

AMALGAMATED TRANSIT UNION LOCAL 569

WORKPLACE HARASSMENT POLICY

Purpose

The purpose of this policy is to express ATU Local 569's commitment to a work environment which is free of discrimination and harassment and to ensure ATU Local 569 meets its legal obligations under Canadian and Alberta Human Rights Laws and its ethical responsibilities as a democratic institution.

Alberta Human Rights, Citizenship and Multiculturalism Act

The purpose of the Act is to provide Albertans with protection of their human rights. It is not the aim of the Act or of the commission to punish those who transgress. The purpose is to return the complainant to the position he or she would be in had the discrimination or harassment not occurred. It states that education is a means of promoting human rights. An employer who neglects to follow up a complaint covered under the Act, may be liable for failing to take prompt and appropriate action.

The Alberta Human Rights, Citizenship Commission regards its role as two-fold: to process complaints and to educate the public on human rights matters.

Definition of Harassment

The Alberta Human Rights, Citizenship and Multiculturalism Act provides protection from discrimination and harassment under the following grounds: race, religious beliefs, color, place of origin, gender, age, sexual orientation, mental or physical disability, ancestry, marital status, family status or source of income. Harassment occurs when an employee is subjected to unwelcome verbal or physical conduct protected under these grounds. Unwanted physical contact, attention, demands, jokes or insults are harassment when they occur under any of the areas protected.

Harassment is "persistent, ongoing communication (in any form) of negative attitudes, beliefs or actions towards an individual or group which might be known to be unwelcome, with the intention of disparaging a person or a group." (From the Ontario Anti-Racism Secretariat, Hamilton, 1995.)

Harassment has the effect of creating an environment that is hostile. Harassment may be physical or psychological in nature. It may be one incident or a series of incidents. **In general, harassing behaviour is marked by one or more of the following characteristics;**

1. **it is disrespectful of the person's dignity,**
2. **it is inappropriate for the situation,**
3. **it violates relationships of trust,**
4. **it assumes and takes advantage of the inequality of personal or assigned power.**

The following are some examples of harassment. Verbal or physical abuse, threats, derogatory remarks, name calling, graffiti, insults, jokes, innuendo or taunts about appearance or religious beliefs. The display of pornographic, racist or offensive images. Practical jokes that result in awkwardness or embarrassment. Unwelcome invitations or requests, either indirect or explicit. Intimidation, leering or other objectionable gestures; condescension or paternalism that undermines self-confidence, unwanted physical contact such as touching, patting, pinching or punching; harassment also can be outright physical assault.

Sexual Harassment

Sexual harassment is discrimination on the ground of gender and is prohibited in Alberta's Human Rights, Citizenship and Multiculturalism Act. Sexual harassment is any unwelcome behaviour, sexual in nature, that adversely affects, or threatens to affect, directly or indirectly, a person's job security, working conditions, prospects for promotion or earnings. Sexual harassment is emotionally abusive and creates an unhealthy, unproductive atmosphere in the workplace. Sexual harassment can be insulting, demeaning, intimidating or threatening.

Sexual harassment can include such things as unnecessary physical contact (such as pinching, patting, rubbing, grabbing, attempting or actual kissing or fondling), leering, "dirty" jokes, pictures or pornographic materials, verbal abuse, unwelcome comments, suggestions, innuendoes, requests or demands of a sexual nature. It also includes persistent, unwelcome requests for dates. The behaviour need not be intentional in order to be considered sexual harassment.

Behavior of a sexual nature is considered harassment when:

- 1. submission to such conduct is made either explicitly or implicitly a term or condition of that individual's employment;
- 2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual;
- 3. such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment. (from Arjun P. Aggarwal in "Sexual Harassment: A Guide for Understanding and Prevention" Butterworths : 1996)

Mutually acceptable flirtation is not considered to be sexual harassment: however, such behavior is not acceptable in the work place.

Note: Sexual harassment is discrimination on the ground of gender. Direct discrimination tends to be quite blatant and not that common. Most cases of discrimination are more subtle; often there is no "intention" to discriminate but the impact is discriminatory. For this reason, the law provides that it is not necessary to prove intent for a case of discrimination to be upheld, but rather, simply that discrimination has taken place.

Policy Objectives

- 1. ATU Local 569 is committed to providing a healthy, harassment-free environment for all employees and members whether it be on the job or at union functions. Harassment by or of members or staff will not be tolerated within this union.
- 2. Harassment complaints shall be treated as confidential. Complainants and respondents are likewise encouraged to maintain confidentiality.
- 3. Investigations shall be conducted impartially. The investigator shall not have any prejudice nor personal interest in the outcome of the investigation.
- 4. To provide fair and prompt action for both the complainant and respondent.
- 5. To apply appropriate remedies when required.
- 6. Retaliation or reprisals against a person making a complaint or against witnesses to a complaint are prohibited.
- 7. ATU Local 569 recognizes the serious nature of unfounded allegations of harassment and will take disciplinary action in those cases which the accusations are shown to be fraudulent, frivolous or malicious.
- 8. There shall be no disciplinary action for complaints made in good faith but found not to be covered by this policy.

