

Corporate Policy

If this information is required in an alternate format, please contact the Accessibility Coordinator at 905-623-3379 ext. 2131

Policy Type:	Working Conditions and Programs
Policy Title:	Harassment
Policy#:	E5
Policy Approved By:	Chief Administrative Officer
Effective Date:	April 28, 1997
Revised:	May 25, 2020 (COD-015-20)
Applicable To:	All Employees
Historical Review:	February 5, 2019 (Report COD-007-19 Employee Policy); October 11, 2017 (COD-005-18 Employee & Elected Officials); October 12, 2016 (COD-003-17 Employee & Elected Officials), February 1, 2011 (F5)

The Corporation of the Municipality of Clarington is dedicated to providing a healthy and safe work environment. Acts of workplace harassment by staff, volunteers, visitors, contractors or vendors will not be tolerated. The Municipality of Clarington has a zero-tolerance policy regarding workplace harassment. Any violation of the policy will be investigated and may result in disciplinary action up to and including termination with cause. Violence in the workplace is dealt with under a separate Health & Safety Policy (H-8 Workplace Violence).

1. Purpose:

- a) To convey the Municipality's commitment to maintaining a workplace free of harassment.
- b) To ensure employees know what to do if he/she has been harassed or accused of harassing another individual and are aware of their responsibilities in maintaining a harassment free workplace.

2. Definitions

- 2.1 Workplace:** any location where business of the Municipality is being conducted such as offices and buildings of the Corporation. The workplace includes cafeterias, washrooms, locker rooms, work sites, on-road municipal vehicles and personal vehicles while occupied by municipal employees during travel for the purpose of municipal business, during regular or non regular hours as required. Harassment that occurs outside the workplace, but which has repercussions in the work environment, adversely affecting employee relationships, may also be defined as workplace harassment, with each situation to be evaluated on its own merit.

Harassment: means engaging in a course of vexatious comments including electronic means of communication or conduct by an employer, someone acting for the employer or co-worker towards any other employee which is intimidating, annoying or malicious and may relate to race, ancestry, place of origin, colour, ethnic origin, citizenship, religion/creed, sex, sexual orientation, age, record of offences (provincial offences and pardoned federal offences), marital status, family status or handicap, against a worker in a workplace that is known or ought reasonably to be known to be unwelcome whether intended or not.

2.3 Harassment is further explained as follows;

a) Workplace Sexual Harassment:

- 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, or
- 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;
- Reprisal or threat of reprisal by a person in a position to grant or deny a benefit to a person who has rejected his or her sexual proposition
- Unnecessary or unwanted physical contact, ranging from touching, patting or pinching to physical assault
- Leering or other suggestive gestures
- Unwelcome remarks, jokes, suggestions or insults about a person's physical appearance, attire or sex
- Displaying, sending or communicating electronically or by any other means pornographic pictures or other offensive, sexually explicit material
- Practical jokes of a sexual nature, which cause awkwardness or embarrassment
- Compromising invitations

b) Discriminatory Harassment

- Unwelcome remarks, jokes or insults about a person's racial background, colour, place of birth, ancestry or citizenship
- The displaying of racist, derogatory or otherwise offensive material
- Insulting gestures or practical jokes based on racial or ethnic grounds which cause embarrassment
- A refusal to converse or work with an employee because of his or her racial or ethnic background
- Any other situation as defined by the prevailing Human Rights Code

Corporate Policy

c) Workplace Harassment

- Physically abusive or aggressive behaviour such as pushing, hitting, finger pointing or standing close to the victim in an aggressive manner
- Using intimidating or disrespectful body language
- Verbally abusive behaviour such as yelling, insults, intimidating comments and name calling
- Spreading malicious rumours
- Excluding or ignoring the victim
- Making little or no eye contact with the victim and refusing to engage in common pleasantries
- Sabotaging the victim's work or claiming credit for it
- Reportedly blaming others for mistakes
- Making false allegations in memos or other documents
- A supervisor undermining the victim's efforts by setting impossible goals and deadlines and impeding an employee's efforts at promotions or transfers
- Persistent excessive and unjustified criticism and constant scrutiny by a supervisor

2.4 Examples that do not constitute Workplace Harassment, providing they are undertaken without malice or intent to intimidate or undermine;

- performance reviews
- work assignments
- work evaluation
- disciplinary measures taken by the employer for valid reasons
- normal workplace conflict that may occur between individuals, or differences in opinion between co-workers
- requesting documentation in support of an absence from work
- a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment

3. Policies:

- a) The Corporation of the Municipality of Clarington, CUPE Local 74 and the Clarington Fire Fighters Association, Local 3139 supports and recognizes their obligations regarding the right for every employee to work in a harassment free environment, as specified in the prevailing Ontario Human Rights Code and the Occupational Health & Safety Act.
- b) In keeping with its legal and social responsibilities as an employer, the management of the Corporation shall treat any complaint of harassment as a serious matter.

Corporate Policy

- c) No employee shall be harassed because of race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, creed, sex, sexual orientation, age, record of offences (provincial offences and pardoned federal offences), marital status, family status or disability.
- d) A spirit of fairness to both parties must guide the proceedings. This includes the respondent's right to know both the allegations and the accuser and the rights of both parties to a fair and impartial investigation and possibly a hearing.
- e) Confidentiality will be maintained to the best of management's ability. Any employee who is the subject of a complaint shall be informed of the complaint as soon as reasonably possible. The complainant who wishes to seek a remedy or a sanction through this procedure must be prepared to be identified to the respondent which will be undertaken with efforts to maintain respect for all involved in the situation. All involved in the process are requested to maintain confidentiality.
- f) This policy provides that the complainant not be compelled to proceed with the complaint unless the situation warrants as determined by management. It further provides the complainant with the right to withdraw a complaint at any point up to the final disposition of the matter. Based on knowledge obtained, the Corporation may be required to proceed with the investigation and report without the complainant's direct involvement.
- g) The respondent is entitled to a specific disposition of the issue as appropriate to the situation and findings.
- h) Every effort must be made by all parties to stop the harassment immediately.
- i) Any employee may at any time throughout the process seek advice or assistance from the Ontario Human Rights Commission.
- j) The employer will provide workers with information and instruction that is appropriate for the worker on the contents of this policy and program with respect to workplace harassment.

4. Procedures:

The Complainant:

Any person who believes he/she is being harassed by another person is advised to take the following measures:

Step #1 – Ask the harasser to stop:

Inform the harasser that his or her behaviour is unwelcome. An individual (although he or she should know better) may not realize that he or she is being offensive. A simple chat may resolve the problem. If the person refuses to cooperate, remind him or her that such behaviour is against Municipal policy.

Corporate Policy

If the employee feels uncomfortable asking the harasser to stop, assistance or intervention by Human Resources may be sought.

Step #2 – Keep a record of the harassment:

When did the harassment start? (E.g. dates, time, locations). What happened? Were there any witnesses? Were there any threats or reprisal? What was your response? Failure to keep a diary of the events will not invalidate your complaint. A record will, however, reinforce it.

Step #3 – Lodge a complaint:

- a) If the harassment, despite your efforts to stop it, continues, you should report the problem to your Supervisor, Department Head or a designate from Human Resources. If the offending person is the designate from Human Resources, the complaint should be taken directly to the Chief Administrative Officer or designate. If the offending person is the Department Head, the complaint shall be reported to Human Resources who will bring this matter to the CAO. If the offending person is the CAO, the Human Resources designate has the ability to advise Council in a confidential report.
- b) If the complaint is against a member of Council, alleged by another member of Council or by staff, the matter will be addressed through the Council Code of Conduct. The complaint shall be submitted to the Integrity Commissioner as per the Council Code of Conduct Complaint Procedure. The Integrity Commissioner will report to Council in accordance with governing protocol of that Office.
- c) Once the complaint is received, if verbal, Human Resources will document the events as communicated. If the complaint is in writing the date and time received will be recorded. Both parties may have a copy of the complaint, but Human Resources will retain all formal records.
- d) Where a manager or supervisor initially receives the official complaint, it is his/her responsibility to ensure that the designate from Human Resources and the Department Head is notified about the complaint as soon as reasonably possible. The designate from Human Resources is then responsible for assessment and initiation of an investigation.
- e) The designate from Human Resources will acknowledge receipt of a complaint as soon as reasonably possible to the Manager/Department Head/Complainant/Alleged Harasser.
- f) The Department Head and the CAO will be kept apprised of the process as to the appropriate steps throughout the process.

Corporate Policy

Human Resources:

Human Resources with assistance from the Health & Safety Coordinator if requested shall take the following steps:

Step #1 – Investigation of Complaint will be conducted by Human Resources or by Independent investigator as appropriate to the circumstances as determined by Human Resources.

a) Fact finding

- i) A confidential interview with relevant parties will be conducted to obtain information and clarify the details of the reported incident. Both parties will have an opportunity to identify witnesses or others who may be interviewed. Where witnesses are not identified, or where otherwise appropriate, co-workers or other individuals may be interviewed. All interviews will be conducted in a confidential manner.
- ii) The results and conclusions of the investigation will be documented after interviewing the complainant, respondent and any other relevant witnesses including co-workers if necessary. Complainant and/or respondents may be asked to verify documentation. Where appropriate and necessary, the investigator may contact the Ontario Human Rights Commission or independent investigation firms for advice or assistance.

Preliminary findings

- ii) Where the information revealed early in the investigation suggests a reasonable possibility of a resolution, an early settlement may be proposed prior to conducting the entire investigation.
 - iii) Where appropriate, a meeting may be convened with the parties (either individually or collectively as appropriate) involved to discuss preliminary findings of the investigation and inform participants of the possibility and nature of early settlement and the reasons.
 - iv) This stage allows all parties to become aware of the tentative findings and presents an opportunity, based on the information, to resolve the matter upon agreement of all parties without further investigation.
 - v) Where agreement is reached and the matter deemed resolved, a summary report will be prepared for the Chief Administrative Officer and appropriate Department Head.
- b) In situations where both parties agree on a settlement, but Human Resources deem the situation could pose a risk of further action, danger or legal outcome, Human Resources will make recommendations to the CAO regarding acceptance of the proposed settlement or proceeding further.

Corporate Policy

- c) Further investigation
 - i) Where, as a result of preliminary findings, a resolution cannot be proposed or achieved, or where the designate from Human Resources determines that file closure at this point would not be appropriate, further investigations will be conducted.
- d) Notification and discussion of results
 - i) The designate from Human Resources will subsequently schedule meetings with the complainant, alleged harasser, Department Head and/or Chief Administrative Officer where necessary, to present and discuss the findings and conclusions of the investigation. Separate meetings may be convened if necessary and all parties have a right to be represented.
- e) Report of Findings
 - i) A written general summary of the complaint and results of the investigation will be provided to the Chief Administrative Officer, Director of Corporate Services/HR, Department Head the complainant and the respondent as they are affected by the outcome. Documents are retained by Human Resources and detailed notes are not provided to complainant or respondent.
 - ii) The final full report will not be released to complainant or respondent or other party involved unless extenuating circumstances dictate, or there is a legal requirement to release the report.
 - iii) The results of an investigation under this policy and any report created in the course of or for the investigation, are not a report respecting occupational health and safety for the purposes of Section 25(2) of the Occupational Health and Safety Act.
- f) Disciplinary measures
 - i) If there is evidence of harassment, disciplinary measures will be taken by the Department Head, in consultation with the Director of Corporate Services/HR and the Chief Administrative Officer as appropriate. Such discipline may include suspension or termination of employment. Documentation regarding the disciplinary action will be placed in the employees personnel file.
 - ii) The worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation.

Corporate Policy

- g) Malicious complaints
 - i) Where, as a result of an investigation, it is determined that the complaint was made maliciously – with a specific and directed intent to harm, or made in bad faith with reasonable knowledge of any intent to harm, formal disciplinary actions may be taken against the complainant, after consultation with the Department Head, Director of Corporate Services/HR and/or CAO as appropriate. Documentation regarding the disciplinary action will be placed in the employee's personnel file.

Step #2 – Preventing a Re-Occurrence

- a) If the complaint is found to be not supported, no documentation of the complaint will be placed in the employee file of the respondent, unless the respondent requests a letter of clearance stating the claim was unfounded be placed into their employee file. Human Resources will maintain all records.
- b) It is the responsibility of the Department Head and Supervisors to make all reasonable efforts to ensure that workplace harassment does not occur and that there is no retaliation for having made a good faith complaint in his or her department.

The Respondent:

- a) Assess your behaviour seriously. Understand that even if you did not intend to offend, your behaviour has been perceived as offensive. Be aware that the test of harassment is not whether you intended to offend, but whether a reasonable person ought to have known that the behaviour, comments or conduct were unwelcome.
- b) Cease the behaviour that the person finds offensive or unwelcome. Failure to cease this behaviour will leave you more vulnerable to a formal complaint, which could lead to disciplinary actions.
- c) If you believe the complaint is unfounded, discuss the matter with your supervisor and/or Department Head or Human Resources.
- d) You are entitled to know the allegations against you and to have an opportunity to respond.
- e) Document your version of the alleged incident including times, places, what happened and any witnesses.
- f) Cooperate with any investigation undertaken to resolve the matter.