

Workplace
Discrimination and
Harassment Prevention
(WDHP) Program

External Investigations
Guide for OPS Employees

Centre for Employee Health, Safety
and Wellness
Employee Relations Division
HROntario
Ministry of Government Services
February 2012

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This document is available in alternate format upon request from the <u>Centre for Employee Health</u>, <u>Safety and Wellness (CEHSW)</u>

INTRODUCTION

This Guide has been developed as a resource for any Ministry and Commission Public Body employee who is a complainant, respondent or witness in an external third-party Workplace Discrimination and Harassment Prevention (WDHP) Policy investigation.

This guide contains information about the external third-party WDHP investigation process; things to consider as you approach the investigation; confidential support that is available for you and your family anytime you may need it during the investigation; and access to resources. For detailed information about the full policy as approved by Management Board of Cabinet, please refer to the WDHP policy, accessible via the OPS Wellness Portal.

Context

The WDHP Policy demonstrates the OPS commitment to fostering and sustaining an inclusive, diverse, equitable and accessible workplace that is respectful and free from discrimination and harassment. This commitment extends to employees, service providers and members of the public.

The policy of the OPS is to take every reasonable step to:

- > cultivate and sustain a supportive work culture;
- > prevent workplace discrimination and harassment and promote awareness of rights and responsibilities;
- identify and eliminate workplace discrimination and harassment in a timely manner; and
- improve and/or restore work environments and work relationships affected by incidents or allegations of discrimination or harassment.

Managers are accountable for ensuring positive and productive workplaces where staff are treated fairly and with respect. A key leadership role is resolving conflict and addressing inappropriate actions in a timely and effective manner.

The WDHP Policy

The policy upholds the legal framework of Ontario's *Human Rights Code* as well as complying with the new personal harassment provisions as outlined in the *Occupational Health and Safety Act* (effective Jun 15, 2010). The policy provides guidance on how to uphold these key pieces of legislation in the workplace and establishes a standard for conduct that describes the expectation of the type of inclusive work environment that the OPS is striving for.

The prevention of discrimination and harassment fosters a supportive workplace culture and workplace wellness.

Role of the Centre for Employee Health, Safety and Wellness

The Centre for Employee Health, Safety and Wellness (CEHSW) develops and delivers consistent programs and services that promote the health, safety and wellness of OPS employees. The CEHSW is part of the Employee Relations Division, HROntario.

The CEHSW supports managers and employees by providing WDHP advisory services, mediation assistance, investigation coordination, workplace restoration and remediation services. The WDHP Section is responsible for administering the WDHP Policy by helping managers and employees resolve workplace issues using various processes.

One of the resolution processes that managers use to resolve workplace issues, including discrimination or harassment complaints, is the external third-party investigation. A qualified, unbiased third-party investigator conducts the investigation and provides a report for the Deputy Minister or delegated decision maker through the WDHP Section.

The WDHP Section plays an important role in the investigation process by:

- > providing unbiased support and resources for all parties;
- > liaising with investigators and overseeing investigations;
- providing the draft report to complainants and respondents; and

forwarding the final report and recommendations to the Deputy Minister or delegated decision maker for consideration.

Being a complainant, respondent or a witness in an investigation can be a stressful experience. The WDHP Section will provide information, support and tools to assist you as you go through the investigation process.

EXTERNAL THIRD-PARTY WDHP POLICY INVESTIGATION

An external third-party WDHP Policy investigation seeks to determine whether or not allegations of inappropriate behaviour are substantiated and contravene the policy.

Parties to a WDHP Investigation

Investigator:

A qualified third-party investigator conducts the investigation. Their role is to gather the evidence from all the parties and conclude, on the balance of probabilities¹, whether or not the evidence supports the finding that the allegation(s) of inappropriate behaviour did or did not occur; and that the WDHP Policy was or was not violated.

Complainant(s):

The person or persons who allege that inappropriate behaviour has occurred;

Respondent(s):

The person or group of persons who are allegedly responsible for the inappropriate behaviour;

¹ Balance of probabilities means that evidence supports the likelihood that the behaviour did or did not occur.

Witness(es):

The person or persons whose names may have been provided by the complainant or the respondent, as having first-hand knowledge of the situation, and who have been interviewed by the investigator;

Responsible Manager:

This is the first level of management not involved in the complaint and:

WDHP Advisor:

The WDHP Advisor provides information, resources and support to all parties and oversees the investigation process.

Note: complainants, respondents and witnesses may choose to have a support person attend meetings with the investigator. This could include a bargaining agent representative, where applicable, friend or legal counsel (for employees not represented by a bargaining agent). Complainants and respondents may not choose witnesses as their support person or anyone else involved in the complaint. Any expenses associated with support person's attendance are incurred by the party to the complaint.

Investigation Process

Once the manager has determined that an investigation is the appropriate resolution option based on the preliminary assessment conducted by the WDHP Section, the following process will be used:

The responsible manager will communicate their decision to conduct an external investigation to both complainant and respondent;

- > The manager will secure the services of an investigator from the appropriate Vendor of Record (VOR) with the assistance of the WDHP advisor;
- Complainants and respondents will be contacted by the WDHP Advisor to provide them with formal written notification of the external investigation; Respondents will be provided with a summary of allegations against them in order to prepare for their meeting with the investigator;

- The WDHP advisor will contact each party to arrange their interview date, time and location to meet with the investigator. During this conversation, additional information will be provided which includes:
 - The right to be accompanied by another person or bargaining agent representative where applicable (any cost incurred in exercising this right will be at the cost of the employee) during complaint resolution processes related to this policy
 - The importance of maintaining confidentiality throughout the investigation
 - The name of the investigator
 - The protocol to follow for questions and/or concerns surrounding the investigation or any other matter related to the investigation
 - Investigation timelines
 - Post investigation process
- The investigator interviews the parties and gathers other evidence (e.g. emails, documents, photos, etc), then prepares and submits a draft report to the WDHP advisor;
- The WDHP advisor reviews the draft WDHP investigation report to ensure findings and conclusions are based on collected evidence and can withstand third-party scrutiny. The WDHP advisor provides both Complainant and Respondent with a copy of the draft report. These parties have five (5) business days to submit comments in writing to the investigator on the accuracy and completeness of the facts;

Note: Witnesses do not receive a copy of the investigation report.

- The investigator prepares and submits the final report to the WDHP advisor;
- The responsible manager and/or applicable WDHP Office submits the final report to the Deputy Minister or the delegated decision maker;
- The Deputy Minister, CPB designated official or the delegated decision maker (as per the Ministry's approved delegation of authority) provides written notice to the complainant and respondent, informing them of the results of the investigation, along with a copy of the investigation

- report. The letter includes the investigation outcome (i.e., whether the allegations have been unsubstantiated or substantiated) and next steps;
- At the conclusion of the investigation, workplace restoration activities will take place to improve and/or restore work environments and relationships affected by the allegations of discrimination and/or harassment by employing workplace restoration strategies. Managers must review workplaces affected by incidents or allegations of discrimination or harassment at least six (6) months after the conclusion of the complaint resolution process to determine whether additional workplace restoration strategies should be engaged.

CONFIDENTIALITY AND PRIVACY

Confidentiality is most important to ensuring all parties are treated fairly, with dignity and respect throughout all stages during and following the investigation. Therefore, it is necessary to remember the following:

- Complainants, respondents, and witnesses must cooperate fully and completely in the investigation and resolution processes.
- Personal information must only be collected, used or disclosed when its collection, use, or disclosure is necessary to administering the Policy.
- During and after an investigation and resolution of alleged policy violations, all information must remain strictly confidential except when sharing this information is required by collective agreement provisions or by law.
- > Parties are advised of the importance of maintaining confidentiality and the impact of not doing so on the outcome of the investigation. Sharing or discussing information about the investigation, where it is not appropriate to do so, could be seen as:

- Interfering with the investigation or intimidating a party to the investigation (i.e. complainant, respondent, witness);
- Attempting to influence the outcome of the investigation;
- Threatening or retaliating against one or more of the parties;
- Directly or indirectly intimidating one or more of the parties;
- Poisoning the work environment;
- Insubordination not complying with the direction of management.
- Sharing or discussing information about the investigation where it is not appropriate to do so could result in a violation of the WDHP Policy. The consequence could be discipline, up to and including dismissal.
- Complainants or respondents must not share information or the draft report with anyone other than the person who accompanied them to an interview and/or their representative.
- > The investigator maintains confidentiality in the report through the use of alphabetical and numeric identifiers (e.g. "Complainant", "Respondent", "Witness 1", "Witness 2", etc). Witnesses are not identified to either the complainant or the respondent. However, based on the circumstances of their evidence they could be identifiable to the parties.
- > There must be no reference to a complaint under this policy in an employee's personnel file unless disciplinary action was taken against the employee.

