

Report To: Human Resources Committee, Board of Health
Submitted by: Dr. Nicola Mercer, Medical Officer of Health & CEO
Subject: WORKPLACE HARASSMENT AND SEXUAL HARASSMENT

RECOMMENDATION(S):

- (a) That the Human Resources Committee makes recommendation to the Board of Health to receive this report, for information.

BACKGROUND:

As outlined in Wellington-Dufferin-Guelph Public Health's (WDGPH) Human Resources Committee Report BH.05.OCT1116.R10 – Bill 132 – Sexual Violence and *Harassment Action Plan Act* (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016, on March 6, 2015, the Government of Ontario announced “It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment” and introduced the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016 which came into force September 8, 2016.¹

Bill 132 modified six (6) Ontario Statutes including the *Occupational Health and Safety Act* (OHSA) which directly affects WDGPH. The OHSA was amended on the topics of Workplace Harassment and Workplace Sexual Harassment which expanded the definitions of harassment. Bill 132 also required procedures to permit a worker to report incidents of workplace harassment to a person other than their supervisor/manager (if, for example, the harassing party was the supervisor/manager), how the information from an investigation was disclosed to other parties and how the outcomes of an investigation would be communicated to the person that filed the complaint.

In response to Bill 132, and to ensure continued compliance, WDGPH revised its Workplace Harassment and Workplace Sexual Harassment Policy – CA.52.01.100 (attached hereto as Appendix “A”) and Workplace Harassment Procedure – CA.52.02.100 (attached hereto as Appendix “B”) on August 17, 2016 in accordance with the revised regulatory requirements in order to protect the health and safety of our employees.

In response to several very high profile harassment concerns, covered by the media, WDGPH had the workplace harassment and sexual harassment Policy and Procedure reviewed by legal counsel to ensure continued compliance. In addition, WDGPH provided individual interactive refresher training on workplace harassment, sexual harassment and workplace violence to all WDGPH employees in 2017. Employee training was approximately an hour in duration. Participants were required to complete a skills-assessment at the conclusion of the training.

WDGPH provides the Workplace Harassment and Workplace Sexual Harassment Policy as a condition of employment and also reinforces these requirements through new hire orientation. All employees are provided with workplace harassment, sexual harassment and workplace violence training, at time of hire.

It is the policy of WDGPH that all employees have a right to work in an environment free of personal and/or sexual harassment and to be treated with respect, courtesy and tact. WDGPH and its' employees share the responsibility of ensuring a harassment-free environment. Workplace harassment is behaviour that is prohibited under the Ontario Human Rights Code and the *Occupational Health and Safety Act*.

WDGPH will not tolerate, condone or ignore harassment and is committed to promoting appropriate standards of conduct, at all times. All employees are responsible for respecting the dignity and rights of others, including their co-workers, visitors, volunteers, contractors and the public. All employees have a right to work in a respectful workplace and also to expect co-workers, visitors, volunteers, contractors and the public to treat them respectfully.

PUBLIC HEALTH AND/OR FINANCIAL IMPLICATIONS:

WDGPH recognizes that, due to the public services that we provide to the general public, there are unique challenges from a workplace harassment and a workplace sexual harassment perspective to ensure the safety of our employees. As such, WDGPH may be required to restrict and/or modify how WDGPH services are delivered to these individuals including involving law enforcement, as appropriate.

REFERENCES:

1. Legislative Assembly of Ontario. Bill 132, Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016. [Online]. Cited 2016 09 08. Available from:
http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=3535&detailPage=bills_detail_the_bill.