Advisors

9. The executive shall appoint people who shall be called the "Advisors." It is the job of the designated Advisor(s) to deal with harassment complaints.
10. Note: Those members who have natural abilities in the areas of empathy and understanding are best suited for the Advisor position.
11. The Advisors shall have adequate education and training provided for them. Special attention will be given to the area of impartiality.
12. The role of the Advisor(s) shall include investigator, conciliator and educator.
13. **Note: In any individual complaint, an Advisor shall not perform the task of both conciliator and investigator (in the interests of impartiality).**
14. It shall be the responsibility of the Advisor(s) to deal promptly with all harassment complaints.
15. The Advisor(s) may consult with the Human Rights and Citizenship Commission in matters requiring clarification of specific information issues, since education is part of its mandate.
16. The Advisor(s) shall report and make recommendations to the President-Business Agent, Assistant Business Agent-Financial Secretary Treasurer or Assistant Business Agent-Maintenance on issues involving retaliation and appropriate remedy.

Procedure

The person experiencing the harassment should consult with an Advisor. To consult with an Advisor, contact the President-Business Agent, Assistant Business Agent-Financial Secretary Treasurer or Assistant Business Agent-Maintenance to arrange for an appointment.

Note: It is not necessary to reveal the purpose of the consultation request to the President-Business Agent, Assistant Business Agent-Financial Secretary Treasurer or Assistant Business Agent-Maintenance.

If you are being harassed:

1. If possible, you should consult with an Advisor. You may also act on your own and tell the harasser his/her behaviour is unwelcome and ask him/her to "Stop". This policy encourages members to seek relief in the form of assistance in saying "Stop" (see section on relief in the Appendix).
2. Keep a record of incidents (date, times, locations, possible witnesses, what happened, your response). You do not have to have a record of events in order to file a complaint, but a record can strengthen your case and help you remember details over time. Most

people stop the discrimination and correct any inequity it may have caused the complainant when they are told of a legitimate problem or concern. If any problems occur as a result of confronting your harasser, bring these to the attention of an Advisor.

- 3 If the harasser continues his/her behaviour after being notified that the behaviour is unwelcome, report the problem to an Advisor (To consult with an Advisor, contact the President-Business Agent, Assistant Business Agent-Financial Secretary Treasurer or Assistant Business Agent-Maintenance to arrange for an appointment). A complaint may be filed at this time, or at any other time if the behaviour persists.
4. The Alberta Human Rights, Citizenship, and Multiculturalism Act has a 12 month limitation of filing of complaints under that Act. This Union Policy has a 3 month limitation for filing a complaint; however complainants are encouraged to consult with a designated Advisor as soon as possible after the incident or situation has occurred.

Outside this specific Union Policy, you also have the right to contact the Alberta Human Rights and Citizenship Commission to file a complaint of harassment. If circumstances warrant it, a charge of assault may be filed with the police.

Dealing with a complaint

Under no circumstances will a legitimate complaint be dismissed or downplayed, nor should the complainant be told to deal with it personally. Regardless of the outcome of a harassment complaint made in good faith, the employee or member lodging the complaint, as well as anyone providing information, will be protected from any form of retaliation. No documentation will be placed on the complainant's file where the complaint is filed in good faith, whether the complaint is upheld or not. Once a complaint is received, it will be kept confidential except as necessary to investigate and respond to any legal and/or administrative proceedings arising under this Policy or otherwise.

- 5 When a complaint is brought forward, the Advisor will listen to the complainant's description of the incident(s) or situation and will discuss the complainant's concerns. If the Advisor determines, in consultation with the complainant, that the conduct described does not constitute harassment as defined in this Policy, the Advisor will take no further action under this Policy.
6. Complaints must be made in writing. The Advisor may give assistance to the complainant in writing the complaint. The accused will be presented with the written complaint and a response requested. At this point, the Advisor shall decide if conciliation will be attempted (see Appendix for section on conciliation). **If not, another Advisor will be appointed to conduct an impartial investigation.**
- 7 Both the complainant and the respondent will be interviewed, as will any individuals who may be able to provide relevant information. Both the complainant and the respondent have a right to offer a resolution at any time during the investigation.

8. Upon completion of the investigation, the Advisor will write an investigation report. A copy of the report will be sent to the complainant and to the respondent. Within fifteen (15) working days of the date that the report was delivered, the complainant and the respondent may make written responses to the report.
9. Upon review of the report and any written responses, the Advisor will determine if the complaint is upheld or dismissed. The Advisor will inform the complainant and the respondent of the decision in writing.
10. If the complaint is upheld, the Advisor shall make recommendations for appropriate remedy. If the investigation fails to find evidence to support the complaint, there will be no documentation concerning the complaint placed in the file of the respondent.

