



HROntario

| Employee Health, Safety
and Wellness

**Workplace
Discrimination and
Harassment (WDHP)
Program**

**Information for
Managers and
Employees**

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INTRODUCTION

The provisions pertaining to harassment are reflected in the Ontario Public Service (OPS) Workplace Discrimination and Harassment Prevention policy, which is available on the [OPS Directives and Policies](#) website on MyOPS. This enterprise policy addresses the prevention, reporting, and resolution of workplace discrimination and harassment, and the restoration of workplaces affected by discrimination and/or harassment incidents or allegations. It forms the basis of the OPS Workplace Discrimination and Harassment Prevention (WDHP) program.

The policy applies to all ministries, Commission public bodies (CPBs), deputy ministers, chairs of CPBs, and public servants appointed under Part III of the *Public Service of Ontario Act*, including regular staff, fixed term staff and Ministers' staff.

The workplace harassment provisions of the policy also apply to workers as defined in the *OHS Act* which includes individuals who perform work or supply services in OPS workplaces but are not public servants (e.g. fee-for-service consultants, contractors, etc.). These individuals are referred to as "other workers" throughout the policy and program documents.

This document provides direction and assistance to OPS managers and employees to comply with the WDHP policy. It was prepared by the Centre for Employee Health, Safety and Wellness (CEHSW), HROntario, in consultation with representatives from OPS core business areas and MGS Legal Services Branch. The CEHSW assists ministries by providing advice and support to all parties throughout the complaint resolution and workplace restoration process.

The Ontario Provincial Police (OPP) and Commission public bodies maintain their own internal complaint resolution and workplace restoration advisory services but are required to comply with the mandatory requirements set out in the OPS WDHP policy.

The employer, for the purposes of the *OHS Act*, is deemed to be each ministry and/or Commission public body. Deputy ministers and chairs of CPBs are responsible for ensuring the OPS WVP policy is applied in their workplaces through the implementation and maintenance of the WDHP program and/or related policies and programs.

OBJECTIVES

The information provided in this document is intended to:

- 1) assist ministries and/or CPBs to fulfill their statutory obligations under the *OHSA* and Ontario's *Human Rights Code*; and
- 2) provide information, guidance and tools to support ministries in meeting their obligations as outlined in the WDHP policy.

It should be noted that, while the amended *OHSA* also addresses workplace violence, this document pertains only to discrimination and harassment in the workplace. Please refer to the OPS Workplace Violence Prevention policy and guidance materials when addressing issues relating to workplace violence.

OVERVIEW

WORKPLACE DISCRIMINATION AND HARASSMENT PREVENTION

REQUIREMENT	DESCRIPTION
Develop policy	<ul style="list-style-type: none">> Policies must be reviewed at least annually> Workplace policy must be developed to reflect the <i>OHS</i>A requirements
Develop and maintain program	<ul style="list-style-type: none">> A workplace discrimination and harassment prevention program must include measures and procedures:<ul style="list-style-type: none">◦ for workers to report complaints, and◦ following an incident, to ensure that workplaces are restored.> The program must also detail how the employer will investigate and deal with complaints of workplace discrimination and harassment.
Provide information and instruction to employees	The employer must provide employees with information and instruction on the contents of the workplace discrimination and harassment prevention policy and program.

LEGISLATIVE FRAMEWORK

The *Criminal Code of Canada*, Ontario's *Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act, 2005*, and the *OHSA* are pieces of legislation that address workplace discrimination and harassment in Ontario.

Criminal Code of Canada

Incidents such as assault, sexual assault, criminal harassment, hate crimes, child pornography, and uttering threats may fall within the scope of the *Criminal Code of Canada*, which is enforced by police services.

Ontario's Human Rights Code

Ontario's *Human Rights Code* states that no individual shall be discriminated against in the course of employment or subjected to workplace harassment based on one or more of the prohibited grounds. The *Code* allows Ontarians to bring forward complaints of such occurrences to the Human Rights Tribunal of Ontario.

Accessibility for Ontarians with Disabilities Act, 2005

This Ontario law is intended to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025, by developing, implementing and enforcing accessibility standards.

