

WORKPLACE HARASSMENT PREVENTION PROGRAM

Issue Date: June 22, 2011
Employer Review: July, 2020
JHSC Review: July 28, 2020
Revision Date: April 25, 2018

Doc. No: OHS-4.5.7
Approved By: Vice-President, Human Resources
Approval Date: April 27, 2018
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1.0 PURPOSE

The University of Windsor is committed to providing a safe learning and work environment and maintaining a Workplace that is free of workplace harassment as required by the *Occupational Health and Safety Act (Act)*. This document supplements the University's Harassment Prevention Policy (OHS-10-002) and outlines the responsibilities associated with this program. The program will be reviewed annually by the University, in consultation with the University's Joint Health and Safety Committee, to ensure that it adequately implements the University's Harassment Prevention Policy and will be revised as necessary.

The purpose of this program is:

1. To take every precaution reasonable in the circumstances to prevent workplace harassment.
2. To provide guidelines on:
 - how to develop preventative measures
 - how to report and investigate workplace harassment
 - how to follow-up on incidents
3. To assist faculty and staff in addressing workplace harassment.

2.0 SCOPE

This program applies to workers, related third parties, and students.

This program applies to all employees, contractors, volunteers, students and visitors to University workplaces. It also applies at University workplaces and at other places where employees, contractors and volunteers work.

Incidents of violence, sexual assault, or threats of violence should be responded to in accordance with the University of Windsor program on violence in the workplace. In addition, for incidents of sexual misconduct (including sexual harassment or sexual assault), the University's Policy on Sexual Misconduct may also be referenced at: www.uwindsor.ca/sexual-assault

Additionally, this program applies to workplace harassment through the use of social media. For the purposes of this program, "social media" should be broadly understood to include blogs, wikis, microblogs, message boards, chat rooms, electronic newsletters, online forums, social networking sites, and other sites, applications, and services that enable users to create and/or share information and/or content online or to participate in social networking.

3.0 DEFINITIONS

Workplace Harassment: workplace harassment as defined by the *Occupational Health and Safety Act* means:

- a) *engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or*
- b) *workplace sexual harassment*

Workplace Sexual Harassment is further defined by the *Occupational Health and Safety Act* as:

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- a) *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*
- b) *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.*

The University also considers a sexual solicitation or advance, to any worker, regardless of their position, when the person knows or ought reasonably to know that the solicitation or advance is unwelcome, to be a form of workplace sexual harassment.

The definition of workplace harassment is broader than harassment as defined by the *Human Rights Code*.

Examples of workplace harassment under this definition may include, but are not limited to:

- Unwelcome words or actions that are known or ought reasonably to be known to be offensive, embarrassing, humiliating or demeaning to a worker or group of workers
- Behaviour that intimidates, isolates, or discriminates against a worker or group of workers
- Bullying, intimidating or offensive jokes or innuendos, displaying or circulating offensive pictures or materials, or offensive or intimidating phone calls
- Repeated words or actions, or a pattern of behaviours, against a worker or group of workers in the workplace that are known or ought reasonably to be known unwelcome
- Workplace sexual harassment

Examples of behaviour that may constitute workplace sexual harassment include:

- Sharing sexually inappropriate images or videos, such as pornography, with co-workers
- Sending sexually suggestive letters, notes, or e-mails
- Displaying inappropriate sexual images or posters in the workplace
- Telling lewd jokes, or sharing sexual anecdotes
- Making inappropriate sexual gestures
- Staring in a sexually suggestive or offensive manner, or whistling ("cat-calling")
- Making sexual comments about appearance, clothing, or body parts
- Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person
- Asking sexual questions, such as questions about someone's sexual history or their sexual orientation
- Making offensive comments about someone's sexual orientation or gender identity

Workplace harassment does not typically include:

- legitimate performance management
- operational directives
- job assignments

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- inadvertent management errors, or
- a single incident unless grave or harmful

Act: "Act" is the *Occupational Health and Safety Act*, R.S.O. 1990, as amended.

Balance of Probabilities: The test to be met to show, by weight and sufficiency of the evidence presented, that a claim is more likely to be true than not.

Complainant: A "Complainant" is any person who is a worker (including any employee whether covered by a collective agreement with the University or employed under an individual contract of employment), and any person who is a volunteer, all of whom are entitled to submit a complaint under this program.

Contractor: A "Contractor" is an organization, partnership, or individual engaged by the University of Windsor to provide services to the University either personally or with the assistance of other individuals.

OHREA: Office of Human Rights, Equity and Accessibility

OHSa: Occupational Health and Safety Act (Ontario)

Related Third Party: Related Third Party includes a Contractor and the Contractor's employees or subcontractors.

Respondent: The individual or entity about whom allegations have been made.

Supervisor: as defined by the *OHSa*, a person who has charge of a workplace and/or authority over a worker. At the University, supervisors may include both individuals in designated administrative positions (e.g. Deans, Directors, Supervisors) and individuals who are not in such positions but in particular contexts, may have authority in relation to others.

Visitor: A "Visitor" is any person who is not a worker or a related third party who has occasion for any reason to visit the University campus.

Worker: includes faculty, staff, student workers, and any person recognized by the University as a volunteer; as defined in the Occupational Health and Safety Act to include:

- a) a person who performs work or supplies services for monetary compensation, and
- b) a person who performs work or supplies services for no monetary compensation under a program approved by a university.

Workplace: For the purposes of this program, the workplace includes but is not limited to, the University of Windsor campus, locations of business travel and conferences, student placements, field trips and University sponsored social events.

4.0 RESPONSIBILITIES

Shared Responsibilities:

To ensure the preservation of a productive, safe and peaceful learning environment:

- Everyone involved with the University of Windsor shares a responsibility to create and maintain an environment free of Workplace Harassment and to act respectfully to one another

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- Every effort must be made to work toward the resolution of complaints by all those affected
- Anyone who witnesses Workplace Harassment is responsible for bringing it to the attention of his/her Supervisor and for participating in the investigation of the complaint.

Supervisor Responsibilities:

Supervisors are responsible for understanding what constitutes harassing behaviour and conducting themselves in accordance with the spirit and intent of the policy.

Supervisors shall:

- Act respectfully in their interactions with all members of the University community
- Communicate to members of their respective areas that Workplace Harassment is not permitted and will not be condoned or ignored
- Demonstrate by leadership and action a commitment to the prevention of Harassment by maintaining an environment free of workplace harassment
- Communicate the principles of the "Workplace Harassment Prevention" policy and uphold its intent
- Ensure all members of their respective work areas engage in the required training
- Take the steps necessary to put a stop to any harassment of which they are aware, regardless of whether a complaint has been filed
- Take all complaints of harassment seriously
- Promptly and diligently investigate any alleged incident
- Take prompt action to resolve complaints and implement corrective measures
- Encourage and provide opportunity for participation in education and training programs provided by the University
- Provide information to workers on various support programs/mechanisms available to them (e.g. Employee Assistance Program)
- Keep detailed confidential records of any incident of Workplace Harassment and/or investigations and forward to their respective senior executive as required
- Be aware of their roles and responsibilities as set out in the OHSA with respect to workplace violence and harassment.

Workers' Responsibilities:

Workers shall:

- Act respectfully in their interactions with all members of the University community
- Serve as role models in the workplace by promoting a harassment free workplace
- Cooperate with the University in efforts to investigate and resolve matters arising under the program (the worker may choose to request union representation where applicable)
- Be aware of and abide by the requirements of this program and applicable procedure(s)

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- Report any incidents of workplace harassment that have been experienced or witnessed in accordance with the applicable procedure(s)
- Participate in training as required.

5.0 REFERENCE DOCUMENTS

OHS-10-002 Harassment Prevention Policy

The University policy entitled "*OHS-10-002 Workplace Harassment Prevention*" states:

"The University of Windsor is committed to the protection of the health, safety and wellbeing of all members of the University community. As such, the University will take all precautions reasonable to provide and maintain a respectful learning and work environment that is free of harassment. Harassment will not be tolerated in the Workplace."

Ontario Human Rights Code, R.S.O. 1990, c. H.19, as amended

Ontario Occupational Health & Safety Act

The *Occupational Health and Safety Act* requires all employers to take every precaution reasonable in the circumstances to protect workers against workplace harassment.

Criminal Code of Canada

The Criminal Code of Canada makes it an offence for a person to knowingly, or recklessly engage in conduct that causes a person to fear for their safety or the safety of anyone known to them.

University of Windsor Human Rights Policy

The University's Human Rights policy requires the employer to provide a harassment and discrimination free workplace based on the prohibited grounds of discrimination of the *Ontario Human Rights Code*.

University of Windsor Policy on Sexual Misconduct

University of Windsor Procedures for Addressing Student Non-Academic Misconduct

University of Windsor Collective Agreements as applicable

APPENDIX A: Workplace Harassment Complaint Process Map (*OHS-4.5.7a*)

OHS-4.5.7b Workplace Harassment Reporting Form

OHS-10-003 Violence Prevention Policy

OHS-4.5.6 Workplace Violence Prevention Program

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6.0 PROCEDURE

Training and Prevention for Workplace Harassment

All workers will be provided information and instruction on the contents of the policy and program with respect to workplace harassment prevention. Workers are required to complete the *Violence and Harassment Prevention in the Workplace Awareness* training, which can be accessed online at: www.uwindsor.ca/requiredtraining.

Further information about course offerings is available on the Employee Engagement and Development website at: www.uwindsor.ca/engagementanddevelopment.

No Reprisal

Workplace harassment and this program are serious matters. This program prohibits reprisals against workers who have made good faith complaints or provided information regarding a complaint or incident of workplace harassment.

Persons who engage in reprisals or threats of reprisals may be disciplined up to and including dismissal from employment.

Reprisal includes:

- Any act of retaliation that occurs because a person has complained of or provided information about an incident of workplace harassment;
- Intentionally pressuring a person to ignore or not report an incident of workplace harassment; and
- Intentionally pressuring a person to lie or provide less than full cooperation with an investigation of a complaint or incident of workplace harassment.

Bad Faith Allegations

Although false and frivolous accusations of harassment occur in rare instances, such false accusations are serious offences because they may have serious consequences for the respondent.

The insufficiency of evidence to prove a complaint does not mean that the complaint was submitted in bad faith. A malicious or bad faith complaint means that a person who has made a complaint did so when he/she knew or should clearly have known that it was untrue.

A worker who makes a false complaint or otherwise abuses this program may be disciplined up to and including dismissal from employment. Such discipline is not a reprisal or breach of this policy.

Harassment by/of Students

The University does not condone workplace harassment by or toward any student registered in a course or program of study at the University of Windsor ("Student").

- If a worker is subjected to harassing behaviour by a student, he or she should seek support from their Supervisor

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- Although students are not identified under the *Occupational Health and Safety Act*, a student who is subjected to harassing behaviour by a University of Windsor worker should report it to the Associate Vice-President, Student Experience; Dean; Department Head; the worker's Supervisor; and/or the Office of the Vice-President, Human Resources.

Harassment by/of Related Third Parties

The University does not condone harassment by or toward related third parties.

Workers subjected to harassment by a related third party should report it to their Supervisor who will investigate the complaint.

Related third parties who are subjected to harassment by a University of Windsor worker should report it to their contractor.

The contractor should report complaints of harassment to the University of Windsor contract Supervisor.

Harassment by/of Visitors

The University does not condone harassment by or toward visitors.

All members of the University of Windsor community should make it clear to visitors that harassing behaviour is not acceptable at the University of Windsor.

If a worker is subjected to harassment by a visitor, he or she should seek support from his/her Supervisor. Campus Community Police may be called by a Supervisor to escort the visitor(s) off campus and/or take other appropriate action.

Although visitors are not identified under the *Occupational Health and Safety Act*, visitors who are subjected to harassment by a University of Windsor worker should report it to the worker's Supervisor and/or the Office of the Vice-President, Human Resources.

PROCEDURES AND PROCESS

Complaint Process – Informal and Formal Investigation Procedure

1. Confidentiality

All reports made in the course of action taken pursuant to these procedures shall be considered to be confidential to the parties involved. This does not preclude the discreet disclosure of information in order to elicit facts or to implement and monitor terms of resolution.

Confidentiality of information disclosed at any time pursuant to this Program is maintained to the extent possible and consistent with the University's need to respond appropriately to the situation, or as otherwise required by law. This means that information about the complaint, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint.

Please note: In accordance with the *OHSA*, any report created in the course of a harassment investigation is not considered an occupational health and safety report.

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Workers may request union representation as appropriate.

2. Process

The complaint process will be fair:

- The Respondent will be informed of the allegations
- The Respondent will be provided the opportunity to respond
- A decision will be made by the appropriate level of management in consultation with the Vice-President, Human Resources*; or Associate Vice-President, Academic; if required
- In the event of conflict of interest, appropriate alternative measures will be taken

Please reference Appendix A *Workplace Harassment Complaint Process Map* which outlines the complaint reporting process.

**Vice-President, Human Resources means Vice-President, Human Resources or designate*

3. Reporting

All workers are responsible for reporting workplace harassment as defined by the Act to their Supervisor. Should the Respondent be the Complainant's immediate Supervisor, the Complainant should contact the next level of authority (Supervisor, Dean, Department Head), or Human Resources.

In all cases, the Supervisor will follow the reporting procedures as outlined below. If the Supervisor has concerns about whether the matter should be referred to Windsor Police, he or she should consult with Campus Community Police Services. No Supervisor should go to Windsor Police without consulting with Campus Community Police Services.

4. When a Supervisor Becomes Aware of a Workplace Harassment Concern

Within two days of receiving the complaint, the Supervisor assesses the immediate risk, gathers information and documents the concern. He or she will consult with the appropriate office as listed in the Resources section.

The University will ensure that an investigation appropriate in the circumstances is conducted when the Supervisor or Human Resources becomes aware of an incident of workplace harassment. Complaints of harassment may be investigated using the informal or formal process (reference sections below).

If the concern falls within the scope of the *Human Rights Code*, the Supervisor may refer the concern to the Office of Human Rights, Equity and Accessibility (OHREA) for support.

If the concern does not fall within the scope of the *Human Rights Code* or Campus Community Police Services, the Supervisor determines whether the resolution falls within the informal or formal resolution process.

If the respondent is a student and the incident involves student misconduct, the concern is referred to the Associate Vice-President, Student Experience. If the issue is regarding Human Rights, it will be referred to OHREA.

If a complaint under this program is received by any office as identified in the Resources section (Associate Vice-President, Academic; Vice-President, Human Resources; Campus Community Police Services; the applicable

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union representative; and/or OHREA), the Supervisor will be involved in the resolution of the concern, as appropriate.

Should the Supervisor encounter a situation that is deemed unsafe to intervene, the Supervisor should enlist the assistance of their Supervisor or Campus Community Police as appropriate (reference OHS-4.5.6 *Violence Prevention Program*).

5. Early Resolution: Informing the Worker

Whenever possible, a first step is to approach the worker whose conduct is at issue and inform them that the conduct or behaviour is inappropriate, unacceptable and unwelcome. Indicate clearly how it is affecting you and that the behaviour must stop. Indicate that repeated behaviour may give rise to further action. Should discussion with the worker not resolve the issue, or if, for some reason, such discussion is not appropriate, speak with the Supervisor and/or union representative, if applicable.

If a Complainant requires assistance raising a concern before proceeding to a complaint, or in the event direct contact did not resolve the matter, the complainant is to contact their own Supervisor and/or union representative, if applicable.

6. Informal Process

A Supervisor who receives a complaint of workplace harassment resolvable through informal resolution must take reasonable action to assist the Complainant in achieving a resolution within ten (10) days of receiving the complaint.

An informal process may include a range of options such as:

- Communicate concerns directly to the other party that their behaviour is unwelcome, unwanted and the behaviour must stop immediately;
- Communicate the concerns to the other party in writing, describing the impact of the behaviour and that the behaviour must stop immediately;
- Work together to develop strategies to address concerns;
- Informal mediation, and/or
- Agreement to participate in counselling and/or coaching for one or both parties

Efforts at informal resolution are a shared responsibility and should include individual meetings with the parties as appropriate (i.e. Complainant, Respondent, and witnesses).

The parties may decide to meet as a group to discuss the issue. If desired, the parties at the meeting may invite representatives of their union(s).

The Supervisor shall record the details of information provided during the informal resolution process and complete the Workplace Harassment Reporting Form (OHS-4.5.7b).

The Supervisor shall consider if any interim measures are required during the resolution process. Interim measures may change based on the circumstances of the concern and do not reflect the merit of the concern.

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The primary objective of the informal resolution process is to promptly restore and/or maintain a safe and harassment free work environment.

If the concern is not resolved at this stage, then the Supervisor may also seek assistance from the Associate Vice-President, Academic, the Vice-President, Human Resources or Labour Relations. After consultation, the Supervisor may then attempt further informal resolution.

If the concern is resolved through the informal process, a summary of the resolution and any corrective actions, if required, will be communicated to both the Complainant and Respondent in writing. Subsequently, the file is closed and is to be retained by Human Resources.

7. Formal Process

If resolution through the informal process is not possible, the Supervisor shall forward the complaint to the appropriate next level; the Associate Vice-President, Academic; or the Vice-President, Human Resources; to initiate a formal investigation using the *Workplace Harassment Reporting Form* (OHS-4.5.7b).

The Supervisor in consultation with the Associate Vice-President, Academic or the Vice President, Human Resources will make a decision as to what additional interim measures, if any, are required in the workplace while the Associate Vice-President, Academic or the Vice-President, Human Resources considers the complaint.

Any of the parties may request a formal review of the Supervisor's decision to forward a *Workplace Harassment Reporting Form* by submitting additional evidence in writing to the Associate Vice-President, Academic or the Vice-President, Human Resources, within 30 days of receiving the Supervisor's decision.

8. Formal Investigation Procedure

Upon receipt of a request for a formal investigation of a Workplace Harassment concern, the recipient of the complaint will consult with the Vice-President, Human Resources regarding the appointment of an investigator and the investigation shall not exceed 20 working days, unless both parties agree to extend. There may be extenuating circumstances that require this timeframe to be extended without the consent of the parties (e.g.: availability of an investigator).

One of three types of investigators may be appointed:

- internal investigator (i.e. senior manager or trained investigator, including where appropriate, the union designated investigator)
- third-party investigator
- Campus Community Police, where harassment is criminal in nature or constitutes a hate crime.

The investigator will be responsible for establishing the facts, including interviews of the Complainant, the Respondent and any witnesses. The Complainant, Respondent and witnesses will be provided a copy of the information they provided during the course of the investigation.

The Vice-President, Human Resources shall consider if any interim measures are required during the process. Interim measures may change based on the circumstances of the concern and do not reflect the merit of the concern.

The worker may choose to request union representation throughout this process.

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The Complainant, Respondent and witnesses may be called upon with minimal advance notice to ensure the timeliness of the investigation process.

Investigation Process

The investigation process will be fair:

- The Respondent will be informed of any and all allegations
- The Respondent will be provided the opportunity to respond
- A decision will be made by an impartial decision-maker
- In the event of conflict of interest, appropriate alternative measures will be taken
- The investigator interviews the Complainant(s)
- The investigator interviews Respondent(s) if identified
- The investigator meets with any witnesses identified as having knowledge of the incident, if necessary
- If required, the investigator will re-interview the Complainant(s), Respondent(s) or witness(es).

Upon completion of the investigation, the Investigator will prepare and submit a report within 20 working days, unless both parties agree to extend. There may be extenuating circumstances that require this timeframe to be extended without the consent of the parties. The Investigator(s) will prepare and submit a report to the Vice-President, Human Resources. The report will summarize the facts and findings of the investigation and determine whether, on a balance of probabilities, there is:

- sufficient evidence to substantiate a finding of violation of the policy, or
- insufficient or lack of credible evidence to substantiate the alleged violation of the policy, or
- no violation of the harassment policy.

A summary of findings report containing the results of the investigation will be distributed in writing by the Vice-President, Human Resources to the following recipients:

- The Supervisor/Unit Department Head or delegate
- Associate Vice-President, Academic; as relevant
- The Complainant(s)
- Representative of the union(s) of which the Complainant and/or Respondent are members, as relevant
- The Respondent(s), if identified

Space will be provided at the end of the summary of findings for comments of both the Complainant(s) and Respondent(s).

9. Resolution

Based on the investigator's findings, the Vice-President, Human Resources consults with the Supervisor or Associate Vice-President, Academic; or other University officials as relevant, to determine whether further action is warranted (i.e. initiate corrective action).

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Once the investigative process has been completed, the Complainant and Respondent shall be notified in writing of the following:

- the results of the investigation
- corrective actions to be taken, if any; and
- timeframes to complete any corrective actions.

Where a complaint is lodged by more than one Complainant or is against more than one Respondent, the Complainant or Respondent, as the case may be, shall receive only the portions of findings applicable to their specific complaint/response.

The file will be considered closed upon completion of any corrective actions.

10. Follow Up

The Supervisor of both parties will contact the parties periodically, and as required, to ensure that the workplace is safe and harassment free, including free from reprisal for having sought protection pursuant to the Act.

11. Record Keeping

All records relating to the investigation, including all notes and materials and final report will be kept in confidence within Human Resources, for a minimum of one year from the conclusion of the investigation.

OTHER RESOURCES

Further assistance can be provided by the following departments:

Department of Human Resources Contact: 519-253-3000 www.uwindsor.ca/hr

For confidential support, referrals and assistance, please contact 519-253-3000 ext. 2094.

Office of Human Rights, Equity and Accessibility (OHREA) Contact: 519-253-3000 ext. 3400
www.uwindsor.ca/ohrea

OHREA serves as the focal point and primary resource to all members of the University community on matters involving human rights issues.

Campus Community Police Contact: 519-253-3000 ext. 1234 www.uwindsor.ca/campuspolice

In situations involving unwanted or threatening behaviour which may lead to acts of violence, Complainants and Supervisors are strongly advised to contact Campus Community Police. Investigations will be conducted through standard Campus Community Police investigation procedures by trained staff in the department.

Sexual Misconduct Response and Prevention Office Contact: 519-253-3000 ext. 4550
www.uwindsor.ca/sexual-assault

In situations involving sexual misconduct, Complainants may contact the Sexual Misconduct Response and Prevention Office for further guidance.

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External Resources

Additional information and resources are available on the Health and Safety website:
www.uwindsor.ca/safety/wpvh

7.0 REVISION HISTORY

Date (yyyy/mm/dd)	Revision