

Corporate Human Resources Policy	 Hamilton	Content Updated: 2018-06-04 Date of Last Review: 2022-06-27
Work Environment		Supersedes Policy: Harassment and Discrimination Prevention Policy (April 27, 2005)
Policy No: HR-70-13		
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HARASSMENT AND DISCRIMINATION PREVENTION POLICY
(in accordance with the Ontario Human Rights Code)

POLICY STATEMENT

The City of Hamilton is committed to maintaining an inclusive Workplace climate that promotes mutual respect for the dignity and worth of each person. In this diverse and equitable Workplace, all Employees will have the opportunity to contribute fully to the City of Hamilton’s mission, vision and values, and each Employee’s unique contribution will be respected.

The City of Hamilton upholds a zero tolerance to harassment and discrimination. Employees of the City of Hamilton are entitled to work in an environment free from Harassment and Discrimination, that is based on the **prohibited grounds** under the *Ontario Human Rights Code*, which includes:

- Race
- Sex (including pregnancy)
- Colour
- Disability or perceived disability
- Ancestry
- Sexual orientation
- Place of origin (where one was born)
- Age
- Ethnic origin
- Marital Status (includes same sex partnership status)
- Citizenship
- Family Status
- Creed (religion)
- Gender Identity
- Gender Expression
- Record of offence, for which a pardon has been granted (in employment only)
- Receipt of public assistance (in housing/accommodation only)

The City prohibits Harassment or Discrimination of or by any of its Employees, in the Workplace, or at any work-related and/or staff social functions, or in any other work-related circumstances. The City of Hamilton will not engage in any actions that contribute to Harassment and/or Discrimination in its Workplace. Discrimination

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		and Harassment are violations of the Ontario <i>Human Rights Code</i> upon which this policy is based.	
PURPOSE	<p>The intention of this policy and its procedure is to prevent Discrimination and Harassment from occurring in the workplace and where necessary, to act upon complaints of such behaviour promptly, fairly, judiciously and with due regard to confidentiality for everyone involved. An effective element in preventing Harassment and Discrimination is education. To this end, education programs and information sessions are provided to promote awareness of human rights and to foster an environment free of Discrimination and Harassment within the City of Hamilton.</p> <p>The City of Hamilton has implemented a policy on Personal Harassment in addition to this policy on Harassment and Discrimination. The <i>Personal Harassment Prevention Policy</i> may provide means for addressing concerns which are not covered by the Harassment and Discrimination Prevention Policy. The City also has a <i>Workplace Violence Prevention Policy</i> that addresses concerns related to Workplace violence. Some Employees may also have rights under collective agreements. Any individual has the right to pursue their complaint the Human Rights Tribunal of Ontario.</p> <p>This policy contains definitions related to harassment and discrimination and identifies the rights and responsibilities of all Employees, including Management.</p>		
SCOPE	<p>This policy applies to all City of Hamilton Employees, including but not limited to regular, temporary, contract and probationary Employees, and to contractors, consultants, volunteers, students, interns as well as applicants for employment. This policy also applies to elected officials.</p> <p>Members of the public, visitors to City facilities, and individuals conducting business with the City of Hamilton, are expected not to engage from Harassment and Discrimination against Employees. If such Harassment or Discrimination occurs, the City will take reasonable and necessary steps to ensure a Workplace free from Harassment and Discrimination to the extent possible, which may include issuing trespass notices, contacting Police, and involvement of Legal Services etc.</p>		

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DEFINITIONS	
Abuse of Authority	An individual's improper use of power or authority to intimidate, threaten or coerce an individual in a manner that is not consistent with City policies. Abuse of Authority must be linked to prohibited grounds as identified in the Ontario <i>Human Rights Code</i> to fall under this policy.
Complainant	Any person who makes a complaint.
Disability	<p>Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device; a condition of mental impairment or a developmental disability; a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language; a mental disorder; or an injury or disability for which benefits were claimed or received under the insurance plan established under the <i>Workplace Safety and Insurance Act, 1997</i>.</p> <p>"Disability" should be interpreted in broad terms.[1] It includes both present and past conditions, as well as a subjective component, namely, one based on perception of disability.</p>
Discrimination	Discrimination means differential treatment of an individual or group of individuals which is based, in whole or in part, on one or more of the prohibited grounds under the Ontario <i>Human Rights Code</i> and which has an adverse impact on the individual or group of individuals. Discrimination may be intentional or unintentional, direct or indirect.
Employee	All Employees of the City of Hamilton, union and non-union including but not limited to, regular, temporary, probationary and contract Employees.
Employer	In accordance with the <i>Occupational Health & Safety Act</i> , means a person who employs one or more workers or contracts for the

