

SAMPLE: Human Rights Policy

This policy is from a large performing arts organization in Ontario, however, the legal aspects of this policy are applicable to all employers.

Revised: March 27, 2001

POLICY STATEMENT

Theatre X is committed to creating and maintaining a positive and professional work environment. In support of this, Theatre X expressly prohibits any form of discrimination and harassment, including sexual harassment, as defined under the Ontario Human Rights Code.

SCOPE

This policy applies to the following persons and corporations:

- all employees of Theatre X, including those employed on a contract basis;
- members of the Board of Governors;
- members of societies and associations which are under the authority of Theatre X;
- persons or corporations in a contractual relationship with Theatre X such as those undertaking provision of service or research, construction;
- visitors or patrons who may be on Theatre X premises.

The actual determination of any violation of this Policy can be made only in the context of a particular case, in accordance with fair procedures.

DEFINITIONS

Discrimination

Discrimination is any action, communication or behaviour that has the effect of making a distinction between individuals or groups based on prohibited grounds. In other words, it means treating individuals differently, negatively or adversely, whether intentionally or not.

Prohibited grounds of discrimination, with respect to employment are defined by the Ontario Human Rights Code as being: age, ancestry, citizenship, colour, creed, handicap, ethnic origin, marital/family status, place of origin, race, sex, sexual orientation, record of offences and same-sex partnership status.

Handicap

"Because of handicap" means that a person has, or has had, or is believed to have had:

- a) any degree of physical disability, infirmity, malformity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and without limiting the generality of the foregoing, including diabetes, mellitus, epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheel chair or other immediate appliance or device;

- b) a condition of mental retardation or impairment;
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- d) a mental disorder; or,
- e) an injury or disability for which benefits were claimed or received under the *Workers' Compensation Act* [now *Workplace Safety & Insurance Act*]

Harassment

Harassment means "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." All forms of harassment are defined as discrimination.

Harassment is any behaviour, action or communication that is directed at, and offensive to, another individual and which the harasser knows or ought to know, is unwelcome. It consists of objectionable conduct, remarks, gestures and displays that are insulting, intimidating, humiliating, hurtful, demeaning, belittling, malicious, degrading or otherwise causes offence, discomfort, or personal humiliation or embarrassment to a person or group of persons. Examples of harassment include:

- a) unwelcome remarks, jokes, nicknames, innuendo, or taunting related to such things as a person's age, sexual orientation, race, same-sex partnership status, ancestry;
- b) written or verbal abuse or threats linked to a prohibited ground;
- c) racial or ethnic slurs;
- d) posters, notices or bulletins which may cause offence and encourage discrimination or create a hostile environment.
- e) use of terminology that reinforces stereotypes based on prohibited grounds;
- f) vandalism or physical assaults motivated by prohibited grounds;
- g) condescension, paternalism, or patronising behaviour linked to prohibited grounds which undermines self-respect or adversely affects performance or working conditions.
- h) abuse of supervisory authority that endangers a person's employment, work performance or interferes or negatively influences the person's career. This includes misuses of power including intimidation, threats, blackmail and coercion.

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victim of the harassment.

Specific examples can include:

- a) unwelcome remarks, jokes, innuendoes, or taunting about a person's body, attire or sex;
- b) practical jokes of a sexual nature which cause awkwardness or embarrassment;
- c) displaying pornographic pictures, posters, graffiti or other offensive material;
- d) questions or comments about an individual's sexual preferences, etc.;
- e) leering (suggestive staring) or other obscene or suggestive gestures;
- f) unwanted sexual flirtations, advances, or propositions;
- g) unwanted physical contact including touching, kissing, patting and pinching;

- h) persistent unwanted contact or attention following the end of a consensual relationship;
- i) conduct such as stalking; and
- j) sexual assault or abuse.

It does not include:

- a) a hug between friends; or
- b) a relationship or mutual flirtation of mutual consent.

Reprisal

Reprisals or threats of reprisal, particularly by a person in authority, are defined as acts or threats designed to punish an individual who has reported discrimination or harassment; or threats designed to dissuade an individual from reporting discrimination or harassment.

In sexual harassment cases, reprisals can also be defined as acts designed to punish an individual who has rejected sexual advances; or threats if sexual advances are rejected.

PREVENTION AND INTERVENTION

Prevention and intervention are key to achieving an environment free of discrimination and harassment. Theatre X supports this by providing a clear policy statement and an internal complaint and investigation procedure, and will provide ongoing training and communications regarding employee and employer rights and obligations.

Condoning:

If a person in authority knows, or should reasonably have known, that discrimination or harassment may have occurred and fails to take appropriate action, the person in authority has condoned the discrimination or harassment and may be subject to sanctions under this policy.

Individuals who observe a situation involving the harassment of another or others have a responsibility to inform the harasser of this policy, recognising that individuals who experience discrimination or harassment are often reluctant to report it.

Self-help Measures:

Individuals who feel they are victims of harassment have a right and responsibility to take self-help measures wherever possible or pursue the complaint process. Whenever and wherever possible, self-help measures should be used prior to filing a formal complaint. This includes communicating with the harasser (i.e., telling them face-to-face, telephoning, or writing) indicating that his/her behaviour is offensive.

Consultation & Information:

Consulting with an advisor (e.g. Human Resources) does not mean that a complaint is being lodged. Individuals can obtain information about harassment, discuss an incident or explore self-help measures with an advisor including Human Resources, their immediate supervisor, their Manager/Director, or their union representative, where applicable.

Informal consultation, assistance or advice can be sought through the Director of Human Resources. Theatre X will take no action, involving a third party, until a formal complaint is filed by a complainant willing to be identified, as outlined in the Complaint & Mediation Procedure.

COMPLAINT & MEDIATION PROCEDURE

Confidentiality:

Information gathered during the investigation and contacts made will be documented and maintained in a confidential file, separate from the personnel file, by Human Resources. Those involved in the investigation, including witnesses, will be advised that all information discussed must and will, to the extent possible, be kept confidential. Release of information will be allowed only where required by law. A breach of such confidentiality will be subject to disciplinary action.

Although anyone may report discrimination or harassment, a complaint may be made only by persons affected by the alleged discrimination or harassment, or by the Director of Human Resources or the Executive Director on behalf of Theatre X.

Should a complainant or respondent choose to retain legal counsel at any stage of a complaint or appeal, it shall be at the complainant's or respondent's own expense.

All Theatre X employees, including the respondent(s), must co-operate fully in any investigation under these guidelines.

Step I: Filing of a Formal Complaint

- The complainant will submit a written complaint to the Director of Human Resources, (Director), or Executive Director. The complaint will provide details of the alleged harassment, including dates, times, places, names of individuals involved and names of any witnesses. The complainant will be advised that the Director will conduct an investigation. The investigation will include interviews with the complainant, the respondent and, if necessary, any relevant witnesses. Normally the complaint must be filed within three months of the alleged incident, or if incidents are ongoing, within three months of the latest incident.
- The Director will meet with the respondent and provide, or forward, a copy of the complaint to him/her, and provide him/her with an opportunity to respond. The respondent will be advised that the Director will conduct an investigation. This investigation would include interviews with the complainant, the respondent and, if necessary, any relevant witnesses. The Director will request a written response within ten days. If a response is not received within ten days, the respondent will be advised that, in the absence of their co-operation or a response within another ten days, the complainant may request a hearing with the Complaint Panel.
- The Director will meet with the complainant and respondent, either individually or together, where appropriate, to attempt to achieve a satisfactory resolution. Resolution may include, but is not limited to a formal apology, appropriate counselling for those involved, discussion with the respondent regarding expected and appropriate workplace behaviour and responsibilities.
- At this point, the procedure may result in a mutually acceptable resolution, withdrawal of the complaint or failure to resolve.

- Should the investigation not substantiate the complaint, then the Director will withdraw the complaint and advise both the complainant and the respondent.
- If the complainant or the respondent is not satisfied with the settlement of the matter reached under Step I of this procedure, then either can request a formal hearing before the Complaint Panel.

Step II: Complaint Panel

- A tribunal consisting of the Executive Director, the Director of Human Resources and a Director will be convened, in camera, within 15 days of a request for hearing.
- The Panel will hear both parties and will conduct a thorough investigation. It will then deliberate and make its written decision and recommendations within 30 days of the hearing. The written report will be provided to both the complainant and the respondent.
- The Panel's investigation will substantiate the claim(s) of discrimination or harassment, or dismiss it.
- If the allegation is substantiated, then disciplinary action will be determined by the Panel, based on the severity of the case. Disciplinary action may range from a written warning up to and including termination of employment.

Complaints that are found to be trivial, frivolous, vexatious or made in bad faith may result in disciplinary action against the complainant. The severity of the action will depend on the seriousness and impact of the complaint.