



The Government of Bermuda

The Ministry of Labour

Bullying and Sexual Harassment Policy Statement

Pursuant to the First Schedule of the Employment Act 2000

The Policy Statement and corresponding templates contained herein has been created by the Ministry of Labour for employers to implement pursuant to the Employment Amendment Act 2021, which comes into force on the 1st of June 2021, to ensure that employees are allowed to work in environments free of bullying and sexual harassment.

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BULLYING AND SEXUAL HARASSMENT POLICY STATEMENT [TEMPLATE]
Pursuant to section 10B of the Employment Act 2000

1 Purpose

- 1.1 It is the policy of [Employer Name] to provide an environment free from bullying and sexual harassment of any kind and for any reason, including sex, age, relationship status, sexual preference, religious belief, colour, race, creed, national or ethnic origin, disability, or any other factor or relevant circumstance.
- 1.2 An employee and any third party or person on the premises of [Employer Name] is entitled to work, provide services or be in an environment free of bullying and sexual harassment.
- 1.3 Bullying and sexual harassment violates an individual's fundamental rights and personal dignity. It is unlawful, and will not be tolerated by [Employer Name].
- 1.4 When [Employer Name] determines that an allegation of bullying or sexual harassment is true, it will take prompt and appropriate corrective action.
- 1.5 The provisions of this policy are subject to the Employment Act 2000.

2. Definitions

- 2.1 Bullying is the habitual display of offensive behaviour intended to harm, intimidate, humiliate, undermine or coerce a person or group of persons and includes, but is not limited to, ostracizing, ridiculing, shouting at, threatening, and verbally abusing a person or group of employees.
- 2.2 Sexual harassment is unwanted or unwelcomed sexual attention of an offensive nature made by a person who knows, or reasonably should know, that the attention is unwanted or unwelcomed by the other person and that the other person may conclude that the conduct was intended to —
 - (a) offend, humiliate, disrespect or degrade him or her;
 - (b) intimidate, threaten or compel him or her by putting him or her in fear of being placed at a disadvantage or prejudiced if he or she does not submit to the sexual harassment;
or
 - (c) create a hostile environment for him or her, or violate his or her dignity.
- 2.3 Sexual harassment encompasses a wide range of inappropriate conduct or acts under the law, but in addition to the conduct or acts prohibited under the law, other examples of conduct specifically prohibited by [Employer Name] include —

- (a) promising, directly or indirectly, a person a reward if the person complies with a request of a sexual nature;
- (b) threatening, directly or indirectly, to retaliate against a person if the person refuses to comply with a request of a sexual nature;
- (c) denying, directly or indirectly, a person an opportunity if the person refuses to comply with a request of a sexual nature;
- (d) engaging in sexually suggestive physical contact or touching or grabbing of another person in a way that is unwelcome;
- (e) repeatedly standing too close to or brushing up against a person;
- (f) engaging in explicit language, sexually suggestive gestures, or indecent exposure;
- (g) making sexual or romantic advances toward a person and persisting despite the person's rejection of the advances;
- (h) sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via e-mail or other electronic means;
- (i) verbal abuse of a sexual nature;
- (j) repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he or she is not interested (A [Supervisor/Director/Manager] in particular should be careful not to pressure an employee or third party on the premises of [Employer Name] to socialise);
- (k) giving gifts or leaving objects that are sexually suggestive;
- (l) repeatedly making sexually suggestive gestures;
- (m) making or posting sexually demeaning or offensive pictures, cartoons or other materials in the workplace;
- (n) off-duty, unwelcome conduct of a sexual nature that affects the work environment;
- (o) deliberately creating an overall offensive environment, including use of vulgar language, displaying, storing, or transmitting sexually explicit photographs or other materials, and the telling of sexual stories;
- (p) asking a person intrusive questions that are of a sexual nature pertaining to that person's private life.

2.4 Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own may not be sexually harassing.

- 2.5 Certain behaviours, such as conditional promotions, awards, grades, training or other benefits upon acceptance of unwelcome actions of a sexual nature, are always wrong and prohibited by [Employer Name].
- 2.6 An [employee/worker] is prohibited from bullying or sexually harassing another [employee/worker] or third party whether or not the incidents of bullying or sexual harassment occur on [Employer Name] property and whether or not the incidents occur during working hours.
- 2.7 The victim can be of the same sex as the bully or harasser. The bully or harasser can be a [Supervisor/Director/Manager], another [employee/worker or a non-employee] or third party who has a business relationship with [Employer Name] or may be on the premises of [Employer Name].
- 2.8 Although bullying or sexual harassment typically involves a person in a greater position of authority as the bully or harasser, a person in a position of lesser or equal authority may also be found responsible for engaging in prohibited bullying or sexual harassment.
- 2.9 Consensual sexual or romantic relationships between [employees/workers] are deemed unwise and are strongly discouraged by [Employer Name] in particular if one [employee/worker] has supervisory authority over the other [employee/worker].

3 The Employee's Rights and Responsibilities under this Policy

- 3.1 All incidents of bullying, sexual harassment or inappropriate sexual conduct should be reported by an [employee/worker] or third party regardless of their seriousness.
- 3.2 If an [employee/worker] or a third party believes that he or she has been subjected to bullying or sexual harassment or any unwanted or unwelcome sexual comment, conduct, innuendo, gesture, contact, advance or attention by anyone (e.g., a co-worker or other person), he or she should—
 - (a) make his or her unease and/or disapproval directly and immediately known to the alleged bully or harasser orally or in writing and advising that such conduct is unwelcome and offensive and must stop; and
 - (b) report the incident immediately to the [Supervisor/Director/Manager] in writing. If the [Supervisor/Director/Manager] is responsible for the bullying or sexual harassment, report the conduct to the [Chairperson of the Board].
 - (c) report the incident to the Human Rights Commission pursuant to Section 14H of the Human Rights Act 1981. The complaint:
 - a. shall be made by the person aggrieved, but may be made on his behalf by a member of his family or other suitable person if the person from whom the complaint might have been made is unable to act for himself;

- b. may be made orally, electronically or in writing; and
- c. shall be made within six months after the alleged contravention takes place:

Provided that the Executive Officer may entertain a complaint up to two years after an alleged contravention if he is satisfied that there are good reasons for the delay and that no one will be prejudiced by the delay.

Where a complaint is made to the Commission, it shall record the complainant's name and contact information, the subject matter of the complaint and the date when the complaint was made.

- 3.3 A person should feel free to raise concerns and make a report without fear of reprimand.
- 3.4 The privacy of the complainant and of the person accused of bullying or sexual harassment must be maintained and all information must be kept strictly confidential.
- 3.5 [Employer Name] shall not retaliate against or victimize an [employee/worker] or third party for filing a complaint of bullying or sexual harassment or for cooperating in an investigation of a sexual harassment complaint;
- 3.6 The [employee/worker] shall not make a false complaint of bullying or sexual harassment.

4. [Employer's] Responsibilities under this Policy

- 4.1 If [Employer Name] receives an allegation of bullying or sexual harassment, or has reason to believe bullying or sexual harassment is occurring, it will take the necessary steps to ensure that the matter is promptly investigated and addressed.
- 4.2 [Employer Name] is committed to take action if it learns of instances of bullying or sexual harassment, even if the individual does not wish to file a formal complaint.
- 4.3 All complaints will be promptly and carefully investigated by the administration, and all employees are assured they will be free of any and all reprisal or retaliation from filing such complaints.
- 4.4 An administrative investigation will include interviews with all relevant persons, including the complainant, the accused and other potential witnesses. In determining whether an alleged conduct constitutes bullying or sexual harassment, the record as a whole and the totality of the circumstances, such as the nature of bullying or sexual advances and the context in which the alleged incidents occurred will be examined. A determination of appropriate action will be made from the facts, on a case-by-case basis.
- 4.5 The administration will review the finding with the complainant at the conclusion of its investigation. If the investigation reveals that the complaint appears to be valid, immediate

and appropriate corrective action, up to and including discharge, will be taken to stop the bullying or sexual harassment and prevent its reoccurrence. If the validity of the complaint cannot be determined, immediate and appropriate action will be taken to assure that all parties are reacquainted with the bullying and sexual harassment policy and to avoid bullying and sexual harassment in the future.

- 4.6 Any finding can be appealed to the [] using the company's existing [grievance/disciplinary] policy.
- 4.7 If a complaint involves a member of the administration, then a written request should be made to the [Chairman of the Board] to establish a [Committee] to investigate the complaint.
- 4.8 Prevention is the best tool for the elimination of bullying and sexual harassment. [Employer Name] and the administration express strong disapproval of any acts that can be construed as an act of bullying and sexual harassment of any [person/employee/worker] or third party on the premises of [Employer Name].

5. Resolution

- 5.1 An [employee/worker] of [Employer Name] who has been found to have bullied or sexually harassed another [employee/worker], third party or visitor/patron of [Employer Name] will be subject to disciplinary action up to and including termination.
- 5.2 An employee or any person under the employer's direction who has made a false complaint of bullying or sexual harassment shall be subject to disciplinary action up to and including termination.
- 5.3 An employee who is dissatisfied with the resolution of a bullying or sexual harassment complaint or suffers further bullying or sexual harassment after the resolution of a complaint from the same bully or harasser, may make a complaint to the Human Rights Commissions in accordance with section 14H of the Human Rights Act 1981 or the Labour Relations Section in accordance with the Employment Act 2000.

6. Confidentiality

- 6.1 All inquiries, complaints and investigations are treated with confidentiality. Information is revealed strictly on a need-to-know basis. However, the identity of the complainant usually is revealed to the accused and witnesses.
- 6.2 An [employee/worker], a third party or other individual contacted in connection with a complaint will be counselled that any information pertaining to the complaint must be held in confidence.

ANNEX 1: Workplace Bullying and Sexual Harassment Investigation Process [Template]

Further to Clause 4 of the Bullying and Sexual Harassment Policy Statement entitled “*[Employer’s] Responsibilities under this Policy*”, this template may be used for guidance on the investigation process of workplace bullying and sexual harassment incidents or complaints.

[EMPLOYER’S NAME] WORKPLACE BULLYING AND SEXUAL HARASSMENT INVESTIGATION PROCESS

A. Commitment to Investigate

[Employer’s name] will ensure that an investigation appropriate in the circumstances is conducted when the employer, human resources, a manager or supervisor becomes aware of an incident of workplace bullying or sexual harassment or receives a complaint of workplace bullying or sexual harassment.

B. Who Will Investigate

[Director/Manager/Supervisor/Department] will determine who will conduct the investigation into the incident or complaint of workplace bullying or sexual harassment. If the allegations of workplace bullying or sexual harassment involve [Director/Manager/Supervisor/Department], the employer will refer the investigation to an external investigator to conduct an impartial investigation.

C. Timing of the Investigation

The investigation must be completed in a timely manner and generally within 90 days or less unless there are extenuating circumstances (i.e. illness, complex investigation) warranting a longer investigation.

D. Investigation Process

The person conducting the investigation whether internal or external to the workplace will, at minimum, complete the following:

- i. The investigator must ensure the investigation is kept confidential and identifying information is not disclosed unless necessary to conduct the investigation. The investigator should remind the parties of this confidentiality obligation at the beginning of the investigation.

- ii. The investigator must thoroughly interview the [employee/worker] who allegedly experienced the workplace bullying or sexual harassment and the alleged bully (s) or harasser(s), if the alleged bully or harasser is an [employee/worker] of the employer. If the alleged bully or harasser is not an [employee/ worker], the investigator should make reasonable efforts to interview the alleged bully or harasser.
- iii. The alleged bully(s) or harasser(s) must be given the opportunity to respond to the specific allegations raised by the [employee/worker]. In some circumstances, the [employee/worker] who allegedly experienced the workplace bullying or sexual harassment should be given a reasonable opportunity to reply.
- iv. The investigator must interview any relevant witnesses employed by the employer who may be identified by either the [employee/worker] who allegedly experienced the workplace bullying or sexual harassment, the alleged bully(s) or harasser(s) or as necessary to conduct a thorough investigation. The investigator must make reasonable efforts to interview any relevant witnesses who are not employed by the employer if there are any identified.
- v. The investigator must collect and review any relevant documents.
- vi. The investigator must take appropriate notes and statements during interviews with the [employee/worker] who allegedly experienced workplace harassment, the alleged bully or harasser and any witnesses.
- vii. The investigator must prepare a written report summarizing the steps taken during the investigation, the complaint, the allegations of the [employee/worker] who allegedly experienced the workplace bullying or sexual harassment, the response from the alleged bully or harasser, the evidence of any witnesses, and the evidence gathered. The report must set out findings of fact and come to a conclusion about whether workplace bullying or sexual harassment was found or not.

E. Results of the Investigation

Within 10 days of the investigation being completed, the [employee/worker] who allegedly experienced the workplace bullying or sexual harassment and the alleged bully or harasser, if he or she is an [employee/worker] of the employer, will be informed in writing of the results of the investigation and any corrective action taken or that will be taken by the employer to address workplace bullying or sexual harassment.

F. Confidentiality

Information about complaints and incidents shall be kept confidential to the extent possible. Information obtained about an incident or complaint of workplace bullying or sexual harassment,

including identifying information about any individuals involved, will not be disclosed unless disclosure is necessary to protect [employees/workers], to investigate the complaint or incident, to take corrective action or otherwise as required by law.

While the investigation is on-going, the [employee/worker] who has allegedly experienced bullying or sexual harassment, the alleged bully or harasser(s) and any witnesses should not discuss the incident or complaint or the investigation with each other or other [employees/workers] or witnesses unless necessary to obtain advice about their rights. The investigator may discuss the investigation and disclose the incident or complaint-related information only as necessary to conduct the investigation.

All records of the investigation will be kept confidential.

G. Handling Complaints

The employer must set out any interim measures that may be taken after the complaint is received and during the investigation. The employer must also set out how they might deal with the complaint of bullying or sexual harassment if bullying or sexual harassment is found. This may include discipline up to and including termination.

ANNEX 2: Workplace Bullying and Sexual Harassment Investigation [Template]

Further to the Bullying and Sexual Harassment Policy Statement this template may be used for guidance in investigating workplace bullying and sexual harassment incidents or complaints. It may not be appropriate for complex workplace bullying and sexual harassment investigations.

The person conducting the investigation must not have been involved in the incident or complaint of workplace bullying or sexual harassment and must not be under the direct control of the alleged bully or harasser.

[EMPLOYER'S NAME] WORKPLACE BULLYING AND SEXUAL HARASSMENT INVESTIGATION

Name of investigator:

Date of investigation:

A. Background Information: (Attach more pages if necessary)

1. Name of person who reported the workplace bullying or sexual harassment:
2. If not the same person as above, name of person who allegedly experienced workplace bullying or harassment:
3. Date complaint/concern raised and how:
4. Name of [employee(s)/worker(s)] (complaining or possibly exposed to workplace bullying or sexual harassment):
Position/Department:
5. Name of respondent(s) (alleged bully or harasser):
Position/Department:
If not an [employee/worker] – provide details:

B. Investigation Plan: (Attach more pages if necessary)

1. Obtain the [employee(s)/worker(s)] concerns of bullying or sexual harassment in writing, if possible. Assistance should be provided in completing the Complaint Form where necessary.

2. An investigator will interview the [employee/worker] who allegedly experienced workplace bullying or sexual harassment and the alleged bully or harasser (if an [employee/worker] of the employer). If the alleged bully or harasser is not an [employee/worker] of the employer, the investigator should make reasonable efforts to interview him or her.

3. Make a list of possible relevant witnesses. The [employee/worker] who allegedly experienced workplace bullying or sexual harassment and the alleged bully or harasser should be asked for names of any relevant witnesses.

4. Interview relevant witnesses. Ask specific questions about what they have observed, are aware of or have personally experienced. If the witnesses are not [employees/workers] of the employer, the investigator should make reasonable efforts to interview those witnesses.

5. Collect and review relevant documents from the [employee/worker], alleged bully or harasser, witnesses and the employer.

6. Take detailed notes.

7. Keep the investigation confidential. Instruct the [employee/worker] who allegedly experienced workplace bullying or sexual harassment, the alleged bully or harasser and witnesses not to talk to others about the investigation unless it is necessary, for instance, to obtain advice or counselling.

C. [Employee(s)/Worker(s)] Concerns/Workplace Bullying and Sexual Harassment Allegations: (Attach more pages if necessary)

Confirm date of first incident and any subsequent behaviours or conduct. Note that recalling events of bullying or sexual harassment can be stressful for the complainant.

1. Date of first incident:

2. Date of last incident:

3. Date of other incident(s):

D. Alleged Bully or Harasser(s) Response: (Attach more pages if necessary)

Note that the alleged harasser(s) will likely need details of the allegation of bullying or sexual harassment to be able to respond.

E. Interview Relevant Witnesses (Attach more pages if necessary):

1. Witness name and response:

2. Witness name and response:

F. Collected documentation: (Attach more pages if necessary)

Note to list the documents collected for the investigation and how or from whom they were obtained.

- 1.
- 2.
- 3.

G. Investigation Result(s): (Attach more pages if necessary)

Summary of key evidence:

Persons interviewed:

Analysis of the evidence (whether bullying or sexual harassment occurred):

Recommended Next Steps:

Report provided to:

ANNEX 3: Workplace Bullying and Sexual Harassment Complaint Form [Template]

Further to the Bullying and Sexual Harassment Policy Statement this is a template of a complaint form for employees/workers to report an incident or a complaint of workplace bullying or sexual harassment. This template may be modified to meet the needs of the workplace.

Note: Whether the worker uses the complaint form or not, the employer is still obligated to ensure an investigation appropriate in the circumstances is conducted into an incident of workplace bullying or sexual harassment.

[EMPLOYER] BULLYING AND SEXUAL HARASSMENT COMPLAINT FORM

Name and contact information of [employee/worker] who has allegedly experienced workplace bullying or sexual harassment:

Name of alleged bully or harasser(s) and contact information, if available:

Details of the Complaint of Workplace Bullying or Sexual Harassment

Please describe in as much detail as possible the bullying and sexual harassment incident(s), including: (a) the names of the parties involved; (b) any witnesses to the incident(s); (c) the location, date and time of the incident(s); (d) details about the incident(s) (behaviour and/or words used); (e) any additional details. (Attach additional pages if required)

Relevant Documents/Evidence

Attach any supporting documents, such as emails, handwritten notes, or photographs. Physical evidence, such as vandalized personal belongings, can also be submitted. If you are not able to attach documents and they are relevant to your complaint, please list the documents below. If someone else has relevant documents, please note that below.

Signature:

Date: