

	POLICY Number: 7311-30-022 Title: Workplace Harassment
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OVERVIEW

Workplace harassment is against the law. It can impact human capacity to thrive and disrupt the delivery of healthcare services. According to the Government of Canada, 40% of Canadian employees experience harassment on a weekly basis.¹ Saskatoon Health Region (SHR) recognizes workplace harassment is a pressing safety issue that requires serious commitment and urgency. This policy and procedure set out the principles necessary to support staff's legal right to a safe workplace by preventing and stopping harassment.

DEFINITION OF HARASSMENT

Harassment² based on prohibited grounds (discrimination) includes any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- constitutes a threat to the health or safety of the worker (staff).

Harassment based on prohibited grounds (discrimination) extends to sexual harassment and is prohibited in the Saskatchewan Employment Act and Saskatchewan Human Rights Code.³

Discrimination may include:

- Mobbing, ostracizing,
- Negative comments about religious affiliation,
- Acts of prejudice with gender identity, gender expression or two-spirit identity,
- Prejudiced slang, phrases or nicknames or stereotypes,
- Disparaging remarks about skin color or other ethnic and/or cultural traits,
- Displaying or sharing hate literature (electronic, hard copy or pictorial materials) that is objectionable and offensive to a particular group or person,
- Unfair treatment of staff because of their union affiliation,
- Blocking opportunity or negatively impacting Staff employment because of a prohibited ground,

¹ <http://www.cih-irsc.gc.ca/e/45838.html>.

² Definition pursuant to the Part III of the Saskatchewan Employment Act.

³ The provisions under the Code regarding discrimination practices in the workplace are found in Sections 10, 16, 17, 18, 27 and 31.

- Offensive gestures or mimicking a visible or invisible impairment,
- Offensive reference to an individual's mental or physical disability,
- Derogatory age-related comments,
- Wearing clothing that could be offensive to a particular group,
- Refusing to work with an individual or excluding him/her from work activities because of a prohibited ground.

Sexual Harassment means any conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome. Sexual harassment may include:

- Any implied or express threat of reprisal for refusing to comply with a sexually-oriented request,
- Unwelcome remarks, lewd jokes, innuendos, propositions or taunting about a person's body, attire, sex or sexual orientation,
- Displaying or sending pornographic or sexually explicit or offensive pictures or materials via text, hardcopy, video or other multimedia platforms,
- Unwelcome physical contact/touching,
- Unwelcome invitations or requests, direct or indirect, to engage in behavior of a sexual nature,
- Refusing to work with or have contact with an individual because of their sex, gender or sexual orientation.

Targets of sexual harassment may be male, female, transgender or transsexual. Sexual harassment may occur between members of the same-sex.

Personal Harassment⁴ (bullying) includes any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects an individual's psychological or physical well-being;
- the perpetrator knows or ought to reasonably know would cause the individual to be humiliated or intimidated, and
- constitutes a threat to the health or safety of the worker (Staff).

To constitute personal harassment, either of the following must be established:

- repeated conduct, comments, displays, actions or gestures, or
- a single, serious comment, display, action or gesture, that has a lasting, harmful effect of the worker (staff).

Personal Harassment may include:

- Mobbing, ostracizing,
- Verbal, electronic or written abuse or threats,
- Insulting, derogatory or degrading comments, jokes or gestures,
- Personal ridicule or malicious gossip,
- Unjustifiable interference with another's work or work sabotage,
- Interference with or vandalizing personal property.

Harassment does not include any reasonable action taken by SHR, or a Manager or supervisor employed or engaged by SHR, relating to the management and direction of SHR Workers (staff) or the place of employment⁵ (see *Appendix C, Section 3* of the SHR Harassment Handbook for further information).

The definition of harassment in any applicable collective bargaining agreement continues to apply, in the event that it is more specific than the definition in the *Act*. For the purposes of this Workplace Harassment policy and procedure, the forgoing definitions of harassment will be applied to SHR harassment investigations.

⁴ Definition pursuant to the Part III of the *Act*.

⁵ *Ibid*.

APPLICATION OF TERMS

Definitions are provided in this policy only to the extent necessary. See *Appendix C: SHR Harassment Handbook* for full reference of all terms.

Bad Faith means a formal harassment complaint brought with an ulterior motive motivated by ill-will, hostility, malice and/or is discolored by a personal animosity or a lack of fairness or impartiality. It includes a reckless disregard for another's health and safety that is intentionally, knowingly and negligently untrue without reasonable and probable grounds.

Bona fide means real, actual and genuine with good faith, earnest and not feigned; sufficiently weight or sufficiently serious grounds.

Collaborative Processes means solutions where both parties mutually consent to share responsibility and participate in restoring harmony and resolving differences (e.g., mediation, conciliation, facilitated meetings, coaching conversations, education, and group facilitation). Collaborative processes are a 'no-fault' endeavor that may involve apologies and/or admissions of guilt, but do not normally incorporate employer discipline.

Complainant means a person who lodges a complaint.

Designated Harassment Investigator (DHI) means the assigned SHR authority who objectively oversees harassment processes in SHR, including receiving and pre-assessing formal harassment complaints for grounds, conducting independent investigations and/or overseeing third-party investigations.

Formal Harassment Complaint means a complaint of alleged harassment brought to SHR's attention that is written and submitted using the SHR Harassment Complaint Form. Formal investigations in SHR are complaint-form driven; as such, for a formal complaint to commence, staff are required to submit the *SHR Harassment Complaint Form*. Complaints that are not written on the SHR Harassment Complaint Form may not result in a harassment investigation.

Harassment Complaint Form is used by SHR DHI to receive, pre-assess and investigate formal complaints in a consistent and fair manner. The form can help complainants focus their concerns and concisely set out the particulars of their allegations. The form is to be freely accessed in an uncomplicated manner and inclusively available to all staff in SHR. The SHR Harassment Complaint Form is available in *Appendix B* of this policy and procedure.

Manager means all in-scope and out-of-scope direct reports, including Department Heads.

Pre-assessment means a pre-screening of all formal harassment complaints conducted by the SHR DHI. The main purpose of this initial screening is to determine whether the complaint falls within the definition of harassment (see *Appendix C: SHR Harassment Handbook* for further reference).

Respondent means the individual whom a complaint has been lodged against and responds to the complaint.

Retaliation (reprisal)⁶ means any actions, threats or pressure in any form that may include physical harm, job loss, punitive work assignments or actions impacting salary or wages.

Staff means all employees, practitioner staff, professional staff, contractors, students and volunteers.

Vexatious Complaint means a complaint made in bad faith.

⁶ SHR Policy: *Speaking Up-Protection of Persons Reporting Wrongdoing*

1. PURPOSE

The purpose of this policy is to establish SHR's position and legal requirements regarding harassment.

2. PRINCIPLES

- 2.1** SHR is committed to ensuring a safe and productive work environment where the inalienable human rights, dignity and worth of all staff are upheld. Harassment is a right's infringement and against the law. All staff are entitled to a workplace free of harassment; Therefore, SHR has zero tolerance for workplace harassment.
- 2.2** Exposure to harassment can be health harming.
- 2.2.1 Staff safety takes priority over fostering a future relationship between an alleged harasser and target.
- 2.2.2 Support with collaborative [processes⁷ and relationship building is available in SHR to address less harmful acts than harassment (see SHR Policy: *Respectful Workplace*).
- 2.3** This policy and procedure were developed in compliance with the required provisions in the *Act* and *Saskatchewan Occupational Health and Safety Regulations (the Regulations)*.

3. POLICY

- 3.1** All staff are entitled to lodge a complaint of harassment and do so confidentially without discrimination or retaliation.⁸
- 3.1.1 It is strictly prohibited to penalize, retaliate or discriminate against any staff in any manner because of their participation with a harassment complaint or when seeking enforcement of this policy and procedure.
- 3.1.1.1 SHR has zero tolerance for obstructing, retaliating against or inordinately influencing and/or interfering with a DHI tasked with reaching an investigative realization based on the established facts (see *Appendix C, Section 12* SHR Harassment Handbook for more information).
- 3.1.1.2 Investigative conclusions submitted by the DHI are subject to final review only.
- 3.1.2 Under no circumstances should a harassment complaint or investigation ever be used as a means of targeting or retaliating against staff because of their membership or affiliation with a union.
- 3.1.3 SHR will not disclose the name of a complainant, respondent or the circumstances related to the complaint to any person except where disclosure is:
- 3.1.3.1 Necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint; or
- 3.1.3.2 Required by law.⁹
- 3.1.4 Breaches of confidentiality pertaining to an investigation are strictly prohibited (see *Appendix C, Section 9* SHR Harassment Handbook for more information).

⁷ Section 6 of *Appendix C: SHR Harassment Handbook* outlines the differences between collaborative processes and formal investigations.

⁸ Part III, Subsection 3-35 of the *Act*.

⁹ Pursuant to the *Regulations*.

- 3.2** A formal harassment complaint should be submitted as soon as possible after the most recent or last event of alleged harassment.
- 3.2.1 SHR does not normally accept a formal harassment complaint where the complaint is made more than one (1) year after the complainant became aware of the alleged harassment.
- 3.3** SHR has no tolerance for vexatious complaints.
- 3.3.1 Allegations made in bad faith can have serious effects on innocent individuals and can needlessly siphon costly resources.
- 3.3.2 Where an investigation determines a vexatious complaint was made, the complainant may be subject to disciplinary action.
- 3.4** All formal harassment complaints will undergo a pre-assessment for grounds. When it is determined a harassment complaint is *bona fide*, a formal investigation will be conducted and a standardized test applied.
- 3.4.1 The criteria to determine whether discrimination and/or personal harassment have occurred form part of this policy and procedure (see *Appendix A*).
- 3.5** A harassment investigation shall normally be completed within ninety (90) calendar days or less, notwithstanding extenuating circumstances.
- 3.5.1 All reasonable efforts will be made to adhere to the ninety (90) day timeline; however, the interests of speed shall not trump thoroughness and due diligence.¹⁰
- 3.5.2 Parties to an ongoing investigation may be updated periodically on the status of the investigation timeline.
- 3.6** All harassment complaints, investigations and outcomes shall be documented.
- 3.6.1 At the conclusion of a harassment investigation the DHI will complete a written investigation report memorializing conclusions and reasons for the decision.
- 3.6.2 The complainant, respondent, union representative (or a retained legal counsel), assigned HR consultant, SHR legal counsel, affected Manager and/or executives as applicable will be provided opportunity to review the final report in its entirety. To protect the confidentiality of all parties, the complainant, respondent and authorized supports will be provided read-only¹¹ access to the final report under the direction and supervision of the DHI. Any third-party disclosure beyond read-only access will be at the sole discretion of SHR legal counsel.
- 3.7** Corroborated cases of harassment impose a legal and ethical obligation to take sufficient action to stop the harassment and prevent its reoccurrence. SHR will take all reasonable corrective action without delay respecting any staff who subjects another to harassment.
- 3.7.1 This duty extends to:
- 3.7.1.1 Incidents that occur at the workplace or during work hours,
- 3.7.1.2 Conduct perpetrated by staff.
- 3.7.1.3 Incidents that occur outside the usual workplace or after work hours that arise out of or are connected to employment, may include business travel, carpooling, social media (e.g., information and communication technologies), attending a

¹⁰ See Section 16 of the SHR Harassment Handbook for further information.

