

# Sexual Misconduct Policy



An HR policy banning sexual and other forms of workplace harassment is essential for all companies. The problem is that standard anti-harassment policies may not go far enough, at least in the context of sexual harassment. As HR director, it's incumbent on you to make the case for broadening your policy to ban not just harassment of a sexual nature but other forms of sexual misconduct that technically may not count as harassment. Here's a template policy that you can adapt for your own circumstances.

## **1. POLICY**

ABC Company prohibits and will not tolerate sexual misconduct of any kind regardless of where it occurs, whether in the workplace, during a Company-related social or business activity or in a private setting away from work while an employee is off-duty. Employees found to have engaged in sexual misconduct will be subject to discipline, up to and including termination of employment, in accordance with this Policy. ABC Company also reserves the right to report employee sexual misconduct to law enforcement personnel, child or adult protective services organizations and other appropriate authorities for investigation and potential criminal prosecution. These principals apply to all individuals who work for ABC Company, including full- and part-time employees, temporary employees, independent contractors, volunteers, interns, supervisors, managers, board members and executive officers, without exception regardless of position or title.

## **2. PURPOSE**

The way you conduct yourself when you are off-duty and away from work is generally your own business. ABC Company believes in the principles of individual liberty and freedom and that, as a general matter, employers have no right and should not seek to dictate morality or exert control over the personal lifestyle choices of their employees.

At the same time, ABC Company recognizes that its reputation and business depend to a large degree upon the behaviour of its employees. When employees fail to exercise good judgment and engage in illegal, unethical or immoral conduct, it may reflect negatively on ABC Company—even if that conduct occurs when the employees are not at work or exercising their employment duties. The purpose of this Policy is to

establish clear ground rules for disciplining employees for off-duty sexual misconduct that has a direct and negative impact on the organizations they work for and their ability to perform the job duties they were hired to carry out effectively.

### 3. SEXUAL MISCONDUCT vs. SEXUAL HARASSMENT

While sexual harassment is a form of sexual misconduct that this Policy prohibits, this Policy is intended to be broader in scope to cover additional forms of inappropriate and sexually-based nonconsensual behaviour that may not fall under the definition of sexual harassment. Where employee behaviour involves only sexual harassment and not other forms of sexual misconduct, the terms of the ABC Company Workplace Anti-Harassment Policy will apply and to the extent there is any conflict, the latter Policy will govern.

### 4. DEFINITIONS

For purposes of this Policy:

**“Consent”** means conscious, informed, fully voluntary agreement to, or permission for, an act. The following principals apply in determining whether a person has consented to an action banned by this Policy:

- Although consent may be implied verbally or nonverbally, it must never be assumed;
- Silence, inaction or failure to expressly deny 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 (in Canada, the age of consent to engage in a sexual activity is 16);
- Consent is limited in scope and not a blank cheque—consenting to one form of sexual activity is not implied consent to another form of sexual activity; and
- Consent can be taken back at any time.

**“Sexual misconduct”** is an umbrella term that encompasses a wide range of behaviours that are inappropriate, unwelcome, non-consensual and sex-based or of a sexual nature. Sexual harassment, as that term is defined in the ABC Company Anti-Harassment Policy is one form of sexual misconduct. Other common forms of sexual misconduct that this Policy covers include but are not limited to:

- **Non-consensual sexual contact or attempts to commit it**, e.g., any intentional sexual touching, however slight, by one person of another, including but not limited to contact with the breasts, buttocks, groin, genitals or mouth;
- **Sexual assault, non-consensual sexual intercourse or attempts to commit it**, including but not limited to (i) vaginal or anal penetration by a penis, object, tongue or finger; and/or (ii) mouth-to-genital contact or genital-to-mouth contact;
- **Dating violence**, e.g., 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;
- **Domestic violence**, e.g., use of physical, sexual or emotional abuse or threats to control a current or former spouse or other intimate partner like an ex-boyfriend or girlfriend;
  - **Stalking**, e.g., a pattern of repeated and unwanted attention, harassment, contact or other course of conduct directed at a specific person that would cause a reasonable person to fear harm or injury and/or physical, emotional or psychological harm;
  - **Cyber-stalking**, e.g., 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;
  - **Voyeurism**, e.g., the practice of obtaining sexual gratification by looking at sexual objects or acts, typically without the consent or knowledge of the persons being observed;
  - **Sexually-based communication**, e.g., speaking to, or directing any kind of communication, words or images of a sexual nature at another person which the receiving party doesn't welcome, which may include interactions in person, by phone, social media, electronic messages and photos and written words or images such as graffiti; and
  - **Other forms of sexual exploitation**, e.g., taking sexual advantage of another person such as by: (i) Invasion of sexual privacy; (ii) Prostituting another person; (iii) Photographing, video- or audio-taping sexual activity without consent; (iv) Use of artificial intelligence to create images of another person engaging in sexual activity without consent; (v) Exceeding the boundaries of consent, such as by letting a friend hide in the closet so he can watch you have consensual sex with your partner; (vi) Knowingly transmitting a sexually transmitted infection, disease or HIV to another person; and (vii) Non-consensual exposure of genitals.

## 5. DISCIPLINE FOR SEXUAL MISCONDUCT

Sexual misconduct will be subject to discipline if it occurs: (i) in the workplace or during a work-related activity or social event by an employee performing their job duties; and (ii) outside the workplace by an employee who is off-duty even when not related to the employee's employment duties to the extent the sexual misconduct:

- Harms the reputation, public image, community standing or any other aspect of ABC Company, its business, products, services, employees, customers or clients;
- Has consequences that render the employee unable to perform their job or any part of their job effectively;
- Makes other employees, clients or customers unwilling, unable or reluctant to work with the employee to the extent ABC Company deems such unwillingness, inability or reluctance reasonable;
- Makes the employee guilty of a serious breach of the *Criminal Code of Canada*; and/or
- Makes it difficult for ABC Company to manage its operations and/or direct its workforce efficiently.

## 6. REPORTING OF SEXUAL MISCONDUCT

Employees who experience, witness or learn of sexual misconduct committed by an ABC Company employee should report to [designate person or office to receive complaints]. If that person or office is directly involved in the case or the employee is

otherwise hesitant to submit the report to that particular person or office, they may instead submit their report to *[designate alternative person to receive sexual misconduct complaints]*. Employees may submit their reports anonymously.

## **7. INVESTIGATION OF SEXUAL MISCONDUCT REPORTS**

Upon receiving reports of sexual misconduct involving an ABC Company employee, ABC Company will determine whether to notify law enforcement or other appropriate authority of the alleged conduct. In such cases, ABC Company will cooperate fully with the investigation carried out by that authority. ABC Company may also conduct its own internal investigation of the report to determine whether there is reasonable evidence to indicate that the allegations are true. Such internal investigations may be carried out by an independent third party with the knowledge, experience and qualifications necessary to investigate sexual misconduct complaints and who is totally impartial and in no way involved in the case. ABC Company will also take every reasonable measure to ensure that those named in complaint, or who are closely associated with those involved in the complaint, are not part of the investigative team.

## **8. CONFIDENTIALITY**

ABC Company will take all due measures to honour the privacy of persons involved in the sexual misconduct complaint and not disclose the names of the parties or circumstances of the complaint unless disclosure is necessary to perform the investigation, implement corrective actions or otherwise permitted or required by law.

## **9. NO RETALIATION OR REPRISALS**

No employee will 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 misconduct as long as they act in good faith. However, to protect the innocent, ABC Company reserves the right to discipline any employee, up to and including termination, who knowingly and in bad faith files a false complaint or makes misrepresentations of sexual misconduct against another ABC Company employee. A complaint will not be considered to have been made in bad faith merely because the evidence does not ultimately support the allegation of sexual misconduct. Bad faith requires an investigation finding that the employee who accused another person of sexual misconduct acted maliciously knowing the accusation was false or recklessly without regard to whether the accusation was true.

## **ACKNOWLEDGEMENT**

I acknowledge that I have received and read this Sexual Misconduct Policy and/or had it explained to me. I understand that it is my responsibility to abide by all rules contained in the Policy. I also understand how to report incidents of sexual misconduct as set forth in the Policy. I further acknowledge that I will be responsible for knowing about and complying with any changes and updates that are later made to this Sexual Misconduct Policy.

Employee Name: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_