APPENDICES:

Appendix "A" – WDGPH Workplace Harassment Policy CA.52.01.100

Appendix "B" – WDGPH Workplace Harassment Procedure CA.52.02.100

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Original signed document on file

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POLICY

CATEGORY:	Human Resources	NUMBER:	CA.52.01.100
SUBJECT:	Workplace Harassment and Workplace Sexual Harassment	EFFECTIVE:	January 17, 2018
DIVISION:	Human Resources and Corporate Services	PAGE(S):	1 of 4
REPLACES:	CA.52.01.100 Harassment and Discrimination		

POLICY:

It is the policy of Wellington-Dufferin-Guelph Public Health (WDGPH) that all employees have a right to work in an environment free of personal and/or sexual harassment and to be treated with respect, courtesy and tact. The Agency and its' employees share the responsibility of ensuring a harassment-free environment. Workplace harassment is behaviour that is prohibited under the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*.

WDGPH will not tolerate, condone or ignore harassment and is committed to promoting appropriate standards of conduct at all times. All employees are responsible for respecting the dignity and rights of others, including their co-workers, visitors, volunteers, contractors, and the public. All employees have a right to work in a respectful workplace and also to expect co-workers, visitors, volunteers, contractors, and the public to treat them respectfully.

SCOPE:

This policy applies to all employees actively employed with WDGPH.

WORKPLACE HARASSMENT

Workplace harassment may have some or all of the following components:

- It is generally repetitive, although a single *serious* incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect;
- It is hostile, abusive or inappropriate; or
- It affects the person's dignity or psychological integrity.

Some examples of workplace harassment may include:

- Verbally abusive behaviour such as yelling, insults, and name calling including remarks, jokes or innuendos that demean, ridicule, intimidate or offend;
- Workplace pranks or practical jokes that embarrass or insult someone;
- Negative blogging, cyber-bullying;
- Regular use of profanity and abusive or offensive language;
- Aggressive behaviours such as slamming doors or throwing objects;
- Sabotaging someone else's work; or
- Making false allegations about someone.

Some examples of workplace discriminatory harassment may include but are not limited to:

- Offensive comments, jokes or behaviour that disparage or ridicule a person's membership in one of the protected groups;
- Imitating a person's accent, speech or mannerisms;
- Persistent or inappropriate questions about whether a person is pregnant, has children or plans to have children; or

- Inappropriate comments or jokes about an individual's age, sexual orientation, same sex partnership status, attire, customs or personal appearance.

POISONED WORK ENVIRONMENT

Harassing conduct or comments can poison someone's working environment making it a hostile or uncomfortable place to work, even if the person is not being directly targeted. This is commonly referred to as a poisoned working environment and it is a form of harassment.

Some examples of actions that may create a poisoned work environment may include:

- Displaying offensive or sexual materials such as posters, pictures, calendars, websites or screen savers;
- Distributing offensive email messages or attachments such as pictures or video files; or
- Jokes or insults that are offensive, racist or discriminatory in nature.

WORKPLACE SEXUAL HARASSMENT

Both men and women can be victims of sexual harassment and persons can harass someone else of the same or opposite sex.

Some examples of sexual harassment may include:

- Sexual advances or solicitations that the recipient does not welcome and which the person engaging in the conduct knows or ought reasonably to know would be unwelcome;
- Threats, punishment or denial of a benefit for refusing a sexual advance;
- Leering (persistent sexual staring);
- Displaying or circulating sexually offensive material such as posters, pictures, calendars, cartoons, screen savers, pornographic or erotic websites or other electronic material;
- Sexually suggestive or obscene comments or gestures;
- Unwelcome remarks, jokes, innuendoes, propositions or taunting about a person's body, clothing or sex;
- Persistent, unwanted attention after a consensual relationship ends;
- Physical contact of a sexual nature, such as touching or caressing; or
- Sexual assault.

WHAT WORKPLACE HARASSMENT IS NOT

Reasonable action or conduct by a Manager or Supervisor that is part of his or her normal work function would not normally be considered workplace harassment. This is the case even if there are sometimes unpleasant consequences for a worker.

For example, workplace harassment does not include:

- Requesting medical documents or other appropriate documentation to support of an absence from work;
- Measures to correct performance deficiencies, such as placing someone on a performance improvement plan or criticism of an employee's conduct or performance;
- Transfers to other programs or shifts;
- Changes in work assignments;
- Job assessment or observations;
- Enforcement of Agency rules and procedures; and
- Administering disciplinary action for workplace infractions.