¹¹ No pictures or photocopies are permitted during read-only access.

- work-sponsored social event or conference offered by SHR or attending a training session at the request of SHR.
- 3.7.1.4 SHR will ensure that any corrective action taken is communicated to the individual who experienced harassment.
- 3.7.1.5 The degree of communication provided to the complainant about the corrective action will depend on the circumstances and privacy requirements but shall indicate the steps SHR is taking to prevent recurrence.
- 3.8** This policy includes harassment connected to any matter or circumstance arising out of the workplace including conduct perpetrated by a third-party with whom SHR does business with or whom staff is required to meet with. This may include patients, residents, clients, families, contractors (or their staff), and the public.
- 3.8.1 The jurisdiction to investigate and/or sanction conduct can be limited.
- 3.8.2 SHR shall take reasonably practicable action to stop or reduce the risk to its staff of being harassed by third-parties (see *Appendix C, Section 5* SHR Harassment Handbook).
- 3.9** SHR does not mediate *bona fide* complaints of sexual harassment (see *Appendix C, Section 6* of the SHR Harassment Handbook).
- 3.10** A complainant may withdraw a formal harassment complaint at any stage of the investigation by submitting a written request to the DHI.
- 3.10.1 Withdrawal of a formal harassment complaint does not prohibit SHR from investigating the complaint to completion, if deemed necessary. Circumstances requiring continued investigation may include:
- There is evidence/suspicion the complainant(s) has been threatened or may fear retaliation.
 - Failure to resolve the matter formally may endanger staff health or safety.
 - The complaint's allegations involve a serious abuse of power.
- 3.10.2 The DHI has unfettered discretion with accepting a withdrawal.
- 3.10.3 Collaborative processes may not be considered after a formal investigation has started (see *Appendix C, Section 6* of the SHR Harassment Handbook).
- 3.11** Staff may request the assistance of a Saskatchewan Occupational Health and Safety Officer to resolve a Harassment complaint.
- 3.11.1 Prior to requesting the assistance of an officer, the complainant should attempt to resolve the matter with SHR.
- 3.12** A Complainant has a right to file a complaint with the Saskatchewan Human Rights Commission.
- 3.12.1 Nothing in this policy or procedure is intended to discourage or prevent a complainant from exercising any other legal rights pursuant to any other law.
- 3.13** SHR will post a copy of this policy and procedure in a conspicuous place that is readily available to staff.
- 3.14** As a condition of employment, all staff must review this policy and procedure as a component of the pre-employment requirement.

4. ROLES AND RESPONSIBILITIES

4.1 All Staff

- 4.1.1 Refrain from causing or participating in harassment.
- 4.1.2 Conduct themselves in a friendly, courteous manner and be aware that harassing behaviors can cause extraordinary harm.
- 4.1.3 Promote and model a respectful workplace by demonstrating foundational *Respect for People* behaviors in everyday interactions (see SHR Policy: *Respectful Workplace*).
- 4.1.4 Cooperate fully and actively comply and participate with the DHI or designated SHR authority who is exercising a duty imposed by this policy and procedure.
- 4.1.5 Any Staff who witnesses the alleged harassment of other staff or is made aware of alleged acts of harassment must ensure prompt reporting.
 - 4.1.5.1 Bystanders who fail, at minimum, to tell a Manager or SHR authority of destructive or alleged harassing behaviors can be found complicit and party to the harassment if the behavior is ultimately determined to be harassing (see *Appendix C, Section 4* of the SHR Harassment handbook).
- 4.1.6 Pursuant to *Section 3* of this policy, maintain confidentiality and not participate in retaliation, discrimination or obstruction in any manner against any staff because of their participation with a harassment complaint.

4.2 Managers

- 4.2.1 Ensure, insofar as is reasonably practicable, that staff are not exposed to harassment with respect to any matter or circumstance arising out of the workplace.
- 4.2.2 Foster a harassment-free workplace, and be aware of how their actions influence the workplace.
- 4.2.3 Lead by example by modelling and promoting SHR's foundational *Respect for People* behaviors (see SHR Policy: *Respectful Workplace*).
- 4.2.4 Watch for signs that harassment may be occurring (e.g., rumours, chronic conflict, destructive Staff behaviours, poisoned work environment, increased absenteeism, decreased motivation, reduced job performance and increased staff turnover).
- 4.2.5 If aware of destructive staff behaviors, must ensure prompt action is taken to stop the matter from escalating into harassment and prevent reoccurrence.
 - 4.2.5.1 If a Manager willfully fails to intervene and the destructive behavior is ultimately found to be harassment, the Manager can be found complicit and party to the harassment of staff. Substantiated acts of a failure to intervene will not be tolerated and may be subject to appropriate discipline.
- 4.2.6 Not arbitrarily dismiss or ridicule a staff concern of alleged harassment. All complaints of harassment must be taken seriously where staff will not be discouraged from pursuing or resolving a *Bona fide* complaint in accordance with this policy and procedure.
- 4.2.7 Intervene with third-party harassers (see *Appendix C, Section 5* of the *SHR Harassment Handbook*).
- 4.2.8 Take corrective action when an investigative finding of harassment is made or when it required to enforce confidentiality, prevent discrimination or retaliation against staff who make a harassment complaint.

- 4.2.9 Full cooperation and compliance with the DHI or designate authority who is exercising a duty imposed by this policy and procedure.

4.3 Designated Harassment Investigator (DHI)

- 4.3.1 Provide operational oversight for SHR harassment processes.
- 4.3.2 Receive and pre-assesses harassment complaints for grounds.
- 4.3.3 Conduct independent investigations and/or oversee third-party harassment investigations.
- 4.3.4 Have adequate knowledge and training of how to conduct an investigation appropriate in the circumstances.
- 4.3.5 Recuse from all conflicts of interest and not be directly involved in any incident or harassment complaint under investigation by the DHI office.
- 4.3.6 Shall not be under the direct report of an alleged harasser.

4.4 Ethics Services

- 4.4.1 Ethics Services may be consulted on clarification of ethical obligations.

5. NON-COMPLIANCE/CORRECTIVE ACTION

Non-compliance with this policy or procedure may be subject to disciplinary action up to and including termination of employment and/or suspension of privileges.

With all corroborated acts of harassment, corrective action, sufficient to ensure the harassment stops and does not occur again, will be taken respecting any Staff who subjects another to harassment.

In addition, the Act¹² can include the levy of summary conviction fines pertaining to serious breach of this policy, procedure or SHR Harassment Handbook. Fines can be allocated to individual staff guilty of an offense and/or allocated to SHR if guilty of an offense.

If discipline is to be considered post investigation, an impartial party other than the DHI will recommend and deliver.¹³ When appropriate, the DHI will submit non-disciplinary remedial recommendations to assist in the prevention and/or detection of similar events.

6. POLICY MANAGEMENT

The management of this policy and procedure including education, implementation, monitoring and amendment the responsibility of the Director, Human Resources.

A review of efficacy will occur every two (2) years unless circumstances warrant a review in the interim.

7. REFERENCES

See Procedure.

¹² Division 12: 3-78(g) and 3-79

¹³ Disciplinary recommendations emanating from a DHI can expose an investigation to a bias claim that the findings were solely constructed to support a pre-determined state of mind.

PROCEDURE

Number: 7311-30-022

Title: Workplace Harassment

Authorization

- President and CEO
- Vice President, People Practice and Quality

Source: Director, Human Resources
Cross Index: 7311-30-001
Date Approved: August 10, 2017
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Scope: SHR

PRELIMINARY MATTERS

Any situation involving criminal behavior, violent acts of force, aggression, or where staff safety and security is under threat of violence should be reported immediately to:

- SHR Security Services (on any SHR phone dial #321)
- SHR Safety Alert System (urban: 306.655.1600, rural: 1.866.966.0820), and/or
- When appropriate, the applicable police service (city police, RCMP).

Workplace harassment left unchecked has the potential to escalate into violent behavior. Violence against staff may come from colleagues, patients, clients, residents, visitors, third-party contractors, physicians, students or volunteers. All incidents of violent force or threats of a violent nature must be reported and will be assessed and/or investigated (see SHR Policy: *Violence Management*).

DEFINITIONS

See *Appendix C: SHR Harassment Handbook* for full reference of all terms.

1. PURPOSE

The purpose of this procedure is to establish the process for managing harassment complaints, including submitting, receiving and responding to a complaint.

2. PRINCIPLES

2.1 SHR has a legal and ethical duty to act fairly and make decisions using a fair and transparent procedure (procedural justice) when carrying out harassment investigations.

2.1.1 All affected staff in a harassment investigation have a right to not be deprived of the principles of fundamental justice and procedural fairness (see *Appendix C, Section 7*, SHR Harassment Handbook).

2.1.2 The principles of procedural fairness apply evenly to all affected parties, including out-of-scope personnel not affiliated with a trade union.

2.2 There are two types of Harassment complaint options in SHR: informal and formal.

3. INFORMAL HARASSMENT COMPLAINT

Informal complainants are complaints of alleged harassment brought to SHR's attention that are not written nor formally submitted. Complaints that are not submitted in writing on the SHR Harassment Complaint Form may not result in a formal Harassment investigation.

Informal harassment complaints can occur when:

- a complainant suspects they have been the target of harassment but is not sure,
- is hesitant to submit a formal written complaint,
- may only want information or indirect assistance in stopping the offending behavior from continuing, or
- wants to determine a course of action, without a formal investigation.

The informal complaint process is in place because a lack of a formalized complaint does not mean there is no problem to address. Using informal complaint procedures, complainants can maintain more control over the remedy.

3.1 Informal Complaint where the alleged harasser is not named

Sometimes a complainant may not wish to identify the alleged harasser nor ask for *direct* intervention. A complainant may only want information, advice or *indirect* assistance in stopping the offending behavior from continuing. When no harasser is named, the Manager or designated authority uses the following strategies to respond:

Step 1: Offer Employee and Family Assistance Program (EFAP).

Step 2: Review the contents of the Workplace Harassment Policy and Procedure with the complainant.

Step 3: Outline the protections, duties and obligations (e.g., retaliation, confidentiality) involved with complaint processes (see *Appendix C, Sections 9 & 10* of the SHR Harassment Handbook).

Step 4: Provide the complainant guidance, when appropriate, to object to the alleged harasser (See *Appendix C, Section 2* of SHR Harassment Handbook). Maintain a documented audit trail of all discussions and actions taken.

Step 5: Indirectly intervene by arranging for all staff to attend educational programming pertaining to harassment-free workplaces. Re-circulate SHR Policy: Workplace Harassment, SHR Harassment Handbook and SHR Policy: *Respect and Dignity*.

Step 6: Monitor and measure the scenario. Meet with the complainant frequently to enquire if matters are improving. Maintain a documented audit trail of all discussions and actions taken.

At any time during the forgoing steps, the complainant is encouraged to file a formal harassment complaint when the matter poses a serious threat to the health and safety of the complainant or other staff; is potentially criminal in nature, or where circumstances lead SHR to suspect intervention and educational activities may not prevent the alleged harassment from recurring.

3.2 Informal Complaint where the alleged harasser is named

On occasion, complainants are willing to provide the name of the alleged harasser but are reluctant to submit a formal written complaint. Similarly, on occasion complainants are willing to provide the name of the alleged harasser but do not want the alleged harasser to know their identity.

These scenarios can be difficult, however, when the identity of an alleged harasser is divulged, SHR has a duty to intervene and protect a complainant, notwithstanding their requests for anonymity. The Manager or designated authority will intervene as follows:

- Step 1: Offer EFAP to the complainant.
- Step 2: Explore the complainant's reluctance. Discuss the process for making a formal harassment complaint, review the contents of the Workplace Harassment Policy and Procedure.
- Step 3: Outline the protections, duties and obligations (e.g., retaliation, confidentiality) involved with complaint processes and empower complainant to overcome power imbalance concerns. (see *Appendix C, Sections 9 & 10* of the SHR Harassment Handbook)
- Step 4: Provide the complainant guidance, when appropriate, to object to the alleged harasser (See *Appendix C, Section 2* of SHR Harassment Handbook). Maintain a documented audit trail of all discussions and actions taken.
- Step 5: If the complainant is unable to independently intervene with the alleged harasser or if it is determined the complainant's intervention has not stopped the offending behavior, the Manager or designate has a duty to promptly intervene with all affected parties. At this stage, protecting Staff safety is prioritized over maintaining complainant anonymity. Problem solving consultations with human resource specialists, leadership consultants, mediators, practitioner staff affairs and/or union representatives can occur. The Manager, as appropriate, may explore mediation, coaching conversations or performance management in order to prevent further disruption, harm or injury. The forgoing options can potentially remedy the matter without the use of a formal harassment complaint. EFAP should also be offered to the respondent at this stage in the process.

At any time during the forgoing steps, the complainant is encouraged to file a formal harassment complaint when the matter poses a serious threat to the health and safety of the complainant or other staff; is potentially criminal in nature, or where circumstances lead SHR to suspect intervention and educational activities may not prevent the alleged harassment from recurring.

4. FORMAL HARASSMENT COMPLAINT

4.1 For a formal harassment complainant to commence it must be made in writing using the *SHR Harassment Complaint Form* (see *Appendix B*).

4.1.1 Complaints that are not submitted on the Harassment Complaint Form may not result in a harassment investigation.¹⁴

4.1.2 It is assumed at this stage the complainant is aware of and believes the matter cannot otherwise be resolved with collaborative processes (*Appendix C, Section 6* of the SHR Harassment handbook), or that the informal harassment complaint process will not prevent the alleged harassment from recurring.

4.2 Steps for staff to submit a Formal Harassment Complaint

Step 1: If applicable, EFAP is available for supports.

¹⁴ Staff who submit a written harassment complaint but fail to use the SHR Complaint Form will be asked to resubmit on the required form, unless there exceptional circumstances.

Step 2: Prior to submitting a formal complaint, the complainant shall review the workplace Harassment Policy and Procedure in full to become particularly familiar with:

- Appendix A.
- Appendix C, Sections 3 and 7, The SHR Harassment Handbook

Step 3: Phone the SHR Safety Alert System (urban: 306.655.1600, rural: 1.866.966.0820) to inform SHR you are submitting a formal harassment complaint.

Step 4: Complete the SHR Harassment Complaint Form. The signed form can be submitted to the DHI or your Manager. The Manager is only expected to receive the complaint, not conduct a pre-assessment for grounds nor carry out any investigative processes.

4.3 Pre-assessment of the Formal Harassment Complaint

Step 5: Upon receipt of the complaint, the DHI will pre-assess¹⁵ the complaint for grounds for whether it falls within the definition of Harassment:

Step **5a**: If the DHI is satisfied the complaint has grounds it will be formally investigated as alleged harassment. The DHI will inform the complainant and advise of all rights and responsibilities.

Step **5b**: If the complaint does not have grounds, the complainant will be informed in writing and a harassment investigation will not commence. Alternate avenues of remedy may be explored. If the complainant feels SHR has failed to resolve the matter, they may seek the assistance of a Saskatchewan Occupational Health officer.

4.4 Consideration of Interim Safety Measures

Step 6: Prior to notifying the respondent, the DHI shall consider interim safety measures. If it is believed a Complainant may be exposed to harmful behaviors or retaliation while waiting for investigation resolution, immediate action must be taken. Depending on the prevailing circumstances, nature of the complaint and applicable collective bargaining agreements, separating the respondent from the complainant is preferred and may include measures such as:

- temporary shift rearrangement;
- reassignment of duties;
- role relocation, or
- the respondent may be suspended pending final determination of the investigation.

4.5 Notifying the Respondent

Step 7: The DHI will:

- notify the respondent in writing and provide the written complaint;
- provide the SHR Workplace Harassment Policy, Procedure and SHR Harassment Handbook;
- advise of all rights and responsibilities, notably, to maintain confidentiality and avoid retaliation. Respondents should be made aware of their access to EFAP services.

¹⁵ During a Pre-assessment evidence related to an alleged activity may need to be examined and preserved before the suspected person(s) become aware of an investigation.

4.6 Investigation

Step 8: What is harassment, is a question of fact. The corroboration of events verified through reliable oral, physical or documentary evidence is desired. The complainant, respondent and applicable witnesses¹⁶ will be interviewed¹⁷ separately and privately. Relevant witnesses may be identified by the DHI as necessary to conduct a thorough investigation.¹⁸ Respondents are presumed innocent unless the facts say otherwise. In addition to rights outlined in *Appendix C, Section 7* SHR Harassment Handbook, the Respondent will have a right to:

- offer evidence;
- offer witnesses, and
- rebut all relevant evidence/allegations.
-

Step 9: As appropriate, supplementary (re-direct) interviews will be conducted to further clarify facts and ensure the Respondent a Full Answer and Defense to all allegations.

4.7 Distribution of the investigation report

Step 10: The reasons for the final investigation decision will be provided as per *Appendix C, Section 8* of the SHR Harassment Handbook.

4.8 Corrective action

Step 11: For all corroborated acts of harassment, corrective action will be taken by management sufficient to ensure the harassment stops and does not occur again.

5. NON-COMPLIANCE/CORRECTIVE ACTION

See Policy.

6. PROCEDURE MANAGEMENT

See Policy.

7. REFERENCES

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RQHR Harassment Policy and Procedures (2014)

Saskatchewan Employment Act (2013).

Saskatchewan Human Rights Code (1979).

Saskatchewan Occupation Health and Safety Regulations (1996).

¹⁶ The DHI will make reasonable efforts to interview any relevant witnesses who are not Staff employed by the SHR, if identified.

¹⁷ All interviewees will be provided opportunity to review their statements for accuracy. The order of interviews and selection of witnesses will be at the discretion of the DHI.

¹⁸ Any Witness interviewed in a Harassment investigation will be advised that their identities will not be disclosed in any investigation report or to the Complainant or Respondent except as required by law or to the extent necessary to allow a Respondent a Full Answer and Defense.

R. v. Ewanchuk, [1999] 1 SCR 330.
F.H. v. McDougal (2008).
SHR Code of Conduct Policy (2008).
SHR Foundational Behaviors (2016) as per SHR *Respect and Dignity Policy*.
SHR Our Values in Action Policy (2008).
SHR *Respect and Dignity Policy* (2017)
SHR Social Media Policy (2012).
SHR *Speaking Up-Protection of Persons Reporting Wrongdoing Policy* (2011).
<http://www.cihr-irsc.gc.ca/e/45838.html> (harassment statistics).
<http://www.rcmp-grc.gc.ca/cycp-cpcj/bull-inti/index-eng.htm> (Cyber Bullying).
Workplace Bullying Institute: <http://www.workplacebullying.org/>.

CRITERIA TO ESTABLISH WHETHER DISCRIMINATION HAS OCCURRED¹⁹

Criteria to test Harassment based on prohibited grounds (discrimination)

To substantiate discrimination, the complainant must demonstrate on a balance of probabilities:

- A) That the conduct, comment, display, action or gesture applies to one or more of **prohibited grounds** in *Act* and/or Saskatchewan Human Right's Code (1979).
- B) That the harassment occurred on the **worksite** (workplace) or arises out of or is connected to one's employment.
- C) That the conduct, comment, display, action or gesture falls into the domain of **inappropriate**. To be sufficiently serious enough to fall into this domain, inappropriate conduct is not just offensive and unwelcome but is also a marked departure of SHR values. It is motivated by ill-will or by a purposeful and/or reckless indifference to how others perceive our actions.
- D) That the conduct, comment, display, action or gesture constitutes a real **threat to the health and safety** of staff. Assessing whether a real threat occurred is fact-specific and includes the subjective perspective of the complainant along with the objective assessment of the investigator.
- E) That there is **reliable evidence** to support the claim. What is harassment is a question of fact and must be determined according to the objective facts of the situation. The corroboration of various events verified through reliable oral, physical or documentary evidence is desired. Reliable confirmation via corroboration can strengthen the probability that an event did or did not occur and make the foundation of facts more certain.
- F) That the complainant has met their **Burden of Proof**. The complainant has the sole responsibility (e.g., burden) to prove the allegations (see definition in SHR Harassment Handbook). Where it is determined at the pre-assessment phase that the complainant has failed to meet their burden, SHR will not investigate the complaint as harassment. Strictly enforcing the burden of proof can play a practical role in preventing frivolous or vexatious complaints.

During a formal investigation, in order to make a finding of based on prohibited grounds (discrimination), each of the above elements (A thru F) must be present. If even one of the elements cannot be proven, the complaint will not succeed.

Other key criteria for testing discrimination

Credibility

The issue of credibility²⁰ is pertinent and is particularly relevant when discrimination allegations occur without witness. Assessing credibility is also important when facts are in dispute, when cognitive impairments are present, differing versions of events are offered or where corroborating oral, documentary and physical evidence is lacking. When evidence is lacking, the assertions of one party over another will not be accepted *Prima Facie* simply because that party says it is so.

When evidence is lacking, inconsistencies will not only be assessed on subjective elements such as demeanor, powers of observation, recall or whether a witness carries the conviction of telling the truth, but also on the surrounding conditions and other known or reliable facts.²¹

¹⁹ As per the SHR's interpretation of the *Act*.

²⁰ The issue of determining credibility is especially relevant in discrimination claims, but the principles are applied to both discrimination and personal harassment investigations.

²¹ *F.H. v. McDougal [2008]*.

A credibility assessment also includes factors as judgment, memory and ability to describe clearly what was seen and heard and whether the evidence of a witness is in harmony with what a practical and informed person would readily recognize as probable in those conditions.²² Other factors include witness motives, their relationship to the parties, the internal and external consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence.²³ When forming conclusions, the investigator will take into account the credibility of all parties interviewed.

Single Act

According to the Act, for harassment to be deemed discriminatory it can be a mere single act, does not need to be accompanied by a long-lasting harmful effect nor does it need to be repeated or escalate. In addition, harassment can be deemed discriminatory even if the respondent did not specifically target the complainant (e.g., displaying an offensive poster or making discriminatory comments overheard by another individual). All staff in SHR must take care to ensure his or her conduct is not discriminatory in any way.

With any case of harassment, and sexual harassment in particular, a single incident may be viewed to be more significant in circumstances when the relationship at work is one where the respondent has influence and/or positional status with regard to impacting workplace conditions (e.g., career advancement, performance reviews, work assignments and progressive discipline). When there is an imbalance of power, what appears to be consensual may in actuality be unwelcome conduct. Scrupulous attention will be given if a complainant's fear is exacerbated by the status of the respondent.

Detrimental Effect with Sexual Harassment

The Supreme Court of Canada has found that it is not necessary to find staff has suffered detrimental job-specific consequences in order for a finding of sexual harassment to be made; if the complainant's work environment itself is detrimentally affected, a finding of sexual harassment can be made.²⁴

Every corroborated case of sexual harassment is a case of sex discrimination because the complainant was subjected to a disadvantage due to their orientation; hence, a disadvantage that no others were subjected because they did not carry that orientation.²⁵

Consent

As it speaks to actions connected to the workplace, it should never be presumed that consent was given or implied in the absence of a clear, positive agreement between parties. This may include statements or jokes that could be construed as controversial or a monogamous touch (e.g. hug). In the absence of consent, an individual's right to work without having to worry about any kind of pressure can be violated. The easiest way to determine if a person wants to give consent is to simply ask. Express consent is a process that must be asked for every step of the way and all reasonable steps must be taken. This eliminates the uncertainty of guessing and trying to interpret signals. Consent must be clear and unambiguous for each participant at every stage of a conversation or action. The absence of "no" should not be understood to mean "yes." As such, SHR will not accept an implied silence or passivity as a form of consent for inappropriate sexual behaviors.²⁶

²² *Faryna v. Chorney* [1952] 2 D.L.R 354.

²³ *Hadzic v. Pizza Hut Canada*. [1999] B.C.H.R.T.D. No. 44.

²⁴ *Janzen v. Platy Enterprises Ltd.*, [1989] 1 SCR 1252.

²⁵ *Ibid.*

²⁶ *R. v. Ewanchuk*, [1999] 1 SCR 330.

CRITERIA TO ESTABLISH WHETHER PERSONAL HARASSMENT HAS OCCURRED²⁷

Criteria to test Personal Harassment (bullying)

To substantiate personal harassment, the complainant must demonstrate on a Balance of Probabilities:

- A) That the conduct, comment, display, action or gesture falls into the domain of **inappropriate**. To be sufficiently serious enough to fall into this domain, inappropriate conduct is not just offensive and unwelcome but is also a marked departure of SHR values. It is motivated by ill-will or by a wanton and/or reckless indifference to how others perceive our actions.
- B) That the harassment occurred on the **worksite** (workplace) or arises out of or is connected to one's employment.
- C) That the conduct, comment, display, action or gesture constitutes a real **threat to the health and safety** of the individual. Assessing whether a real threat occurred is fact-specific and includes the subjective perspective of the complainant along with the objective assessment of the investigator.
- D) That there is **reliable evidence** to support the claim. What is harassment is a question of fact and must be determined according to the objective facts of the situation. The corroboration of various events verified through reliable oral, physical or documentary evidence is desired. Reliable confirmation via corroboration can strengthen the probability that an event did or did not occur and make the foundation of facts more certain.
- E) That the **respondent knows or ought reasonably to know** that the inappropriate conduct, comment, display, action or gesture would cause an individual to be humiliated or intimidated. The investigator will objectively consider whether the actions under investigation would be such that a reasonable respondent should have known or ought to reasonably have known they would cause humiliation or intimidation.
- F) That the alleged inappropriate conduct, comment, display, action or gesture **adversely affected an individual's psychological or physical well-being**. A health-harming adverse effect on well-being must be caused by or directly associated with the harassment.
- G) The harassment must be **repeated**, or if a **single serious incident** it must be accompanied by a lasting harmful effect. With any case of a single incident, the matter may be viewed to be more significant in circumstances when the relationship at work is one where the respondent has influence and/or positional power with regard to impacting workplace conditions, career advancement, performance reviews, work assignments and progressive discipline.
- H) That the complainant has met their **Burden of Proof**. The complainant has the sole responsibility (e.g., burden) to prove the allegations (see definition in Appendix C, SHR Harassment Handbook). Where it is determined at the pre-assessment phase that the complainant has failed to meet their burden, SHR will not investigate the complaint as harassment. Strictly enforcing the burden of proof can play a practical role in preventing frivolous or vexatious complaints.

During a formal investigation, in order to make a finding of personal harassment, each of the above elements (A thru H) must be present. If even one of the elements cannot be proven, the complaint will not succeed.

²⁷ SHR's interpretation of the Act.

Other key criteria for testing Personal Harassment

Reasonability

An integral part of testing whether personal harassment has occurred is assessing whether the harasser knew or ought to have reasonably known their actions could cause a staff member to be humiliated or intimidated. As such, personal harassment can exist even when there is no intention to harass or offend another. The motive behind an act of personal harassment can be of little relevance to the determination of whether harassment occurred. For example, a motive to harm is not needed to support a finding of personal harassment. Harmful conduct that is humiliating and intimidating may be actionable even when the harasser had the best of intentions. This provision is included in the test for personal harassment because inadvertently injuring staff via personal harassment can potentially be no less damaging than an intentional act, especially when an abuse of positional power or status is involved. As such, all staff in SHR must always take care to ensure his or her conduct is not harmful to another.

Both Harassment types

Under some circumstances, the conduct under investigation can fall under the rubric of both harassment types. For instance, sexual Harassment may also have elements of personal harassment. Under these circumstances, the complainant must formally allege both discrimination and personal harassment and the criteria must be met for both.

Written Complaint

Please check boxes as appropriate:

- [1] Prior to writing your complaint, you must:
- Review the Workplace Harassment Policy and Procedure, most notably, Appendix A.
- [2] Check off the boxes below when writing your complaint. Your complaint should include:
- Date, location and time of each specific incident.
 - If more than one incident, number them in order of date.
 - Names of all persons involved and/or Witnesses who may have heard or saw the conduct under question.
 - Supporting evidence, if available (i.e., documents, journals, notes, reports, physical evidence, electronic communications, pictures, ect).
- [3] In your opinion is the alleged Harassment based on any of the following prohibited grounds ? Check the boxes that apply:
- | | | | |
|---|--|---|-----------------------------------|
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Family Status | <input type="checkbox"/> Sex | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Nationality | <input type="checkbox"/> Disability | <input type="checkbox"/> Age | <input type="checkbox"/> Colour |
| <input type="checkbox"/> Place of Origin | <input type="checkbox"/> Creed | <input type="checkbox"/> Receipt of Public Assistance | |
| <input type="checkbox"/> Physical Size | <input type="checkbox"/> Colour/race | <input type="checkbox"/> Gender identity/expression | |
| <input type="checkbox"/> Marital Status | <input type="checkbox"/> Ancestry | <input type="checkbox"/> NONE OF THE ABOVE | |
- [4] If not based on any of the above prohibited grounds, is the alleged Harassment based on either of the following:
- Repeated incidents that have caused you to be humiliated or intimidated.
- OR
- A single serious incident that has had a lasting harmful effect on you.
- [5] PROVIDE WRITTEN DETAILS OF YOUR COMPLAINT *[fillable PDF]*

Additional Questions

1. Do you currently feel safe in your Workplace?
2. Have you, or are you currently missing any work because of the alleged Harassment (i.e., sick time, disability, WCB, leaves)?
3. Have your working conditions been altered because of the alleged Harassment (i.e, involuntary or voluntary job relocation or transfer, changes in duties or job performance)?
4. Have you discussed the alleged Harassment with a Manager and what problem solving action was taken?
5. Have you tried to resolve the matter directly with the Respondent or have you told the Respondent the behavior is objectionable and must stop?

6. Is the Respondent equal, below or above you in the Workplace hierarchy?
7. Have you been involved in a Harassment investigation in the past?
8. Have you submitted this Harassment complaint to a Saskatchewan Occupational Health Officer?
9. Have you submitted this Harassment complaint to the Saskatchewan Human Right's Commission?

Declaration

- I hereby acknowledge a copy of this complaint will be provided to the alleged harasser for the purpose of investigating this complaint.
- I hereby confirm the statement(s) contained in this complaint are true to the best of my knowledge.

Signature _____

Date (dd/mm/yyyy) _____

Please submit completed form to HR Central (or your Manager) by hand, registered mail or email:

HR Central
HRCentral@saskatoonhealthregion.ca
NAW – Level 1
715 Queen Street, Saskatoon SK
S7K 4X4

Need confidential help completing this form? Please contact your Manager or union.

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DEFINITIONS

For the purposes of SHR Harassment policy, procedure and this handbook, the following terms apply:

Bad Faith means a formal harassment complaint brought with an ulterior motive motivated by ill-will, hostility, malice and/or is discolored by a personal animosity or a lack of fairness or impartiality. It includes a reckless disregard for another's health and safety that is intentionally, knowingly and negligently untrue without reasonable and probable grounds.

Balance of Probabilities means the standard of proof used when making a final investigative determination. It is a yardstick that harassment investigators use to gauge whether the evidence is sufficient enough to make a finding. The balance of probabilities is applied by scrutinizing the evidence to determine whether it is more likely than not that an alleged event occurred. If a complainant is successful in proving their case, it is said that the case was proven by a preponderance (e.g., weight) of the evidence. The standard of proof is met if the allegation is more likely to be true than not true. In short, the standard is satisfied if there is greater than 50% chance that the allegation is true. When applying the balance of probabilities, SHR follows the principles outlined in the Supreme Court in *F.H. v. McDougal*.²⁸

Bona fide means real, actual and genuine with good faith, earnest and not feigned; sufficiently weight or sufficiently serious grounds.

Burden of Proof means a complainant's responsibility (e.g., burden) to prove their harassment allegations by providing reliable evidence that is clear, cogent and convincing. The veracity and origin of evidence is crucial to meeting the burden. This means the complainant must provide the investigator a persuasive element of evidentiary proof (witnesses, documents, credible recall, etc.) on a balance of probabilities that harassment actually occurred. The burden of proof always lies with the complainant (person who lays charges) and their version of events must be more likely true than the person who responds with an opposing opinion (the respondent). Where it is determined at the pre-assessment phase that the complainant has failed to meet their burden, SHR will not investigate the complaint as harassment and alternative remedy may be explored.

Cognitive Impairment means diagnosed deficits such as intellectual disabilities, learning disorders, drug-induced impairment (irreversible or reversible), brain injuries, neurological diseases or mental illness.

Collaborative Processes means solutions where both parties mutually consent to share responsibility and participate in restoring harmony and resolving differences (e.g., mediation, conciliation, facilitated meetings, coaching conversations, education, and group facilitation). Collaborative processes are a 'no-fault' endeavor that may involve apologies and/or admissions of guilt, but do not normally incorporate employer discipline.

Complainant means a person who lodges a complaint.

Cyber-Harassment²⁹ means the use of information communication technologies such as the internet, social media, websites, email, text messaging and instant messaging to harass another. It can include discrimination and/or Personal Harassment:

- i) Sending intimidating or threatening emails or text/instant messages.

²⁸ *F.H. v. McDougal* [2008] 3 SCR 41.

²⁹ Adapted from <http://www.rcmp-grc.gc.ca/cycp-cpcj/bull-inti/index-eng.htm>.

- ii) Posting embarrassing photos.
- iii) Creating a website to demean.
- iv) Pretending to be someone by using their name.
- v) Tricking someone into revealing personal or embarrassing information and posting it to others.
- vi) Posting information that falsely discredits or humiliates.

Cyber-harassment affects targets in different ways than traditional Harassment. It is often present 24/7 and therefore reaches the comfort of a home — typically a safe space from traditional forms of workplace harassment.

Designated Harassment Investigator (DHI) means the assigned SHR authority who objectively oversees harassment processes in SHR, including receiving and pre-assessing formal harassment complaints for grounds, conducting independent investigations and/or overseeing third-party investigations.

Employee Family Assistance Program (EFAP) means a no-cost service to staff, offering immediate and confidential professional help for any work, health or life concern. EFAP services are available twenty four hours a day at 1.844.336.3136 or workhealthlife.com.

Express Consent may be verbal, nonverbal or written form and is clearly and unmistakably stated. Not left to inference or interpretation.

Formal Harassment Complaint means a complaint of alleged harassment brought to SHR's attention that is written and submitted using the SHR Harassment Complaint Form. Formal investigations in SHR are complaint-form driven; as such, for a formal complaint to commence, staff is required to submit the SHR Harassment Complaint Form. Complaints that are not written on the Harassment Complaint Form will not normally result in a harassment investigation.

Frivolous Complaint means a harassment complaint that is groundless and therefore lacks evidentiary basis or legal merit. It is not *Bona fide* and has little prospect of success as it presents no rational argument and/or is untrue by a mistake in judgement, inexperience or because of an honest error of perception.

Full Answer and Defense means a right a respondent has to be informed of all the allegations and allowed to respond in a manner sufficient to permit a robust defense prior to an investigate conclusion.

Harassment³⁰ based on prohibited grounds (discrimination) means any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- constitutes a threat to the health or safety of the worker (wstaff). This type of harassment extends to sexual harassment and is prohibited in the *Act* and *The Saskatchewan Human Rights Code*.³¹

Harassment Complaint Form is used by SHR DHI to receive, pre-assess and investigate formal complaints in a consistent and fair manner. The form can help complainants focus their concerns and concisely set out the particulars of their allegations. The form is to be freely accessed in an uncomplicated manner and inclusively available to all staff in SHR. The SHR Harassment Complaint Form is available in *Appendix B* of this policy and procedure.

³⁰ Definition pursuant to the Part III of the *Saskatchewan Employment Act (the Act)*.

³¹ The provisions under the Code regarding discrimination practices in the workplace are found in *Sections 10, 16, 17, 18, 27 and 31*.

Implied Consent means consent which is not expressly granted by a person by spoken or written word, but rather granted by a person's actions and the facts and circumstances of a particular situation.

Informal Harassment Complaints means complaints of alleged harassment brought to SHR's attention that are not written or formalized. On occasion a complainant may not wish to identify the alleged harasser or ask for direct intervention from SHR. The complainant may only want information, advice or indirect assistance in stopping the offending behavior. Informal harassment complaints will not normally result in a formal harassment investigation.

Manager means all in-scope and out-of-scope direct reports, including Department Heads.

Mobbing means harassment of a staff member by his or her colleague(s). Mobbing typically arises from peer pressure and involves multiple co-workers. Mobbing can involve overt behaviors such as petty fault finding and physical intimidation. More often, however, it takes covert forms such as ignoring or excluding a staff member from social situations and team communications. Mobbing could be intentional or unintentional and can be present in both types of harassment defined in SHR Policy and Procedure. Staff particularly vulnerable to mobbing are those not in the dominant culture because they do not share the same creed, orientation, gender or level of ability. Mobbing severely affects the ability to take part with dignity in the workplace.

Poisoned Work Environment means a workplace wherein comments or behaviors create a hostile or offensive environment for staff or groups and negatively affects communication and productivity. These activities (e.g., yelling, slamming doors, pounding a desk, etc.) are not always nor necessarily directed at anyone in particular.

Pre-assessment means a pre-screening of all formal harassment complaints conducted by the SHR DHI. The main purpose of this initial screening is to determine whether the complaint falls within the definition of harassment. In doing so the DHI may choose to identify the plausibility of a triggering event; gather readily available or pre-established evidence that may support or negate the need for a harassment investigation; examine whether the evidence is first-hand or hearsay; preserve and collect evidence that may be vulnerable to destruction or conduct background interviews with persons who can offer initial details. Pre-assessments do not provide definitive investigative findings; rather, they are a passive probe to ensure a complainant's concerns are directed to the right mechanism to find the right solution. Where a DHI conducts a pre-assessment and is not satisfied with grounds, a harassment investigation will not commence and alternate avenues of remedy may be explored.

Prima facie means a fact presumed to be true unless disproved by some evidence to the contrary.

Personal Harassment³² (bullying) means any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects an individual's psychological or physical well-being;
- the perpetrator knows or ought to reasonably know would cause the individual to be humiliated or intimidated, and
- constitutes a threat to the health or safety of the worker (staff).

To constitute personal harassment, either of the following must be established:

- repeated conduct, comments, displays, actions or gestures, or
- a single, serious comment, display, action or gesture, that has a lasting, harmful effect of the worker (Staff).

³² Pursuant to the Part III of the Act.

Physician means any fee for service, Staff or contractor whom SHR has awarded medical privileges.

Sexual Harassment means any conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Social Media means all forms of user-generated content created or exchanged online. Social Media may include:

- i) Virtual worlds/social networking sites (e.g. Facebook, LinkedIn, Instagram, Myspace, Snapchat, Pinterest, Tumblr, Reddit, Yik Yak, Classmates, myYearbook, Vine, VK, Tinder, WhatsApp, YouTube, blogs, wikis, file sharing (video/audio), and Twitter);
- ii) Video and photo sharing websites (e.g. YouTube, Flickr, PSP);
- iii) Blogging sites (including corporate blogs, personal blogs or blogs hosted by media publications);
- iv) Forums, discussion boards (Yahoo Groups, Google Groups), news article comments and online encyclopedias/wikis (e.g. Wikipedia).³³

Staff means all employees, practitioner staff, professional staff, contractors, students and volunteers.

Respondent means the individual whom a complaint has been lodged against and responds to the complaint.

Retaliation (reprisal)³⁴ means any actions, threats or pressure in any form that may include physical harm, job loss, punitive work assignments or actions impacting salary or wages.

Vexatious Complaint means a complaint made in Bad Faith.

Violence means the attempt, threat or actual conduct of a person (intentional or not) that causes or is likely to cause injury. This may involve the application of physical force with or without weapons. It includes any threatening statement or behavior that gives staff reasonable cause to believe they are at risk of injury.³⁵

Witness means a person who is interviewed during an investigation to obtain what they may have heard, seen or otherwise observed.

Workplace Bullying means repeated or a single grave act of health harming mistreatment by one or more people by verbal and/or physical abuse, threats, intimidation, humiliation, work interference, sabotage, exploitation of a known vulnerability, or any combination of the foregoing. In the *Act*, personal harassment is synonymous with workplace bullying.

Workplace means a work-related area or setting at the place of employment where staff is required or permitted to be present.

³³ SHR Policy: *Social Media*.

³⁴ SHR Policy: *Speaking Up-Protection of Persons reporting Wrongdoing*.

³⁵ Adapted from SHR Policy: *Violence Management*, and Part III, *Saskatchewan Occupational Health and Safety Regulations*.

1. TAKING ACTION TO PREVENT HARASSMENT

SHR is committed to the principle that prevention is by far the best means of combatting harassment with education, early intervention and a strong leadership commitment to promoting a harassment-free workplace. As it speaks to prevention, investigations, policies and enforcement measures are only a small part of the equation. As such, SHR acknowledges that prevention is fully in its purview and span of control; hence, since harassment is a workplace problem, it follows that it requires workplace solutions.

1.1 Tips for Harassment prevention

SHR encourages and invites you to speak out about destructive workplace behaviors, conflict and harassment. Contact your Manager for help with skill building in identifying, coping and addressing disruptive behaviors in a healthy safe manner.

- Get educated by familiarizing yourself with SHR Harassment Policy, Procedure and this Handbook along with SHR Policy: Respect and Dignity. Understand what Harassment is and why psychological safety is important.
- Be alert by keeping an eye out for signs of harassment.
- SHR's Values serve as a guidepost. Set the tone by continually living and modeling our values of respect, compassion, excellence, stewardship and collaboration as per SHR Code of Conduct and Values in Action policies.
- If you see others engaging in offensive behavior and if you feel safe to do so, suggest they stop it. Hold others accountable by making it clear you will not tolerate harassing behaviors. If you need advice on how to best handle a situation, seek it from your Manager or union.
- Seek help for unresolved conflict by advising your Manager or union.
- Find ways to prevent unresolved differences from escalating into harassment and deal with them quickly when they occur.
- Accept responsibility for your own actions and reactions and how they impact others.
- Be part of the resolution for problematic workplace conditions.
- When in doubt, don't say it, don't do it.
- If your behavior is unwelcome, stop the behavior.
- Do not make assumptions; do not assume that friendliness equals sexual interest and that the that lack of objection means people are not offended.
- Avoid gossip, critical words and hurtful actions.
- Recognize the benefit of cultural diversity in the workplace.

2. TARGETS OF HARASSMENT: HOW AND WHEN TO OBJECT

2.1 When a target of harassment should not object

Staff who feel they are being harassed are not encouraged to confront an alleged harasser if:

- i) They are reluctant to do so, or
- ii) The harassment is of a serious nature or if the harasser denies the alleged conduct.

Harassment is always unwanted and undeserved; hence, at no time is a target of harassment ever viewed as responsible for causing their harassment, especially if they were unable or did not object. A failure to object is not a sign that harassment is not occurring.

2.2 When it is okay for a target of Harassment to object

It is possible an alleged harasser may not be aware how their actions are affecting others. In some cases, speaking to the alleged harasser about the inappropriate behavior can help resolve a situation. In circumstances where a Staff member feels safe to address objectionable behavior, it is desirable that an alleged harasser be made aware and given the opportunity to stop. When a Staff member feels safe to object, it can be effective to informally speak with the alleged harasser in private. In other instances, it may be most effective if a Staff member chooses to informally speak to their alleged harasser with the assistance of a third-party (e.g., Manager, union) or submit an objection to the alleged harasser in writing.

2.3 How to object

If a staff member believes they have been subjected to alleged harassment, and feel safe to do so, can object in following manner:

Step 1: Make it clear to the individual (verbally or in writing) that her/his actions are not welcome and tell them a failure to stop will result in a Formal Harassment Complaint.

Step 2: Keep a factual record. Document details such as the date and time the alleged Harassment occurred, the location, frequency, witnesses to any disrespectful behavior and all objections made to the alleged harasser, including the impact of the behavior on you. Preserve copies of pertinent documentation (e.g., letters, emails, pictures, texts, etc.).

Step 3: If the alleged Harassment does not stop after you object, contact your Manager, the SHR Safety Reporting Line (urban: 306.655.1600, rural: 1.866.966.0820), or your applicable union.

Set firm limits when objecting by using the following script suggestions:

- *"I feel uncomfortable when..."*
- *"I want you to stop..."*
- *"If you do not stop I will have to report you."*

When objecting, focus on the unacceptable behavior rather than attacking the alleged harasser. Avoid power struggles and saying anything that could be perceived as abusive language. Avoid blaming language such as *"you always..."* Instead, describe the outcome with *"I"* statements such as *"when you criticize me in front of patients I feel they lose confidence in my abilities."* Help the harasser understand the situation in which the behavior occurs and the impact on yourself and others. Encourage constructive solutions, ask *"what can be done to make it okay again, how can we turn this into something that will be better."*

3. WHAT IS NOT HARASSMENT

3.1 Right to direct the workforce

Harassment does not include any reasonable action taken by SHR, or a Manager or supervisor employed or engaged by SHR, relating to the management and direction of SHR staff or the place of employment.³⁶ Harassment does not extend nor apply to day-to-day management or management decisions including but limited to:

- Work assignments,
- Job assessment, evaluation,

³⁶ Pursuant to Part III of the Act.

- Just cause disciplinary action and progressive discipline,
- Absenteeism,
- Reference checks,
- Organizational changes,
- Workplace inspections,
- Implementation of dress codes,
- Workplace investigations.

Some Management actions and decisions are not harassment, even if they sometimes involve unpleasant consequences. Management actions, however, must be carried out in a manner that is reasonable and not abusive. Should any managerial action fall into the domain of alleged harassment, this policy will come into effect and any real or perceived abuse of positional power (via acts of omission or commission) will be given scrupulous attention.

3.2 Other actions that are not Harassment

- Consensual relationships expressly welcomed by staff. However, if a Staff member feels discomfort with such behavior and/or the behavior persists after one party has clearly expressed discomfort or objected, then it may qualify as harassment.
- An isolated minor incident for which a person has promptly apologized.
- Physical conduct necessary for the performance of the work using accepted industry standards.
- Conduct which *all* parties agree is inoffensive or welcome. Note, conduct can be deemed inappropriate when a staff member clearly communicated discomfort but the conduct continued. If a staff member was unable to object, scrupulous attention will be given to whether they felt unsafe to do so.
- Disagreements in the workplace that are not based on one of the prohibited grounds.
- Expressing opinions that are different from others, unless those opinions fall within the prohibited grounds.

3.3 Workplace conflict is not Harassment

Workplace conflict can involve improper and even disrespectful actions but is not the same as harassment. It can be difficult for staff to know the difference between Harassment and conflict, as they can appear similar. However, they are two distinct behaviors requiring distinctly different interventions. Harassment is more severe than conflict as it has more in common with violence, interpersonal abuse and workplace trauma than with workplace disagreements.

Not every workplace indiscretion, petty act or thoughtless and insensitive word is intended to be captured by the definition of harassment. To qualify as Harassment, the entire criterion in the harassment policy and procedure's *Appendix A* must be met.

Conflict is often an unavoidable part of work; in fact, healthy disagreement and constructive conflict is characteristic of high performing teams. On the other hand, unresolved conflict not dealt with properly or proactively has the potential to escalate and take the form of harassment.

Harassment process should not be used to address conflict. Knowing the differences between conflict and harassment can assist staff and interveners with identifying the right mechanism to find the right solution.

CONFLICT TRAITS ³⁷	HARASSMENT TRAITS
Normal, acceptable and unavoidable part of human interaction. More often than not unsettling, but can still have constructive outcomes.	Not considered normal everyday Workplace behavior. More often than not destructive.
Those involved perceive each other to have equal power in the Workplace. Whoever has more positional influence (outranks) is not a core concern nor in play.	Imbalance of a real or imagined positional power or status is often in play. The imbalance is aggressively exploited as vulnerability. Harassers do not want a relationship of equals.
While interaction can get emotional or heated, control over the other is not the prime focus.	Seeking control and domination over the other, physically and emotionally, is the primary impulse.
Conflict is commonly a two-way street, often viewed by the parties as unwelcome and uncomfortable. Workers (Staff) often find themselves reacting to a conflict, versus (knowingly) initiating.	Harassers welcome, initiate and push destructive conflict. Attacks are largely unsolicited and unidirectional (a one-sided pattern) with a cruelty of purpose.
Time loss from work and fleeing the work environment is less common.	Time loss from work is more common. Increased absenteeism, decreased motivation, declining job performance and unit turnover are symptomatic of harassment. Targets will often eventually flee a marginalized environment. Medical is often sought as targets commonly experience difficulty getting whole.
Workers (Staff) in conflict rarely want to cause each other real harm. The conflict is often situational wherein they did not choose to be in conflict with each other. Prefer to avoid one another until the conflict is resolved.	Collisions are sought because the harasser carries powerful feelings of dislike and a strong desire to hurt the other. They intentionally seek, target and deliberately cause confrontations to elicit high emotion and reactions.
Conflict more often than not deals with isolated and episodic events, flaring up only occasionally where the harm is fleeting and not long lasting.	Harassment often involves a persistent and repeated pattern of severe health harming behavior. The behavior often cumulatively escalates over time with increased frequency and hostility.
Conflict is often fueled by poor communication, differences of opinion, inability of Workers (Staff) to control emotions, murky standard work and expectations. Workplace conflicts can be interpersonal but on balance are more often impersonal, sparked by a Workplace issue. They are rarely sparked by an ulterior or threatening agenda.	Harassment involves a high severity of contempt and disregard over another's deservedness. It involves very intimate, personal-orientated attacks on another's character that are often irrelevant to work (e.g., name calling based on appearance or prohibited grounds, belittling based on half-truths and distortion). The maltreatment is unscrupulous and aimed at the person, not an issue. Often has a predatory agenda to ostracize, intimidate and incapacitate.
Conflict instills worry and distress but there often an underlying understanding why the conflict started. Real fear does not predominate. Parties are generally not frightened of one another.	Harassment instills palpable fear for one's safety. A target feels shock, disbelief and has difficulty finding meaning with why the matter has escalated. Targets can have intrusive thoughts and feel under threat.
Those in conflict often want to maintain confidentiality, prefer a private approach to remedy, are not proud a conflict is occurring.	Harassers will often openly broadcast to colleagues (rumor monger). They often form camps to manage the target's reputation covertly and overtly. The goal is to make things public to increase their sphere of influence.
Those in conflict will often and/or eventually take responsibility for their point of view, are willing to reach compromise and have capacity to express remorse for how the conflict evolved. To resolve, they are apt to internalize and take some level of ownership.	Harassers often refuse to apologize, will more often counter-accuse more versus admit wrongdoing, will show very little empathy and humility. They are apt to externalize blame and rarely demonstrate voluntary remorse. They have the potential to retaliate in order to get 'one up' and keep a target off balance.
Those in ongoing conflict will often problem solve using words and overt actions. Conflict can have elements of passive aggressiveness; however, those elements do not define the conflict.	Harassers will more consistently use covert ways to socially isolate a target and establish control and dominance such as paralinguistic cues (glaring eye contact, huff and puffs, slam things, frowns, tone of voice, very fast or slow rate of speech) or use indirect Violence (silent treatment, gossip, public humiliations).

³⁷ Adapted from the Workplace Bullying Institute.

4. BYSTANDERS TO HARASSMENT

A purpose of this SHR Policy and Procedure is to promote a strong internal responsibility system where all staff understands they have a shared role to play in preventing and stopping alleged harassment. In short, *safety is no accident*. All SHR staff who witness an alleged act of harassment or destructive behavior have a duty to report the situation to their Manager. The employer, typically represented by Managers, in turn, has a legal duty to ensure all reports of alleged harassment are reasonably addressed without delay.

A robust harassment reporting culture is an essential element of a healthy and safe workplace. Doing nothing to support a target of harassment is not a neutral act as it puts targets at a disadvantage. In sum, for harassment to thrive it often requires team approval, secrecy, shame and silent witnesses allowing a harasser to allegedly harass.

You are a bystander if you:

- i) Stand by and say nothing when Staff is being abused by another or by a third-party.
- ii) Feel peer pressure if you do not appear to support an alleged harasser's actions.
- iii) Fear that you may be the next target.

If you Witness alleged harassment:

Step 1: If you feel safe, speak up and make it known that you do not approve of the behavior. If you do not feel safe objecting to the alleged harasser, tell a Manager immediately.

Step 2: Report the incident the SHR Safety Alert System (urban: 306.655.1600, rural:1.866.966.0820)

Step 3: Lend a supportive ear to co-workers who may be experiencing harassment, encourage them to seek help and options for resolution.

Step 4: Where applicable, tell your union representative.

Step 5: Cooperate fully with any investigations or remedies.

SHR upholds the principle that work is one of the most fundamental aspects in a person's life, providing people with a means of financial support and, as importantly, a contributory role in society. Employment is an essential component of a sense of identity, self-worth and emotional well-being. For many staff in SHR, apart from family, workplace relationships are some of the most meaningful relationships in their lives³⁸ and harassment poses a threat to this well-being. As such, any staff member who witnesses the harassment of other staff must ensure prompt reporting.

Pursuant to the Act,³⁹ all staff must take reasonable care to protect his or her health and safety and the health and safety of other staff who may be affected by his or her acts or omissions. Bystanders who fail, at minimum, to tell their Manager of destructive or alleged harassing behaviors can be found complicit and party to the harassment if the observed/ignored behavior is ultimately deemed harassing. Substantiated acts of a bystander failing to report will not be tolerated and may be subject to appropriate discipline.

³⁸ Amalgamated Transit Union, Local 113 v Toronto Transit Commission (Use of Social Media Grievance) 2016, O.C.A.A. No 267.

³⁹ Part III, 3-10.

5. THIRD-PARTY HARASSERS

SHR's harassment policy covers alleged harassment connected to any matter or circumstance arising out of the workplace including conduct perpetrated by a third-party with whom SHR does business with or which whom staff is required to meet with. This may include patients, clients, residents, families, contractors or their staff and the public.

SHR and Managers have a duty to intervene with third-party harassers. However, third-parties are not under the employer's full direction, and therefore the jurisdiction to investigate and/or sanction conduct can be limited. SHR shall take reasonably practicable action to stop or reduce the risk to its staff of being harassed by third-parties as follows:

5.1 External contractors

- i) Provide SHR Harassment Policy, Procedure and Handbook to and/or post in a location visible to contractors.
- ii) Ensure contractors and their workers (staff) are contractually subject to the behavioral expectations SHR Harassment Policy, Procedure and Handbook binding them to accept and meet the terms herein.
- iii) Promptly take action by warning harassing conduct will not be tolerated and if necessary, limiting, cancelling or suspending services and/or removing contractors who participate in alleged harassment.

5.2 Cognitively intact service users

- i) When the alleged harasser is a cognitively intact service user (patient, client, resident) or connected to a service user (family or other visitors), it is recommended that all details of the observed situation be thoroughly documented⁴⁰ in the health record. Determine the potential cause of the alleged harassing behaviors and put measures in place to eliminate the likelihood of further incidents. Ensure all staff are aware of the behaviors; place feedback on the care plan and any communication binder(s) and discuss at team meetings and/or shift briefings.
- ii) When a cognitively intact service user has been asked to stop harassing Staff but they continue, management has the right to make it clear no further incidents will be tolerated under any circumstances or the service user may risk discharge and/or a modification or refusal of service.

5.3 Cognitively Impaired service users

When a cognitively Impaired service user engages in abusive actions, Staff should closely follow any safe Workplace practices and procedures already in place (e.g., behavioural care plans, etc.), seek expertise and thoroughly chart and communicate openly as a care team to problem solve.

5.4 Third-party Violence

Workplace harassment left unchecked has the potential to escalate into violent behavior. All incidents of third-party violent force or threats of a violent nature must be reported and will be assessed and/or investigated. Refer to SHR Policy: *Violence Management*.

5.5 Physicians

Physicians (e.g., fee for service, Staff or contractors) whom SHR has awarded medical privileges are fully subject to the terms of conditions of SHR Harassment

⁴⁰ Documenting can gain more credibility with the issue and help SHR objectively determine the facts.

Policy Procedure and Handbook. *SRHA Practitioner Staff By-Laws* come into effect if the need arises to sanction a physician. SHR Senior Medical Officer, the Director of Practitioner Affairs and SHR Legal Counsel are to be informed without unreasonable delay of all harassment complaints involving physicians.

6. COLLABORATIVE PROCESSES VS. FORMAL HARASSMENT INVESTIGATIONS

Second only to preventing destructive behaviors and conflict from escalating into harassment, is the goal of investigating harassment complaints as soon as possible in the least disruptive manner.

As harassment and conflict are distinct from one another, two distinctly different interventions (collaborative and formal) are available in SHR.

6.1 Formal Harassment investigations

Formal investigations are enforcement measures designed to stop harassment related right's infringement(s). A formal investigation does not rebuild relationships. A formal investigation's central functions are:

- (i) Protect staff safety.
- (ii) Make findings of fact with whether harassment took place.
- (iii) Prevent recurrence by imposing sanctions or conditions.

The full process for how a formal written complaint of harassment can be found in SHR Harassment Policy and Procedure.

6.2 Collaborative Processes

Collaborative processes are informal solutions designed to address workplace conflict and disagreements. They can be preventative or reactive and commonly involve conflict mediation, but can also include education and coaching. Collaborative processes can provide staff opportunity to understand one another and work together to repair the harm done to restore harmony. They can include apologies and admissions but do not incorporate employer discipline; hence, in lieu of punishment, they are a 'no-fault' endeavor. A shared responsibility is emphasized between parties to resolve differences and create a preferred future.

Confidential support with collaborative processes is available via:

- i) Manager.
- ii) Applicable union.
- iii) EFAP (1.844.336.3136 workhealthlife.com).
- iv) SHR Safety Alert System (urban: 306.655.1600, rural: 1.866.966.0820).

6.3 Comparing Collaborative Processes and Harassment Investigations

COLLABORATIVE PROCESSES (e.g., MEDIATION)	HARASSMENT INVESTIGATIONS
Designed to address Workplace conflict.	Designed to address a violation of a Worker's (Staff) legal right to Harassment free Workplace.
Immediate focus is to resolve conflict, no legislative duties involved.	Focus is immediate safety and protecting the Complainant. Fostering a future relationship between a Complainant and Respondent is secondary to safety. Legislative duties involved.
Future harmony is often restored between parties.	Future harmony between parties is rarely restored. Relationships between key parties are further hardened and often result in permanent impasse.
Focused on establishing increased understanding between the parties.	Focused on determining facts.
A voluntarily process, typically only considered a viable option if <u>both parties</u> mutually consent to participate.	Once an investigation has begun, it is an involuntary process. Consent is not a factor in determining whether to investigate.
The parties lead.	SHR leads.
Parties encouraged to collaborate, emphasizes a shared responsibility.	Collaboration discouraged, one party is often made responsible over the other.
Brings Workers (Staff) together in same room.	Separates Workers (Staff). There is never a joint meeting during an investigation.
Affected parties control the process and outcome.	SHR controls the process. Outcome is imposed, unilateral and often binding.
On balance, is not prohibitively time consuming nor overly disruptive to a work unit.	Can be very time consuming and temporarily destabilizing to a work unit.
Operates separate from disciplinary systems with no-fault resolutions. No documentation placed on either Worker's (Staff) personnel files.	Acts as an arm of SHR Department of Labour Relations, authority is used to stop and deter. Disciplinary sanctions can result with documentation placed on the disciplined Worker's (Staff) personnel file.
The process remains confidential.	The process remains confidential but disclosure is often necessary for purposes of investigation, with taking corrective action or when required by law.

6.4 When Collaborative Processes are appropriate and not appropriate

After a formal harassment complaint has been pre-assessed for grounds and accepted as *Bona fide*, SHR then has a legal duty to investigate and if applicable take corrective action to ensure no staff is subjected to alleged health harming behaviors.

An important outcome of the pre-assessment screening process is that a formal investigation will only commence after it has been determined that collaborative processes may not prevent the alleged harassment from recurring or that the informal harassment complaint process is not appropriate. If collaborative processes have already been ruled out for reasons of safety, they will not normally be considered after a formal investigation has started.

SHR will not ridicule, undermine or prevent staff who submit *Bona fide* complaints from accessing harassment rights and remedies available under the law. As such, only after a full investigation is completed and after a harasser's conduct is addressed will collaborative processes normally be considered.

Post harassment investigation, mediation or facilitated discussions may be especially relevant if the investigation concludes no harassment took place. Under these circumstances, if the parties are open to negotiate and/or the complainant does not fear retaliation or loss of face, mediation can prove beneficial. Mediation can clear the

air, rebuild strained relationships, help maintain a professional work relationship, clarify outstanding questions and help the respondent to recognize the adverse impact. If a complainant feels threatened, coerced or otherwise unable to express concerns and negotiate post investigation, collaborative processes will not be considered. Scrupulous attention will always be given with whether mediating could escalate the complainant's experience by alienating, re-traumatizing or causing shame and self-blame.

6.5 SHR does not mediate *Bona fide* complaints of alleged Sexual Harassment

When it is determined that a complaint of sexual harassment has grounds for investigation, mediation will not normally be pursued by SHR as remedy. Mediation could dismiss and ridicule the seriousness of a complaint and block effective action with safeguarding ongoing security. Sexual harassment is often unidirectional and can involve a power imbalance. No behavior from a complainant can ever justify becoming a target of sexual harassment; hence, when a sexualized act lacks consent, there is no shared responsibility to remedy.

The duty to prevent recurring sexual harassment fundamentally lies with SHR and the offender and is never an ongoing responsibility of a target, even partially, to solely prevent further acts or get along with a sexual harasser in the future. Mediating sexual harassment can send wrong message to staff and can dampen the organizational desire to report alleged sexual harassment.

6.6 Collaborative Processes and formal investigations to not replace one another

Where it is determined staff is experiencing unresolved conflict, formal harassment investigative processes will not be used as an alternative to managing and problem solving. Alternatively, using harassment processes to address conflict can minimize the ability of mediation to bring parties together with minimal disruption to build better relationships in the future.

When it is determined a harassment complaint is *Bona fide*, collaborative processes will not normally be used as an alternative to investigating. All *Bona fide* complaints of harassment will be taken seriously and staff will not be discouraged from pursuing or resolving a complaint in accordance with the harassment policy and procedure.

7. WORKER (Staff) RIGHTS DURING INVESTIGATION

7.1 Procedural fairness (natural justice)

The following dictates of procedural fairness apply to SHR harassment investigations:

1. The right to lodge a complaint without it being ridiculed or arbitrarily dismissed and to have it acted upon in a timely manner.
2. The right to refuse mediation.
3. The right to a full and answer and defense wherein details about the fullest nature of the complaint will be disclosed to you prior to being interviewed.
4. The right to adequate notice and to be present.
5. The right to a qualified, impartial investigator.
6. The right to a presumption of innocence unless proven otherwise.
7. The right to be represented.
8. The right to pursue other legal support.
9. The right to confidentiality.
10. The right to submit a complaint without retaliation or discrimination.
11. The right to be heard and make arguments against the totality of allegations.

12. The right to seek the assistance of a Saskatchewan Occupational Health Officer prior, during or after a complaint is investigated.
13. The right to file a harassment complaint with the Saskatchewan Human Rights Commission under the *Saskatchewan Human Rights Code*.
14. The right to be provided a reason for a decision in writing following an investigation.
15. The right to appeal a decision via a collective bargaining agreement.

8. DOCUMENTING INVESTIGATIONS

8.1 Distribution of the final investigative report

At the conclusion of a harassment investigation the DHI will complete a written investigation report memorializing conclusions and reasons for the decision.

The complainant, respondent, union representative (or a retained legal counsel), assigned HR consultant, SHR legal counsel, affected Manager and/or executives as applicable will be provided opportunity to review the final report in its entirety. To protect the confidentiality of all parties, the complainant, respondent and authorized supports will be provided read-only⁴¹ access to the final report under the direction and supervision of the DHI. Any third-party disclosure beyond read-only access will be at the sole discretion of SHR legal counsel.

8.2 Record retention

No record of a harassment complaint or final report will be kept on a staff personnel file unless corrective disciplinary action resulted. If disciplinary action flows, the letter of discipline will be accompanied by the investigation report until the time the discipline expires, wherein it would then be removed from the personnel file.

Human Resources shall retain all documents related to a complaint for seven (7) years following the conclusion of the complaint.

8.3 Document disclosure

All documents, full statements and related materials obtained during the course of a harassment investigation, including the names and copies of witness statements, shall not be disclosed to any unauthorized person unless required by law.

9. CONFIDENTIALITY

9.1 Staff obligations during a harassment investigation

All staff entrusted with information to a harassment investigation will be reminded at the earliest investigative stages to uphold the strictest confidentiality. Those entrusted to information shall not speak to any⁴² staff about the investigation, especially staff who may be involved in and/or impacted by an investigation. This obligation is active during an ongoing investigation, after an investigation has concluded and includes any reference to investigation reports or sanctions thereof.

Persons in a legitimate need-to-know whom staff may speak to about an investigation include an assigned union representative, legal counsel and EFAP services. External supports (e.g., family, friend) may be spoken to under the following circumstances:

⁴¹ No pictures or photocopies are permitted during read-only access.

⁴² Instructions will be provided on a case-by-case basis with whether a Supervisor is a need-to-know.

- External support must not be SHR staff.
- It is the responsibility of the affected staff member to ensure all conversations remain confidential.
- No identifying information pertaining to a patient/client/resident is divulged.

All allegations of confidentiality breaches will be promptly addressed. A breach of confidentiality is a serious offence; unauthorized disclosures of information may be subject to disciplinary action.

9.2 SHR obligations during a harassment investigation

SHR will not disclose the name of a complainant, respondent or the circumstances related to the complaint to any person except where disclosure is:

- i) Necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint; or
- ii) Required by law.

9.3 Witness confidentiality during a harassment investigation

Any Witness interviewed in a Harassment investigation will be advised that their identities will not be disclosed in any investigation report or to the Complainant or Respondent except as required by law or to the extent necessary to allow a Respondent a Full Answer and Defense. For the purposes of investigation reports, Witness identities will be de-identified (e.g., Witness A, B, C, etc.).

10. RETALIATION

All SHR staff have a right to lodge a complaint of harassment without retaliation. It is strictly prohibited and a serious offense for any person involved in a SHR investigation to be penalized or retaliated against in any manner because of their participation in an investigation. All staff involved in a harassment investigation will be reminded at the earliest investigative stages to avoid any real or perceived retaliation.

Action will be taken to prevent retaliation against a complainant who makes a harassment complaint in good faith. All reports of retaliation will be promptly addressed and any substantiated acts of retaliation may be subject to disciplinary action.

11. VEXATIOUS COMPLAINTS

SHR has no tolerance for vexatious complaints intentionally fashioned to harm. Investigations are disruptive and allegations made in bad faith can have serious effects on innocent individuals and can needlessly siphon costly resources. Where an investigation determines that a vexatious complaint was made, the complainant may be subject to disciplinary action.

12. DESIGNATED HARASSMENT INVESTIGATOR (DHI)

12.1 Investigator qualifications

The DHI is the assigned authority who objectively oversees SHR harassment processes, including receiving and pre-assessing complaints for grounds, conducting independent investigations and/or overseeing third-party investigations.

The DHI shall have adequate knowledge and training of how to conduct an investigation appropriate in the circumstances.

12.2 Investigator objectivity

A bedrock of procedural fairness is that staff have a right to an investigation without bias. Harassment investigations must be carried out with a substantial degree of investigator detachment; hence, it is the job of the DHI to care solely

about the investigative process and not about the specifics of the outcome. All investigative decisions shall be based on observable phenomena, not influenced by mind-dependent emotions or personal prejudices.

The DHI shall have no preconceived opinion or predisposition. The DHI will assume a position of disinterestedness and impartiality; any personal or professional stake in an investigative outcome shall be declared by the DHI who will recuse immediately and permitted to do so without any consequence.

12.3 Investigator protection from Retaliation

Central to public trust is SHR's ability to objectively police itself; therefore, maintaining a measure of investigative sovereignty and independence is critical to the credibility of harassment processes. SHR has zero tolerance for discriminating or retaliating against a DHI tasked with reaching an investigative realization based on the established facts. Pursuant to the Act,⁴³ SHR and its Managers must not discriminate against any DHI who investigates and provides information about offenses committed by SHR, its officers or staff, if such information has been provided to the DHI in the enforcement of the Harassment Policy, Procedure or Handbook.

12.4 Investigator independence from chain of command influence

A mandatory requirement for DHI objectivity is a reasonable arm's length independence from the immediate chain of command. This independence extends beyond the state of mind or attitude of the DHI and involves the status or relationship of the investigative decision-maker to the affected executives and parties. Maintaining a measure of investigative insulation is critical to the credibility of an investigation in that SHR executive body, along with its DHI, be seen as independent.

SHR has zero tolerance for obstructing or inordinately influencing a DHI tasked with reaching an investigative realization based on the established facts. As such, control and responsibility for an investigative finding will rest with the DHI. Investigative conclusions submitted by the DHI are subject to final review only; any inappropriate decision making pressure — overt or covert — from any SHR official will not be tolerated.⁴⁴

Moreover, the DHI must not be directly involved in the incident or complaint and must not be under the direct control of the alleged harasser.

12.5 Investigator independence to set timelines

No timelines shall be unilaterally placed onto an investigation outcome. Unreasonably pressuring a DHI for quick action is a form of investigative interference and can contaminate an investigation's thoroughness, objectivity and optic of independence. Decision-making responsibility for an investigative timeline shall rest solely with the DHI and there is no tolerance for corruptive or subversive timeline interference.

As appropriate during an investigation, the DHI shall keep all parties, notably the union and/or external legal counsel, apprised of timelines.

13. HARASSMENT ALLEGATIONS INVOLVING CORPORATE OFFICERS

SHR corporate officers are subject to SHR Harassment Policy, Procedures and Handbook. When allegations of Harassment implicate Directors, Vice Presidents or a CEO, the following oversight protocols are in effect.

⁴³ Ibid.

⁴⁴ Including DHI oversight pertaining to third-party investigations.

13.1 Allegations implicating a Director

In a circumstance where allegations implicate a SHR Director, the DHI may independently lead an investigation and/or provide oversight to a third-party investigative firm as per the discretion of the Vice President People, Practice and Quality and Director, Human Resources. The need for Board familiarity and/or oversight as at the discretion of the Vice President, People, Practice and Quality and CEO.

13.2 Allegations implicating a Vice President

In allegations implicating Vice Presidents, SRHA board involvement is desired and achieved through a sub-committee. The role of a sub-committee is to commission and retain a third-party investigator, receive the final report on the findings and assist in making subsequent decisions about the course of action to be followed.

13.3 Allegations implicating a CEO

In a circumstance where allegations implicate a CEO, the Chair will work in chorus with the Ministry in oversight.

14. THIRD-PARTY HARASSMENT INVESTIGATORS

14.1 Conditions when a third-party investigator may be required

Third-party Harassment investigators are visiting investigators who are retained under contract.

Third-party investigators may be required:

- When a conflict of interest is declared by a DHI.
- When there is a need for an increased measure of investigative independence.⁴⁵
- When it is anticipated that findings will be relied upon outside the organization (e.g., counter-parties, public enquiries).
- When the matter calls for the application of a very specialized skill-set.
- When there is limited availability of internal resources in relation to the predicted length and scope of a pending investigation.

14.2 Third-party investigation oversight

The DHI will provide operational oversight⁴⁶ to all third-party harassment investigations in SHR. Ultimate determinative control and responsibility for a finding will rest with the third-party. The DHI will strive to ensure a third-party investigator's decision-making is insulated and independent from any influence — overt or covert — from any SHR official or department.

15. OTHER OPTIONS FOR REMEDY

15.1 Saskatchewan Occupational Health and Safety Division

Pursuant to the *Regulations*,⁴⁷ nothing in this Workplace Harassment Policy Procedure or Handbook prevents or discourages staff from referring a harassment complaint to the Saskatchewan Occupational Health and Safety Division or from requesting the assistance of an occupational health officer to resolve a complaint of harassment. An officer can be contacted at

⁴⁵ For example, when corporate officers are facing allegations or when the Ministry mandates/contravenes SHR to investigate a matter.

⁴⁶ Including selection, establishing contractual terms of reference, logistical support, instructions re scope, aiding with access to internal policies and procedures and communication updates to affected parties.

⁴⁷ Part III, Section 36.

1.800.667.5023; Ministry of Labour Relations and Workplace Safety, 8th Floor, 122 3rd Avenue North, Saskatoon, Canada S7K 2H6.

Prior to requesting the assistance of an officer, the complainant should try and resolve the matter with SHR. If the complainant feels SHR has failed in resolving the matter, they may contact the Ministry for assistance.

If a staff member requests the assistance of an officer after SHR has attempted to resolve the matter, the officer may investigate to determine whether SHR has complied with the legislation and has taken reasonable action.

The officer may do the following:

- When harassment has not taken place no further action is required; however, the officer may recommend how to resolve the matter.
- When harassment has not taken place under the Act, but has taken place under SHR policy, the officer will recommend the employer implement the Harassment policy.
- When harassment has taken place under the Act, and it is likely to be continued or repeated, the officer will direct the employer to stop the harassment.

15.2 Saskatchewan Human Rights Commission

Pursuant to the Regulations,⁴⁸ a complainant has a right to file a harassment complaint with the Saskatchewan Human Rights Commission under the *Saskatchewan Human Rights Code*.

15.3 Collective bargaining agreement

Nothing in the SHR Harassment Policy, Procedure or Handbook precludes a complainant from accessing his or her rights pursuant to a collective bargaining agreement.

15.4 Other legal avenues

Pursuant to the *Regulations*,⁴⁹ nothing in SHR Harassment Policy, Procedure or Handbook is intended to discourage or prevent a complainant from exercising any other legal rights pursuant to any other law.

16. TIME LIMITS

16.1 Staff timelines to submit a formal harassment complaint

A formal harassment complaint should be submitted as soon as possible after the most recent or last event of alleged harassment.

Historic events can present investigative challenges with reconstructing the past. Notwithstanding extenuating circumstances, SHR may refuse to accept a harassment complaint where the complaint is made more than one (1) year after the worker (staff) making the complaint became aware of the alleged Harassment.

16.2 Employer timelines for the completion of a harassment investigation

No unnecessary delay should occur between receiving the complaint, conducting the investigation, preparing investigation report and taking corrective action following an investigation.

⁴⁸ Ibid.

⁴⁹ Ibid.

An investigation shall normally be completed within ninety (90) calendar days or less, notwithstanding extenuating circumstances. Parties to an ongoing investigation shall be updated periodically on the status of the investigation timeline.

A specialized and complex undertaking, a harassment investigation requires careful preparation, planning and coordination. To be thorough and fair, investigators are required to persevere until the fact-pattern is clearly understood and this can take considerable time.⁵⁰

A rushed investigation can create unreliable conclusions and can pose numerous negative outcomes for all parties. If corrective action flows from an investigative finding there is little tolerance for errors, missteps or omissions caused by a rushed fact finding process. Canadian courts, unions, tribunals and adjudicators are increasingly expressing expectations that harassment investigations are carried out with procedural exactitude and meticulous care.

All reasonable efforts will be made to adhere to the 90 day timeline; however, the interests of speed shall not trump thoroughness and due diligence.⁵¹

17. CORRECTIVE ACTION

If discipline is to be considered post investigation, an impartial party other than the DHI will recommend and deliver discipline.⁵² As appropriate, the DHI may submit non-disciplinary remedial recommendations to assist in the prevention and/or detection of similar events.

Corroborated cases of harassment impose a legal and ethical obligation on SHR to take action to stop the harassment and prevent its reoccurrence. Appropriate corrective action — sufficient to ensure the harassment stops and does not occur again — will be taken respecting any worker (staff) who subjects another to harassment.

SHR will ensure that any corrective action taken is communicated to a complainant who experienced harassment. The degree of communication provided about the corrective action will depend on the circumstances and privacy laws but shall indicate the steps SHR is taking to prevent recurrence.

After corrective action has been taken, the Manager must follow up with the complainant to ensure it was effective. If the complainant indicates alleged harassment has recurred or if alleged retaliation has resulted, the Manager shall take additional or alternative corrective action. Further investigation may be necessary.

⁵⁰ An investigation's length is often proportionate to the complexity of the complaint. For instance, if the alleged Harassment took months or years to unfold, an investigation is unlikely to be completed in mere day or weeks.

⁵¹ Also see section 13.5 of this Procedure.

⁵² Disciplinary recommendations emanating from a DHI can expose an investigation to a bias claim that the findings were solely constructed to support a pre-determined state of mind.

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