayor. Where a complaint is filed against the Mayor, a copy of the complaint will be forwarded to the Deputy Mayor and the City Manager.

In the case of a complaint against a member of City Council, the process established pursuant to the Code of Conduct for Elected Officials will govern. For greater certainty, the Informal Complaint Procedure and the Formal Complaint Procedure outlined in this Policy will not apply.

Informal Complaint Procedure

In this section, the reference to **mediation** refers to an impartial third party who will meet with both parties together in an attempt to find a resolution to the complaint. The reference to **conciliation** refers to an impartial third party who meets separately with the complainant and the respondent to resolve the complaint.

- a) A person who reports an incident of harassment to the employer may request the assistance of his or her manager, the Human Resources Department or other appropriate person in the informal resolution of a workplace harassment complaint. This approach may include a mediation session or if requested by the complainant, a conciliation process to assist the parties in voluntarily reaching an acceptable solution. It is the employer's responsibility to ensure all parties involved have been informed of their rights and responsibilities.
- b) If the informal complaint procedure is not successful, the departmental contact shall recommend further action to resolve the situation.

Formal Complaint Procedure

- a) A person may choose to file a formal complaint either as a first step or if the informal complaint process was not successful. The employer is committed to responding to all complaints; however, if the complainant(s) wish to file a formal complaint, they must do so within one year of the most recent alleged incident. Any complaint filed outside of the one year of the most recent alleged incident will not be receivable, unless the employer determines that the delay is justified.
- b) A formal complaint must be written and signed. It should give an accurate account of the incident or incidents of harassment including times, places and parties involved. When completed, the complaint can be submitted to the following: complainant's Supervisor, Manager, the Director of Human Resources or the City Manager. All formal complaints must be forwarded to the Director of Human Resources or to the City Manager in the event there is a direct reporting relationship with the Director of Human Resources. In the event that a formal complaint is filed against the City Manager, a copy of the complaint is to be forwarded to the Mayor.

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- c) Human Resources or an impartial 3rd party will determine the need for an investigation. Should an investigation be necessary, the City Manager shall appoint an impartial investigator or request the Director of Human Resources to appoint one to ensure the complaint is investigated in a confidential and expeditious manner.
- d) The person against whom a complaint has been filed shall be informed of the complaint, presented with a written statement of allegations and afforded an opportunity to respond. The employer shall maintain the confidentiality of the complainant insofar as possible.
- e) When there is a direct reporting relationship between the complainant and the person against whom a complaint has been lodged, it may be in the best interest of all parties for them to be physically and hierarchically removed from one another for the period of the investigation. If there is no reporting relationship, the employer shall determine if the parties should be physically removed from one another for the period of the investigation.
- f) The investigator shall report the findings and recommendations to the City Manager or designate. In instances of founded complaints, the City Manager shall take appropriate disciplinary action up to and including dismissal. Under no circumstances shall this remedial action adversely affect or impact the complainant's employment.
- g) If the complaint is not founded but through the course of the investigation, certain workplace problems are identified, the City Manager may wish to take appropriate action to re-establish a healthy work environment.
- h) Should the investigation report identify and recommend follow-up measures to be used with affected employee(s), such as training needs or other needs, the employer shall follow these recommendations and ensure all required support services are available to the affected employee(s).
- i) The investigation report will not be disclosed to the complainant(s) or the respondent(s). However, they will be informed of the investigation results along with a summary of the findings.
- j) A complaint made in bad faith under this Policy or that is malicious or vexatious, as determined by the investigation, shall be subject to appropriate disciplinary action.

Confidentiality

The employer shall not disclose to any person the identity of a person who is involved in an incident of harassment or the circumstances related to the incident, other than when the disclosure is necessary in

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order to investigate the incident, required in order to take corrective measures in response to the incident, or required by law.

Other Options

New Brunswick Human Rights Act: Complaints filed pursuant to the New Brunswick *Human Rights Act* should normally be filed within one year from the time the harassment occurred. Complaints are investigated by the New Brunswick Human Rights Commission. For more information, call the New Brunswick Human Rights Commission at 453-2301. An employee or member of the public has the right to file a complaint with the Human Rights Commission at any time.

