**Bullying and Harassment Procedure**

# How to deal with bullying/harassment

## An employee who feels that they have been, or are being bullied or harassed, should discuss the issue with HR or their Manager or Team Leader. The employee must be heard, supported and given any information they need to understand their options, including this policy. This may require more than one discussion, especially if the behaviour is having a serious impact on the employee and they are distressed.

## After discussion, the employee can decide whether to make a formal complaint or deal with the matter in a less formal way, with support.

## An employee has the right at any time during the process to seek advice from, and be represented by a lawyer, advocate, or a union delegate.

## The employee should be reminded of any support that is available to them and how to access that support (for instance EAP). [Insert details of services and contact details here if applicable]. An employee also has the right to have a support person at all stages of the process.

## The people involved in the complaint (the complainant, the person receiving the complaint, any support person, or a representative) should be requested to keep the matter confidential and not to discuss it with anyone to enable a fair process to be put in place.

## If the person accused of bullying or harassment is not an employee, the employer will consider what other measures should be put in place to ensure the behaviour does not continue and employees are safe. An example may be direct communication with the client or customer about expected conduct towards staff and the consequences if this is not respected.

**Informal resolution**

## Informal resolution between employees may take place if the complainant feels they are able to deal with the problem themselves (with appropriate support), or if they prefer another method of resolution for example a facilitated conversation to address the behaviour. It will also give the respondent an opportunity to correct their behaviour which may be better for the ongoing workplace relationship.

## Informal resolution methods include:

### telling the person that their behaviour is offensive and asking them to stop, perhaps in the presence of the employer of a support person;

### writing to the person about their behaviour, requesting a change, and telling them that a formal complaint will be made if the behaviour does not stop; and

### arranging a meeting with a facilitator to discuss the issues and reach an agreement about future behaviour. HR advice should be sought when setting up such a meeting to ensure that it is appropriately facilitated, and the participants are well-supported.

## Informal resolution may not be appropriate if the complainant is afraid the person treating them inappropriately will respond aggressively; if the harassment or bullying is serious and/or continuous; or if it concerns someone in a position of authority. Informal resolution is unlikely to be appropriate where the behaviour is potentially criminal (e.g., sexual assault, threats of violence, or actual violence). If the behaviour is potentially criminal, the employee should be supported if they wish to complain to the Police. The employer should not make the complaint, or pressure the employee either way.

## It is important that any person involved in an informal resolution process feels safe and supported and that they know that either party is free to withdraw from the process at any point.

**Making a formal complaint**

## A formal complaint process may be followed in situations where informal resolution:

### is not the complainant’s preferred option;

### is inappropriate given the seriousness of the issues; or

### fails to resolve the problem.

## Where a staff member wishes to make a formal complaint, the following process applies:

### The employee can discuss their workplace problem with their manager or with HR to make sure they understand the process, their options, and to ask any questions they have.

### An employee who wishes to raise a formal complaint should be made aware that the alleged perpetrator will be told who they are. If the complainant wishes to make an anonymous complaint, they must be told that a formal complaint cannot proceed unless they are prepared to do so on the record. The employer will consider other measures that can be put in place to keep the complainant and other workers safe.

### The complainant should record their complaint in writing, stating clearly what happened including any details of time, date and what was said and done, the names of any potential witnesses and how they would like the situation to be resolved. If there are any supporting material these should also be included with the complaint if possible.

### The complainant should raise the complaint with their manager or HR. If the complaint relates to any of those people, or the complainant is uncomfortable approaching them, they can contact [insert relevant position] directly.

### A person who receives a complaint needs to ensure the complainant has appropriate support and they are aware of their right to advice and representation. An assessment must immediately be made (in consultation with the employee) of any health and safety measures required to make the employee safe.

### The complainant should be asked to keep the complaint confidential so any investigation is not compromised, and to protect the reputation of anyone else that may be involved when allegations are not yet proven. Complainants should not however be silenced or threatened about speaking about their experience.

**Assessment of the complaint**

## [The manager / HR/ Chief Executive] will assess the complaint to determine the next steps. The following should be considered on a case by case basis:

### Does the complaint appear to be made in good faith?

### Does it fall within the scope of bullying/sexual harm/sexual or racial harassment as set out in this policy?

### What does the complainant want to do in relation to the complaint and is this appropriate in the circumstances (e.g. informal, formal, external)?

### Are the actions complained of potentially criminal? If so, inform the employee of their options and provide support. An internal process can still proceed.

### Are the actions complained of a potential breach of the rules of membership or certification of a professional body or regulating agency and should the external agency be notified?

### Would the conduct, if proven, constitute misconduct or serious conduct? If so, refer to the policy on [disciplinary processes].

### Is the matter being raised as a protected disclosure? If so, refer to the policy on [protected disclosures].

### Is it necessary to get expert advice or assistance on how to proceed?

## After assessing the complaint, the next steps may include:

### Getting further advice or outside support.

### Putting in place a supported meeting or a facilitation process to assist the parties to resolve the issues between them. Explain what this means, and what the process will look like. Discuss the possible outcomes and what the options are if this process is not successful.

### Reminding all staff of the expected standard of behaviour and the relevant policies that apply (generally, i.e not identifying people involved in an incident, unless it is already widely known). Consider whether [department/company]-wide training or education should be provided.

### Starting a formal investigation into the allegations if the allegations are serious and not able to be addressed informally, or informal resolution has been unsuccessful. An investigation may be internal (if there is capacity and expertise) or an external independent expert.

**Interim measures after assessment:**

## While the complainant is deciding what to or while awaiting the outcome of an investigation or informal facilitation process, care should be taken to avoid further bullying or harassment.

## Examples of interim measures can include:

### suspending the alleged respondent (after following the correct process [refer to disciplinary policy]) or offering garden leave

### giving the complainant some paid time off work

### stopping contact between the complainant and the alleged perpetrator (for instance implementing working from home, working on different tasks/teams, or changing work times

### providing support or counselling (for instance EAP) to affected staff

**Conducting an investigation**

## If a formal complaint has been raised against an employee and the decision is made to conduct an investigation, [Insert Company Name] will appoint an appropriate investigator to undertake the investigation of the complaint. The investigator may be an appropriate internal or external person.

**Appointment of investigator**

## An investigator will be someone who can attend interviews with the complainant, the respondent and any witnesses (in person or via phone or audio-visual link (AVL) if necessary). The investigator will not be personally invested in the outcome of the investigation and must have both capability and capacity to undertake it in a reasonable timeframe.

**A fair process will be followed in investigating the complaint**

## The investigator will have access to all relevant material and may seek input from any party including the complainant, the respondent, witnesses, or any others who might hold relevant information.

## Any investigation will comply with this policy and procedural fairness requirements. This means the respondent must be informed of the allegation against them (including who the complainant is), their right to representation and/or a support person, and the possible outcomes of the investigation. The investigator must also provide all relevant information to the respondent so they have a full opportunity to respond to the allegations. The complainant and any other participants need to be informed of the process and how the information they provide will be used in the investigation process.

## Appropriate warnings and assurances regarding confidentiality and non-victimisation should be given to everyone involved in the process.

# Investigation report

## The findings of the investigation will be reported to [insert position].

## An investigation report does not recommend disciplinary action but makes factual findings on the balance of probabilities including whether harassment/bullying or other inappropriate conduct has occurred and may make findings as to whether conduct is a breach of the Code of Conduct or other relevant policy.

## [Insert Company Name]’s usual disciplinary process may be initiated by an appropriate line manager, if the report makes findings of inappropriate conduct that could be misconduct or serious misconduct and the manager considers disciplinary action may be warranted following due process. Refer to the [Disciplinary Policy] which sets out types of disciplinary action and the process before doing so.

**Complaint proven**

## In all cases where a complaint is upheld, management has to take reasonable steps to ensure the bullying/harassment ceases immediately. The complainant should be informed of the findings and steps taken and should be protected from any consequences of having made the complaint. Over time, management should check to ensure the behaviour has in fact stopped.

## There may need to be action taken to improve workplace relationships e.g. facilitated meetings between the parties, counselling or coaching. Witnesses may also need support and should be told what they can be told, e.g. (at least) the process has concluded and suitable steps are being taken to keep everyone safe.

## If steps are not taken to prevent repetition of bullying/harassment, the employee may have grounds for a personal grievance or a complaint to the Human Rights Commission.

## [Insert Company Name] may also take other steps, for instance reminding all staff of the expected standard of conduct and the steps they can take if there is an issue. Company/business-wide training may be also be a good idea, especially if the problem appears to be cultural or widespread.

**Complaint not substantiated**

## If the respondent is cleared of the allegations they will:

### be told in writing; and

### be told the letter and other notes relating to the allegation will not be placed on their personnel file.

## The complainant must be informed of the outcome and given support. There may need to be action taken to improve workplace relationships e.g. facilitated meetings between the parties, counselling or coaching. Witnesses may also need support and should be told what they can be told, e.g. (at least) the process has concluded and suitable steps are being taken to keep everyone safe.

**False complaint**

## If the complaint is not upheld, and is proven to be deliberately false, the complainant may be subject to disciplinary action, after a proper disciplinary process has been run.

**Other options**

## Staff may choose to have their complaint dealt with by an appropriate external agency – the Human Rights Commission, Police, the Ministry of Business, Innovation and Employment’s Mediation Service or the Employment Relations Authority, depending on the nature of the situation.

# Support for staff

## Staff may find it difficult or embarrassing to make a complaint of bullying/harassment. Where an approach has been made to a manager by someone who believes they are being harassed/bullied, the manager should make sure the person has appropriate support (e.g. through an Employee Assistance Programme or counsellor). If necessary, the employer should pay for the complainant to have an advocate or legal advice.

## The rights of the person accused of bullying/harassment must also be protected. The respondent should also be offered support and they must be given the opportunity to seek representation and time to prepare a response. There should be no presumption the respondent has engaged in bullying/harassment before a proper investigation process has started and the respondent should be told this.

## To avoid an allegation from causing reputational damage to the respondent, before it is proven, the people involved in the complaint and the investigation should be asked to keep the matter private and confidential.

# Roles and Responsibilities

## Everyone in the workplace has a part to play in eliminating bullying/harassment.

**Employer’s role**

## All People Conducting a Business or Undertaking (PCBUs) have a duty to keep their employees and other persons in the workplace safe from risks to their health and safety (including psychological harm from bullying and harassment). Refer to [Health and Safety Policy].

## The employer should make sure the expected standard of conduct is clearly set out and all staff have both access and training. Staff should be made aware what they can do if they are experiencing bullying and harassment, or if they are found guilty of bullying and harassment. The employer should make sure staff are familiar with how to raise a complaint and what support may be available (for instance from HR or EAP)[[1]](#footnote-2).

## The employer should encourage an open culture where employees feel able to raise concerns.

## The employer must treat all their employees fairly and balance their duties of care to the complainant and the accused person (especially when the allegation has not yet been proven).

**Employee’s role**

## All employees and contractors have a responsibility to ensure their behaviour is not offensive or harmful to others.

## Employees should if possible raise concerns about harassment or bullying as soon as they arise, so the employer can address it before it escalates.

**Manager’s role**

## Managers must promote a safe work environment and deal with any complaints in a sensitive, competent and fair manner. Complaints of bullying/harassment must be acted on immediately (ideally action at least initiated by the day after the complaint is made, if possible) and treated in a confidential, serious and empathetic manner. Managers require training on receiving and handling disclosures of harassment and bullying. They also need to be scrupulous in ensuring their own conduct is above board, and role model good behaviour and accountability.

**The role of person(s) receiving a complaint**

## A person who is approached by an employee or contractor complaining of bullying/harassment should support the complainant in approaching an appropriate manager or [insert position]. The manager or [insert position] will:

### Ensure the person has a copy of this policy and understands their options for next steps; and

### Ensure appropriate support is in place for the parties concerned with the complaint.

# Records

If a formal complaint is upheld, the respondent’s personnel file will contain a summary of the nature of the complaint, and the outcome of any disciplinary action take

1. Note under the Human Rights Act, an employer will be vicariously liable for sexual harassment by an employee unless the employer can prove it has taken reasonably practicable steps to prevent the behaviour or such behaviour occurring. Appropriate measures to meet this test include clear induction, and regular education and training about this policy, the types of behaviour that are unacceptable, how to access support, options for addressing any such behaviour, and evidence the employer has taken suitable steps to address any unacceptable behaviour (i.e. not swept it under the carpet). [↑](#footnote-ref-2)