Occupational Health and Safety Act

The *OHSA* is the overarching piece of legislation that governs health and safety in most Ontario workplaces. Under s. 25(2)(h) of the *OHSA*, all employers have a general duty to take every precaution reasonable in the circumstances to protect the health and safety of their workers. As a result of Bill 168 amendments, the *OHSA* now specifically outlines harassment in the workplace as a health and safety hazard. The legislation recognizes that a continuum of inappropriate behaviours can occur in the workplace. This can range from offensive remarks to violence. Workplace harassment may escalate over time into threats or acts of physical violence. In some cases, a targeted worker may react violently to prolonged harassment in the workplace.

OHSA DEFINITION OF WORKPLACE HARASSMENT

“Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably be known to be unwelcome.”

DEFINITIONS

Workplace: defined under the *OHSA* as any land, premises, location or thing at, upon, in or near which a worker works. Workplaces are more than just office buildings. For example, if an employee attends an OPS-sponsored event (i.e. retirement party) or conference which occurs outside the normal work location and/or core business hours, the event or conference location may be considered a workplace. Consistent with this definition, a vehicle is considered to be a workplace if an employee drives the vehicle in the course of performing the job. Further, when an employee is providing service in a client's home or business, that location is also considered to be the employee's workplace.

Harassment: defined as engaging in a course of vexatious comment or conduct against an employee or other worker in the workplace that is known or ought reasonably to be known to be unwelcome.

Harassment includes:

- > personal harassment (e.g. bullying, psychological harassment), and;
- > harassment based on the prohibited grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy and gender identity), sexual orientation, age, record of offences, marital status, family status, or disability.

Personal harassment is often referred to as bullying or psychological harassment. Examples of behaviour that may signify personal harassment include but are not limited to:

- > making remarks, jokes, or innuendos that demean, ridicule, intimidate or offend (e.g. teasing about a person's physical characteristics or appearance, putdowns or insults);
- > repeated offensive or intimidating phone calls or emails;

- > spreading damaging and false gossip or rumours; and
- > humiliating and embarrassing an employee by belittling, demeaning or patronizing the individual in front of colleagues.

Examples of behaviour that are **not** considered personal harassment include but are not limited to:

- > exercising managerial responsibilities or discretion (e.g., assignment of work, performance and attendance management, discipline for cause, etc.);
- > disagreements, misunderstandings, miscommunication and/or conflict situations that are managed effectively;
- > work-related stress which has origins other than personal harassment;
- > fiscal constraints and organizational change based on business rationale;
- > acknowledging differences in personality and work styles.

Workplace discrimination: defined as any practice or behaviour, whether intentional or not, which has a negative impact on an individual or group based on one or more of the prohibited grounds under the *Code*, except where the conduct is permitted under the *Code*. Discrimination may arise due to unequal treatment or from the same treatment which has an unequal effect on an individual or group protected from discrimination under the *Code*.

WHAT ARE THE PROHIBITED GROUNDS FOR DISCRIMINATION BASED ON ONTARIO'S HUMAN RIGHTS CODE?

The **prohibited grounds** of workplace discrimination and grounds-based harassment under the *Code* are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy and gender identity), sexual orientation, age, record of offences, marital status, family status and disability. The policy prohibits discrimination on the basis of these grounds, and any combination of these grounds.

OHRC GROUNDS	DESCRIPTION
1. Race	Refers to an idea that is artificially constructed by society based on physical traits and geographical, historical, political, economic, social and cultural factors. Race is sometimes thought of as the classification of humankind, according to common ancestry and physical characteristics such as skin colour, hair texture, stature and facial characteristics. However, there is no biological basis for this concept of race, as there are more genetic similarities between races than within races.
2. Ancestry	Relates to whom a person is descended from.
3. Place of origin	Relates to where a person is from (inside or outside Canada).
4. Colour	Refers to skin colour.
5. Ethnic origin	Refers to the cultural origins of a person's ancestors.
6. Citizenship	Refers to legal citizenship (Canadian or otherwise) and also is linked to having landed immigrant, refugee and non-permanent resident status.
7. Creed	Refers to religion or a professed system and confession of faith, including both beliefs and observances or worship.

OHRC GROUNDS	DESCRIPTION
8. Sex (including pregnancy)	Refers to a person's biological sex, male or female, and gender (i.e. social characteristics attributed to each sex). This ground includes pregnancy.
9. Sexual orientation	Refers to the direction of one's sexual interest or attraction and is a personal characteristic that forms part of an individual's core identity. It covers the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.
10. Age	Defined as being at least 18 years of age.
11. Record of offences	"Record of offences" means a conviction for (a) an offence in respect of which a pardon has been granted under the <i>Criminal Records Act (Canada)</i> and has not been revoked, or (b) an offence in respect of any provincial enactment.
12. Marital status	Defined as being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage. It applies to common-law, same-sex and opposite-sex relationships.
13. Family status	Defined as being in a parent and child relationship. It includes non-biological parent and child relationships, e.g. adoption, fostering and step-parenting.
14. Disability	Defined to cover a broad range and degree of conditions, some visible and others not. It includes past, present and perceived physical, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, and environmental sensitivities, as well as other conditions.

OHRC GROUNDS	DESCRIPTION
15. Gender Expression	An external manifestation of one's gender identity, usually expressed through 'masculine', 'feminine' or gender-variant behavior, clothing, hairstyle, voice or body characteristics.
16. Gender Identity	Linked to an individual's intrinsic sense of self and particularly the sense of being male or female. Gender identity may or may not conform to a person's birth-assigned sex and may include individuals who identify as Transgender, Transsexual, Intersex, Crossdresser, and Trans.

OPS WORKPLACE DISCRIMINATION AND HARASSMENT PREVENTION PROGRAM

A. AT A GLANCE

STEP 1: Review the Workplace Discrimination and Harassment (WDHP) Policy

- > Ministry of Government Services (HROntario) shall review the Workplace Discrimination & Harassment Prevention Policy on an annual basis.
- > A copy of the policy must be posted conspicuously in the workplace.

STEP 2: Prevention

- > The Ministry of Government Services (HROntario) shall develop and maintain a corporate workplace discrimination and harassment prevention program that includes measures and procedures to implement this policy.
- > All workers must receive education and training on the Workplace Discrimination and Harassment Prevention program including:
 - their rights and responsibilities under this policy, and;
 - ways in which incidents or allegations of discrimination and harassment can be resolved.
- > Managers, employees and other workers must demonstrate standards of behaviour consistent with the principles outlined in this policy.

STEP 3: Addressing discrimination and harassment: reporting, response and facilitating resolution

- > Employees must report all incidents they have witnessed or experienced and exercise their rights in good faith.
- > Managers must respond to reports or complaints of discrimination and/or harassment immediately.
- > Management must address WDHP issues and complaints appropriately and disciplinary decisions must be consistent, fair and consider mitigating circumstances.

STEP 4: Workplace restoration and review

- > Managers are responsible for facilitating the restoration of workplaces affected by discrimination and/or harassment incidents or allegations.
- > Managers are responsible for reassessing their workplace restoration strategies six (6) months after an incident or allegation of discrimination or harassment to determine whether additional workplace restoration strategies should be engaged.

For more information or advice on these steps contact your WDHP advisor in the CEHSW, or email wdhp@ontario.ca.

B. STEP BY STEP

STEP 1

REVIEW THE WORKPLACE DISCRIMINATION AND HARASSMENT PREVENTION POLICY

The OPS Workplace Discrimination & Harassment Prevention (WDHP) policy applies to:

- > All ministries and Commission Public Bodies (CPBs)
- > All deputy ministers and chairs of CPBs
- > All public servants appointed under Part III of the *Public Service of Ontario Act, 2006* (which includes full-time, part-time, seasonal, fixed-term and permanent staff, and Minister's staff).

The workplace harassment provisions of the policy also apply to workers as defined in the *OHSA* which includes individuals who perform work or supply services in OPS workplaces but are not public servants (e.g. fee-for-service consultants, contractors, etc.). These individuals are referred to as "other workers" throughout the policy and program documents.

The policy:

- > Establishes an OPS-wide approach for the prevention, reporting, resolving and restoring of workplace discrimination and harassment issues.
- > Provides direction to ministries and CPBs on compliance with the policy
- > Assigns deputy ministers and chairs of CPBs as responsible for complying with the *OHSA* and for ensuring the OPS WDHP Policy and related policies and programs are applied and monitored appropriately.
- > Outlines the mandatory requirements and responsibilities of OPS workplace parties.

- > Must be posted in a conspicuous location in the workplace, for example bulletin boards.
- > Will be reviewed annually by HROntario, Ministry of Government Services on behalf of Management Board of Cabinet.
- > Does NOT apply to workplace violence. Refer to the Workplace Violence Prevention Policy and guidance materials when addressing issues relating to workplace violence.

Those found to have violated the WDHP Policy may be subject to discipline up to and including dismissal.

Action Items for Step 1:

- ✓ Managers must ensure that all employees are informed of the WDHP policy and their roles and responsibilities as outlined in the policy.
- ✓ A copy of the policy must be posted conspicuously in the workplace.

STEP 2

PREVENTION

The key to prevention is anticipating situations where workplace harassment or discrimination could occur and putting steps in place to make this less likely, and to mitigate the impact on the workforce if it does occur.

Providing appropriate education and training to employees, managers and other workers is essential to preventing workplace discrimination and harassment, and protecting employees. The *OHSA* requires the employer to provide a worker with "information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment."

This document and information posted in workplaces provide information to all OPS employees regarding the WDHP policy and programs.

The WDHP E-learning modules provide information and instruction regarding the WDHP policy and WDHP program, and can be found on the [OPS Learning and Development](#) (login required). **All OPS employees are required to complete this training or its equivalent in another format. It is the responsibility of management to manage this requirement.** WDHP classroom-based training for employees and managers is also available through [OPS Learning and Development](#).

Employees and other workers new to the workplace should receive this information as part of their orientation.

Action items for Step 2:

- ✓ New employees and other workers must complete WDHP education or training as part of their orientation.
- ✓ New managers must complete WDHP education or training within six (6) months of assuming their managerial role. Ensure existing managers participate in education or training at least every three (3) years.
- ✓ Existing employees and managers must complete education and/or training on the contents of the revised WDHP policy and associated programs.
- ✓ When appropriate, managers must advise visitors to OPS facilities that they are expected to refrain from discrimination or harassment of employees, other workers, and other visitors

STEP 3**ADDRESSING DISCRIMINATION AND HARASSMENT:****REPORTING, RESPONSE AND FACILITATING RESOLUTION****Reporting discrimination or harassment**

Employees, and other workers where applicable, are responsible for bringing to the attention of their manager, the next level of management not involved in the complaint or issue, or the appropriate WDHP office any issues they have witnessed or experienced that may violate the policy. It is recognized that some reporting employees may be fearful of criticism, penalties or judgment by exercising their right to file a complaint under the WDHP policy. Threats and retaliation against employees for raising discrimination or harassment concerns is a policy violation and may be subject to a disciplinary response.

Complaints must be filed, either in writing or verbally, within six months of the alleged incident taking place. Employees may also pursue grievance rights, if applicable, or file applications with the Human Rights Tribunal of Ontario, subject to stipulated time limits.

If you believe the WDHP policy has been violated, either impacting yourself or others, you should:

1. tell the alleged offender and ask them to stop, when possible (i.e. if you feel safe and comfortable doing so);

OR

2. bring the concern to the attention of the first level of management not involved in the complaint;

OR

3. contact your WDHP advisor in the Centre for Employee Health, Safety and Wellness, HROntario (or equivalent in a Commission public body or OPP) for assistance;

OR

4. contact your Bargaining Agent Representative, if applicable.

Confidentiality and Privacy

Every effort must be made to maintain the strict confidentiality of any personal information obtained during and following the complaint resolution process except when sharing information is required by collective agreement provisions or by law.

All parties, including managers, WDHP advisors, complainants, respondents and witnesses, must adhere to the confidentiality and privacy provisions outlined in the policy.

If maintaining confidentiality puts employees at risk of physical harm, the employer must disclose only the amount of information necessary to those individuals deemed necessary to protect the safety of employees, or to enforce an order of protection.

Reports or complaints of workplace discrimination or harassment must not be referenced in an employee's human resource file unless disciplinary action was taken against the employee for violating the policy.

Responding to WDHP complaints

All reported incidents of workplace harassment or discrimination must be responded to immediately and addressed as soon as possible to mitigate significant disruption to the workplace.

When a manager becomes aware of an alleged incident of discrimination and/or harassment, he or she must act whether or not a complaint has been filed, by:

- > intervening to stop the unacceptable behaviour;
- > contacting their WDHP advisor in HROntario (or equivalent in OPP/CPBs) to obtain advice and provide information necessary to conduct a preliminary assessment;
- > determining the appropriate resolution option with advice from the WDHP advisor;
- > protecting the confidentiality of employees who raise allegations or file complaints under the policy; and
- > facilitating issue or complaint resolution in a timely manner and implementing the appropriate remedy.

Facilitating resolution of workplace discrimination and harassment issues

All reported incidents or complaints of workplace discrimination and harassment must be taken seriously.

Each situation must be addressed individually, on a case-by-case basis. Resolution mechanisms include:

- > direct management action;
- > alternate dispute resolution (ADR); and
- > investigation, whether internal or external.

Direct management action is a quick, effective and confidential remedy to address individual behaviour. It limits involvement of other parties and produces minimal disruption to the workplace. (Timeline: within 30 days of the preliminary assessment.)

Alternate dispute resolution (ADR) is an interest-based, voluntary resolution process that is not focused on finding fault or assigning blame and is an effective alternative to an investigation (e.g. mediation, facilitation). (Timeline: within 30 days of the complaint being assigned to an ADR Resource.)

Internal investigation is a formal process conducted by an internal resource (e.g. a management representative) that involves gathering information and interviewing parties to assist management in determining whether or not the policy has been violated. (Timeline: within 60 days of assigning complaint to an internal resource.)

External investigation is a formal exercise conducted by a neutral third-party investigator for arm's length objectivity and transparency in determining whether the policy has been violated. (Timeline: within 90 days of assigning to an external resource.)

Action Items for Step 3:

- ✓ Employees are encouraged, when possible, to tell the offenders about unwelcome conduct or actions perceived to be discriminatory or harassing and to ask the alleged offender to stop. Other workers are encouraged, when possible, to tell the offenders about unwelcome conduct or

actions perceived to be harassing and to ask the alleged offender to stop.

- ✓ Employees understand that alleged policy violations they have witnessed or experienced must be reported to management or a WDHP advisor.
- ✓ Managers understand they must respond immediately and take appropriate steps to resolve a complaint.
- ✓ Managers will ensure that they contact the WDHP advisor immediately upon becoming aware of alleged policy violations.
- ✓ Managers will ensure that they facilitate the timely resolution of complaints or issues (using direct management action, alternate dispute resolution or investigation) by adhering to the timeframes set out in the policy for the various stages of the complaint resolution process.
- ✓ Managers must inform Deputy minister/Commission public body chairs of all complaints that remain open for more than nine months after the preliminary assessment has been completed.

STEP 4

WORKPLACE RESTORATION AND REVIEW

The goal of the WDHP policy is to foster and sustain an inclusive, diverse, equitable and accessible workplace that is free from discrimination and harassment.

Managers must take appropriate steps to restore work environments and working relationships affected by a discrimination or harassment incident or allegation by employing workplace restoration strategies.

Managers must review workplaces in which there were allegations or incidents of discrimination or harassment, six (6) months after the conclusion of a complaint resolution process to determine whether additional workplace restoration strategies are required.

Workplace strategies can include, but are not limited to:

- > coaching and training;
- > healthy conflict resolution exercises;

- > team-building exercises;
- > communiqués; and
- > organizational reviews.

WDHP advisors are available to offer advice on workplace restoration strategies and services.

Action Items for Step 4:

- ✓ Did the manager take appropriate steps to restore the workplace after allegations or incidents of discrimination or harassment were raised?
- ✓ Did the manager review the workplace at least six (6) months after the conclusion of the complaint resolution process, in which there was an allegation or incident of discrimination or harassment to determine whether additional workplace restoration strategies should be pursued?
- ✓ The Centre for Employee Health, Safety and Wellness, HROntario will review the WDHP program for currency each time the WDHP policy has been updated to ensure employees have current information and instruction on the prevention and response to workplace discrimination and harassment.