



1.16 EEO, Harassment and Bullying Policy

Introduction

Healesville Living and Learning Centre supports the concept of equal opportunity in employment and is committed to complying with both the letter and the spirit of the relevant legislation through non-discriminatory employment and management practices and policies.

Healesville Living and Learning Centre agrees that all employees should be treated with respect and fairness and will ensure natural justice for all employees of the company.

Healesville Living and Learning Centre is committed to providing a pleasant working environment, which is free of harassment and bullying for all employees, contractors and volunteers and will encourage good working relationships between employees.

Healesville Living and Learning Centre values and respects the diversity of its workforce and agrees that diversity creates competitive advantage and maximises the talent, potential and contribution of all employees.

What situations are covered by this policy?

The equal opportunity legislation not only covers the workplace, but also covers discrimination and harassment in the provision of goods and services. As such, it is also unlawful for this organisation to discriminate against customers or clients in the provision of the organisation's services.

Further, when using labour hire or temporary staff Healesville Living and Learning Centre will request that the agencies being used apply non-discriminatory screening and interviewing processes to ensure selection is from a diverse pool of candidates. This provides a far better opportunity for Healesville Living and Learning Centre to employ the best person for the position.

The legislation covers all aspects of the employment relationship from recruitment, through the period of a person's employment (eg in the access a person has to training, promotion, remuneration benefits etc) to termination. It also covers work related functions.

Grounds of harassment and discrimination

Following is a list of the grounds of harassment and/or discrimination that apply in Victoria. The list combines the grounds that apply under Commonwealth legislation as well as under the Equal Opportunity Act 2010.

Race (including colour, descent, nationality, national or ethnic origin)

Racial and religious vilification

Immigration

Sex

Sexual harassment

Marital status

Pregnancy

Potential pregnancy

Family responsibilities and status as a parent or carer

Disability/impairment (including physical, intellectual or psychiatric)

Religion, religious belief or activity

Political opinion, belief or activity

Age
Medical record
Criminal record
Sexual preference / sexual orientation
Trade union activity
Industrial activity
Lawful sexual activity
Physical features
Breastfeeding
Gender identity
Personal association with a person with any of the above characteristics (excluding potential pregnancy, family responsibilities, medical record, criminal record, sexual harassment, sexual preference, trade union activity and racial and religious vilification)

Definitions

Discrimination

Unlawful discrimination can occur either directly or indirectly.

Direct discrimination is any action, which specifically excludes a person, or a group of people from a benefit or opportunity, or significantly reduces their chances of obtaining it because a personal characteristic, irrelevant to the situation, is applied as a barrier. That is, a person or a group of people is treated less fairly because they possess a characteristic listed as a ground of discrimination, eg. age, sex, race, disability or marital status.

Indirect discrimination may occur if the outcome of rules, practices and decisions of Healesville Living and Learning Centre which appear to treat people equally and be neutral, actually has an adverse affect on a group of employees or an individual thus reducing a benefit of opportunity. Practices appear fair in form but are discriminatory in outcome. For example, the last on first off rule may have the effect of being indirectly discriminatory against particular group of employees (eg. Women or young people).

Harassment

Harassment is described as any unwelcome behaviour or conduct which has no legitimate workplace function and which intimidates, humiliates or offends another person or persons. Unlawful harassment on the basis of sex, race and disability is specifically outlawed but harassment on the basis of other grounds of discrimination such as age, marital status or a person's sexual orientation is likely to be discriminatory and will therefore be unlawful also.

In harassment cases, the intention of the alleged harasser is irrelevant. What is important in the reaction of the employees being harassed – how that person feels as a result of the harassment.

Harassment has the effect of offending, humiliating or intimidating the person at whom it is directed. It makes the work environment unpleasant and sometimes even hostile. If a person is being harassed then their ability to do their work is affected. They often become stressed and suffer health problems as a result.

Harassment can often be the result of behaviour which is not intended to offend or harm, such as jokes or unwanted attention. The fact that harassment is not intended does not mean that it is not unlawful. The differences between people should be acknowledged and respected - never ridiculed.