THINGS TO CONSIDER

Reassignment

In consultation with the WDHP Advisor, management may provide alternate working arrangements and/or suspend with pay, one or more of the parties pending the outcome of the investigation. This may be appropriate to:

- > Protect a party to the complaint, and/or
- > Minimize tension in the workplace, and/or
- > Limit any possible interference with the investigation.

Timeframe Restrictions

Every effort must be made to comply with the timeframes outlined in the Policy. Timeframes may be exceeded in extenuating circumstances without voiding the process.

With regard to external investigations, the timeframes associated with this resolution option are:

- An investigation must be assigned to an investigator within fifteen (15) working days of management's decision that a complaint will be investigated.
- An external investigation must be completed and final report submitted within ninety (90) working days of assigning a complaint to an investigator, unless there are extenuating circumstances. The responsible manager and/or applicable WDHP Office must submit the final report to the Deputy Minister, CPB designated official or the delegated decision maker.
- Parties and managers involved must be notified of the outcome of an investigation within 30 working days of the Deputy Minister or delegate_receiving an investigator's final report.
- In Commission public bodies, the final report is submitted to the CPB designated official. The CPB designated official, or the delegate of the CPB designated official, must decide on appropriate remedies, where authorized, within 30 working

days of receiving the final report. Where the CPB designated official is not authorized to decide on a particular remedy, an authorized individual for that CPB must decide on the appropriate remedy within 30 working days of receiving the final report.

Interviews

When meeting with the investigator, he/she will explain the interview process and answer questions. Where appropriate, the investigator may refer parties to the WDHP advisor to answer questions about the process. During the interview, the interviewees must:

- > **Be specific and forthright**. When answering the investigator's questions, be honest about what happened.
- Provide the names of witnesses. Whether you are the complainant, respondent or a witness, it is important to remember the names of individuals who were present or who have first hand knowledge of the situation and can provide relevant information.
- Provide physical evidence and supporting information. Findings in an investigation are based on two things: evidence and the balance of probabilities. Therefore, it is important to provide physical evidence and information that is not only relevant to the investigation, but also supports your position.

At the end of the interview, the investigator provides the opportunity for parties to review and confirm the accuracy of their statements. They are entitled to receive a photocopy of their own signed statement. Complainants and respondents will receive copies of their statements at the end of their interviews. If a witness requests a copy of their statement, they should provide the investigator with their correct mailing address and their statement will be sent to them once all interviews have been completed by the investigator.

SUPPORT

WDHP Advisor

The WDHP Advisor provides support throughout the investigation to all parties by answering questions and providing information about the process and appropriate resources.

Responsible Manager

The responsible manager of the affected workplace monitors relationships and supports the parties by:

- Setting down expectations for appropriate workplace behaviour
- Referring parties to appropriate sources for emotional, personal and administrative support
- Reinforcing the WDHP Policy provisions related to reprisals and interference in the investigation process
- Maintaining confidentiality.

Employee Assistance Program

An additional resource is the Employee Assistance Program (EAP). The EAP Service Provider offers professional and confidential assistance, 24 hours a day, 365 days a year.

To utilize the services of the WDHP EAP Provider, you may contact them by telephone at: 1-877-298-8851.

Alternatively, there is also a general EAP line who you may contact by telephone at: 1-800-268-5211 (English) or 1-800-363-3872 (French)

TTY: 1-800-363-6270 (English) or ATS: 1-800-263-8035 (French)

Online counselling at: www.shepellfgi.com

Bargaining Agent

Represented employees may choose to seek advice of their bargaining agent. Employees participating in this process are entitled to bring a union representative as their support person.

ACCESS TO RESOURCES

The WDHP Section encourages all employees to become familiar with the WDHP Policy, other OPS workplace policies, as well as information on staying healthy and safe in the workplace.

Visit the OPS Wellness Portal to find more information and resources.