

ADDRESSING SEXUAL HARASSMENT IN CANADIAN MINING

SEXUAL HARASSMENT AND GENDER-BASED VIOLENCE IN THE WORKPLACE



SAMPLE POLICY AND PROCEDURE



MINING INDUSTRY
HUMAN RESOURCES COUNCIL
CONSEIL DES RESSOURCES HUMAINES
DE L'INDUSTRIE MINIERE





SAMPLE POLICY

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ADDRESSING SEXUAL HARASSMENT AND GENDER-BASED VIOLENCE

Sample Policy

Policy Statement and Objective

[Company Name] is committed to fostering an equitable, respectful workplace free of sexual harassment and gender-based violence where inclusion is incorporated, diversity is valued and integrity, fairness, collaboration, professionalism and trust are the norm.¹ In accordance with our company values, [Company Name] strives to protect its employees from sexual harassment and gender-based violence through both preventative and responsive mechanisms as well as informal and formal processes for addressing concerns and complaints, respectively.

Sexual harassment and gender-based violence at [Company Name] are unacceptable and will not be condoned in any way. Employees who are found to have sexually harassed and/or committed gender-based violence on an individual or groups in the workplace will be subject to job-related disciplinary action, which may include reprimands, warnings, compulsory training and/or counselling, transfer, reassignment, suspension or termination. If acts are thought to be or are criminal in nature, measures related to the criminal code may be pursued, including reporting to the police, a criminal investigation, court proceedings, a criminal record, incarceration, probation, community service and/or fines associated with the criminal offence. The administration of company policy may be deferred until any criminal investigations are complete.

Definitions

Workplace sexual harassment is “unwelcome conduct or comment that leads to adverse job-related consequences for an employee and detrimentally affects the work environment. It can involve unwelcome sexual solicitation or advances. Sexual harassment is a form of discrimination based on sex, gender, gender identity, gender or sexual expression.”²

Gender-based violence “is the act, attempt or threat of physical or psychological injury or harm to a person based on sex or gender including gender identity or expression. It can involve chargeable offences such as domestic violence or sexual assault.”³

1. TSM Safe, Healthy, and Respectful Workplaces. P. 20.

2. Mining Industry Human Resources Council, Safe Workplaces for All: Addressing Sexual Harassment in Canadian Mining. P. 12.

3. Mining Industry Human Resources Council, Sexual Harassment and Violence: Legislative Frameworks for Mining in Canada; Procedures for addressing domestic/intimate partner violence are provided in the Domestic Violence Risk Assessment Tool.

A poisoned workplace is one of the consequences of workplace sexual harassment or violence where the ongoing harassment creates a hostile, negative, and unbearable workplace, effectively making it a condition of employment.⁴

Workplace is any “place or location that an employee is required to engage or attend in connection with any work activities.”⁵ In the mining sector, this can include:⁶

- All offices and mining site areas, including the change areas, cafeterias and confined spaces such as elevator enclosures.
- Mining camps, accommodations and social areas, especially in remote fly in/fly out settings.
- Work-related and work-provided transportation and settings, including airplanes, airports and vehicles.
- Work-related events or gatherings, including social events where participation is the norm.
- Online and electronic venues, such as work meetings, emails and phone calls.

Application

This policy applies to all incidents of sexual harassment and/or gender-based violence alleged to have occurred in the [Company Name] workplace.

This policy applies to all current employees of [Company Name], including full and part-time, casual, contract, permanent and temporary employees as well as former employees whose employment ended within [X] months of the complaint being made. It also applies to contractors, visitors, and students at [Company Name] who are engaged in work and work-related activities.

TIP

There is no statutory limitation on the time limit for applying the policy to former employees. However, it is common for companies to use a timeframe of anywhere from three to six months.

4. Ibid.

5. Ibid.

6. Ibid.

Roles and Responsibilities

[Company Name] is responsible for:

- Applying this policy and related procedures in a timely, consistent and confidential manner in support of a workplace that is free from sexual harassment and gender-based violence.
- Complying with all relevant legislation as it relates to sexual harassment and gender-based violence, including but not limited to labour, human rights and health and safety legislation as well as the criminal code, in addition to respecting the terms set out in applicable collective agreements.
- Designating responsibility within the organization for administering the policy and leading company processes around sexual harassment and gender-based violence, including coordinating with supervisors and appropriate investigators.
- Managing information and communications related to sexual harassment and gender-based violence prevention, concerns and complaints, including maintaining information confidentiality, supporting employees and supervisors and liaising with union representatives.
- Providing sexual harassment and gender-based violence prevention training for employees.
- Making this policy available and accessible to employees, contractors, apprentices, interns, visitors and students.
- Reviewing this policy and ensuring alignment with related policies and effective practices.

Supervisors are responsible for:

- Fostering a harassment-free work environment and modelling appropriate workplace behaviour.
- Acting at all times in accordance with this policy.
- Preventing and addressing harassment whether or not a formal complaint has been made.
- Reporting sexual harassment and/or gender-based violence when in receipt of information which credibly leads them to believe it has occurred.
- Ensuring concerns and/or incidents are dealt with in a timely, sensitive and confidential manner.
- Supporting informal resolution or formal complaint processes.

Employees are responsible for:

- Acting in accordance with this policy.
- Supporting the prevention of sexual harassment and gender-based violence in the workplace.
- Reporting sexual harassment and/or gender-based violence when they experience or witness it.
- Cooperating with a sexual harassment and/or gender-based violence investigation and respecting the confidentiality related to the investigation process.
- Maintaining confidentiality of all parties involved in a concern, incident or complaint process.
- Refraining from retaliatory behaviour against the complainant, responding party, witnesses and any other individuals who are involved in an incident, complaint or resolution process.

Emergency Concerns

Occurrences of sexual harassment and/or gender-based violence that pose an immediate danger to the health and safety of an employee (i.e., an emergency) are handled according to the Sexual Harassment Procedure. Employees in such situations can refuse work and should engage in reporting immediately.

Reprisals and Malicious Complaints

Any form of retaliation, however subtle or severe, against an individual for reporting alleged acts of workplace sexual harassment or gender-based violence will not be tolerated. Similarly, interference with the resolution of an alleged act of workplace sexual harassment or gender-based violence is strictly prohibited. Equally, as false accusations can have serious effects on innocent persons, the willful misuse of this policy or making false accusations will not be tolerated. Involvement in reprisals, interference and/or false accusations may result in disciplinary actions, including termination of employment.

Privacy and Confidentiality

[Company Name] recognizes that it may be difficult to come forward to report incidents of sexual harassment and/or gender-based violence and every reasonable effort will be made to ensure that the privacy of the persons involved in a complaint is protected. To the extent practical and appropriate under the circumstances, anonymity and confidentiality of all involved parties (i.e., complainants, witnesses, etc.) will be maintained subject to the overriding responsibility of [Company Name] to investigate incidents and/or complaints as well as adhere to applicable legislation.

Managing Data

To the extent possible and provided confidentiality and privacy are not compromised, aggregate data related to complaints will be tracked, compiled and communicated to executive leadership in order to enhance the organization's capacity to prevent workplace sexual harassment and gender-based violence.

Training

[Company Name] will provide the appropriate training on preventing and addressing sexual harassment and gender-based violence to employees on a regular basis.

Designation of Responsibility

[Company Name] will ensure that this policy and related procedure can be easily accessed through different channels as well as available to employees in various formats.

[HR or designated department] will be responsible for administering this policy.

Policy Review

[Company Name] will review this policy at least annually or as required and will make necessary adjustments to support its effectiveness and compliance with relevant legislation.

Relevant Policies

List relevant company policies, this may include:

Code of Conduct

Human Rights

Equity, Diversity and Inclusion

Health and Safety

Records Retention/Management

Other

Relevant Legislation

List relevant legislation, this may include:

Canadian Human Rights Act

Provincial/Territorial Human Rights Legislation

Occupational Health & Safety Legislation

Personal Information Protection and Electronic Documents Act

Other

Date: [Month/Day/Year]

References

Canadian Human Rights Commission. (2023). Developing a Workplace Anti-harassment Policy.
https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/template_anti-harassment.pdf

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SEXUAL HARASSMENT AND GENDER-BASED VIOLENCE

Application

This procedure applies to all incidents of sexual harassment and/or gender-based violence alleged to have occurred in the [Company Name] workplace.

This procedure applies to all current employees of [Company Name], including full and part-time, casual, contract, permanent and temporary employees as well as former employees whose employment ended within [X] months of the complaint being made. It also applies to contractors, visitors and students at [Company Name] who are engaged in work tasks and work-related activities.

TIP

There is no statutory limitation on the time limit for applying the procedure to former employees. However, it is common for companies to use a timeframe of anywhere from three to six months.

Definitions

The ‘workplace’ is defined as any “place or location that an employee is required to engage or attend in connection with any work activities.”¹ In the mining sector, this includes:²

- All offices and mining site areas, including the change areas, cafeterias and confined spaces such as elevator enclosures.
- Mining camps, accommodations and social areas, especially in remote FIFO settings.
- Work-related and work-provided transportation and settings, including airplanes, airports and vehicles.
- Work-related events or gatherings, including social events.
- Online and electronic communications (e.g., work meetings, emails and phone calls).

1. Mining Industry Human Resources Council (MiHR). (2022). Safe Workplaces for All: Addressing Sexual Harassment in Canadian Mining. P. 12. <https://mihr.ca/wp-content/uploads/2022/11/Safe-Workplaces-For-All-Report-EN.pdf>

2. Ibid.

Examples

Workplace sexual harassment is “unwelcome conduct or comment that leads to adverse job-related consequences for an employee and detrimentally affects the work environment. It can involve unwelcome sexual solicitation or advances. Sexual harassment is a form of discrimination based on sex, gender, gender identity, gender or sexual expression.”³ Examples of workplace sexual harassment include:

- Asking for sex in exchange for a benefit or a favour.
- Repeatedly asking for dates, and not taking “no” for an answer.
- Demanding hugs.
- Making unwelcome physical contact, including unwanted touching.
- Using rude or insulting language or making comments toward someone based on gender or of a sexual or sexually derogatory nature.
- Posting or sharing pornography, sexual pictures or cartoons, sexually explicit graffiti, or other sexual images (including online).
- Making sexual jokes.

Gender-based violence “is the act, attempt or threat of physical or psychological injury or harm to a person based on sex or gender including gender identity or expression. It can involve chargeable offences such as domestic violence or sexual assault.”⁴

Examples of gender-based violence include:⁵

- Sexual abuse and violence, including ‘coercive’ or transactional sex, rape and sexual assault.
- Psychological abuse and intimidation.
- Threats and acts of physical and sexual violence.

Where domestic abuse/intimate partner violence are a concern, the procedures for personal safety planning will apply.⁶

3. Ibid.

4. Mining Industry Human Resources Council (MiHR), Sexual Harassment and Violence: Legislative Frameworks for Mining in Canada; Procedures for addressing domestic/intimate partner violence are provided in the Domestic Violence Risk Assessment Tool.

5. Ontario Human Rights Commission. (2023). Sexual Harassment in Employment Fact Sheet. <https://www.ohrc.on.ca/en/sexual-harassment-employment-fact-sheet> and International Training Centre. (2023). Gender-Based Violence in Global Supply Chains: Resource Kit. https://gbv.itcilo.org/index.php/briefing/show_paragraph/id/63.html

6. See the Domestic Violence Risk Assessment Guide.

The following actions do not generally constitute sexual harassment or gender-based violence, provided they are carried out with respect, professionalism and in good faith:⁷

- Carrying out regular supervisory duties, including setting out performance expectations and providing constructive feedback about work performance.
- Taking measures to correct performance deficiencies, such as placing an employee on a performance improvement plan.
- Taking reasonable disciplinary actions.
- Assigning work and directing how and when it should be done.
- Requesting updates or status reports.
- Approving or denying time off.
- Requesting medical documents to support an absence from work.

Procedure

Sexual harassment and gender-based violence at [Company Name] are strictly prohibited. [Company Name] takes reports of concerns and/or incidents seriously by making every effort to support a positive reporting culture in the workplace, facilitate informal resolution of concerns, as appropriate, conduct timely investigations into allegations and take corrective actions as needed. In instances where other related processes are engaged (e.g., grievances, criminal investigations, human rights complaints), the application of these procedures may be deferred until such processes are complete.

[Company Name] adopts a trauma-informed approach to addressing sexual harassment and gender-based violence at work. Affected employees are encouraged to consult a health professional (of the employee's choice) for treatment or referral. Employees may access services and resources through an employee assistance program [if available]. At any time during the process, an employee may be accompanied or represented by a support person (e.g., a union representative; a colleague, friend or partner, etc.). Most importantly, subjects of harassment are supported to determine and pursue the measures they deem most suitable to the incident and with which they are most comfortable.

At the same time, subject to the nature or seriousness of the concern(s) and/or incident(s), [Company Name] may choose to investigate a concern, regardless of whether a formal complaint is made by an employee, contractor, visitor or student.

7. Ontario Ministry of Labour. (2016). Workplace Violence and Harassment: Understanding the Law. P 9. https://files.ontario.ca/wpvh_guide_english.pdf

i. Emergency

If an occurrence of sexual harassment and/or gender-based violence poses an immediate danger to the health and safety of an employee, or if there is a threat of such an emergency occurring, please contact:

- a) The Security Office at [xxx-xxx-xxxx].
- b) The Emergency Response Team.
- c) Call 911 for emergency services (police, fire and ambulance).

Please also advise, as soon as possible, your supervisor, Human Resources and/or a member of the management team onsite, following [Company name's] existing Emergency Procedure.

Employees in such situations can refuse work and should engage in reporting immediately.

ii. Report/Communicate a Concern and/or Incident

[Company Name] asks individuals to report or communicate a concern and/or incident if:

- They are or may be experiencing sexual harassment and/or gender-based violence in the workplace ('complainant').
- They have or may have experienced workplace sexual harassment and/or gender-based violence in the past; ('complainant').
- They witnessed an occurrence of sexual harassment and gender-based violence in the workplace ('witness').

[Company Name] encourages concerns and/or incidents to be reported as soon as possible but no later than within one year of the last incident of perceived harassment or violence, unless there are circumstances that prevented the individual from doing so.

Individuals may report a concern and/or incident verbally or in writing to a supervisor,⁸ HR representative, union representative, or via a confidential reporting hotline [if available].

The individual experiencing sexual harassment and/or gender-based violence should be prepared to provide details such as: what happened; when it happened; where it happened; how often; who was involved and who else was present or witnessed the incident (if applicable).

8. An alternate supervisor is suitable when one's supervisor is alleged to be involved in the incident.

While it is not necessary to have a record of events to file a complaint, keeping notes can help in remembering details over time, and assist with the investigation. Individuals experiencing sexual harassment and/or gender-based violence should attempt to keep detailed records of incident(s). This would include the following:

- The name and employment position of the employee or other person(s) alleged to be harassing.
- Frequency of conduct (has it happened before?), date(s), time(s), location(s).
- Possible witnesses.
- What happened.
- Their reaction.
- Whether they told anyone about the situation and if so who and when, and
- Any knowledge they have of the same or similar situation happening to others, in as much detail as possible.

All parties to an incident or concern – subject, alleged perpetrator and witnesses, are encouraged to document any and all steps taken to address the issue including meeting notes, conversations, items that may serve as proof or evidence of harassment, timelines of occurrences, effect on carrying out job responsibilities. Supervisors, management, investigators, [HR or designated department] will also be responsible for documenting all steps associated with the communication of a concern or incident, including inquiries into this procedure and related policy, investigations and outcomes.

iii. Address the Concern and/or Incident Directly

An individual may be willing and able to address a concern and/or incident themselves if they feel comfortable and safe doing so. This may involve, for example, communicating to the alleged harasser that their behaviour is concerning or unwelcome and asking them to stop. This may occur verbally or in writing, at the time of the incident or following it. Supervisors, HR and support persons may facilitate this approach through their participation in a meeting or being copied on a written communication, for example.

An individual who comes to understand that they may have harassed another person in the workplace is encouraged to apologise and seek to repair the harm done as well as to access helpful supports, including training, counselling or other appropriate measures. Supervisors, mentors and [Human Resources or designated department] can facilitate communication between parties as well as access to supports as needed.

iv. Informal Approach to Concerns and/or Incidents

An informal approach is used to assist the parties to address or resolve a concern or incident. An informal process involves the subject of harassment and alleged harasser without a formal investigation. In consultation with [HR or designated department], a subject of alleged harassment may pursue one or more of the following measures:

- a) Communicating directly with the alleged perpetrator, whether verbally or in writing.
- b) Sharing concern with a supervisor and working with/through them to address it.
- c) Sharing concern with union and working with/through representatives to address it.
- d) Mediation.
- e) Counselling/mentoring with a view to addressing the concern.
- f) Engaging with a designated department (e.g., HR or other) to understand and identify appropriate steps, including initiating a formal complaint.
- g) Other options or mechanisms suitable to a particular circumstance such as site relocation or change in reporting structure.

v. Formal Approach to Complaints and Resolution

A formal complaint process may be initiated at any time by an individual who is or may be the subject of harassment, witnesses or individuals indirectly affected by an incident or concern. This formal process may also follow attempts to address concerns using direct communication or informal resolution measures or following an incident or concern of a more serious nature.

A formal process involves a written letter of complaint against an identified individual(s) regarding a concern(s) and/or incident(s). This letter of complaint is sent to your supervisor/management.

On receipt of a letter of complaint, [Company X management] will assume responsibility for managing the formal process.

The alleged harasser(s) identified in the complaint will be informed of the complaint by [HR or designated department] through a separate letter. Details of the complaint and related allegations will be provided.

All parties to a concern or complaint are expected to respect the privacy and confidentiality of all other parties involved and to limit the discussion of the concern or complaint to those that need to know. Non-disclosure agreements are subject to individual cases and may be part of the resolution process.

[HR or designated department] will work with the supervisors of the parties to a complaint to ensure safety and well-being throughout the process. This may involve relocation, reassignment or placing staff on leave (with or without pay) while the process is underway. Where a supervisor is a party to a complaint, this will also be addressed to ensure the integrity of the complaint process and the safety and well-being of the staff involved. Also, all parties to a complaint will be informed of related company policies and procedures, their rights and responsibilities, as well as options to access support and advice during the process.

[HR or designated department] may have an initial meeting with the complainant and/or alleged perpetrator(s) to learn more about the complaint and related incident(s), to determine interim safety measures as indicated above and to determine an appropriate approach to the investigation of the complaint, the next step in the process. This includes determining whether an internal or external investigator will be engaged.

The investigation procedure will include the person who made the complaint (the complainant) the person against whom the complaint was made (alleged harasser(s)) and any identified witnesses.

Investigations will be conducted by (an) individual(s) with the necessary training and experience and who is not in conflict with the particular case, in a real or perceived way(s). The investigator will interview the complainant, the alleged harasser and any identified witnesses or resource people relevant to a particular complaint. All people who are interviewed have the right to review their statement, as recorded by the investigator, to ensure its accuracy.

The investigator will prepare a report for [HR or designated department] that will include:

- Information about the complaint itself.
- A summary and analysis of allegations and relevant information gathered from the parties involved, including witnesses (if applicable).
- A decision about whether, on a balance of probabilities, harassment did occur.
- Recommendations for addressing the complaint as well as for eliminating or minimizing the risk of a similar or repeated occurrence.
- Any recommended additional suggested resolution, training or disciplinary process associated with the complaint.

At the conclusion of the investigation, [Human Resources or designated department] will make one of the following decisions:

- The complaint is substantiated.
- The complaint is not substantiated.

The parties to a complaint - complainant and respondent, will be advised in writing of this decision and will be provided with a summary overview of the investigator's report. However, corrective measures may not be communicated to the parties.

If a complaint is substantiated, Human Resources will:

- a) Take corrective actions against the perpetrator including, for example, requiring a formal apology, referral to appropriate counseling, training, reassignment, temporary suspension with or without pay, or termination, depending upon the seriousness of the offence.
- b) Recommend proactive steps to avoid a similar incident in the future.

Freedom from Retaliation

If any retaliatory action or threat of retaliation, whether subtle or severe, is experienced by individuals relating to a concern or complaint or any related procedural steps, they are asked to inform [HR or designated department] immediately. Such threats or actions will be treated as a separate matter by [HR or designated department], who will address them following standard HR practices, including appropriate investigative and disciplinary measures.

Documentation, Information Sharing and Data Management

[HR or designated department] will maintain records related to workplace sexual harassment and violence training completed by employees.

[HR or designated department] will also document and maintain records related to specific concerns or complaints related to sexual harassment and/or gender-based violence.

Should [Company Name] be required to disclose any personal information as a result of a legal investigation arising from a workplace sexual harassment and/or gender-based violence incident, [Company Name] will comply with all relevant provincial/territorial and federal legislation, including the Criminal Code and the *Personal Information Protection and Electronic Documents Act*.

Records will be kept for [timeframe of at least five years]. In keeping with [Company Name]'s records retention and management procedures.

Designated Department

As the designated department responsible for administering this procedure, [HR or the designated department] will support its regular review, ensuring effectiveness and alignment with relevant legislation and internal policies and procedures.

All enquiries about this policy can be made to [HR or the designated department].

Procedure Review

[Company Name] will review this procedure at least annually or as required and will make necessary adjustments to support its effectiveness and compliance with relevant legislation.

Date: [Month/Day/Year]

References

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