Harassment often involves an abuse of power, for example, a manager may harass a person whom they are supervising. Abuse of power can also happen when certain groups are in a minority in the workplace and are therefore in a vulnerable position, for example, women or people from non-English speaking backgrounds.

There is no requirement that before making a complaint under the legislation a person being harassed must advise the alleged harasser that their behaviour is unwelcome.

Types of Harassment

There are many types of harassment. These can range from direct forms, such as abuse, threats, name calling and sexual advances; to less direct forms, such as where a hostile work environment is created, but no direct attacks are made on an individual.

Examples of verbal harassment:

- sexual comments, advances or propositions
- lewd jokes or innuendo
- racist comments or jokes
- spreading rumours
- comments, jokes about a person's disability, pregnancy, sexuality, age, religion, tec.
- repeated questions about personal life
- belittling someone's work or contribution in a meeting
- threats, insults or abuse
- repeated unwelcome invitations
- offensive, obscene language
- obscene telephone calls, unsolicited letters, faxes, email

Examples of non-verbal harassment:

- leering, eg. staring at a woman's breasts
- putting offensive material on notice boards, computer screensavers, email, etc.
- wolf whistling
- nude or pornographic posters
- displaying sexist or racist cartoons or literature
- demoting, failing to promote or transferring someone because they refuse requests for sexual favours
- following someone home from work
- standing very close to someone or unnecessarily leaning over them
- mimicking someone with a disability
- practical jokes which are unwelcome
- ignoring someone, or being cold or distant with them
- crude hand or body gestures

Examples of physical harassment:

- unwelcome physical contact such as kissing, hugging, pinching, patting, touching brushing up against a person
- indecent or sexual assault or attempted assault
- hitting, pushing, shoving, throwing object at a person
- unzipping a person's attire

What do you do if you are harassed?

If you feel that you are being harassed, tell the person to stop, that their behaviour is unacceptable and that they must not do it again. It is important to say these things to the harasser as they might interpret silence as tacit consent. If, however, you are too frightened or embarrassed to say anything, this does not mean that your complaint will not be taken seriously.

If the behaviour does not stop, or even if it does stop but you wish to report it, tell your manager or supervisor. Alternatively, you may wish to speak to a grievance contact officer or the Complaints Officer, who will tell you what your options are. If you so wish, you may make a formal complaint under HLLC Grievance Handling Procedure. Copies of the procedure are available from the C.E.O.

It is a good idea to make a written note of any harassment, including details of dates, times, witnesses, what happened and what you said/felt.

Be frank and open with the C.E.O. who is investigating the complaint about what happened. This will enable appropriate action to be taken.

You can also get advice from your union, or a government agency such as the Human Rights and Equal Opportunity Commission, or the Anti-Discrimination Board.

Vilification

Vilification is a public act which incites, encourages, or urges others to hate, have serious contempt for, or severely ridicule, a person, or group of people because they are (or are thought to be) members of a particular group. Vilification has no justification in "free speech".

Racial vilification is unlawful under the *Racial Discrimination Act 1975*.

Bullying

Bullying is repeated behaviour that intimidates, humiliates and/or undermines a person or group. It is behaviour that is beyond normal disciplinary action or appropriate workplace interaction.

Bullying has many characteristics in common with discrimination and harassment but the reasons for the bullying behaviour may be much broader than the grounds on which it is unlawful to discriminate against or harass someone.

Bullying can lead to serious breaches of occupational health and safety laws and can also be prosecuted under common law.

Examples of bullying behaviour include:

- Isolating someone
- Psychological abuse which destroys self-esteem and confidence
- Unfair or excessive criticism
- Setting impossible deadlines
- Using aggressive language

The following behaviour is unacceptable at Healesville Living and Learning Centre. This list is not exhaustive.