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Frivolous	services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services.		
Harassment	Characterized by a lack of seriousness or sense; of little or no weight, worth or importance, not worthy of serious notice.		
Harassment	Engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. This comment or conduct may be offensive, intimidating, hostile or inappropriate, based on the prohibited grounds set out in the <i>Ontario Human Rights Code</i> . Refer to the <i>Personal Harassment Prevention Policy</i> for Harassment that is not based on the prohibited grounds of the <i>Ontario Human Rights Code</i> .		
Management	Any individual responsible for directing the work of others, including but not limited to elected officials (when in a supervisory relationship with City Employees), the City Manager, General Managers, Executive Directors, Directors, Managers, Supervisors, and team leaders. These individuals are considered a part of the “directing mind” of the organization and the City of Hamilton could be held liable by a court or tribunal if these individuals violate the Code themselves or do nothing to prevent and stop Harassment or Discrimination in the Workplace.		
Poisoned Work Environment	Is a work environment where inappropriate comments, behaviour or the display of offensive material has an adverse impact on an individual or a group. The offending behaviour does not need to be directed towards an individual, but may have an adverse impact in the Workplace that goes beyond the original incident. The adverse impact can include psychological suffering.		
Respondent	A Poisoned Work Environment may result from a pattern of events or a single, serious remark or action.		
Respondent	Any person who is the subject of a complaint (ie. a complaint is made against them).		
Sexual Harassment	The Ontario Human Rights Code defines harassment as “engaging in a course of vexatious comment or conduct that is known or ought		

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Adverse Effect Harassment/ Discrimination Systemic Discrimination Trivial Vexatious Workplace	<p>to be known to be unwelcome.” Sexual harassment includes unwanted or unwelcome actions or comments of a sexual or gender-related nature. Sexual Harassment does not have to be sexual in nature. Stereotypical comments or actions about one gender or the other can be a form of Sexual Harassment. Sexual Harassment can happen to anyone regardless of their sex. Usually Sexual Harassment is a pattern of behaviour that occurs over a period of time; however a single incident can be serious enough to be considered Sexual Harassment. Sexual Harassment is further defined under the <i>Occupational Health and Safety Act</i> to include:</p> <ul style="list-style-type: none"> • engaging in a course of vexatious comment or conduct against a worker in a workplace 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, • 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. <p>Policies, practices, procedures, actions or inactions that appear neutral, but have an adverse impact on persons identifiable on a prohibited ground set out in the Ontario <i>Human Rights Code</i>.</p> <p>Is similar to adverse effect discrimination but arises out of long-standing stereotypes and value assumptions resulting in discriminatory effects which are more subtle in appearance. In some cases, the action/decision may appear to be justified but in fact relies on stereotypes/value assumptions.</p> <p>Of very little importance or value; insignificant.</p> <p>Conduct that is inappropriate, unnecessary, and that a reasonable person would consider to be offensive, upsetting, distressing, demeaning or would make a person uncomfortable.</p> <p>Any building or part of a building in which one or more Employees work, including Employee eating, changing and lounge areas, and any vehicle or conveyance, or any area including outside worksites,</p>	

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	where Employees perform their duties (construction site, open field, parking lot, road, park). A workplace also includes any work-related function or circumstances. In some instances, harassing or discriminatory behaviour which occurs outside of the physical Workplace and/or adversely affects relationships in the work environment may be covered under this policy (e.g., work-sanctioned social functions, conferences, <i>etcetera</i>).	
TERMS & CONDITIONS 1. Discriminatory or Harassing Behaviours	The following terms and conditions apply to this Policy: Discriminatory or harassing behaviour results from actions directed at specific individuals or groups, which are unwelcome or unwanted; or, may be actions which are not directed at a particular individual, but have created a “Poisoned Work Environment” which is hostile, intimidating or offensive. To be covered under this policy, the harassing or discriminatory behaviours must be linked to one or more of the prohibited grounds. Examples of discriminatory or harassing behaviours include, but are not limited to: <ul style="list-style-type: none"> • Racial or ethnic slurs • Written or verbal abuse or threats based on a prohibited ground • Unwelcome remarks, jokes, nicknames, taunts, suggestions related to a person’s body, attire, age, marital status, sex or gender, ethnic or racial origin, religion, disabilities, sexual orientation, or any prohibited grounds • Practical jokes related to a prohibited ground which result in embarrassment or insult or negatively affect work performance • Abuse of Authority which undermines performance or threatens careers, based on a prohibited ground • Vandalism of personal property (if the employee is targeted because he/she is identifiable on a prohibited ground) • Displays of racist or other offensive or derogatory material • Derogatory cartoons or graffiti based on a prohibited ground • Patronizing or condescending behaviour or language which reinforces stereotypes and undermines self-respect • Inappropriate references to racist organizations or individuals 	



2. Complaints

- Accessing, displaying, transmitting or storing (including on the City’s technology systems, including computer network etc.) material which violates any Canadian federal or provincial law or City by-law or directive, or is harassing, discriminatory, or obscene and conducive to a Poisoned Work Environment. (See City of Hamilton Computer Acceptable Use Policy).

Examples of **sexual harassing behaviours** include but are not limited to:

- Unwanted touching or patting
- Sexually suggestive or obscene remarks or gestures
- Leering (suggestive staring) at a person’s body
- Display of sexually offensive material
- Making sexual requests or suggestions
- Unwelcome sexual flirtations, advances, propositions
- Sexual assault
- Sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that is by their nature, clearly embarrassing or offensive.
- Derogatory or degrading remarks directed toward members of one sex or sexual orientation
- Verbal abuse or threats of a sexual nature.
- Offensive comments or conduct around someone’s sexual orientation, gender identity or gender expression

Complainants and Respondents have the right to confidential, unbiased advice from the Human Rights Specialist for the City of Hamilton.

The Procedures for Resolving Harassment and Discrimination Issues outline the steps for handling of complaints, including the following options:

- Complaint to the City of Hamilton, through an Employee’s Supervisor
- Complaint directly to the Human Rights Specialist in Human Resources

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3. Confidentiality	<ul style="list-style-type: none"> • Complaint to the Human Rights Tribunal of Ontario • Filing of a grievance for those Employees covered under a collective agreement • Complaint to Police if a criminal act has occurred. <p>The City of Hamilton will make every reasonable effort to maintain confidentiality for Employees involved in Harassment and Discrimination complaints or incidents. Confidentiality extends to all records relating to complaints, including but not limited to meetings, interviews and investigation results. Breaches of confidentiality may be subject to appropriate disciplinary action. Complainants, Respondents and witnesses will be advised to maintain confidentiality concerning complaints or incidents. Any record of discipline which occurs as a result of a complaint will be included in the disciplined Employee's file. However, all records are subject to the provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> and may be subject to disclosure under the Act or to a court of law.</p>		
4. Procedural Fairness	<p>The rules of procedural fairness govern all activities occurring under this policy.</p>		
5. Reprisal	<p>Any form of retaliation against parties involved in a complaint (including a Complainant, Respondent, witness, investigator etc.), will be considered a serious violation of this policy and will not be tolerated. Such retaliatory actions may be subject to disciplinary action up to and including termination of employment.</p>		
6. Trivial, Frivolous/ Vexatious Complaints	<p>The City of Hamilton prohibits complaints that are trivial, frivolous, vexatious or made in bad faith. Any Employee found to have lodged such a complaint may be subject to appropriate disciplinary action, up to and including dismissal.</p>		
RESPONSIBILITIES			
Shared Responsibility (All Employees)	<p>All Employees have the right to work in an environment free from Harassment and Discrimination. All Employees share the responsibility to support human rights and equality. The particular responsibilities of the Employer, Management and non- Management Employees are specified below.</p>		

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Employees share in the responsibility to ensure that their work environment is free from Harassment and Discrimination.

Employees must not engage in any behaviour or comments that are or may be perceived as Harassment or Discrimination. Employees are required to report incidents of Harassment, Discrimination, or Reprisal to their Supervisors or Managers or to the Human Rights Specialist in Human Resources.

It is the responsibility of every Employee to co-operate fully in any attempts to resolve a matter under these policies and to co-operate fully in the investigation of any complaint. Any Employee who refuses to participate in an investigation or the resolution of a matter under these policies, or who knowingly or recklessly makes a false statement or gives false or misleading information, will be subject to disciplinary action up to and including termination of employment.

