Workplace Harassment Investigation Guidelines

Guidelines for Investigating Non-Human Rights Code Based Workplace Harassment and Bullying Complaints

Effective Date: January 2015
Revised Date: January 2025

Lead: Director, Human Resources (Staff Relations)

Purpose:

The University has a legislative and ethical obligation to address allegations of workplace harassment and bullying in a timely, objective, and fair manner.

Scope:

These guidelines apply to workplace harassment and bullying complaints filed by all University employees excluding members of University of Guelph Faculty Association (UGFA) and members of CUPE 3913 Unit 1 and 2.

Definitions:

Workplace Harassment: Engaging in a course of vexatious comment or conduct against a Worker, in a workplace, including virtually through the use of information and communications technology that is known or ought reasonably to be known to be unwelcome or Workplace Sexual Harassment (see below).

Workplace Sexual Harassment means:

1. Engaging in a course of vexatious comment or conduct against a worker in a workplace including virtually through the use of information and communications technology 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
2. 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 Bullying: the tendency of individuals or groups to use persistent aggressive or unreasonable behaviour against a co-worker.

Consensus decision making: is a group decision making process that seeks not only the agreement of most participants but also the resolution or mitigation of minority objections.

Submission of a Complaint or Incident Report:

Complaints of workplace harassment or bullying are to be submitted in writing via a Workplace Harassment Reporting Form submitted to Occupational Health and Wellness who will then forward it to the Director, Staff Relations for follow-up. The Workplace Harassment Reporting Form [1] can be found on the University's Human Resources Website at, Workplace Harassment Prevention Policy and Program [2].

If a bargaining unit member wishes to file a grievance at the same time as filing a workplace harassment complaint, the grievance will generally be held in abeyance until the formal investigation of the complaint is complete.

Investigation Preparation:

- The Director, Staff Relations will establish a Fact Finding Team, typically three people, led by the Director, Staff Relations, or designate, a member of management from the department in question, along with a member of management from outside of the department. The Director may choose to retain an external investigator if required.
- The members of the Fact Finding Team will disclose to the Director, Staff Relations any potential conflicts of interest that they have with any of the parties to the complaint. The Director, Staff Relations will determine whether a declared potential conflict of interest exists which will result in the replacement of the member in question. The nature and circumstances of all declared conflicts of interest, together with the Fact Finding Team's conclusions regarding the matter, will be noted in writing in both the draft and final report concerning the formal complaint.
- The complainant or respondent may promptly challenge the participation of one (1) or more individuals to a fact-finding team on the ground that the individual has a potential conflict of interest in the outcome of the matter or that there is a reasonable apprehension of bias on that individual's part. A party raising the challenge will promptly state the challenge upon becoming aware of it, in writing to the Director, Staff Relations. The challenge will then be provided to the Associate Vice-President (Human Resources) and the decision with regard to the potential for conflict of interest or bias will be made within five (5) working days of having received the challenge. The decision will be final.
- The Director, Staff Relations, in consultation with the Senior Management of the complainant's department, will determine if any immediate action or interim measures are required, such as making arrangements for alternative supervisory relationships, or discontinuing contact between the complainant and respondent during the period of the investigation and resolution process.
- The Director, Staff Relations, or designate will, within five (5) university working days of receipt of the written complaint or Incident Report, meet with the complainant (and a support person as requested). The investigation process will be outlined.
- The Director, Staff Relations, or designate will, within five (5) university working days of meeting with the complainant, meet with the respondent (and a support person as requested) and provide a copy of the complaint and/or incident report. The investigation process will also be outlined.
- The Director, Staff Relations will request that the respondent provide to Staff Relations a written response to the formal complaint within the following ten (10) university working days.
- The Director, Staff Relations will provide the respondent's written response to the complainant and ask that the complainant to provide a written reply within ten (10) working days.
- The fact finding process will commence on the expiry of the time permitted for response.
- The complainant and respondent are encouraged to seek the assistance of one (1) or more of the following individuals: Union or employee group representative; EAP; colleague. As this is an internal process external legal counsel are not permitted to attend meetings.
- A complaint may be withdrawn at any time, but the withdrawal of the complaint must be done in writing. The University may elect to continue to investigate the complaint following a withdrawal.

Fact Finding Process:

The Fact Finding Team may conduct an investigation in order to inform its conclusions. The Fact finding team will attempt to make all decisions by consensus, however where this is not possible, the Fact Finding Team will vote on the issue and abide by a majority decision. The report of the Fact Finding Team may reflect, without attribution, a different view of all or any part of the report held by a member of the Fact Finding Team.

Allegations of harassment must be proven on a "balance of probabilities", the same standard used in human rights inquiries and civil law matters. The onus of proof lies on the party making the complaint.

Upon the request of all parties, the Fact Finding Team may decide to suspend any fact finding in the event that the parties agree to participate in mediation or some other form of alternative dispute resolution (ADR). In determining whether the complaint is amenable to mediation or ADR, the Fact Finding Team will consider the University's legal responsibility to provide an environment free from harassment and whether the matter involves express or implied threats, intimidation, or coercion.

The filing of a counter-complaint by a respondent against a complainant regarding matters subject to a fact finding under these procedures need not result in a separate fact-finding. The allegations raised by the respondent may be addressed within the scope of the original fact finding.

The Fact Finding Team will devise a plan under which it will interview the complainant, the respondent and witnesses. In addition, the Fact Finding Team will make note of those persons who, although named as witnesses, in its view had no information bearing on the allegations or were not available for interview. If it appears to the Fact Finding Team that other persons not named by the parties may have information related to the formal complaint, efforts will be made to interview those potential witnesses. It may, at the discretion of the Fact Finding Team, be necessary to re-interview the complainant and/or respondent before issuing the final report.

Report of the Fact Finding Team:

Once the fact finding process is complete, the Fact Finding Team will give a copy of its report to the parties detailing the following:

1. Nature and circumstances of all declared potential conflicts of interest, together with the conclusions regarding those matters or the outcome of any challenges;
2. Allegations giving rise to the formal complaint, or counter complaint if applicable;
3. Any responses of the respondent and complainant;
4. The number of persons interviewed by the Fact Finding Team;
5. The nature of the evidence provided by the complainant, respondent and the witnesses;
6. Findings of fact including whether workplace harassment occurred.

Copies of the final report of the Fact Finding Team will be distributed by the Director, Staff Relations to the Associate Vice-President (Human Resources), and the Vice-President (Finance and Administration & Risk).

An employee who is not in agreement with the outcome of the investigation may elect to file a grievance or dispute in accordance with the terms of the applicable employee agreement, or University Policy. The Director, Staff Relations or designate will hear the dispute and decide whether the new evidence presented is relevant and the investigation needs to be re-opened or if the file remains closed. There will be no further appeals.

Decision - AVP Human Resources and VP Administration

The Associate Vice-President (Human Resources) and the Vice-President (Finance, Administration & Risk), in receipt of the final report, will decide in consultation with Senior Management and in accordance with the terms and conditions of the applicable Collective Agreement or Policies Compact, what action will be taken.

Source URL:https://www.uoguelph.ca/hr/about-hr/environmental-health-safety-ehs/workplace-harassmentviolence-prevention-policies-and-2

Links
[1] https://www.uoguelph.ca/hr/system/files/Workplace%20Harassment%20Reporting%20Form_3.pdf [2] https://www.uoguelph.ca/hr/hr-services/environmental-health-safety-ehs/workplace-harassment-prevention-policy-and-program