Also, differences in opinion or minor disagreements between co-workers would not generally be considered workplace harassment.

In addition, this policy is not meant to inhibit the free speech of our employees nor is it intended to interfere with the normal social relations that are part of working within this Agency.

CONFIDENTIALITY

The Occupational Health and Safety Act S 32.0.7(1)(b) requires that a worker who has allegedly experienced workplace harassment and the alleged harasser be informed of the results of the investigation and of any corrective action that has been taken or will be taken by the Agency as a result of an investigation. Every effort will be taken to ensure confidentiality for employees involved in incidents of harassment. However, complete confidentiality is not possible in all circumstances and cannot be guaranteed. Limited information may need to be disclosed for the purposes of investigations, taking corrective action with respect to the incident or complaint, grievance proceedings or for legal compliance requirements.

NO REPRISALS

No reprisals or threats of reprisal will be made or taken against an employee who files a complaint in good faith. If an employee believes that a reprisal or threat of reprisal has been made or taken, he/she should immediately report this to his/her immediate Supervisor/Manager, their Director, the Medical Officer of Health, and/or the Human Resources Manager. Employees who engage in reprisals or threats of reprisals may be disciplined up to and including termination.

COMPLAINTS NOT IN GOOD FAITH

An employee who makes a complaint not in good faith may be disciplined up to and including termination. Such discipline is not a reprisal or breach of this policy.

WORK REFUSAL

There is no legislative right that allows employees to refuse work because of harassment. Refer to Health and Safety policy CA.56.01.120 *Refusal to Work*.

REPORTING WORKPLACE HARASSMENT

WDGPH has set up guidelines for employees to follow to report harassment issues. Refer to procedure CA.52.02.100 *Workplace Harassment and Workplace Sexual Harassment*.

DEFINITIONS:

Workplace Harassment – *The Occupational Health and Safety Act* defines workplace harassment as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known, or ought reasonably to be known as, unwelcome or workplace sexual harassment.

Discriminatory Harassment – The *Ontario Human Rights Code* defines discriminatory harassment as a course of improper conduct or comments based on one or more of the protected grounds listed in the Code, which a person knows or ought reasonably to know would be unwelcome. Protected grounds under the Code include race,

ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age; marital status; family status handicap; and any other legally protected status under the Code.

Workplace Sexual Harassment – *The Occupational Health and Safety Act* defines workplace sexual Harassment as engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identify or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome or 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.

Workplace – A building, vehicle, open, external area where a worker is required to be there, or near there, as part of their job. Workplace may be any land, premises, location, internal or near which an employee works.

REFERENCES AND RELATED FORMS, POLICIES AND PROCEDURES:

Corresponding Procedure: CA.52.02.100 Workplace Harassment and Workplace Sexual Harassment
CA.56.01.119 *Violence Prevention*
CA.56.01.120 *Refusal to Work*
Occupational Health and Safety Act, Ontario
Ontario Human Rights Code

Contact for inquiries: Manager, Human Resources

Original document signed by: Director, Administrative Services *Signed document on file* _____

Dates Revised: Apr 2002, May 1, 2010, Feb 15, 2011, Aug 17, 2016
Dates Reviewed:

PROCEDURE

CATEGORY:	Human Resources	NUMBER:	CA.52.02.100
SUBJECT:	Workplace Harassment and Workplace Sexual Harassment	EFFECTIVE:	January 17, 2018
DIVISION:	Administrative Services	PAGE(S):	1 of 4
REPLACES:	CA.52.01.100 Harassment and Discrimination		

PURPOSE:

Wellington-Dufferin-Guelph Public Health (WDGPH) is committed to investigating reported incidents of harassment in a prompt, objective, and sensitive manner taking necessary corrective action and providing appropriate support for victims.

PROCEDURE:

If an employee believes that they are being harassed, that employee should:

- Immediately make the individual(s) aware that their behaviour is unwelcome and ask them to stop; and
- Document the event(s), complete with the time, date, location, names of witnesses and details of the event.

