



Council Policy

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Approval date: March 17, 2014

Resolution No.: 134/2014

Subject: Respectful Workplace Policy

Purpose

This Policy will apply to the resolution of all internal informal or formal concerns/complaints brought forward regarding disrespect, harassment and/or bullying.

Scope

The Policy applies to all City employees, the City Administrator, the Mayor and City Councillors. It also applies to contractors, visitors and other parties who attend at City of Penticton worksites or interact with City of Penticton employees during the course of their employment.

Policy

The procedures set out within this Policy also will apply to any and all City of Penticton investigations conducted in response to related grievances and external discrimination/harassment/bullying complaints filed with WorkSafe BC, the Human Rights Tribunal or otherwise.

This includes any communication and/or conduct between internal Staff (including employees, management, and Council) and external public (including contractors, visitors and public).

If there is harassment, bullying or disrespect by an external party to a City staff member which may constitute violence in the workplace, the City would follow appropriate procedures outlined in WorkSafe BC policy and legislation.

Please find the WorkSafe BC prevention policies for your reference in the links below:

- Employer Duties - Workplace Bullying and Harassment - D3-115-2
- Worker Duties - Workplace Bullying and Harassment - D3-116-1
- Supervisor Duties - Workplace Bullying and Harassment - D3-117-2

DEFINITIONS

Parties

Parties are the Complainant(s) and Respondent(s) directly involved in a complaint and may include: employees (unionized and excluded), contractors and elected officials.

Complainants

Complainants are those individuals making a complaint and seeking recourse in relation to this Policy.

Respondents

Respondents are those individuals alleged to have violated this Policy.

Bystanders

Bystanders are third parties who have witnessed behavior that, in their view, potentially constitutes a violation of this Policy. Bystanders should report their concerns in accordance with Step 2 of the Informal Processes set out below.

Bystanders are not Parties to a complaint. However, they may be interviewed as witnesses in the event there is a formal investigation into their concerns.

Witnesses

Witnesses are individuals who have direct knowledge of or involvement in any matter or incident that potentially relates to a complaint brought forward or filed pursuant to this Policy.

Respectful Conduct

Respectful workplace conduct incorporates courtesy, civility, consideration and compassion. It is an approach which actively respects individuals by avoiding unnecessary behaviors which would have a negative impact on them. It involves taking responsibility for one's behavior/conduct in the workplace.

A workplace disagreement or difference of opinion is not by definition disrespectful. The manner in which a disagreement is described, discussed or resolved will determine whether or not the conduct is respectful.

Examples of Disrespectful/Disruptive Conduct may include, but are not limited to behaviours that are objectively found to be:

- profane, disrespectful, intimidating, insulting, demeaning or abusive written or verbal communication or conduct: this may include verbal or non-verbal language and gestures;
- outbursts of anger;
- arguments with or between staff that take place in a "public" non-confidential area;
- critical comments about staff that are made outside the usual and confidential processes for review/feedback;
- shunning and other repeatedly "exclusive" conduct, verbal or non-verbal in nature;
- verbal, psychological or physical threats to safety;
- application of negative stereotypes or generalizations; and
- unwelcome remarks, jokes, innuendo or taunting.

Depending on the nature, extent and/or severity of the disrespectful conduct, it may also constitute discrimination, discriminatory harassment, sexual harassment, personal harassment or bullying.

Discrimination

Discrimination is adverse differential treatment of an individual or group, whether intended or not, on the basis of race, color, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or unrelated criminal conviction. Discrimination of this nature imposes burdens or

obligations on an individual or group that serves no work-related function. It is important to note that such conduct is not only a breach of this Policy; it may also be a breach of the British Columbia Human Rights Code.

Discriminatory Harassment

Discriminatory harassment is a form of discrimination and also is contrary to the Human Rights Code. Discriminatory harassment is abusive, unfair, offensive, or demeaning treatment of or disrespectful/disruptive conduct towards a person or group of persons related to their race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or unrelated criminal conviction ("Protected Grounds") that a reasonable person would know or ought to know would:

- have the effect of interfering with an individual's work or participation in work-related activities; or
- create an intimidating, hostile or offensive environment for work or participation in a work-related activity.

Examples of Discriminatory Harassment:

- Teasing, joking, taunting, insulting or criticizing a person, directly or indirectly, verbally or in writing, based on his or her "Protected Ground" (as defined above, for e.g. race, gender, age, religion). This may include commentary regarding their ability to communicate "clearly", physical appearance, work style and level of intelligence.

Sexual Harassment

Sexual harassment is disrespectful/disruptive conduct of a sexual nature made by a person who knows or ought reasonably to know that such conduct or comment is unwanted or unwelcome; or an expressed or implied promise of a reward for complying with a request of a sexual nature; or an expressed or implied threat of reprisal for refusal to comply with such a request; or disrespectful/disruptive conduct of a sexual nature which is intended or reasonably would be known to create an intimidating, hostile or offensive environment.

Examples of Sexual Harassment may include, but are not limited to:

- verbal or written commentary or threats of a sexual nature;
- unwelcome remarks, jokes, innuendoes or taunting of a sexual nature;
- displaying of pornographic or other offensive pictures;
- unwelcome and/or repeated sexual invitations or requests;
- leering or other inappropriate sexually oriented gestures;
- unnecessary physical contact such as: touching, patting or pinching;
- sexual assault (this may also be a criminal matter);
- negative comments that are gender-based; and
- repeated behavior that a person has objections to and is known or should reasonably be known to the offender as being unwelcome.

Personal Harassment

Personal harassment is any behavior (including Disrespectful/Disruptive Conduct) by a person directed against another person that a reasonable person would know or ought to know would cause offence, humiliation or intimidation, where the conduct is not carried out in good faith and serves no legitimate work-related purpose.

Examples of Personal Harassment:

- Swearing, yelling, or making derogatory gestures or comments to or about another individual
- Engaging in embarrassing practical jokes, ridicule, or malicious gossip
- Verbal or physical threats or physical assault

Bullying

Bullying is any repeated or systematic physical, verbal or psychological behavior (including Disrespectful/Disruptive Conduct) which would be seen by a reasonable person as intending to belittle, intimidate, coerce or isolate another person.

What is Not Bullying/Harassment

Personal harassment and/or bullying does not include social banter in the workplace that is objectively viewed as acceptable in tone and content.

Nor does it include actions occasioned through the good faith management of the employment relationship, including decisions related to hiring, selection, performance evaluations, and progressive corrective discipline, provided that such decisions are made and implemented in a manner that is respectful of those involved.

For greater clarity, operational changes in an employee's duties, job description, work space or work environment, that are implemented in accordance with the above, are not considered to be violations of this policy.

Methods of Communication

Inappropriate communication that may violate this Policy may be transmitted in person, on the phone, and in writing, through email, texts, Facebook, Twitter and other social media messaging, and otherwise. Potential violations may consist of inappropriate communication made to a person and/or communication made about a person to others.

FAIRNESS

Parties, Bystanders and Witnesses have a right to fair treatment in the consideration and adjudication of complaints and concerns under this policy. Fair treatment includes the right to:

- Bring forward their concerns pursuant to processes within the Policy within a timely manner
- Being informed in a timely manner of complaints made against them
- An impartial and objective consideration and evaluation of the circumstances, through informal or formal intervention
- Confidentiality to the extent possible in the circumstances, including the avoidance of gossip, rumors and speculation by any Party or Witness
- Protection to any Party or Witness from retaliation for participation in processes under this Policy
- Being effectively informed of the outcome of any formal intervention
- Union representation for unionized staff
- Other representation for excluded staff

CONFIDENTIALITY

All Bystanders, Witnesses and Parties involved in a complaint or in the informal/formal resolution of a complaint, are expected to keep matters related to a complaint confidential. This includes managers and supervisors who are privy to the complaint or complaint resolution process.

An established breach of confidentiality regarding a complaint or complaint resolution process shall be considered an independent violation of the Policy (regardless of the merits or conclusions regarding the complaint) and shall result in discipline.

Any allegation or complaint under this Policy will be considered personal information supplied in confidence for the purpose of Sections 22(2) (f) of the Freedom of Information and Protection of Privacy Act. The names of those involved in the complaint shall not be disclosed to any person except where necessary for the purpose of fairly investigating and determining the outcome of the complaint.

The substance of investigative reports and the substance of meetings held by those in authority to make decisions in relation to a complaint, regardless of whether it is substantiated, will be protected from disclosure to third parties in accordance with Section 40 of the Act.

COMPLAINT RESOLUTION PROCESS

Complainants are encouraged to resolve complaints/concerns with others as soon as they arise, using the informal process set out below, unless attempting resolution with such others would be clearly inappropriate in all of the circumstances.

Without limiting its application, the informal resolution process is commonly used in circumstances where the alleged concern/conduct appears to be: (a) non-repetitive (a "one-off" discussion/interaction); and (b) relatively minor in severity or seriousness, considering its content, potential impact on the individual and/or the safety/health of the overall organization.

Although the Complainant may indicate that he/she prefers the informal process, the City of Penticton may at any time exercise its discretion to initiate a formal process based upon its overall review of the circumstances.

Informal Processes

Step 1 – Resolution (Informal Conversation)

Wherever reasonable, a Complainant should address the person with whom he/she is having difficulty (the "Respondent") in a direct and discreet (confidential) manner as soon as possible following the incident.

If the Complainant is not comfortable taking this step, or if the Complainant has done so without success, then the Complainant should proceed to the next step.

Step 2 – Resolution (Manager/Designate Involvement)

The Complainant or a Bystander should approach his/her supervisor or manager with his/her concerns including particular examples of inappropriate statements or verbal or non-verbal behaviors by the Respondent(s), dates, times, witnesses and as much detail as possible. This should be done as soon as reasonably possible following the incidents/behaviors. The supervisor/manager in receipt of a complaint/concern should contact Human Resources.

If the Complainant or Bystander is uncomfortable approaching any of these Individuals, or if the Individuals are the Respondents or if the Individuals are perceived by the Complainant to be part of the "problem", then the Complainant or Bystander can speak to Human Resources.

Human Resources should review the concern and where appropriate directly or indirectly facilitate a resolution of the concern in a manner that is considered most effective and reasonable considering all of the circumstances.

Interventions by managers and/or Human Resources may include one or more of the following possibilities (or other similar interventions):

- Meeting separately with each person involved in the concern to discuss and investigate the situation;
- Meeting together with the persons involved to facilitate a discussion aimed at understanding and resolving the issue in a practical, non-punitive manner or mediating a solution that works for all Parties;
- Coaching one or more of the Parties (verbally or in writing) on workplace expectations regarding appropriate workplace behavior or performance;
- Recommending or applying progressive discipline when warranted i.e. based on the findings and severity of the misconduct found;
- Engaging the support of Human Resources to assist with Step 2 processes; or
- Engaging an external third party facilitator or mediator to work with the Parties and others involved to achieve a confidential, practical and mutually agreeable resolution to outstanding concerns without making findings against any Party ("Mediation").

The above noted intervention/ preliminary investigation should be completed on or before 30 days after the final meeting. The time-lines will be reasonably extended at the request of the lead investigator based on a number of factors, including extenuating circumstances or complexities surrounding a particular investigation/intervention.

If, at the outset of or at any time during the Step 2 process, the individual who receives the reported complaint/concern concludes that a formal investigation is warranted, given the parties involved and/or severity of the behaviors alleged in the complaint, including their potential physical or psychological impact on the Complainant or other employees, then the matter should be immediately referred to Step 3 of the Policy for investigation and resolution.

Formal Processes

Step 3 – Investigation

The formal process involves a formal objective Investigation of a written complaint/concern that has been brought forward to the City of Penticton (the "Complaint").

Once the Complaint has been received by the immediate supervisor, manager or Human Resources, the Complainant will be asked to complete a formal complaint form. This form seeks the following details:

- Complainant's name and position;
- Name and position(s) of the Respondents;
- The address or location where the incident(s) occurred;
- A detailed summary of all of the specific incidents or examples of behavior that have led to the filing of the complaint;
- The date(s) and time of each incident;
- The names of the individual(s) alleged to have engaged in the unacceptable conduct;
- The details of the complaints – that is, the specifics of what was said or done to the Complainant to have triggered the complaint;
- The identity of any potential Witnesses;
- The impact of the behavior on the Complainant; and
- Any steps taken, through Steps 1 or 2 of the Policy, to address the Complaint and the outcome of those processes.

The Complainant must sign and date the complaint and send to the designated individuals set out above by either:

- envelope marked "Confidential" or
- scanning the signed Complaint and sending it via email indicating "Confidential"

The filing of a formal Complaint does not mean that a formal Investigation will be automatically conducted. The manner in which a Complaint is resolved will be determined by the City of Penticton, following consultation with the parties, and will depend on a number of factors, including the nature, extent and severity of allegations brought forward by the Complainant and the history of circumstances leading up to the filing of the formal Complaint.

Following this review, the individual(s) who receives the Complaint may take one of the following steps:

- Refer the matter back to Step 2 to resolve the matter through informal processes; or
- Assign an internal or external Investigator to conduct a formal investigation of the Complaint.

Appointment of Investigator

Factors that will be considered in determining whether to retain an Internal or External Investigator may include: the overall complexity of the facts/law related to the Complaint; the parties to the Complaint, the anticipated length of time necessary to conduct the Investigation; the potential severity of the outcome(s) of the Investigation in relation to the Respondent(s) should the Complaint be substantiated; and any other relevant circumstances.

Formal investigations in response to complaints filed against the City Manager, Mayor or City Councillors shall be conducted by external investigators.

Internal Investigators shall have sufficient prior experience and/or training in conducting workplace Investigations and shall have no previous involvement in the facts/circumstances giving rise to the Complaint.

Time Limits

The time limit for making a formal Complaint is six months from the date of the last incident. This is consistent with the time limits noted in the BC Human Rights Code. This may be extended, by written request, up to one year following the incident in accordance with with WorkSafe BC requirements.

Interim Measures

It may be necessary to take interim measures, such as transfers/leaves/restrictions regarding contact or communication between the parties while a Complaint is being investigated. Such measures will be precautionary, not disciplinary.

Mediation during the Formal Process

Where appropriate, Mediation is available to Parties to try to resolve the Complaint at any point during the process. Any ongoing Investigation will be suspended during Mediation and will resume if Mediation is unsuccessful.

Unless explicitly agreed to by the parties in writing, the Investigator shall not act as the Mediator and shall have no communication with the Mediator regarding the Complaint at any time.

Withdrawal of a Formal Complaint

At any time during the course of an Investigation of a formal complaint, the Complainant may choose to withdraw his or her complaint without penalty so long as the complaint was filed in good faith. In such circumstances, there should be no indication of the Complaint in the personnel files of the Complainant or Respondent.

The Investigation Process and Role of the Investigator

The investigator will take a reasonable amount of time to conduct the Investigation to interview the Parties and relevant Witnesses and obtain and review any potentially relevant documents.

The investigator will prepare a Report of Investigation outlining his/her findings and conclusions and submit the report to Human Resources.

The findings and conclusions may relate to both the conduct at issue and the medical/emotional/financial impact of the conduct on those involved.

The investigator may include recommendations in the Report, where applicable and if requested by the City of Penticton.

Human Resources will advise both the Complainant and Respondent of the findings and conclusions of the Investigation and any recommendations related to their conduct, through a written summary of the report. Other parties involved in the complaint (witnesses and others) will be advised that the Investigation has been concluded (without being provided any further information).

Appeals

Within 15 days of receiving a summary of the Investigative Report, either Party may file an appeal with the City Manager or his/her designate.

The appeal shall be based upon and restricted to perceived, specific flaws or errors related to the investigative process. The appeal shall not constitute an avenue in which to "re-investigate" the merits of the complaint.

The City Manager or his/her designate shall review the Investigative Report to evaluate the fairness of the process.

If the City Manager and/or his designate has any concerns with the investigative process, he/she may at his/her sole discretion: (a) remit the matter back to the Investigator, with specific questions/areas of clarification; or (b) refer the complaint to a new Investigator, depending on the nature and extent of procedural concerns as determined by the City Manager and/or his designate.

The decision of the City Manager or his/her designate is final.

OUTCOMES

General Outcomes

Once the Appeal period has expired or the Appeal has concluded, the City of Penticton will inform the Complainant and Respondent of its final implementation plan based upon the Investigative Report.

Part of the implementation plan may include processes similar to those set out in Step 2, in order to help rebuild/repair the relationships.

Outcomes that may be included in the implementation plan include one or more of the following:

- Oral and/or written apology from the Respondent(s);
- Adjustments to the workplace environment;
- Adjustment to leave entitlements (e.g. sick leave/vacation banks)
- EAP referrals;
- Coaching of Expectations – Verbal or in Writing;

- Medical Assessment referrals;
- Training;
- Transfers to a different shift/department; and/or
- Institution of formal discipline and disciplinary processes, up to and including suspension/termination for employees and suspension/removal from premises for contractors.
- Mediation

Significant discipline (including termination of employment and/or removal from premises) may arise even after one incident if such action is warranted based on the severity of the findings/conclusions of the Investigation. Otherwise, progressive discipline/action shall be implemented.

The Complainant and Respondent will only receive information relevant to their role in the final implementation plan; they will not be privy to recommendations related to the other Party.

Outcomes for Employees/Management

Management will determine and implement specific consequences and remedies that are reflective of and relevant to the Investigative findings/conclusions within a reasonable period of time after receipt of the Report of Investigation.

Disciplinary processes will be implemented in accordance with any relevant collective agreements or employment contracts.

Outcomes for Contractors

In the event that the Respondent is a contractor, the City of Penticton will consult with the appropriate personnel within the external agency to determine the appropriate remedy.

Appeals of Outcomes/Discipline

Any Party who disagrees with the nature/extent of action or disciplinary action imposed as a result of the Investigation should access the usual grievance/appeal processes set out in the relevant collective agreement or contract.

Other Important Points

Malicious/Vexatious/Frivolous Complaints or Misuse of the Policy

In circumstances where a complaint is found to have been made in bad faith or determined to be vexatious, frivolous or a general misuse of the Policy, the Complainant may face similar outcomes as a Respondent as set out above (i.e. interventions ranging from coaching to formal disciplinary intervention).

This section of the Policy may apply to filed Complaints as well as any circumstances in which individuals repeatedly threaten to file Complaints against others in order to achieve similar ends.

A Complaint (or "threatened" Complaint) will be deemed to have been made in bad faith when, considering all of the circumstances surrounding the Complaint including its timing and context, the Complaint was found to have been made solely in an attempt to:

- Influence, resist or overturn decisions related to the Complainant's employment;
- intimidate, threaten or cause trouble to the Respondent;
- create a hostile or intimidating workplace environment for others, including the Respondent; or
- create a potential personal benefit or entitlement to the Complainant.

Misuse of the Policy may include unreasonable, repetitive filing of Complaints or concerns that are consistently found to be unsubstantiated.

In circumstances where a complaint has been found to be malicious, vexatious or a misuse of the Policy, the Respondent may be awarded the same remedies as those available to Complainants as set out above.

Unsubstantiated Complaints

If the investigator finds insufficient evidence to support the Complainant's allegations and finds that there has been no misuse of the Policy or bad faith in filing the complaint, no action will be taken in relation to the Complaint. There will be no record of the Complaint on the Respondent's file.

Consequences of Retaliation

Any established retaliation against any Party, Bystander or Witness involved in an informal or formal resolution process shall be considered an independent violation of the Policy (regardless of the merits or outcome of the initial concern or Complaint) and shall result in significant discipline commensurate with the severity of the conduct.

Multiple Proceedings

This policy is in addition to and not in substitution for any rights an individual may have to pursue action, whether under collective agreements, policies or any applicable legislation, including human rights legislation.

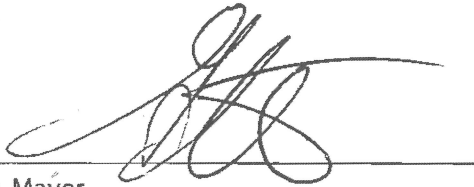
If at any time a staff member elects to initiate other legal proceedings or if the staff member takes any steps outside of those contemplated under this policy, the City of Penticton may consider discontinuing or suspending any procedures taken under this policy as a result of the complaint (depending on a consideration of all of the circumstances).

Potentially criminal behavior such as assault, sexual assault, significant threats, or attempts at extortion shall be directly referred to the police by the City of Penticton upon receipt of a complaint of this nature.

Previous revisions

Workplace Harassment Policy (Rescinded)

Approval

A handwritten signature in black ink, appearing to be 'Garry Litke', written over a horizontal line.

Garry Litke, Mayor