

# Sexual Harassment & Misconduct Policy



*This Model Policy can be adapted for use at any workplace.*

## **1. COMPANY COMMITMENT & PRINCIPLES**

ABC Company is fully committed to providing employees a work environment that is positive, respectful and safe, and honours the wellbeing and human rights of all our employees. We will not tolerate sexual harassment in any form and we are committed to taking all complaints seriously and responding as quickly as possible.

## **2. PURPOSE**

The purpose of this Policy is twofold:

1. To establish clear ground rules regarding sexual harassment and other forms of sexual misconduct so that all employees understand what is and is not acceptable; and
1. To describe the procedures ABC Company follows to receive, investigate and respond to complaints of sexual harassment, including imposition of discipline for those guilty of offences.

## **3. DEFINITION OF SEXUAL HARASSMENT**

For the purposes of this Policy, sexual harassment in the workplace refers to engaging in a course of offensive, humiliating or intimidating comment or behaviour based on sex or gender by one employee against another, that the person engaging in the behaviour knows or ought reasonably to know is unwelcome. Sexual harassment negatively affects the work environment and can lead to negative work-related consequences for the victim. Sexual harassment may consist of a single incident of unwelcome behaviour or multiple incidents over time. Sexual harassment is a form of discrimination that is prohibited under both federal and provincial human rights codes.

### **• What Constitutes Sexual Harassment**

Sexual harassment includes, but is not limited to:

### ***Physical Harassment:***

- Leering or inappropriate staring;
- Invasion of personal space;
- Unwelcome and unnecessary physical contact (touching, grabbing, hugging, kissing, etc.);
- Sexual assault and violence.

### ***Verbal Harassment:***

- Making offensive comments or behaviour towards a person based on their gender identity, gender expression or sexual orientation;
- Making sex-related comments about a person's physical appearance or actions;
- Making comments or behaviour because of a belief that someone does not conform to gender-role stereotypes;
- Making offensive comments about members of a specific gender or sexual orientation;
- Using vulgar, sexual or gender-related humour or derogatory language (such as slurs, jokes or innuendo);
- Asking unwelcome questions or engaging in unwelcome conversation about sexual activities;
- Spreading sexual rumours (including online).

### ***Environmental Harassment:***

- Displaying or distributing pornographic or other sexual images, objects, jokes or sayings (including online);
- Making vulgar gestures.

### ***Threats and Demands:***

- Asking for sexual favours in exchange for workplace benefits;
- Repeatedly asking someone for dates or sexual favours even after they have said no;
- Threatening someone (e.g. with violence, termination or denial of other workplace benefits) if they refuse to comply with sexual advances
- Making an employee dress or behave in a sexualized or gender-specific way
- Threats of retaliation or reprisal if the victim makes a complaint under this Policy.

#### **◦ Where Sexual Harassment Can Take Place**

For the purposes of this Policy, the workplace or work environment refers to all workplace-related activities, including:

- Activities on workplace premises
- Work assignments outside of workplace premises
- Work-related conferences, training sessions, or seminars
- Work-related travel
- Work-related social functions that the workplace sponsors or organizes

This includes the job application and interview process, volunteer work and internships with ABC Company, and activities or events that take place outside regular business hours or locations but are linked to and may impact the workplace environment.

This Policy applies to all permanent and temporary employees at all levels, to those with whom ABC Company conducts business, and at all sites where ABC Company business activities take place.

- **Potential Victims of Sexual Harassment**

Both women and men may engage in and experience sexual harassment in the workplace, but women are generally more vulnerable to it because they often hold jobs with lower pay, authority and status than men. That being said, even women in positions of authority can experience sexual harassment. Treating and portraying an employee, especially a woman, in a sexual way can undermine their status and image in the eyes of their coworkers.

- **What Does NOT Constitute Sexual Harassment**

The definition of sexual harassment and the ABC Company Sexual Harassment Policy are not intended to inhibit interactions based on mutual consent between employees, such as consensual conversation about sex in the workplace, or suggestive imagery, like a poster, that does not offend anyone. However, if you are offended by comments or imagery in the workplace even when no one else is, this does not mean that your concern is invalid. You should express your objections to those involved and file a complaint if the issue is not resolved.

## **4. OTHER FORMS OF PROHIBITED SEXUAL MISCONDUCT**

- **Sexual Offences Other than Harassment**

**ABC Company is committed to prevent**

ting and protecting employees against not just sexual harassment but a wide range of behaviours and conduct of a sexual nature that is nonconsensual or has the purpose or effect of threatening, intimidating or coercing. Both men and women may be perpetrators as well as victims of sexual misconduct.

- **Definition of Consent**

For the purposes of this Policy, consent means conscious, informed, fully voluntary agreement to, or permission for, an act. In determining whether consent has been given, the following principles will apply:

- Although consent may be implied verbally or nonverbally, it should never be assumed;
- Silence, inaction or absence of express denial of consent do not necessarily imply consent;
- Consent is valid only if it is given voluntarily without threat, force or duress;

\* Consent is valid only if it is given by a person with adequate capacity—valid consent cannot be provided by a person who is asleep, drunk, high, physically or mentally incapacitated or otherwise judgment-impaired;

\* Consent is not valid if it is provided by a person under the legal age of consent;

\* Consent is limited in scope—consenting to one form of sexual activity is not implied consent to another form of sexual activity;

\* Consent can be taken back at any time.

- **Forms of Prohibited Sexual Misconduct**

Forms of sexual misconduct banned by this Policy include, but are not limited to:

1. **Non-Consensual Sexual Contact (or Attempts to Commit It)**, e., any intentional sexual touching, however slight, with any object by a person upon a person without consent and/or by force, including (without limitation): (i) contact with the breasts, buttocks, groin or genitals; (ii) making another person touch the abuser, victim or a third party with or on any of those body parts; and/or (iii) any other intentional bodily contact in a sexual manner not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.
2. **Non-Consensual Sexual Intercourse (or Attempts to Commit It)**, e., any sexual intercourse, however slight, with any object by a person upon a person without consent and/or by force, including (without limitation): (i) vaginal penetration by a penis, object, tongue or finger; (ii) anal penetration by a penis, object, tongue, or finger, and/or (iii) oral copulation (mouth-to-genital contact or genital-to-mouth contact).
3. **Dating Violence**, e., a pattern of assaultive and controlling behaviours by a person against a dating partner in an attempt to use fear, degradation, humiliation and/or abuse to gain or maintain power and control in the relationship.
4. **Domestic Violence**, i.e., use of physical, sexual or emotional abuse or threats to control a current or former spouse or other intimate partner, e.g., a person with whom the abuser is living or has lived with in the past.
5. **Stalking**, e., a pattern of repeated and unwanted attention, harassment, contact or other course of conduct directed at a specific person which would cause a reasonable person to become alarmed or fear harm or injury, including physical, emotional or psychological harm.
6. **Cyber-Stalking**, e., use of electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact to pursue, harass or make unwelcome contact with another person.
7. **Sexual Exploitation**, e., taking sexual advantage of another person for the advantage or benefit of the person committing the exploitation or a third person to the extent such behaviour does not constitute sexual harassment or one of the other forms of sexual misconduct banned by this Policy. Examples:
  - Invasion of sexual privacy;
  - Prostituting another person;
  - Photographing, video-or audio-taping sexual activity without consent;
  - Exceeding the boundaries of consent, e.g., letting a friend hide in the closet so he can watch you have consensual sex with your partner;
  - Voyeurism;
  - Knowingly transmitting a sexually transmitted infection, disease or HIV to another person;
  - Non-consensual exposure of genitals; and
  - Sexually-based stalking.
    1. **Sexually-Based Communication**, e., speaking to, or directing any kind of communication, words or images of a sexual nature at another person which is not welcomed by the receiving party, which may include interactions in person, by phone, social media, electronic messages and photos and written words or images such as graffiti.

## 5. ROLES & RESPONSIBILITIES

- **Duty of Management**

ABC Company management is committed to:

- Treat all co-workers, seniors, subordinates, colleagues and others with whom

they interact with professionalism, dignity and respect in adherence to this Policy;

- providing satisfactory resources to deal with sexual harassment complaints;
- taking complaints seriously and responding quickly; and
- fostering a healthy environment where employees feel comfortable about raising complaints and are kept informed about and involved with actions taken in response.

