

Human Rights Policy:

Preventing Discrimination in the Workplace

B.C. Human Rights Clinic

Prevention is Key

Left unattended, discrimination and harassment in a workplace can be costly. Victims suffer and employers experience a loss of productivity, damaged employee morale, and the time and expense of dealing with formal complaints.

The courts have told us that employers are liable for acts of harassment and discrimination that occur in the workplace. Even if the employer is not aware of a particular incident, the courts have held employers liable for the acts of their employees. The courts have also told us that employers who take reasonable steps to help people understand discrimination, and who work hard to eliminate discrimination, may be held less liable.

Workplace policies that address discrimination and harassment set out the standard of acceptable conduct and are an employer's way of addressing liability and complying with the law. Human rights policies can help to prevent discrimination in the workplace while also serving as a critical management tool for addressing issues as they arise.

Anti-discrimination policies explain what discrimination is, tell all employees that discrimination will not be tolerated, and set out how employers and employees should respond to incidents of discrimination.

Planning and Development Stage

In order for any human rights policy to be effective, it must be supported by management. Make sure that senior executives understand the obligation to provide a discrimination-free workplace, the benefits of a healthy and respectful work environment, and the need for comprehensive human rights policies to support these objectives.

Often, a Human Rights Committee is established to do much of the work involved. This committee should involve people from all levels of the company and its role is to develop time lines and initiate and design a strategic plan that can be put into action in a step by step process. Common committee goals include:

- providing ongoing mandatory human rights education and training to all employees,

- designing policy or contract language that provides definitions of discrimination and harassment and develops appropriate complaint procedures and remedies,
- development of an appropriate employment equity program,
- provision of occasional information workshops on specific issues, such as the duty to accommodate and how that duty effects workplace practise and procedures,
- review and monitoring of existing policy.

Policy Development

1. Clearly define your policy objectives and set them in writing in order to guide the process. What do you want to achieve?

- to increase workplace understanding of discrimination and / or harassment,
- to ensure all employees understand certain types of behaviour and conduct that will not be tolerated,
- to define a process for dealing with discrimination,
- to define a process or protocol for addressing accommodation issues,
- to offer remedies for people who experience discrimination,
- to hold offenders accountable for their behaviour.

2. What types of discrimination and / or harassment will be covered?

Are you developing a policy that applies to harassment only? If so, it should extend to all prohibited grounds of discrimination under the BC *Human Rights Code*. You should also extend the scope of a harassment policy to include personal and criminal harassment.

Will your policy extend to other forms of discrimination such as differential treatment, employment equity and / or hate propoganda? If so, you should include appropriate definitions and examples. As well, you will have to decide if separate protocols and procedures are required.

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3. Who is covered by the Policy?

Applying human rights policy equally, regardless of status or position, is an important part of creating a respectful and discrimination-free workplace.

In addition, you may also need to consider the following:

- determine to whom the policy will apply in the unionized setting and the role that the union will play in different complaint scenarios,
- determine the application of the policy to situations including non-employees such as patients, students, volunteers, customers, clients, suppliers, contractors and so on.

Content of a Human Rights or Harassment Policy – Common Elements:

1. Policy statement – A short clear expression of the corporate commitment to providing a workplace free from discrimination and harassment.
2. Indication of what laws are referenced - (e.g. *BC Human Rights Code, Criminal Code*).
3. Definitions of discrimination and / or harassment and clear descriptions of inappropriate behaviour and conduct.
4. Expression of employees' rights and responsibilities such as: the right to a discrimination-free workplace; the responsibility to treat other employees with respect; the responsibility to speak up when discrimination occurs; the responsibility to report discrimination to the appropriate person; and the provisions and limitations of confidentiality under the policy.
5. Supervisors', managers', and employers' rights and responsibilities such as: the right to evaluate employees based on criteria related to their job; the responsibility to treat all employees, clients, suppliers, contractors with respect; the responsibility to report or investigate all complaints; the responsibility to set a good example; and the responsibility to refuse to tolerate discrimination.
6. Procedures are at the heart of policy and should be designed to ensure that allegations of discrimination will be dealt with in a serious, timely, and confidential manner.

Employers should always act quickly to deal with the first signs of a problem that may be related to discrimination, even if a formal complaint has not been filed.

Often, employers assign or designate procedural responsibilities under the policy to specific individuals in an organization. At times they consider using the services of an independent, impartial investigator for formal complaints. In either case, management should remain neutral and impartial until all facts and evidence

have been gathered or until an informal settlement has been reached.

Most human rights and harassment policies allow for two channels to handle complaints; one informal and one formal. Both channels should be designed to offer timely resolutions, and both channels must respect the rights of the parties involved.

i. Informal process

When both parties agree, mediation or discussions can be used to quickly resolve complaints. Both parties need to agree to the process, and as a tool, mediation can be utilized at any point during the process of dealing with a complaint. The role of the mediator is to assist the parties in solving their issue. In order to do so, they need to be knowledgeable about human rights legislation and remain impartial and neutral throughout the process. In many cases this may require special training.

ii. Formal process - Investigation

Formal complaints should be investigated and dealt with promptly. Because an investigation will proceed, allegations must be in writing and signed by the person bringing them forward. The alleged offender should receive copy of the allegations and be given an opportunity to respond to them before an investigation begins. A thorough investigation would:

- include interviews with the complainant, the complainant's witnesses, the alleged offender and his or her witnesses,
- examine all relevant documents, records and personnel files if necessary,
- provide a written summary of the full investigation to the complainant and the alleged offender. Both parties should be given the opportunity to provide comments on the content of this summary before the full report is finalized,
- the full investigation report should be submitted to the person who is responsible for the management of the complaint and it should include: who was interviewed, what questions they were asked, what conclusions the investigator came to about the discrimination, and what possible remedies, penalties, or other action may be appropriate in the particular case.

Your policy should remind all employees that they have a responsibility to co-operate in an investigation.

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Further procedures to include in your policy include:

- practical guidelines for employees and management, such as who receives complaints and what their roles are,
- detailed steps to be taken by all parties,
- a reasonable time frame for dealing with complaints,
- identification of people responsible for specific policy roles and decisions,
- information about other agencies that deal with discrimination and harassment.

7. Set out the range of remedies, corrective action, and safeguards for those involved in complaints such as:

- possible remedies for people affected by discrimination,
- the range of disciplinary consequences associated with the policy content,
- options for group intervention,
- whether information about the complaint will be included in an offender's file,
- information confirming that the complaint will not be put in the complainant's personnel file, when the complaint is in good faith,
- protection against retribution or retaliation for employees who complain of discrimination, who report discrimination that they witnessed, or who support a complainant.

Remedies and Corrective Actions

The purpose of any human rights policy is to prevent, and where it has not prevented, to remedy the consequences of discrimination. The primary focus of any remedy should therefore be on the victim of discrimination ensuring they are made whole, or put into the place they would have been had the discrimination not happened.

Possible Policy Remedies:

- an oral or written apology,
- lost wages incurred as a result of the violation,
- compensation or reinstatement of any lost benefits, such as sick leave, pension benefits, raises, overtime, shift bonuses, or higher rates of pay etc.,
- a job or promotion that was denied,
- the reasonable cost of counselling,
- a position away from the harasser and / or a commitment that they will not be transferred, or will

have a transfer reversed, unless they choose to move,

- no record of the complaint, investigation or decision should go in the employee's personnel file if the complaint was made in good faith,
- any unfavourable work review or comments that were placed in the complainant's personnel file because of the actions should be removed from the file.

Corrective Action for Offenders:

Someone who has discriminated or harassed another person needs to be held accountable for their actions. Disciplinary consequences should be clearly set out in policy and corrective measures such as education should form part of the solution.

Common forms of discipline applied include:

- a written reprimand,
- a suspension, with or without pay,
- a transfer, if it is not reasonable for the people involved to continue working together, or,
- a demotion.

In most cases, the offender should also be required to attend an anti-harassment or a human rights training session.

If the investigation does not find evidence to support the complaint, there should be no documentation concerning the complaint placed in the file of the alleged offender. When the investigation reveals a policy violation, the incident and the discipline which is imposed on the offender should be recorded in their file.

Tips for a Successful Implementation

Education is a critical step in any preventative strategy. In the case of human rights policy, everyone must know that the policy exists and management must ensure that staff at all levels are aware of the ongoing commitment to that policy. A good policy also serves to foster a greater understanding of the true nature of discrimination and harassment and its destructive consequences.

Orientation to policy - Everyone who is covered by the policy must have a copy and understand its content. Information sessions are a good way to introduce the policy, and it should be included in orientation packages

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for all new employees. You can also post the policy in several, easily accessible places.

Ongoing education on human rights and discrimination

Ongoing education of employees is crucial to a successful policy and this education should be made mandatory. A continuous approach to education reminds employees of definitions and inappropriate behaviours and builds confidence in those that need to deal with such behaviour. It also reinforces management's commitment and limits potential liability.

Training for Managers

Managers are largely responsible for creating workplace culture. If managers at all levels show respect for all employees, show they won't tolerate discriminating behaviour, and make it clear that they support the policy, discrimination will be much less likely to occur. The more knowledgeable managers are about identifying discrimination and how to handle it, the more easily problems will be resolved, and the smoother the workplace will function.

Training human rights advisors, mediators, and investigators

If possible consider appointing a human rights advisor in the organization and ensure they receive the necessary training. Their presence may encourage some people to bring forward informal complaints, or alternatively their presence may deter inappropriate actions or behaviours.

Monitor and adjust the policy

Like all workplace policies, you need to monitor and adjust a human rights policy in order to fill gaps, clarify sections or words, adjust processes that didn't work, identify further training needs, and to reflect changes in the organization and the law.

You should always allow those affected by the policy to have input into this process.

A Preventative Strategy is Key

- make it clear that discrimination in the workplace will not be tolerated by anyone,
- take action to eliminate discriminatory jokes, posters, graffiti, e-mails and photos at the work site,
- provide continuous education and information about discrimination to all staff on a regular basis,
- make sure that all managers and supervisors understand their responsibility to provide a discrimination-free work environment,

- develop a human rights policy that addresses discrimination and harassment. Show you mean it by making the policy apply to everyone,
- communicate the policy to all employees,
- promptly investigate and deal with all complaints of discrimination,
- provide protection and support for the employees who feel they are being discriminated against,
- appropriately discipline employees who discriminate against other employees.

Grounds of Discrimination

The grounds of discrimination prohibited by the *BC Human Rights Code* are age, race, colour, ancestry, place or origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, and in the case of employment, unrelated criminal convictions. "Age" means an age of 19 years or more.

More Assistance and Resources - Current Definitions

See the Ministry of Justice human rights information pamphlets titled "Harassment" and "Protection from Discrimination" at www.ag.gov.bc.ca/human-rights-protection. Also refer to the Clinic's definition sheet titled "Harassment".

Formal Complaints

The BC Human Rights Tribunal accepts, mediates and adjudicates all formal complaints of discrimination filed under the BC Human Rights Code. Complaints must be filled within six months of the incident.

BC Human Rights Tribunal
Suite 1170 – 605 Robson Street
Vancouver, BC V6B 5J3
Ph: 604.775.2000
Toll Free: 1.888.440.8844
TTY: 604.775.2021
Fax: 604.775.2020
Web: www.bchrt.bc.ca

Education, Consultation and Training

The Human Rights Clinic delivers education in regards to human rights policies. We also have a large collection of materials relating to policies. Call us if we can be of further assistance.