



**DURHAM COLLEGE STUDENTS INCORPORATED**

## **WORKPLACE HARASSMENT AND DISCRIMINATION POLICY**

**OFFICIAL CONSOLIDATION**

**Current as of**

**September 24, 2020**

## **NOTES ON OFFICIAL CONSOLIDATION**

This consolidation is current as of September 25, 2020.

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

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**Durham College Students Inc.**  
(hereinafter the “**Corporation**”)  
**WORKPLACE HARASSMENT AND DISCRIMINATION POLICY**  
(hereinafter the “**Policy**”)

Effective Date: <b>May 1, 2019</b>	Last Review Date: <b>April 1, 2019</b>
Approved by: <b>Board of Directors</b>	Executive Responsible: <b>General Manger</b>

## **ARTICLE I: POLICY STATEMENT**

### *Policy Statement – General*

1.1 The Corporation is dedicated to maintaining a safe space. Any forms of oppressive and/or discriminatory behavior or language on account of citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, gender identity, gender expression, family status, marital status, sexual orientation and/or record of offences, will not be tolerated. As a safe space, Corporation does not tolerate any anti-LGBTQ (lesbian, gay, bisexual, transgender) violence or harassment.

### *Policy Statement – dignity*

1.2 The Corporation is a place where rules and conduct promote respect and dignity for all people at all times.

### *Binding employees*

1.3 All Employees of the Corporation must respect, promote and abide by this Policy.

## **ARTICLE II: PURPOSE**

### *Purposes of Policy*

2.1 The purposes of this Policy are:

2.1.1 to outline the Corporation’s commitment to providing a discrimination and harassment-free workplace;

2.1.2 to define the types of behaviour which, constitute discrimination and harassment;  
and

2.1.3 to establish a procedure for dealing with complaints of discrimination and/or  
harassment.

## **ARTICLE III: APPLICATION**

### *Application of the Policy*

3.1 This Policy applies in respect of interactions which occur during the course of the Corporation's business, activities, and events whether or not they occur on or off the Corporation's business premises and whether or not perpetrators are Employees or third parties.

### *Application of the Policy – Non Union*

3.2 This Policy applies to the non-unionized Employees of the Corporation.

### *Application of the Policy - Union*

3.3 Unionized Employees should consult the most recent Collective Agreement between the Student Association at Durham College and Unifor and its Local 222 to identify the harassment and discrimination provisions applicable to their employment.

## **ARTICLE IV: DEFINITIONS**

### *Definations*

4.1 The following definitions shall apply to this Policy:

“**Code**” means the Ontario Human Rights Code.

“**Discrimination**” means differential or unequal treatment in the workplace related to any of the Protected Ground in the the Code namely citizenship, race, place of origin, ethnic origin, colour, ancestry, disability, age, creed, sex/pregnancy, gender identity, gender expression, family status, marital status, sexual orientation or record of offences.

“**Harassment**” means a course of vexatious comment(s) or conduct that is known or reasonably ought to be known to be unwelcome, whether or not it is based on a prohibited ground under the Human Rights Code. Harassment typically involves a pattern of comment or conduct that occurs over time. However, a single incident may, in certain instances, also constitute harassment.

Harassment includes comments/conduct targeted towards a particular individual as well as comment/conduct directed towards a group of individuals that creates a poisoned working

environment for members of that group. The reasonable exercise of management functions is not harassment.

**“Members”** means the members of the Corporation, as defined in the Corporation’s By-laws.

**“Sexual Harassment”** includes any harassment based on sex or gender, including but not limited to the following:

- any sexual advance or other conduct of a sexual nature which is known or ought reasonably be known to be unwelcome; and
- any reprisal or threat of reprisal (ex. loss of job, denial of advancement, pay increase or other employment benefit) for rejecting a sexual advance or other conduct of a sexual nature from a person in a position of authority who knows or ought reasonably to know that it is unwelcome.

**“Gender-Based Harassment”** is a form of sexual harassment but unlike other forms of sexual harassment, it is not generally motivated by sexual intent. Gender-based harassment is any behaviour that polices and/or reinforces traditional heterosexual gender norms. It is often based on hostility and making an individual feel unwelcome in their environment. In some cases, gender-based harassment may look the same as harassment based on sexual orientation or homophobic bullying.

Examples of Sexual Harassment and Gender-Based Harassment (as outlined by the Ontario Human Rights Commission) include, without limitation:

- demanding hugs;
- invading personal space;
- making unnecessary physical contact, including unwanted touching, etc.;
- using language that puts someone down that is related to gender;
- sex-specific derogatory names;
- leering or inappropriate staring;
- making gender-related comments about someone’s physical characteristics or mannerisms;
- making comments or treating someone badly because they don’t conform with sex-role stereotypes;
- showing or sending pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including on-line);
- sexual jokes, including passing around written sexual jokes (for example, by e-mail);

- rough and/or vulgar humour or language related to gender;
- using sexual or gender-related comment or conduct to bully someone;
- spreading sexual rumours (including on-line);
- making suggestive or offensive comments or hints about members of a specific gender making sexual propositions;
- verbally abusing, threatening or taunting someone based on gender;
- bragging about sexual prowess;
- demanding dates or sexual favours;
- making offensive sexual jokes or comments;
- asking questions or talking about sexual activities;
- making an employee dress in a sexualized or gender-specific way;
- acting paternally in a way that someone thinks undermines their self-respect or position of responsibility;
- making threats to penalize or otherwise punish a person who refuses to comply with sexual advances (known as reprisal).

**“Sexual Solicitation”** means solicitation(s) or advance(s) by any person who is in a position to grant or deny a benefit to the recipient of the solicitation(s) or advance(s). This includes Managers and Supervisors, as well as Employees where one person is in a position to grant or deny a benefit to the other.

**“Poisoned Environment”** means an environment where comments or conduct (including comments or conduct that are condoned or allowed to continue when brought to the attention of management) create a discriminatory work environment such that it can be said that it has become a term and condition of one’s employment to have to be in such a workplace. The comments or conduct need not be directed to a specific individual, and may be from any individual, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

*Definition when not defined*

4.2 Any other capitalized term not defined herein shall have the same meaning assigned to it in the Durham College Students Inc. Workplace Health and Safety Policy.

## **ARTICLE V: RESPONSIBILITIES**

### *Responsibility Employees*

5.1 All Employees are expected to uphold and abide by this Policy, by refraining from any form of harassment or discrimination and by cooperating fully in any investigation of a harassment or discrimination complaint.



### *Duty to Report*

5.2 Anyone who becomes aware of any apparent workplace discrimination or harassment, including any incident of retaliation against any person for invoking this Policy, is encouraged to bring forward such incident to Management.

### *Duty to Act*

5.3 Managers and Supervisors have the additional responsibility to act immediately on observations or allegations of harassment or discrimination. Managers and Supervisors are responsible for creating and maintaining a harassment and discrimination-free organization and should proactively address issues as they arise.

## **ARTICLE VI: COMPLAINT PROCESS**

### *Timelines for Complaints*

#### 6.1 General Terms

##### 6.1.1 Timelines for initiating a Complaint

6.1.2 All Complaints must be filed within six (6) months of the most recent instance of alleged discrimination and/or harassment. A report outside this time frame may be considered, in special circumstances, at the discretion of Management.

### *Confidentiality*

6.2 Confidentiality will be maintained, to the extent possible, in any investigation. However, procedural fairness requires that the Respondent to a complaint be apprised of the nature of the complaint and by whom it has been made so that they have an opportunity to speak to the allegations. While appropriate steps will be taken to preserve the anonymity of any witnesses, this may not be possible at some or all stages of the investigation process.

### *Misuse of the Complaint Procedures*

6.3 Management shall have the discretion to refuse to investigate a Formal Complaint where, in their opinion of, the Complaint has not been made in good faith, or where the Complaint does not fall under these procedures. If Management determines that a Complaint has been filed in bad faith, the Complaint process may be discontinued and disciplinary action may occur.

### *Reprisals*

6.4 Alleged reprisals, if substantiated, will be subject to the same consequences as Complaints of discrimination and/or harassment.

### *Maintenance of Documents*

6.5 All documents related to a complaint, including the written complaint, witness statements, investigation notes and reports, and documents related to the complaint, will be securely maintained by the General Manager or designate, separate from personnel files and disclosed only when and to the extent necessary to satisfy due process requirements

### *Optional Resolution Processes*

6.6 6.6.1 Early Resolution. Employees who feel they have been harassed and/or discriminated against, are encouraged to take the step of informing the individual that their behaviour must stop immediately. It is recognized, however, that some situations may not lend themselves to this step and/or that some Employees may not wish to pursue this step. Accordingly this step is not a pre-requisite to bringing a Complaint.

6.6.2 Informal Complaint Stage. A Complainant may report an incident to any Manager and request that it be resolved informally without a full investigation. Likewise, the Manager may, upon receipt of a concern, suggest informal measures to resolve a concern. Neither the Complainant nor the Respondent is obliged to agree to this approach.

### *Formal Complaint Process*

6.7 6.7.1 Initiating a Formal Complaint. If a Complainant does not wish to pursue the Early Resolution or Informal Complaint Stage or if such measures, for whatever reason, do not satisfactorily resolve the issue, the Complainant may launch a Formal Complaint by bringing such Complaint forward to a Manager. Formal Complaints are to take the form attached in Appendix "A" hereto.

6.7.2 Response to Complaint. Individuals who are named as Respondents to a Formal complaint have a right to a written copy of the Formal Complaint Form (Appendix "A") and to know the specifics of an allegation against them. Upon receipt of the Formal Complaint, a Respondent has five (5) working days from which to file a Formal Response, which is to be submitted to the Manager.

6.7.3 Threshold Assessment. All Formal Complaints filed under this Procedure shall be subject to a threshold assessment by the Manager (or designate) to determine:

- whether the alleged conduct would meet the definition of discrimination and/or harassment;
- whether the Complaint, as provided, contains sufficient detail to allow for an investigation; and/or
- whether the Complaint is frivolous or vexatious or brought in bad faith.

Such assessment shall be conducted either before or after the receipt of the Response, as determined appropriate by the Manager (or designate). Where the Manager (or designate) deems that the threshold for investigation has not been met, they may opt to not further investigate the Complaint and the Complainant (and Respondent, if appropriate) shall be so advised.

6.7.4 Investigation of Complaint. In the event that the General Manager (or designate) determines that the Formal Complaint does meet the threshold (as above) they shall appoint an Investigator to investigate the Complaint. The Investigator may be the General Manager (or designate) themselves or another third party.

## **ARTICLE VII: FORMAL INVESTIGATION**

### *Duties of the Investigator.*

7.1 In a formal investigation, the Investigator shall in a timely fashion:

7.1.1 separately meet with the Complainant and the Respondent;

7.1.2 obtain the names of witnesses and other persons that the Complainant and the Respondent believe may have information relevant to the matters in issue;

7.1.3 interview the named witnesses as the Investigator deems appropriate;

7.1.4 interview any other persons who, in the Investigator's opinion, may be able to contribute relevant information to the investigation;

7.1.5 come to a conclusion about whether the specific incident(s) in issue did or did not occur based on a balance of probabilities;

7.1.6 gather other evidence as is required;

7.1.7 generate an Investigation Report; and

7.1.8 make recommendations, as appropriate.

## **ARTICLE VIII: MEASURES TO BE TAKEN**

### *Types of measures*

8.1 The General Manager (or designate) shall, based on the Investigation Report, take and/or facilitate appropriate action which, may include, without limitation:

8.1.1 Discipline;

8.1.2 Counseling;

8.1.3 Application of strategies to restore a positive working environment;

8.1.4 Mediation;

8.1.5 Training;

8.1.6 Separation of the Respondent and Complainant; and

8.1.7 Other remedial measures as they see fit.

### *Discipline*

8.2 If discipline is imposed, such discipline may include any and all appropriate action up to and including dismissal from employment.

### *Unsubstantiated claims*

8.3 In the event a Complaint is not substantiated, no further action will be taken, unless the complaint is found to be trivial, vexatious or an abuse of power in which case the Complainant may be subject to discipline and/or such other action as the General Manager (or designate) determines appropriate.

## **ARTICLE IV: MEDIATED RESOLUTION**

### *Definition*

9.1 Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. At any time during the investigation, or before, the parties may agree to mediate their differences. In the event that such option is taken, the investigation shall be placed in abeyance until such time that mediation has been completed.

*Formalizing the resolution*

9.2 When matters are resolved through mediation, the Complainant and the Respondent will sign a plan of action for resolution outlining the terms to which the parties have agreed.

*Mediation voluntary*

9.3 Mediation is voluntary and the Complainant or the Respondent may choose not to participate or, once they have agreed to participate, to withdraw at any time.