Appeals Process

11. Complainants or respondents may initiate an appeal procedure. The appeal request must be made in writing to the President-Business Agent, Assistant Business Agent-Financial Secretary Treasurer or Assistant Business Agent-Maintenance within fifteen (15) working days of the date that the decision was delivered.
12. An alternate Advisor who did not conduct the original investigation will be appointed from the Advisors to function as an appeals officer. This appointment shall be made in consultation with the respondent and the complainant.
13. Unless exceptional conditions exist, the appeals officer will complete the appeal process within thirty (30) working days of appointment.
14. The appeals officer will operate under strict confidentiality. The appeals officer shall have discussions with the complainant and the respondent; he/she shall also examine evidence. Upon completion of the appeal, the appeals officer shall issue a decision which is final and binding.
15. The appeals officer will give a written decision to the respondent and complainant within ten (10) working days after the conclusion of the appeal procedure.

Application

This policy applies to, but is not limited to, all employees and members of ATU Local 569. Any contractor of the Union is bound by this policy.

For the purposes of this policy the work environment shall include but is not limited to the following:

16. ATU Local 569 office and union hall
17. Work related telephone or computer
18. Union related functions (social or work related)

Responsibility of the Executive Board

The Executive Board's responsibilities include, but are not limited to, the following:

19. Informing themselves of this policy and supporting an awareness about discrimination and harassment in general. This shall include an education seminar for the whole executive board at the beginning of each term in office.
20. Ensuring, within their realm of responsibility, that administrative fairness is maintained when dealing with the resolution or the investigation of complaints of harassment.
 - . Constructively participating in processes aimed at resolving complaints of harassment and providing remedies as appropriate.
 - . To provide adequate education for appointed Advisors.

Appendix

Purpose of Conciliation and Investigation

Conciliation is a voluntary, non-adversarial way of resolving disputes in which a neutral person known as a conciliator helps the Complainant and the Respondent to identify the issues, discuss the facts surrounding the issues and generate possible solutions. The conciliator does not take sides or assess the complaint. All information provided by the parties during conciliation is without prejudice and will not be used for any purpose other than conciliation.

The purpose of investigation is to establish the facts and determine whether or not there is merit to the complaint. Investigative impartiality is a required skill.

Remedy (for complainant)

Remedy, in human rights legislation and jurisprudence, attempts to place the victim in the position she or he would have been in had the harassment not occurred. This principle does not include placing the victim in a preferred position because he or she has been subjected to harassment. There are two broad types of remedy for the complainant which the union may provide: relief and compensation.

Relief: Any person experiencing harassment may request relief from the Advisor. It is not necessary to file a complaint in order to receive some form of relief. Some examples of relief are as follows:

23. The complainant may request assistance in saying "Stop" to the person engaging in offensive behaviours. This relief can include coaching the complainant in how to communicate effectively with the person engaging in the behaviours, or providing a neutral third party to assist in communicating the message. The latter involves placing the authority of the Union behind the communication.
24. Providing relief can include taking reasonable steps to prevent either covert or overt forms of retaliation. When retaliation is initiated by co-workers or others, the environment may become poisoned or toxic. Poisoned or toxic work environments are characterized by the presence of divided loyalties, hostile confrontations, lowered productivity, isolation, fear, and sabotage. Such environments may be experienced as harassing by those who must work or interact within them. Under such conditions, relief might include professional assistance to return the work environment to one which is healthy and productive.
25. At the request of the complainant, the Advisor may assist in informal resolution (prior to a complaint being brought forward). This method is an informal conciliation process.

Compensation: Compensation may be necessary to place the victim of the harassment in the position they would be in but for being subjected to this type of conduct. In certain circumstances such compensation may be legally required. While each situation must be assessed individually, compensation may include but is not limited to:

- a. an apology to the complainant
- b. reinstatement of an employee
- c. compensation for lost wages

Remedy (for respondent)

The degree of harassment will influence the assessment of what the remedy should be for the respondent.

While each situation must be assessed individually, remedy for a Union employee may include but is not limited to:

- 1 providing an education session for the respondent
2. statement of commitment to be placed in respondent's file (this is a written statement which is signed by the respondent and indicates a commitment of the respondent to not repeat the offensive behaviours).
3. repeating offensive behaviours may lead to suspension or dismissal

Remedy for a Union member may include but is not limited to:

- 1 providing an education session for the respondent
2. statement of commitment to be placed in respondent's file (this is a written statement which is signed by the respondent and indicates a commitment of the respondent to not repeat the offensive behaviours).
3. repeating offensive behaviours may lead to discipline covered under the Constitution and Bylaws of ATU Local 569

Reference Sources

1. Handouts from the Human Rights and Citizenship Commission
 - a. Developing and Implementing Effective Harassment and Sexual Harassment Policies
2. Sample Harassment Policy
 - a. Complaint Process
 - b. Harassment as a Form of Discrimination
 - c. Sexual Harassment
 - d. Remedy
 - e. Alberta Human Rights, Citizenship and Multiculturalism Act
3. University of Alberta 1997 GFC Policy Manual
4. Section 44 Discrimination and Harassment Policy and Procedures

Note: Due to the care, attention and expertise given to the wording of the reference documents, much of the wording of this policy is modified or direct quotations from both of the sources listed.