- Derogatory comments about a person on the basis of their disability, race or any other ground of discrimination
- Display of offensive materials, pictures or objects based on sex, a disability or race including material on the internet
- Intimidation or verbal abuse aimed at a person with a disability or their carer, their aids or capabilities.
- Practical jokes based on a person's disability, race, sexual preference, etc.
- Isolation, segregation or humiliation of a person with a disability or of a particular race.
- Racially orientated intimidation or verbal abuse.
- Less favourable treatment of employees on workers compensation.
- Unwelcome comments or questions about a person's life, appearance or dress.
- Unnecessary familiarity such as touching, fondling, patting or pinching.
- Sexual assault, rape, flashing or indecent exposure.
- Jokes, intrusive questioning, messages (email and other) or telephone calls of a sexual nature.
- Direct propositioning or subtle pressure for sexual favours.
- Leering
- Sexually explicit conversation.
- Gender based insults or taunting.
- Offensive and suggestive body language.

Note that some of these items, including sexual assault, rape and indecent exposure are also criminal offences.

Liability

There are three levels of liability under discrimination legislation. These are:

Vicarious liability where Healesville Living and Learning Centre is responsible for the actions of its employees (including managers and supervisors) in relation to discrimination, harassment, victimisation and vilification even where it does not know the inappropriate behaviour is occurring.

Other people in the workplace whose actions Healesville Living and Learning Centre may be held vicariously liable for may include:

- *Legal partners;*
- *Workplace participants;*
- *Contract workers; and*
- *Commissioned agents.]*

Ignorance of the behaviour is not an excuse or a satisfactory defence against a claim of vicarious liability.

Accessory liability may occur if Healesville Living and Learning Centre, an employee or other workplace participant, requests, encourages, authorises, causes, instructs, induces, aides or permits an individual to commit an act of harassment or discrimination against another employee.

Direct / personal liability means that employees of Healesville Living and Learning Centre may be held directly (and personally) liable for acts of discrimination or harassment against a fellow employee or employees.

Further, the employer may also be held directly liable for harassment and discrimination in the workplace.

Victimisation

Victimisation is the term used to describe any "pay-backs", retribution or intimidation associated with a discrimination or harassment complaint. Victimisation refers not only to intimidation of complainants or potential complainants, but also to the alleged harasser or discriminator, witnesses, supporters and those resolving or investigating any complaints.

Healesville Living and Learning Centre will take all necessary steps to ensure victimisation does not occur. Persons found guilty of victimisation will be subject to disciplinary processes.

It is expected that employees will raise issues in good faith.

Responsibilities

Healesville Living and Learning Centre's responsibilities are to:

- Provide all workplace participants with harassment and discrimination free work environment;
- Provide a fair and effective procedure to investigate complaints or harassment, bullying and discrimination and provide trained contact officers to support employees through the complaint resolution process;
- Ensure victimisation does not occur.
- Treat all workplace participants fairly;
- Ensure the organisation has a comprehensive and regularly reviewed EEO / harassment / discrimination / bullying policy in place that is well communicated to all employees, including managers, supervisors, casuals and contractors;
- Provide all employees with harassment / discrimination training (including refresher training from time to time; and
- Take suitable disciplinary action against any person found to have victimised, vilified, harassed, bullied or discriminated against another employee.

Employees of Healesville Living and Learning Centre have the responsibility to:

- Report any incidents or harassment, bullying or discrimination they may see happening around them to an appropriate manager or supervisor;
- Ensure they do not victimise any person involved in a complaint of harassment or discrimination;
- Ensure they do not vilify another person or group of people;
- Ensure that if involved in complaints, confidentiality is maintained; and
- Treat all workplace participants fairly and with respect.

Supervisors / Managers of Healesville Living and Learning Centre have the responsibility to:

- Follow appropriate procedures for investigating complaints or harassment and discrimination if a complaint is made to them;
- Ensure their staff are aware of this policy and Healesville Living and Learning Centre's expectations that they behave respectfully and tolerantly;
- Model appropriate behaviour; and
- To promote and develop a harassment and discrimination free work environment.

Contact officers of Healesville Living and Learning Centre have the responsibility to:

- Be a first point of contact for people who have concerns about inappropriate behaviour and provide support for people;
- Act impartially if involved in investigating complaints of harassment, bullying or discrimination in the workplace;
- Maintain confidentiality;
- Assist the employee in the resolution of the complaint; and
- Know the organisation's procedures for the resolution of complaints.

Procedure for Handling Harassment, Discrimination and Bullying Issues

The following procedure is designed to help you address any concerns you have about incidents of harassment, discrimination and bullying or other offensive workplace behaviour.

The handling of any such issues will be:

Completely confidential. Only the people directly involved in making or investigating a complaint will have access to information about the complaint. Other employees or managers may be involved (eg. as witnesses) but only on a need to know basis.

Impartial. Both sides will have a chance to tell their side of the story. No assumptions will be made and no action will be taken until all relevant information has been collected and considered.

Free of repercussions. No action will be taken against anyone for making a complaint or helping someone make a complaint provided the complaint is made in good faith. Management will take all necessary steps to ensure that no victimisation occurs against anyone who makes a complaint or is involved in a complaint.

Timely

All complaints will be dealt with as quickly as possible.

Note: Healesville Living and Learning Centre reserves the right to act in the interests of the company by taking action deemed appropriate in the circumstances.

The following procedure, based on the principles of natural justice, is to be used to resolve any grievance.

Step-by-step procedure

Step 1 – If possible try to resolve the matter directly with the other party involved. Your manager is available to assist in this process.

Step 2 – If the incident is unable to be resolved either directly between those involved or with the assistance of the manager the issue should be referred to CEO or Committee of Management.

Step 3 – A detailed investigation of the alleged incident(s) will need to be carried out at this stage to assist in the resolution of the grievance. Witnesses may be called upon as part of the investigation. Any investigation will be kept confidential. It may be appropriate to involve representatives from the Union (if union members are involved in the complaint).

Step 4 - If at any stage during the grievance procedure the complainant is not satisfied with the company's actions they can take their matter to the Victorian Equal Opportunity Tribunal if the complaint is made under State legislation. If the complaint is made under the Federal legislation then the appropriate tribunal is the Human Rights and Equal Opportunity Commission.

Resolution

Action taken to resolve a grievance is dependent on the circumstances of their complaint. Generally, the primary concern of the complainant is that the harassing behaviour ceases. A range of possible resolutions that could deliver a satisfactory solution include:

- Apology;
- Undertaking that the behaviour will cease;
- Formal counselling of the alleged harasser;
- Disciplinary action, eg. transfer, formal warning, dismissal;
- Awareness raising / training session;
- Re-crediting leave associated with the harassment;
- Reimbursing costs for treatment associated with the harassment, eg. medical or counselling;
- Dismissing the complaint; or
- Notifying the police.

In the case of criminal offences it is up to the complainant to notify the Police. Employees will be encouraged to report the offence to the Police if appropriate. This does not negate the company's responsibility to investigate the complaint.

If complaint not substantiated

If, after thorough investigation, Healesville Living and Learning Centre decides that there has been no offence committed or the complaint has not been substantiated, the following steps will be taken:

1. the reasons for the decision will be explained to the parties involved.
2. the complainant will be advised of their right to take the matter to external organisations or jurisdictions.
3. any notes concerning the allegations will not be kept on either party's personal file – a separate and totally confidential file of the incident will be kept.
4. a watching brief will be maintained on the situation after the investigation.

If, after the investigation, a complaint is found to be false or frivolous it will be appropriate to take disciplinary action against the person who made the complaint. This may include termination of employment.

Record Keeping

HLLC will keep confidential records of all complaints made.

Records of harassment or discrimination complaint investigations will be kept separate from employee's personnel files. Access to these files will be restricted to the CEO.

These files will be kept for a period of 7 years from the conclusion of the complaint.

Other resources

As a result of the investigation into harassment or discrimination complaint, it may be necessary for HLLC to utilise resources from outside the company to help resolve the situation.

These may include:

- an Employee Assistance Program (EAP)
- use of an independent investigator; or
- use of an independent mediator.

The decision to involve outside assistance will be made with parties involved.