- **Duty of Supervisors**

Supervisors will:

- Treat all co-workers, seniors, subordinates, colleagues and others with whom they interact with professionalism, dignity and respect in adherence to this Policy;
- ensure that all employees, including those in positions of responsibility, are made aware of sexual harassment policies as soon as they are introduced, as well as through training, orientation material and education on human rights issues;
- and continually monitor the work environment to make sure it is free from sexually harassing behaviour.

- **Duty of Workers**

Workers will:

- Treat all co-workers, seniors, subordinates, colleagues and others with whom they interact with professionalism, dignity and respect in adherence to this Policy;
- Immediately notify a supervisor or manager if they experience or witness incidents of sexual harassment or other violations of this Policy.

## 6. REPORTING SEXUAL HARASSMENT & MISCONDUCT

- **Procedures**

ABC Company wants to ensure all its employees feel safe, comfortable and encouraged to report any incident of sexual harassment or misconduct they have observed or experienced. Please file a complaint about any incident to your manager [contact name and info] or HR advisor [contact name and info]. If it is not appropriate to file a complaint with these individuals because they are involved in the incident, the employee should report the incident to any other manager of their choice.

Complaints need not be in writing but should include as much detail as possible, including the name(s) of the individual(s) involved and a description of the incident(s), including actions and/or comments made, place(s), date(s) and time(s).

The possibility of informal resolution may be explored and reached with the consent of all parties. If no informal resolution is sufficient, a formal and thorough investigation of the incident and surrounding circumstances will be undertaken, involving interviews with the complainant, the respondent, and any other individuals who may be able to provide information on the situation.

If the process within the workplace does not address or resolve the issue to your satisfaction, you can report it to the [province] Human Rights Tribunal [contact info].

Threats, attempts or actual incidents of physical or sexual assault are all criminal offences and can be reported to your local police service.

- **Assurance of Non-Retaliation**

Employees are reminded that ABC Company is committed to providing you a workplace free of sexual harassment and misconduct in accordance with OHS, human rights and other laws and this Policy. Making you feel free to come forward and report incidents or concerns of sexual harassment is an important part of our commitment. Accordingly, we wish to assure you that you won't be fired, demoted, reassigned, disciplined or subject to any other punishment or adverse treatment from ABC Company or its managers, supervisors and other representatives in retaliation for reporting sexual harassment or misconduct in good faith.

- **Bad Faith Complaints**

To protect the innocent, ABC Company reserves the right to discipline any employee who knowingly and in bad faith files a false complaint or makes misrepresentations of sexual harassment or misconduct up to and including termination. For purposes of this Policy, a complaint is not considered bad faith merely because the evidence does not ultimately support the allegation. Bad faith requires an investigation finding that the employee who accused another person of sexual harassment or misconduct acted maliciously knowing the accusation was false or recklessly without regard to whether the accusation was true.

## **7. INVESTIGATION**

All reports of sexual harassment, misconduct or other alleged violations of this Policy will be taken seriously and responded to immediately. Where it is determined that the report has merit, an internal investigation will be made by staff members not implicated or in any way involved in the complaint following the fair investigation procedures and protocols set out in the ABC Company Disciplinary Policy.

## **8. DISCIPLINE**

Where acts of sexual harassment and misconduct are shown to have occurred, they will not be tolerated and will be responded to with appropriate disciplinary action, up to and including termination, based on a thorough investigation of the incident and the surrounding circumstances. Such disciplinary action may include immediate termination, even if the person committing the act has committed no prior offences or engaged in previous acts of sexual harassment or misconduct.

## **9. PRIME CONTRACTORS, CONTRACTORS & SUBCONTRACTORS**

To protect employees from risks of sexual harassment or misconduct by third parties they contact at work, ABC Company will ensure that any prime contractors, contractors, and subcontractors hired to perform work at its work sites are notified of and required to ensure their workers comply with the terms of this Policy and are held accountable for any violations they commit.

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#### **10. Questions or Concerns**

If you require any clarification or would like to discuss any part of ABC Company's Sexual Harassment Policy, please contact [contact info].