Complaints under the Criminal Code: Sexual and other forms of assault are covered under the Criminal Code. In these instances, the police can be asked to investigate. Sexual and other forms of assault are serious criminal offenses that should be reported to the police.

3. RIGHTS AND RESPONSIBILITIES

- a) Implementation: The Director of Human Resources is responsible for implementing this Policy.
- b) Shared responsibility: While all managers and employees share responsibility for understanding and preventing harassment in the workplace, it is important to recognize that managers carry more responsibility than other employees. When a manager receives a verbal or written complaint from an employee who alleges being subjected to behaviors considered to be inappropriate, the manager, in consultation with the employee, must develop and document an action plan to assist the employee.
- c) Managers: Those who have authority to prevent or discourage harassment may be held accountable for failing to do so. This accountability extends to anyone in a management or supervisory position. Employers are responsible for management and supervisory actions (or inactions). The employer may share liability with managers and others in founded complaints. It is therefore crucial that supervisors and managers take all complaints of harassment or inappropriate behavior seriously, develop action plans for dealing with the allegation and document all discussion and action taken on each individual matter in the case of both formal and informal complaints.
- d) Complainant(s): An employee has the right to file a complaint and to obtain a review of his or her complaint without fear of retaliation, through the procedure outlined in this Policy.

An employee may be accompanied by a person of the employee's choice during any meeting dealing with the complaint or the resolving of the complaint.

It is the responsibility of the complainant(s) to:

- Report all incidents of harassment to the employer as the circumstances permit;

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- Co-operate fully with all stages of the mediation, conciliation and/or investigation process; and
- Whenever possible, maintain a record of times, dates witnesses and the nature of the harassing behavior.

e) Respondent: The person against whom a complaint has been lodged (respondent) is entitled to:

- Be informed that a complaint has been filed;
- Be presented with a written statement of allegations and to be afforded an opportunity to respond to them; and
- Request a meeting with the Director of Human Resources or designate to discuss the options to resolve the complaint. A respondent to the complaint may be accompanied by a person of the employee's choice during any meeting with the Human Resources contact and/or the investigator and at any subsequent interviews that the parties would attend to resolve the issue.

A Respondent has the responsibility to fully participate with all stages of the mediation, conciliation, and/or investigation process.

f) Witnesses: Employees are obligated to meet with the investigator and to cooperate with all those responsible for the investigation of the complaint. No person shall be subject to retaliation because he or she has participated as a witness.

Employees are obliged to maintain confidentiality with respect to the investigation.

g) Investigator(s): The investigator assigned to investigate a complaint of harassment shall:

- Ensure the person against whom a complaint has been lodged has received a written statement of the allegations;
- Ensure all parties involved have been informed of their rights and responsibilities;
- Interview the parties concerned and any witnesses;
- Collect all pertinent evidence;
- Use a mediation or conciliation process where appropriate;
- Respect confidentiality;
- Prepare a report; and
- Ensure the investigation is completed in a timely fashion taking into account particular circumstances (generally up to 3 months).

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4. WITHDRAWAL OF COMPLAINT

It is the right of the complainant, if so desired, to withdraw the allegations of harassment, made in good faith, without resolution, as long as:

- The decision was made without coercion.
- The complainant understands that, where reasonable prima facie evidence of harassment or discrimination exists, the City Manager or the Director of Human Resources may exercise the option to complete the investigation, and remedy the situation in order to ensure due diligence in identifying and stopping harassment or eliminating a poisoned work environment.
- If the complainant wishes to withdraw a complaint but the respondent insists an investigation proceed for the purpose of establishing that no harassment occurred, an investigation shall proceed.

5. TRAINING

All employees will be trained on this Policy. An employee who wishes to receive additional training or be retrained on this Policy shall make such request in writing to his or her Supervisor.

All members of Moncton City Council will be trained on this Policy. A member of Moncton City Council who wishes to receive additional training or be retrained on this Policy shall make such request in writing to the City Manager.

The employer will consult with the Joint Occupational Health and Safety Committees to determine an appropriate retraining cycle.

5. Administration and Contact

City Clerk's Office

655 Main St., Moncton, NB E1C 1E8

Telephone: 506.853.3550

Email: info.clerk@moncton.ca