Employer Responsibility

- Provide a Workplace free from Harassment and Discrimination that is based on the prohibited grounds under the Ontario *Human Rights Code*.
- Ensure corporate policies and procedures comply with the Ontario *Human Rights Code*.
- Provide Human Rights awareness education to all Employees.
- Create an environment that encourages the reporting of all incidents of Harassment and Discrimination.
- Provide a process to handle and investigate Harassment and Discrimination complaints in the most effective, fair and timely manner, given the circumstances.

Management Responsibility

Management is responsible for providing a Workplace that is free of Harassment and Discrimination, and for intervening if Harassment or Discrimination occurs. They must ensure that Harassment and Discrimination are not tolerated, ignored or condoned.

Management is responsible for not only their own actions, but also for dealing with the actions of staff under their supervision. In order to prevent Harassment and Discrimination, address perceived

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Harassment and Discrimination, and to address Employee complaints with respect to Discrimination or Harassment on the basis of the prohibited grounds under the Ontario *Human Rights Code*,

Management will undertake the following actions:

- Set a good example by never engaging in, tolerating or condoning Harassment or Discrimination.
- Make all reasonable efforts possible to protect Employees from Harassment and Discrimination.
- Consult with the Human Rights Specialist on all matters that may pertain to this policy.
- If Harassment or Discrimination is suspected, or if an Employee complains that they are being harassed or discriminated against, action must be taken in accordance with this policy and the associated procedure (*Resolving Harassment & Discrimination Issues*). Accordingly, Management must consult with the Human Rights Specialist as soon as possible, upon learning or suspecting that Harassment or Discrimination may be occurring. In consultation with the Human Rights Specialist, Management must approach an Employee if Harassment or Discrimination is suspected because some Employees may be embarrassed and/or reluctant to complain.
- Respond immediately to any Harassment or Discrimination complaints by contacting the Human Rights Specialist. Only the Human Rights Specialist may formally investigate a Harassment or Discrimination Complaint (see the associated procedures – *Resolving Harassment and Discrimination Issues*). Management who are aware of Harassment or Discrimination and do not take corrective action in consultation with the Human Rights Specialist, may be subject to disciplinary action, up to and including termination of employment.
- In consultation with the Human Rights Specialist/Labour Relations, take remedial action with Employees who violate this policy, including disciplinary action, training, education or any other action deemed appropriate given the circumstances.

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COMPLIANCE	<p>Any Employee who is found to have violated this Harassment and Discrimination Prevention Policy may be disciplined according to the severity of the actions, up to and including termination of employment with cause and without termination pay/severance. Such terminations will be communicated to City Manager and Council.</p>	
RELATED DOCUMENTS	<p>The following related documents are referenced in this Policy:</p> <ul style="list-style-type: none"> • <i>Personal Harassment Prevention Policy</i> • <i>Violence in the Workplace Prevention Policy</i> • <i>Procedures for Resolving Harassment and Discrimination Issues</i> • <i>Occupational Health and Safety Act (OHSA)</i> • <i>Municipal Freedom of Information and Protection of Privacy Act</i> • <i>Ontario Human Rights Code</i> • <i>Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons</i> <p>Contact: For more information on this Policy, contact a Human Rights Specialist in Human Resources, City Manager’s Office.</p>	
HISTORY	<p>This Policy replaces previous Harassment and Discrimination Policy, approved by Council on April 27, 2005 (Report HUR05005).</p> <p>The Corporate Policy Review Group and an Employment Lawyer, specializing in Human Rights, were consulted in the revisions made to this Policy.</p> <p>Approved by Council of the City of Hamilton 2014-02-12</p> <p>Update History:</p> <ul style="list-style-type: none"> • Policy was updated to be consistent with Bill 132 and changes to the <i>OHSA</i> taking effect on September 8, 2016 • Updates were made in June 2018 to clarify language, align more closely to legislation and to reference the 	

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	<p style="text-align: center;">Protocol on Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons</p> <p>Review History:</p> <ul style="list-style-type: none"> • Senior Management Team 2016-03-31 • Corporate Policy Review Group 2017-06-01 • Corporate Policy Review Group 2018-07-02 • Corporate Policy Review Group 2019-06-28 • Human Resources 2020-12-01 • Corporate Policy Review Group 2022-06-27 	