



Code of Ethics and Harassment: RM Councils

SARM MIDTERM CONVENTION

November 2018



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OVERVIEW

Rural Municipalities are legally required to have:

- 1) A Harassment Policy;
- 2) A Code of Ethics

HARASSMENT OVERVIEW

- 1) Definition of Harassment**
- 2) What is and is Not Harassment**
- 3) Employer's Obligations**
- 4) Process and Policy**
- 5) Tips**

CODE OF ETHICS OVERVIEW

- 1) What is required?**
- 2) What is permitted?**
- 3) Relationship with Harassment Policies**
- 4) Recommendations**

DEFINITION OF HARASSMENT

There are two types of harassment contemplated by the legislation:

a) Prohibited Grounds Harassment

- Human Rights based definition
- Has been in effect since 1993

b) Personal Harassment

- Based on Quebec legislative model
- In place since October 2007

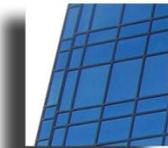
PROHIBITED GROUNDS

Any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status family status, disability, physical size or weight, age, nationality, ancestry or place of origin

AND

- constitutes a threat to the health or safety of the worker



Sexual Harassment

- Conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome
- A single incident of inappropriate conduct relating to a Prohibited Ground is considered harassment



PERSONAL HARASSMENT

- The term “harassment” is sometimes called “bullying”
 - any inappropriate conduct, comment, display, action or gesture by a person that:
 - adversely affects a worker’s psychological or physical well-being
 - that the perpetrator knows or ought reasonably to know would cause a worker to be humiliated or intimidated
- AND
- constitutes a threat to the health and safety of the worker

FINDING PERSONAL HARASSMENT

There must be:

- repeated (or multiple) inappropriate conduct, comments, displays, actions or gestures

OR

- one serious occurrence of inappropriate conduct, comment, display, action or gesture may suffice to form the basis of a complaint IF a lasting, harmful effect on the worker is established

FACTORS

Adverse Effects

- some evidence of “adverse effects” is needed, but does not necessarily need to be medically verified
- maybe medical verification may be needed to establish that a worker has experienced “a lasting harmful effect” arising out of a single serious incident

Knowledge

- it must be shown that the perpetrator knows, or ought reasonably to know that the conduct would cause a worker to be humiliated or intimidated

FACTORS

Inappropriate conduct could include:

- verbal or written abuses or threats
- insulting, derogatory or degrading comments, jokes or gestures
- personal ridicule or malicious gossip
- refusing to work or co-operate with others
- interference with or vandalism of personal property
- unwelcome physical contact

EXAMPLES

Less obvious examples:

- Preventing the person from expressing themselves:
 - yelling at them, threatening them, constantly interrupting them, prohibiting them from speaking to others
- Isolating the person:
 - no longer talking to them at all, denying their presence, distancing them from others, excluding from typical group activities
- Destabilizing the person:
 - making fun of their convictions, their tastes and their political choices

PERSONAL HARASSMENT IS NOT...

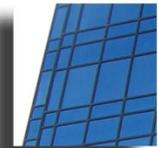
- any reasonable action taken by an employer, a manager or supervisor employed or engaged by an employer relating to the management and direction of the employer's workers or the place of employment

EXAMPLES

- assignment of work and equipment
- evaluation or appraisals of performance or attendance
- imposing progressive discipline
- training
- supervising
- imposing deadlines
- imposing appropriate dress codes or hygiene standards
- enforcing occupational health and safety standards

WHAT IS NOT HARASSMENT

- normal exercise of management rights
- work conflicts
- work-related stress
- difficult conditions of employment and professional constraints



EMPLOYER'S OBLIGATIONS

A. Develop and Implement Written Harassment Policy

- policy must be posted and readily available to workers

B. Ensure Workers Not Exposed to Harassment

- employers are required to ensure, as far as is reasonably practicable, that workers are not exposed to harassment with respect to any matter or circumstance arising out of their worker's employment

HARASSMENT POLICY

- *Employer Required By Law to Have a Harassment Policy*
- When developing a harassment policy, employers must seek input from their OHC or OHS representative. In small workplaces that do not have an OHC or OHS representative, employers should ask workers for their input.

HARASSMENT POLICY

Policy must include:

- a definition of harassment that includes the definition in the Act;
- a statement that every worker is entitled to a harassment-free workplace;
- a commitment that the employer will make every reasonably practicable effort to ensure no worker is subjected to harassment;
- a commitment that the employer will take corrective action with a worker who subjects another worker to harassment;
- a process on how complaints can be brought to the attention of the employer;
- a statement of confidentiality;
- a reference to the harassment provisions of the Act and the worker's right to request the assistance of an Occupational Health Officer;
- a reference to the discriminatory practices provisions of *The Saskatchewan Human Rights Code* and the worker's right to file a complaint with the Saskatchewan Human Rights Commission;
- a process on how the complainant and alleged harasser will be informed of the results of the investigation; and
- a statement that the employer's harassment policy is not intended to discourage or prevent the complainant from exercising any other legal rights.

ENSURE NO EXPOSURE TO HARASSMENT

Required to ensure that workers are not exposed to harassment

- positive action is required on the part of the employer to prevent exposure
- prevention is the key
- essentially this means that, to fulfill their duty, employers must show they have taken all reasonably practicable steps to ensure workers are not exposed to harassment
- identification of risk factors

ENSURE NO EXPOSURE TO HARASSMENT

- harassment is not restricted to conduct that occurred at the place of employment or that was perpetrated by other employees
 - an employer's duty includes any incident that occurs outside the usual workplace or work hours but is connected to or arises out of the worker's employment
 - i.e. work sponsored social events or conferences

ENSURE NO EXPOSURE TO HARASSMENT

Anyone Can Be the Alleged Harasser

- harassment might be perpetrated by another employee
i.e. supervisor/worker; worker/worker; worker/supervisor
- harassment might be perpetrated by someone other than an employee, but with whom the worker is required to be contact with because of work
i.e. clients, the public, persons from contracting businesses

CARRYING OUT EMPLOYER'S DUTY

1) Talk About It

The employer should:

- learn what harassment is and is not
- inform employees of employer's commitment to combat and put a stop to psychological harassment
- make employees aware of their individual responsibility for ensuring that their workplace is free from harassment
- provide workers and supervisors with harassment prevention training

CARRYING OUT EMPLOYER'S DUTY

- consult with employees to prevent harassment
- promote awareness among the persons with whom the employer interacts (customers, suppliers, users, visitors, etc.) regarding the fact that steps have been taken to prevent and put an end to harassment in the workplace
- protect employees from reprisal or retaliation

CARRYING OUT EMPLOYER'S DUTY

2) Act

When the employer is informed of a harassment situation, they should:

- intervene diligently and adequately to take stock of the situation and resolve it
- support, through various measures and according to the circumstances, the persons concerned by the harassment situation

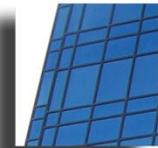
CARRYING OUT EMPLOYER'S DUTY

3) Detect Risk Factors and Implement Measures

- It also involves detecting risk factors and implementing appropriate measures to ensure that such risk factors do not lead to harassment
- The employer puts in place a procedure to be informed of a harassment situation
 - procedure that is simple, effective and known to all

PROCESS AND POLICY

- Harassment can come up in multiple forums, eg.
 - OHS,
 - grievance,
 - human rights complaint,
 - litigation
- May want to consider an internal/external investigation



TIPS

- 1) Employers best course is to identify and address personal harassment incidents in a timely manner**
- 2) Prohibitions against harassing behavior must be clear and universally understood**
- 3) Penalties must be appropriate, universally and consistently applied**
- 4) Managerial Duties – don't be afraid to manage**
- 5) Assess the workplace**

Code of Ethics

Section 93.1 of *The Municipalities Act* requires each RM to develop a code of ethics that:

- Applies to all members of counsel
- Outlines standards for dealing with each other, employees, and members of the public
- Includes the prescribed code of ethics; and
- Set out the process for dealing with a contravention of the code of ethics

Code of Ethics

The prescribed Code of Ethics includes a preamble, statement of purpose and interpretation, and describes the following values:

Honesty

Objectivity

Respect

Transparency and Accountability

Confidentiality

Leadership and the Public Interest

Responsibility

Code of Ethics

- RMs had 120 days to implement a Code of Ethics (from October 2016)
- If you did not, the model Code of Ethics is deemed to be in effect
- Model Code of Ethics is incomplete

Code of Ethics

The legislation permits (not required) a Code of Ethics to:

- Include ethical requirements for members of committees, controlled corporations and other bodies where members are not part of council;
- Govern the acceptance of gifts or other benefits in connection with the member's holding of office; and
- Establish rules regarding the **censure and suspension** of a member of council who contravenes the Code of Ethics

Code of Ethics

Relationship with Harassment Policy:

- The two policies should either overlap, or relate to one another
- Sanctions which may apply to employees, may not be applicable/appropriate for members of counsel
- Consider whether similar process can apply to both (if appropriate)

Code of Ethics

Recommendations:

- Important to establish the procedure in which *alleged* contravention will be evaluated
- Build in notice requirements and an opportunity to respond
- Consider sanctions which fall within “censure” or “suspension” (or both) – including timelines
- May want to involve legal counsel in drafting/responding to an issue – could require a motion from the council

Cannot be used to remove a member from office



QUESTIONS?



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