If the harassment does not stop at this point or if the harassed employee does not feel he/she is able to approach the alleged harasser directly, that employee should seek the assistance of their Manager, Director and/or Human Resources. Union employees may also discuss the matter with their ONA representative.

To determine whether harassment has occurred employees need to consider:

- Whether the recipient found the behaviour offensive; and
- Whether a person knew or reasonably ought to have known that the behaviour would be considered unwelcome or offensive by the recipient.

Workplace Resolution Process

The process to resolve a workplace harassment concern varies and will depend upon the unique specifics of the particular situation.

WDGPH encourages the complainant to meet and discuss their concerns with the alleged harasser when appropriate and if the complainant feels safe to do so.

The discussion could be conducted:

- In a meeting between the complainant and the alleged harasser; or
- In a meeting with a neutral third party such as a Manager and/or Human Resources and the complainant and the alleged harasser.

An investigation will occur when:

- If it does not appear that the matter can be resolved on an informal basis;
- The Agency is made aware of a harassment issue that is in violation of WDGPH's workplace harassment policy that the Agency considers to be serious regardless of whether a complaint is made;
- If the complainant does not feel comfortable and/or safe to meet with the other party; or
- Based on the complexity of the complaint and/or the severity of the allegations.

Investigation Process

WDGPH endeavors to resolve all complaints of workplace harassment as expeditiously as possible.

The Manager/Director and Human Resources will interview the harassed employee, the alleged harasser and any witnesses. The interviews will be documented and the outcome of the investigation will be communicated to both parties in writing where appropriate. Investigation documentation and notes will be kept confidential and stored separately from an employee's personnel file.

Alternatively, WDGPH may retain a qualified external consultant to conduct an investigation in complex and/or highly sensitive allegations.

The Human Resources department has the discretion to refuse to intervene or investigate, or may discontinue an intervention or investigation where the complaint involves minor misconduct and can reasonably be resolved without a formal investigation, where an adequate remedy already exists, where the complaint is frivolous, vexatious, or not made in good faith, another complaint avenue has been pursued, or having regard to all the circumstances, further investigation of the matter is unnecessary.

Mediation

It is a basic requirement for employees to work together in a professional manner. Mediation is a voluntary process (i.e. both the complainant and the alleged harasser have to agree to participate) where the parties would meet with a trained mediator to determine whether the dispute can be resolved in a mutually satisfactory manner. In specific situations, WDGPH may determine that mediation is required to assist with resolving the issue. The mediator may be a neutral third party internal to WDGPH or an external party who would be hired at the expense of the Agency.

Other

The remedy in a substantiated case of workplace harassment will be determined based on the results of the investigation. Some of the corrective action that WDGPH may take depending on the evidence may include but is not limited to:

- A directive by WDGPH to the offending party to cease and desist specific inappropriate behaviours;
- A verbal and/or written apology from the offender to the complainant;
- Disciplinary action consistent with policy CA.52.01.142 *Progressive Discipline Process*;
- For third party contractors, advising the third party contractor of the Agency's concerns and/or prohibiting a specific contractor employee from returning to WDGPH facilities; or
- In the case of someone from the general public that WDGPH provides services to, restricting and/or modifying how WDGPH services are delivered to them and involving law enforcement, as appropriate.

RESPONSIBILITIES:

Senior management, managers, and employees share responsibility to maintain an environment free from harassment and discrimination and refrain from engaging in any behaviour that may reasonably be perceived as harassment or discrimination.

Senior Management will:

- Provide a safe workplace free from harassment, threats of harassment, intimidation and other disruptive behaviours;
- Carry out management responsibilities, including performance management, and training in a manner that does not abuse authority, undermine performance or intimidate staff;
- Provide awareness education on harassment and discrimination, information and training to all employees;
- Ensure confidentiality, respect, and consideration for all employees;
- Encourage employees to report concerns regarding harassment or possible harassment in the workplace;
- Provide and promote the use of Employee Assistance Programs, other emotional and medical support programs;
- Establish procedures for preventing, reporting, investigating, documenting and responding immediately to complaints;
- Ensure compliance by all persons who have a relationship with WDGPH including contractors, volunteers, physicians, clients and others to whom employees may come in contact with during their time of employment;
- Respond to and resolve all complaints of harassment and take corrective action as required to maintain a safe work environment; and
- Participate in investigations as required.

Managers will:

- Know, promote and implement policies and procedures; monitor employee compliance;
- Encourage employees to report possible workplace harassment and violence situations that could occur in order to ensure a safe work environment for all employees;
- Ensure confidentiality, respect and consideration for all employees;
- Maintain confidentiality as required that does not conflict with ensuring a safe work environment and aligns with policy CA.52.01.100 *Workplace Harassment and Workplace Sexual Harassment*;
- Provide instruction, information and supervision to protect employees from workplace harassment;
- Integrate proper behaviour regarding harassment into day-to-day activities;
- Identify harassment situations and provide control strategies to minimize risk of harassment;
- Investigate all workplace harassment in conjunction with Human Resources;
- Work with employees and Human Resources to determine best resolutions;
- Advise their Director and Human Resources of harassment situation;
- Ensure all new employees review the policy CA.52.01.100 and procedure CA.52.02.100 *Workplace Harassment and Workplace Sexual Harassment* as part of their orientation process; and
- Participate in investigations as required.

Human Resources will:

- Provide guidance and support to all workplace parties in the establishment and administration of policies and process that prevent workplace harassment and violence;
- Encourage employees to report possible workplace harassment and violence situations that could occur in order to ensure a safe work environment for all employees;
- Provide guidance and support to employees and supervisors to resolve workplace harassment concerns;
- Respond promptly to all reports of workplace harassment;
- Work in conjunction with Supervisor/Management personnel in an investigation to ensure the maintenance of accurate notes and records;

- Examine all relevant facts to determine the outcome of the investigation and recommend appropriate corrective action to Senior Management;
- Share information with the Joint Health and Safety Committee (JHSC) as appropriate;
- Initiate corrective active requests; and
- Investigate workplace harassment complaints in conjunction with Managers.

Joint Health and Safety Committee will:

- With the guidance of the Health and Safety and Emergency Preparedness Officer, provide recommendations to management to reduce or eliminate workplace harassment;
- Respond to employee concerns related to workplace harassment and communicate these concerns to management; and
- Assist in the review of the policy, procedures and their effectiveness.

Employees will:

- Tell the alleged harasser to stop;
- Act respectfully towards others and work in compliance with WDGPH policies and procedures;
- Not engage in or ignore bullying, teasing, harassing or intimidating behaviours;
- Immediately report to Human Resources, their Supervisor or their Director any incident where the employee is subjected to, witnesses or has knowledge of workplace harassment;
- Understand what workplace harassment is and their responsibility as employees;
- Seek guidance from Human Resources and/or their Manager on how to address the situation or incident;
- Seek support if confronted with threats of harassment in the workplace including the Employee Assistance Program;
- Maintain a personal written record of the alleged nature of the harassment/discrimination, date(s), time(s), behaviour and list of witness(es);
- Participate in investigations, corrective action, and follow-up action as requested; and
- Where an employee of WDGPH is performing job responsibilities and feels harassed/discriminated by a client or a member of the public, they will discuss this issue immediately with their Manager to determine the most appropriate course of action.

REFERENCES AND RELATED FORMS, POLICIES AND PROCEDURES:

Corresponding Policy: CA.52.01.100 *Workplace Harassment and Workplace Sexual Harassment*
CA.52.01.142 – Progressive Discipline Process

Contact for inquiries: Manager, Human Resources

Approved by: Director, Administrative Services *Signed document on file* _____

Dates Revised: Apr 2002, May 1, 2010, Feb 15, 2011, Aug 17, 2016
Dates Reviewed: