POLICY 8.3 – No Discrimination

Policy Category: Personnel – Select Administrative Group Employees (SAGE)
Effective Date: June 26, 2002
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POLICY

Non-Discrimination/Harassment

1.00 There shall be no discrimination exercised against any Select Administrative Group Employee (SAGE) regarding any term or condition of employment, including but not limited to salary, position, appointment, promotion, termination of employment, layoff, or other leaves or benefits, by reason of the grounds (a) through (e) listed below, by reason of:

a) race, colour, ancestry, place of birth, national origin, citizenship (except for new appointments as provided for by law); or

b) creed, religious or political affiliation or belief; or

c) sex, sexual orientation, physical attributes or family relationship; or

d) age (except for mandatory retirement at ages 65) or physical or mental illness or disability (provided that such condition does not interfere with the ability to carry out the employee’s responsibilities); or

e) place of residence.

1.01 Clause 1.00 does not apply to any action or decision based on a bona fide occupational requirement or qualification.

2.00 This Policy shall not preclude any equity measures agreed to by the parties or required by law.

3.00 There shall be no harassment or sexual harassment exercised against or by any SAGE employee.

3.01 Harassment means engaging in a course of vexatious comment or conduct related to one or more of the prohibited grounds of discrimination under Clause 1.00 of this Policy.

3.02 Sexual harassment means engaging in a course of vexatious comment or conduct of a sexual nature including sexual assault, verbal abuse or threats, unwelcome sexual invitations or requests, demands for sexual favours or unwelcome innuendo or taunting about a person’s body, physical appearance or sexual orientation.
3.03 Conduct and/or behaviour also constitutes harassment, whether or not it is based on the prohibited grounds of Clause 1.00, when it creates an intimidating, demeaning or hostile working or academic environment.

4.00 There shall be no reprisal or retaliation nor any threat of reprisal or retaliation against anyone for pursuing rights under this Policy or for participating in proceedings under this Policy. Any such alleged reprisal or retaliation or threat thereof shall be equivalent grounds for laying a complaint under this Policy.

Complaint Procedure

General Provisions

5.00 Employees may seek the advice of the Human Rights Officer (HRO) in order to discuss situations which may be encompassed by this Policy. All such discussions shall be confidential in accordance with the policies and procedures of the Equity Services Office.

6.00 A complaint may be filed by (an) individual(s) with the HRO up to six (6) months from the incident, or related episode in a series of incidents, of the alleged discrimination or harassment occurring.

7.00 In any meeting or hearing held pursuant to the terms of this Policy, complainant(s) and respondent(s) may be accompanied by a representative of the employee group to which they belong.

8.00 With respect to matters arising under the terms of this Policy, complainant(s) and respondent(s) may be represented by legal counsel.

9.00 Any dispute arising from the application of this Policy is limited to a complaint that the procedure(s) of this Policy was (were) not followed, except for the following:

(a) a dispute that a remedy provided by the Employer is inappropriate or inadequate; or

(b) a dispute claiming that the determination of the Employer is inconsistent with the Panel of Inquiry’s finding of fact; or

(c) a dispute that discipline imposed by the Employer is inappropriate.

10.00 Employees may seek assistance from the Ontario Human Rights Commission even when taking steps under this Policy.

10.01 If the circumstances giving rise to a complaint under this Policy independently give rise to proceedings before a Board of Inquiry under the Ontario Human Rights Code or to proceedings in the courts or to the laying of a criminal charge, then any action under this Policy shall be suspended until such proceedings are concluded.

Initiating the Complaint

11.00 Following consultation with the HRO, the complainant(s) may elect to file a complaint which shall be in writing, signed and dated, setting out the circumstances of the alleged discrimination or harassment, naming the respondent(s) and authorizing the HRO to attempt information resolution.
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Information Resolution

12.00 Within five (5) working days of receiving the written complaint, the HRO shall provide the respondent(s) with a copy and invite the respondent(s) to reply in writing.

13.00 The respondent(s) shall have fifteen (15) working days after receiving the HRO’s request to respond in writing to the HRO.

14.00 The HRO shall provide a copy of the response to the complainant and attempt to discuss the complaint with both parties and may conduct informal mediation in an effort to resolve the complaint in a manner acceptable to both parties.

15.00 If resolution is achieved, both parties shall sign a statement of the terms of resolution which shall be filed with the HRO. No further action may then be taken on the complaint unless one or both parties fails to comply with the terms of resolution.

16.00 If the terms of resolution entail action by the Employer, the Employer shall agree to undertake such action by signing the written resolution document. If the Employer refuses to undertake such action, it shall state in writing to the parties why it refuses to do so.

17.00 If a settlement is not reached within thirty (30) working days of providing the respondent with a copy of the complaint, the HRO will so inform the parties in writing and shall advise the parties that the matter will be submitted to formal investigation under Clause 19.00.

18.00 Complaint files maintained by the HRO pursuant to this Policy shall be confidential and may not be introduced in subsequent investigations or proceedings except as provided in Clause 34.00 below, or unless compelled by law. The HRO may not appear as a witness in any dispute resolution process arising from the application of this Policy or in any subsequent investigations or proceedings unless compelled by law.

Investigation

19.00 The Director of Equity Services shall retain an External Investigator to conduct an investigation of the complaint.

19.01 Within twenty (20) working days of being retained, the External Investigator shall submit a written report to the HRO, with copies to the complainant(s) and respondent(s). The report shall advise either that:

   (a) there is no prima facie case raised by the complaint, in which case it shall not go forward; or

   (b) that there is prima facie case appropriate for determination by a Panel of Inquiry.

20.00 Where a prima facie case is found to exist pursuant to sub-clause 19.01(b), the HRO shall seek to meet with the complainant(s) and respondent(s) with a view to resolving the complaint on terms acceptable to both parties.

21.00 If the complaint is not resolved within ten (10) working days of the attempted meeting(s) between the HRO, the complainant(s) and the respondent(s), the complaint shall be submitted for hearing by a Panel of Inquiry (PI). Before submitting the complaint to the PI, the HRO shall attempt to meet with the complainant(s) and respondent(s) to reach an agreed statement of facts to be submitted to the PI.
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22.00 The External Investigator’s report shall be confidential and may not be introduced in subsequent proceedings, except as provided by Clause 34.00 below, or unless compelled by law. The External Investigator may not appear as a witness in subsequent proceedings unless compelled by law.

Formal Determination

Panel of Inquiry Report

23.00 The PI shall be composed of one (1) person chosen by the Select Administrative Group Employees, one (1) person chosen by the Employer and one (1) person chosen by the other two who shall be Chair. In the event the complainant and the respondent are members of different associations, unions or employee groups, the PI shall be composed of one (1) person chosen by the complainant’s association, union or employee group, one (1) person chosen by the respondent’s association, union or employee groups, and a third person chosen by the Employer who shall be the Chair. In the event there are multiple complainants and/or respondents who are members of different association, unions or employee groups, the composition of the PI will be determined by agreement with the Employer.

24.00 The purpose of the PI will be to determine the facts pertaining directly to the complaint. The parties will have the right to present evidence and argument to the Panel and to call witnesses.

25.00 Within ten (10) working days of concluding the hearing, the PI shall submit a written report to the Employer and to the parties. The report shall include a copy of the complaint, the respondent’s written response (if any) and the findings of fact relevant to the complaint.

26.00 No member of the PI may be compelled to appear as a witness in any dispute resolution/mediation process (Policy 8.5 and 8.6) arising from the application of this Policy.

Employer Determination

27.00 The Employer shall issue a written determination within ten (10) working days of receiving the PI’s report. Copies of the Employer’s determination shall be sent to the parties.

28.00 The determination shall contain:

(a) a finding, with reasons, that the complaint is or is not upheld;

(b) a statement of any remedy(ies), other action(s), sanction(s) or disciplinary measure(s) to be taken or required by the Employer;

(c) a statement of exoneration where appropriate.

29.00 If the determination is that the complaint is not upheld or if a subsequent dispute resolution process is decided in favour of a respondent employee, the Employer shall ensure that all documentation concerning the allegation is secured by the Office of Equity Services according to Clause 34.00 below.

Human Rights Officer

30.00 The Employer shall appoint at least one Human Rights Officer to the University’s Office of Equity Services. The HRO shall be responsible to give advice and receive complaints according to Clauses 5.00, 6.00 and 11.00-17.00 above.
31.00 By June 1 each year, the HRO shall make an annual report to the President with a copy to SAGE. This report shall provide a statistical record of complaints, informal resolutions and determinations, and may include any observations and recommendations the HRO may have with respect to the implementation of this Policy.

Conflict of Interest

32.00 A person involved in the application of any of the provisions or procedures under this Policy shall, on the grounds of conflict of interest or reasonable apprehension of bias, immediately declare any such conflict of interest or bias to the parties to the complaint, to the Senior Director, Human Resources and to the SAGE representative(s). The Senior Director, Human Resources or the SAGE’s representative(s) or, as appropriate, both jointly, shall forthwith provide a replacement for the person who has made the declaration.

33.00 A party to a complaint who objects to the participation of a person in the application of the provisions or procedures under this Policy on the grounds of conflict of interest or reasonable apprehension of bias may inform the Senior Director, Human Resources that he or she wishes that person to be replaced, stating his or her reasons. The Senior Director, Human Resources shall immediately inform SAGE of any such declaration. The Senior Director, Human Resources shall also immediately inform the person named in the declaration, and he or she shall be given a reasonable opportunity to respond to it. The Senior Director, Human Resources and SAGE shall then decide jointly with regard to a replacement, should one be appropriate.

Retention of Files

34.00 All documents related to a complaint will be retained in confidence for ten (10) years in the Office of Equity Services. Such files in the Office of Equity Services can only be accessed where the HRO has reason to believe that there is a pattern of harassment.