



UNIVERSITY
OF MANITOBA

University Governance

Respectful Work and Learning Environment: Procedure

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| PROCEDURE: | RESPECTFUL WORK AND LEARNING ENVIRONMENT |
| Effective Date: | June 22, 2004 |
| Revised Date: | |
| Review Date: | June 22, 2014 |
| Approving Body: | Administration: President |
| Authority: | Respectful Work and Learning Environment Policy |
| Implementation: | Vice-President (Administration) |
| Contact: | Executive Director of Human Resources |
| Applies to: | Board of Governors members, Senate members, Faculty/School Councils, Department Councils, Students, External Parties- Contractors and Suppliers, All Employees |

1.0 Reason for Procedures

To set out Procedures secondary to the Policy entitled "Respectful Work and Learning Environment" in connection with supporting a climate of respect in the workplace and in the learning environment where individuals are free from harassment and discrimination.

2.0 Procedures

Anyone who believes that any member of the University has subjected him or her to harassment or discrimination in the course of University-related employment, study, training or activities may discuss concerns and/or make a complaint under the Respectful Work and Learning Environment Procedures. All informal complaints must be made within a reasonable time, usually within one year from the date of the most recent alleged incident. All formal complaints must be made within one year from the date of the most recent alleged incident unless, in the discretion of the investigation officer, extenuating circumstances would warrant an extension of time.

2.1 Definitions:

This Procedure covers:

2.1.1 Human Rights Discrimination or Harassment, which means, except where bona fide and reasonable cause exists, or where it is based upon bona fide and reasonable requirements or qualifications, the differential treatment, whether intended or not, of an individual or group of individuals based on:

- (a) an individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or
- (b) any of the following categories:

- (i) ancestry,
- (ii) race,
- (iii) colour,
- (iv) nationality or national origin,
- (v) ethnic background,
- (vi) religion or religious belief, association or activity
- (vii) age,
- (viii) sex,
- (ix) gender-determined characteristics,
- (x) gender identity,
- (xi) sexual orientation,
- (xii) marital or family status,
- (xiii) source of income,
- (xiv) political belief,
- (xv) political association or activity,
- (xvi) physical or mental disability or related characteristics or circumstances.

2.1.1.1 Reasonable Accommodation

The University of Manitoba is committed to providing reasonable accommodation for the special needs of its constituents whose requirements are related to a specific human rights category.

2.1.1.2 Notwithstanding any other provision of this procedure, it is not discrimination or a contravention of this procedure to:

- (a) make reasonable accommodation for the special needs of an individual or group, if those special needs are based upon any characteristic referred to in section 2.1.1 above;
- (b) plan, advertise, adopt or implement an affirmative action program or other special program including those who are disadvantaged because of any characteristic referred to in section 2.1.1 above;
- (c) conduct research approved by the Human Ethics Board; or
- (d) exercise the provisions of the University of Manitoba Act.

2.1.1.3 Examples of Harassment and Discrimination

Examples of harassment and discrimination include, but are not limited to:

- (a) derogatory written or oral comments and gestures such as name-calling, slurs, graffiti, pictures, remarks, or jokes based on any characteristic referred to in 2.1.1 above;
- (b) evaluations of performance based on any characteristic referred to in 2.1.1;
- (c) behaviour stating or implying actual or perceived abilities or inabilities based on any characteristic referred to in 2.1.1;
- (d) applying stereotypes or generalizations based on any characteristic referred to in 2.1.1;
- (e) refusal to work with or share facilities based on any characteristic referred to in 2.1.1; and
- (f) inappropriate questions or sharing of information about a person's sexuality or sexual orientation.

2.1.2 Sexual Harassment, which is deemed to include, but is not restricted to:

- (a) unwanted sexual attention by a person who knows or ought reasonably to know that such attention is unwanted;

- (b) express or implied promise of reward for complying with a sexually oriented request;
- (c) express or implied threat or reprisal for refusal to comply with a sexually oriented request;
- (d) denial of opportunity or an expressed or implied threat of denial of opportunity for refusal to comply with a sexually oriented request; and
- (e) sexually oriented behaviour or gender-based abusive and unwelcome conduct or comment that has the purpose or effect of creating an intimidating, hostile or offensive environment.

2.1.2.1 Examples of Sexual Harassment

Examples of sexual harassment may include, but are not limited to:

- (a) sexist remarks, jokes, innuendoes or taunting about a person's body, appearance, characteristics or clothing;
- (b) displaying of pornographic or other sexually offensive or derogatory pictures or material;
- (c) persistent and unwelcome invitations or requests for dates;
- (d) leering, ogling or other sexually oriented gestures;
- (e) inappropriate touching; and
- (f) sexual assault.

2.1.3 **Personal Harassment**, which is deemed to include, but is not restricted to:

- (a) one or a series of objectionable and unwelcome comments or actions directed toward a specific person or group of persons which serve no legitimate work or academic related purpose and have the effect of creating an intimidating, humiliating, hostile or offensive environment; and
- (b) physical or verbal abuse, threats or intimidation that is humiliating or demeaning.

2.1.3.1 Examples of Personal Harassment

Examples of personal harassment may include, but are not limited to:

- (a) repeated or continuous incidents of yelling, screaming or name-calling;

- (b) repeated or continuous threats to terminate employment or contracts for reasons unrelated to performance;
- (c) repeated or continuous threats to withdraw funding, scholarships or advancement opportunities for reasons unrelated to performance; and
- (d) comments addressed to a person which have the effect of undermining a person's role in the workplace or classroom.

2.1.3.2 The University does acknowledge the legitimate right and responsibility of academic staff members to correct inappropriate student behaviour, insist on order in the classroom and evict, as necessary, those who disrupt order in the classroom. [See Bylaw: Student Discipline.]

2.1.4 What May Constitute Harassment or Discrimination

In regard to sections 2.1.1, 2.1.2, and 2.1.3, one incident or a series of incidents may constitute harassment or discrimination. It may involve individuals or groups and either peer or power relationships. It may be physical or psychological in nature. It can occur between males and females and between members of the same gender.

2.1.5 A Complainant is a person who discusses a concern and/or makes a complaint (an allegation, whether oral or written, of harassment or discrimination).

2.1.6 A Respondent is a person against whom a complaint has been made.

2.1.7 An Administrative Officer is anyone who has sufficient authority to take or ensure the taking of remedial action such as deans, directors, department heads, heads of administrative units, vice-presidents, vice-provosts and the president. In the case of a student, the administrative officer shall be his or her dean, director, or delegate. [See Bylaw: Student Discipline.]

2.1.8 An Equity Services Advisor is an individual appointed by the University of Manitoba as someone possessing the appropriate training and skills to review and resolve informal complaints related to all human rights harassment and discrimination, sexual and personal harassment.

2.1.9 An Investigation Officer is an individual retained by the University of Manitoba as someone possessing the training and appropriate background to investigate formal complaints related to all human rights harassment and discrimination, sexual and personal harassment.

2.1.10 A Human Resources Department representative is a Human Resource Consultant or a Staff Relations Officer who is a member of the Human Resources Department and possesses the training and background to review and resolve informal complaints of personal harassment in the workplace.

2.1.11 A Student Advocacy representative is a member of the office of Student Advocacy who possesses the training and background to review and resolve informal complaints of personal harassment from students enrolled in the University.

2.2 Concerns/Complaints

2.2.1 Advice and Assistance

2.2.1.1 A complainant who believes that he or she has experienced harassment or discrimination should take direct action, if possible, to make the unease and/or disapproval known to the offending person or persons.

2.2.1.2 In the case of sexual harassment and/or human rights harassment the complainant may choose to consult with an appropriate administrative officer, or an Equity Services Advisor for the purpose of receiving advice and assistance with a view to resolving the situation.

2.2.1.3 In the case of personal harassment in the workplace, employees may also consult with a Human Resources Consultant or a Staff Relations Officer in the Human Resources Department for the purpose of receiving advice and assistance with a view to resolving the situation informally.

2.2.1.4 In the case of personal harassment of students, a student may also consult with a Student Advocacy representative for the purpose of receiving advice and assistance with a view to resolving the situation informally.

2.2.1.5 If the complaint is against an administrative officer the complainant may seek advice and assistance directly from the Equity Services Advisor or a Human Resources Consultant or Staff Relations Officer, as is appropriate for the type of harassment.

2.2.2 Duty of Administrative Officers

2.2.2.1 If a complaint is brought to an administrative officer, he or she shall contact an Equity Services Advisor or Human Resources Department representative, as is appropriate for the type of harassment complaint, to receive advice and assistance with respect to the handling of the complaint. The complainant will be advised that this contact and direction is being sought. The Equity Services Advisor, Human Resources Department representative and the administrative officer will treat the matter confidentially.

2.2.2.2 Both the complainant and the respondent are entitled to information regarding counseling services that

are available and appropriate for the situation.

2.2.3 Informal Complaint

2.2.3.1 If the complainant is unable to take direct action, or if the offensive behaviour persists in spite of it being brought to the respondent's attention, the complainant may request that an appropriate administrative officer and/or an equity services advisor try to resolve the situation.

2.2.3.2 Alternatively, in the case of a personal harassment complaint in the workplace, a Human Resources Department representative, or in the case of personal harassment of a student a Student Advocacy representative, may be asked to intervene to try to resolve the situation.

2.2.3.3 A Human Resources Department representative or a Student Advocacy representative may meet with the complainant, the respondent and any other relevant party or union representative with a view to resolving the matter.

2.2.3.4 A Human Resources Department representative or a Student Advocacy representative must keep a written record of the date, time and nature of any incident that is brought to their attention, along with the names of any witnesses and the steps taken to deal with the situation.

2.2.4 Informal Resolution

2.2.4.1 If an informal resolution, acceptable to both parties, is reached, then the appropriate administrative officer and/or the Equity Services Advisor, Human Resources Department representative or Student Advocacy representative, depending on who handled the complaint, will:

- (a) send a written communication to both parties, setting out the understandings and/or agreement. Receipt of this written communication must be acknowledged by both parties;
- (b) assist in bringing about whatever administrative or other action is needed to implement the resolution;
- (c) ensure that the Equity Services Advisor has a copy of the written communication to both parties.

2.2.4.2 No record of the informal resolution shall be kept in either the complainant or respondent's student or personnel file.

2.2.5 Formal Complaint

2.2.5.1 If the matter is not resolved informally, or if the behaviour continues or reoccurs, or if the complainant chooses not to attempt to resolve the matter informally, complainants have the option to file a formal complaint.

The formal complaint shall:

- (a) be in writing indicating that it is a formal complaint;
- (b) set out the particulars of the allegations, including, where possible, the dates, times and nature of the allegations and the names of any witnesses to the behaviour;
- (c) be signed and dated by the complainant; and
- (d) be submitted to the Investigation Officer.

2.2.5.2 A complainant may request the assistance of the Equity Services Advisor to draft the formal complaint.

2.2.6 Applicability of the Complaint

2.2.6.1 Upon receipt of the formal complaint the Investigation Officer will review the allegation(s) to ensure that it falls within the definitions set out under this procedure.

2.2.6.2 If it is determined that the allegation(s) does not fall under the definitions set out in this procedure then the complainant shall be advised accordingly and no further action will be taken under this procedure.

2.2.6.3 If it is determined that the allegation(s) falls within the definitions set out in this procedure, an investigation shall be launched.

2.2.7 Investigation

2.2.7.1 The investigation shall be concluded as expeditiously as possible. If the Investigation Officer foresees significant and unexpected delays in the completion of the process, he/she shall notify the complainant and the respondent. The Investigation Officer shall advise them of the reasons for the delay and shall provide an estimate of the time required to complete the investigation.

2.2.7.2 If, at any time during the course of the investigation the Investigation Officer deems it appropriate for the complainant and respondent to seek resolution through mediation, and where they both consent to do so, the Investigation Officer may interrupt the investigation for such period(s) of time as he or she considers reasonable to facilitate such an approach to resolution. Any such resolution may provide for withdrawal of the complaint or a portion thereof.

2.2.8 Duties of the Investigation Officer During an Investigation

Upon an investigation being launched the Investigation Officer shall:

- (a) notify the respondent in writing that a complaint has been received and that an investigation has commenced. The respondent shall be provided with a signed copy of the formal complaint and the policy and procedures: Respectful Work and Learning Environment;
- (b) provide the respondent with a reasonable opportunity to consult with counsel or a union or Human Resources Department representative or personal representative;
- (c) advise the respondent to provide a written response to the complaint within a reasonable time;
- (d) investigate the complaint, including interviewing the complainant and the respondent, and any other person deemed relevant to the investigation. The complainant and the respondent shall cooperate fully with the Investigation Officer and provide any information required by the Investigation Officer upon request. The complainant or respondent may be accompanied during the interview by counsel, or a union or Human Resources Department representative or personal representative;
- (e) at the conclusion of the investigation prepare a written report which sets out the allegation(s), the information obtained and provides a conclusion as to whether the policy on Respectful Work and Learning Environment has been breached on a balance of probabilities;
- (f) provide a copy of the written report to the Vice-President (Administration) and the appropriate administrative officer. In the event that the Investigation Officer finds that the policy on Respectful Work and Learning Environment has been breached, a copy of the written report shall be provided to the Vice-Provost (Student Affairs) when the respondent is a student or the Executive Director of Human Resources and the Vice-President (Academic), as is appropriate, when the respondent is an employee. The Vice-President (Administration) may choose to provide a copy of the written report to the complainant and/or the respondent; and
- (g) Where the respondent is a member of the Executive Group as defined in Policy: Employee Organizations and Employment Groups, any reference to the Vice-President (Administration) in 2.2.3 or 2.3-2.5 is deemed to be a reference to the President, or to the Chair of the Board of Governors, if the President is the respondent.

2.3 Findings of Formal Investigation

2.3.1 No Breach of Policy

2.3.1.1 If it is determined that the policy on Respectful Work and Learning Environment has not been breached then the Investigation Officer shall advise the Vice-President (Administration) and the appropriate administrative officer. The Vice-President (Administration) will advise the parties accordingly and may choose to provide them with a copy of the Investigation Officer's written report. No further action will be taken and no record of the complaint will be placed on the University's official employment file or student file for the respondent.

2.3.1.2 No record of the complaint shall be kept in the complainant's personnel file or student record unless it is determined that the complaint was frivolous or vexatious. The University may take disciplinary action against a complainant in cases where frivolous or vexatious complaints are submitted.

2.3.2 Breach of Policy

If it is determined that, based on the written report, the policy on Respectful Work and Learning Environment has been breached the Vice-President (Administration) in consultation with the appropriate administrative officer and the Vice-Provost (Student Affairs), where the respondent is a student, or the appropriate administrative officer and the appropriate Vice-President and the Executive Director of Human Resources where the respondent is an employee, will determine an appropriate disposition of the matter.

2.3.3 Where Collective Agreement provisions require that the President obtain the approval of the Board of Governors for a suspension or dismissal, the finding of the Vice-President (Administration) shall be referred to the President in the form of a recommendation for action.

2.3.4 Notice of the disposition will be provided to the complainant, the respondent, the appropriate administrative officer and the Investigation Officer. The appropriate administrative officer will ensure the disposition is fulfilled and file a copy of the disposition in the University's official employment file for the respondent, in the case of an employee or in the University's official student file for the student, in the case of a student.

2.3.5 All other information pertaining to the investigation shall be retained in a secure file held by Equity Services. The appropriate administrative officer and/or the Equity Services Advisor will facilitate any request or requirement for counseling/education/training on behalf of either the complainant or the respondent.

2.4 University-Instituted Investigation

The Vice-President (Administration), in consultation with Equity Services, and where appropriate the President or another Vice-President may request that an investigation be conducted in the absence of a formal complaint and in circumstances where he/she deems it appropriate to do so. The University shall utilize the same methods of investigation, adapted as necessary to meet the circumstances. Based on the results of this investigation, appropriate disciplinary action may be taken.

2.5 Appeals

2.5.1 The respondent may appeal the decision/recommendation of the Vice-President (Administration) with respect to any discipline in accordance with the appropriate grievance process defined by collective agreement, policy or Board Bylaw, if the respondent is an employee of the University, or pursuant to the Bylaw: Student Discipline, if the respondent is a student.

2.5.2 Upon the request of the respondent, the Vice-President (Administration) may suspend the imposition of the discipline pending the outcome of an appeal by the respondent.

2.6 Liability

No one charged with responsibility under this procedure, who carries out their duties in good faith and conscience shall be liable for any action or claim arising out of their good faith execution of those duties.

2.7 Interference and Retaliation

2.7.1 Interference with the conduct of an investigation or retaliation against a complainant or witness, whether the complaint was substantiated or unsubstantiated, may itself result in disciplinary action.

2.7.2 Where the respondent is in a position of power with respect to the complainant, the appropriate administrative officer, may, where it is feasible to do so and at the complainant's request, reassign either the complainant or the respondent to different duties, or permit a student an academic accommodation(s), for example, switching sections of a course, pending the resolution of the complaint.

2.8 Confidentiality

2.8.1 To the best of their ability, complainants, respondents, and persons who become privy to a complaint under this procedure shall treat it in strict confidence, except in the case of serious threat to life or property which might require disclosure. They shall not discuss it with anyone who is not necessary to the process of resolution, counseling, investigation or disposition. Complainants or respondents who have been provided with copies of the investigative report must also keep it in strict confidence.

2.8.2 Intentional or unnecessary breaches of confidentiality by any person may be subject to disciplinary action by the University of Manitoba.

3.0 Accountability

3.1 The University Secretary is responsible for advising the President that a formal review of these Procedures is required.

3.2 The Executive Director of Human Resources is responsible for the communication, administration and interpretation of these Procedures.

4.0 Review

4.1 Formal Procedure reviews will be conducted every ten (10) years. The next scheduled review date for this Procedure is June 22, 2014.

4.2 In the interim, these Procedures may be revised or rescinded if:

- (a) the Vice-President (Administration) or the President deems necessary; or
- (b) the relevant Bylaw, Regulation(s) or Policy is revised or rescinded.

5.0 Effect on Previous Statements

5.1 These Procedures supersede:

- (a) all previous Board/Senate Procedures and resolutions on the subject matter herein;
- (b) all previous Administrative Procedures and directives on the subject matter contained herein;
- (c) 223 Sexual Harassment Policy; and
- (d) 236 Human Rights Policy.

6.0 Cross References

Respectful Work and Learning Environment Policy

Student Discipline Bylaw

Employee Organizations and Employment Groups Policy

related documents:

Respectful Work and Learning Environment Policy

Student Discipline Bylaw

Employee Organizations and Employment Groups Policy

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