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# Workplace Harassment Code of Practice

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| Origination Date: |  | Effective Date: |  |
| Review Date(s): |  | Section: |  |
| Revision Date(s): |  | Policy No: |  |

### Approvals

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name of Current Chair]  Board Chair / President | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name of one Current JHSC Chair]  JHSC Chair | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name of Current Administrator]  Administrator |

### DEFINITION

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| According to the General Regulation 91-191, OHS Act, Section 2, workplace Harassment means:  “any objectionable or offensive behaviour 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”  Without limiting the above, personal harassment includes harassment within the meaning of the *New Brunswick Human Rights Act*, i.e., harassment on the basis of the following prohibited grounds of discrimination: race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex. PURPOSE This Code of Practice is to help employers promote a safe working environment and protect their employees’ dignity and respect. STATEMENT |
| As an employer, \_\_\_\_\_\_*XYZ Nursing Home*\_\_\_\_\_ is committed to providing a work environment in which all individuals are treated with respect and dignity. Workplace harassment will not be tolerated from any person in the workplace including managers, supervisors, employees, students, subcontractors, residents, volunteers and members of the public. Everyone in the workplace has a role to play in keeping workplaces safe and healthy.  All employees are entitled to a safe and healthy workplace. Workplace Harassment can destroy a person’s dignity and can prevent workers from doing their jobs effectively. Harassment in the workplace is a form of discrimination. It is unwelcome and unwanted. It can also be an expression of abuse of power, authority, or control and is coercive in nature. The abuse of one's authority or position, to intimidate or harass is forbidden. Workplace harassment has the potential to escalate into violence.  Performance reviews, work evaluation and disciplinary measures taken by the employer for any valid reason do not constitute harassment in the workplaces. PROCEDURES Employees are encouraged to report any incidents of workplace harassment to their immediate supervisor or next level of management, if conflict of interest exists. This shall be done in writing, by use of the nursing home’s Harassment & Violence Reporting Form. All employees at \_\_\_\_\_\_*XYZ Nursing Home*\_\_\_\_\_, including managers, supervisors, temporary employees, students and subcontractors are to adhere to this Code of Practice, report an incident of harassment as soon as circumstances permit and will not be penalized or disciplined for reporting an incident or for participating in an investigation. |
| **Roles and Responsibilities** While all managers and employees share responsibility for understanding and preventing harassment in the workplace, it is important to recognize that, under law, managers carry more responsibility than other employees.  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.  Managers are also responsible for ensuring that the rights of both the respondent and the complainant involved in a harassment incident are protected. Fair and equitable procedures must be ensured for all parties.  **Administrator or Designate**  Administrators are responsible for the implementation and administration of the harassment policy. They shall:   * Appoint an investigator or investigators (where appropriate) as soon as possible; * Consult with the investigator or investigators to set a reasonable time frame for the completion of the investigation; * Review the findings and recommendations; * Determine the outcome and the appropriate action to be taken, and * Ensure the parties are informed of the outcome in a timely fashion.  **Supervisor / Manager**  All managers and supervisors are responsible for their employees' work environment, and managers must take appropriate action to protect their employees and others in the workplace.  Managers are also responsible for ensuring that the rights of both the respondent and the complainant involved in a harassment incident are protected. Fair and equitable procedures must be ensured for all parties. **Investigator** The appointed investigator will investigate and deal with all complaints or incidents of workplace harassment in a fair, respectful and timely manner. The name of the person/persons involved in an incident of harassment or a description of the incident will not be disclosed unless it is:   1. Necessary in order to investigate the incident 2. Required in order to take corrective measures in response to the incident 3. Required by law  **Employees** Employees in the workplace have a duty to report a harassment situation as soon as circumstances permit. This shall be done in writing.  **Complainants:**   * to immediately make known, if possible, their disapproval or unease to the respondent; * to follow all procedures under this Code of Practice; * to cooperate with all those responsible for dealing with the investigation of the complaint; and * to maintain confidentiality   **Respondents:**   * to follow all procedures under the Code of Practice; * to cooperate with all those responsible for dealing with the investigation of the complaint; and * to maintain confidentiality   **Witnesses:**   * to meet with the investigator and to cooperate with all those responsible for the investigation of the complaint; and * to maintain confidentiality with respect to the investigation |
| **Corrective Measures** The results of an investigation will be provided in writing to the affected employees by the Administrator or designate. The investigation report will not be available to either the complainant or respondent.  All measures identified to mitigate harassment in the workplace shall be put on employee bulletin boards if there are new or revised procedures to follow.  Harassment in the workplace constitutes a disciplinary infraction and shall be dealt with appropriately.  EFAP services may be offered to the affected employees. **Training** All employees shall receive training on the Code of Practice at the start of their employment, annually, and if there are updates made to the Code. These training records will be kept in the employee files for three years. |
| **Review** This code of practice will be reviewed annually and /or if there is a change in conditions at the place of employment and/or when ordered to do so by an officer. |
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# Harassment Guidelines

In developing work practices, operational procedures and staff training programs, specific circumstances appropriate to each area of operation must be considered.

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| Definitions | Details |
| Personal Harassment | Means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome. It includes objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment. |
| Sexual Harassment | Means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or a series of incidents,   1. that might reasonably be expected to cause offence or humiliation; or 2. that might reasonably be perceived as placing a condition of a sexual nature on employment, an opportunity for training or promotion, receipt of services or a contract.   **Examples** of behaviour that can constitute sexual harassment include, but are not limited to:   * unwanted touching, patting or leering; * sexual assault; * inquiries or comments about a person's sex life; * telephone calls with sexual overtones; * gender-based insults or jokes causing embarrassment or humiliation; * repeated unwanted social or sexual invitations; and * Inappropriate or unwelcome focus/comments on a person's physical attributes or appearance. |
| Poisoned Work Environment | Is characterized by an activity or behaviour, not necessarily directed at anyone in particular, that creates a hostile or offensive workplace.  **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 and the display of pornographic or other offensive material. |
| Abuse of Authority | Harassment also includes **abuse of authority** where an individual **improperly** uses the power and authority inherent in a position to endanger a person's job, undermine the performance of that job, threaten the person’s economic livelihood, or in any way interfere with or influence a person's career. It is the exercise of authority in a manner which serves no legitimate work purpose and ought reasonably to be known to be inappropriate.  **Examples** of abuse of authority include, but are not limited to, such acts or misuse of power as intimidation, threats, blackmail or coercion. |
| Workplace | Includes but is not limited to the physical work site, washrooms, cafeterias, training sessions, business travel, conferences, work related social gatherings, the employee or client’s home or worksite, etc. The workplace may also include social media in certain circumstances |
| The Complainant | Is the person who alleges that she/he has been harassed by the respondent. |
| The Respondent | Is the person who is alleged to have harassed the complainant. |

# Harassment Procedure

Upon becoming aware of any incident which may fall under the definition of harassment nothing precludes a manager from foregoing the procedure under this policy and taking appropriate action which may include invoking the normal disciplinary procedure.

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| Situation | Details |
| Rights | **Complainants**   * To make a complaint and to obtain a review of the complaint * To be accompanied by a person of their choice during the interview; and * Not be subject to retaliation for the reason of having made a complaint under this code of practice   **Respondents**   * To be informed that a complaint has been filed; * To be presented with a written statement of allegations and to be afforded an opportunity to respond to them; and * To be accompanied by a person of their choice during their interview.   **Witnesses**   * Not to be subject to retaliation because he or she has participated as a witness. |
| Informal Procedure | Complainants and managers must use the informal complaint procedure to attempt to resolve workplace harassment unless it is inappropriate to do so.  An effective way to end the problem of harassment in the workplace is to communicate concerns directly by telling the person that the behaviour is unwelcome and must stop or by requesting the manager to do so.  A complainant should request the assistance of a manager in the informal resolution of a workplace harassment complaint. If the communication is done orally the complainant should have the manager present. If done in writing, it is advisable to forward a copy to the manager, and to keep a copy of the letter.  The manager may help with other methods of informal resolution such as discussion and mediation, to assist the parties in voluntarily reaching an acceptable solution.  When the facts are not in dispute and it is determined by the manager that the respondent or any other person has committed an act or acts constituting harassment the manager shall take appropriate action up to and including dismissal.  Nothing in the informal procedure prevents a manager from recommending the matter be investigated or if the informal complaint procedure is not successful from recommending further action. |
| Formal Procedure | Where appropriate, the complainant may choose to file a formal complaint.  The employer is committed to responding to all complaints, however, it is in the manager’s discretion whether or not to investigate a complaint depending on whether:   1. there is a prima facie factual and legal case, 2. there is evidence of substantial loss or damage to the complainant and a clearly identifiable remedy.   If there has been significant delay in filing a complaint, the manager may choose to respond to the complaint if:   1. there are justifiable reasons beyond the complainant’s control for not filing the complaint within a reasonable time, and 2. the respondent will not be unduly prejudiced by the extension.   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 is submitted to the manager.  Depending on the circumstances of the complaint, the manager may consult with the administrator regarding engaging an external investigator. The investigator should not be the decision maker. If the manager is investigating the complaint, the decision maker should be the Administrator.  If at any time a grievance has been filed and the subject matter is the same as, similar in nature or related to the complaint the manager must contact New Brunswick Association of Nursing Homes (NBANH) Labour Relations Counsel – 506-460-6262.  When there is a direct reporting relationship between the complainant and the respondent, 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.  The investigator may upon reviewing the written complaint and interviewing the complainant determine whether or not the complainant has a prima facie complaint under this policy which merits further investigation.  The manager shall inform the complainant whether or not the investigation will be pursued and may take action to resolve the issue.  The respondent shall be informed of the complaint, presented with a written statement of allegations and afforded an opportunity to respond.  Unless directed otherwise the investigator shall gather and analyze the information, summarize the findings and may propose corrective action or make recommendations.  The investigator shall report the findings and recommendations to the Administrator who shall determine whether the respondent has committed an act or acts constituting harassment.  Where it is determined that the respondent has committed an act or acts of harassment, the Administrator shall take appropriate action up to and including dismissal.  The Administrator may take any other action deemed advisable.  A complaint under this Code of Practice that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate disciplinary action.  The parties to the complaint must be informed as to whether the complaint is founded or not and where appropriate, whether action has been taken. |
| Other Options | **Complaints to the New Brunswick Human Rights Commission**  New Brunswick Human Rights Act complaints 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.  **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 lay criminal charges. Sexual and other forms of assault are serious criminal offenses that should be reported to the police.  **Complaints under the NB OH&S Act**  If there are procedural concerns, any individual may contact WorkSafeNB to have an officer come in and review the process in regards to the regulation. |
| Investigator | The investigator should not be the decision maker. If there is a question of the nursing home’s integrity or impartiality, a third party investigator may be advised.  The investigator shall:   * Ensure the respondent 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 process where appropriate; * Prepare a report; and * Ensure the investigation is completed in a timely fashion taking into account particular circumstances.   If there is a concern that at any point in the processes may escalate the situation, managers and administrators are encouraged to contact NBANH legal counsel. |
| Information / Training | Training is a critical component of a harassment prevention strategy. Providing appropriate training informs employees that management will take harassment seriously, encourages employees to report incidents, and demonstrates management’s commitment to deal with reported incidents.  Each Department, in consultation with the Joint Health and Safety Committee, will determine the most appropriate training to be delivered to employees.  Recommended courses for management:   * Conflict Resolution; * Dealing with Difficult People and Situations; * Investigation; * Harassment prevention; * WorkSafeNB Supervisors in Healthcare training * Access Morneau Shepell Manager Consultation services   Recommended courses for employees:   * NBCCSA/WorkSafeNB – Violence & Harassment Awareness Webinar * Gentle Persuasive Approach * CPI Non-Violent Crisis Intervention * UFirst! * Various offerings from the EFAP services (Morneau Shepell) for addressing workplace challenges.   These training records will be kept for three years. |
| Support Services / Medical Assistance | In cases where other support services are deemed to be required, such as access to Employee/Family Assistance Program the Manager will advise and assist the employee to seek such services.  Management: if further legal advice is required, the employer is to contact the NBANH Labour Relations Counsel. |