

Toronto Transit Commission

POLICY/INSTRUCTION

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Respect and Dignity	Human Rights	June 30/16	10.1.3

1.0 RESPONSIBILITY

Head – Diversity & Human Rights Department

2.0 POLICY STATEMENT

The Toronto Transit Commission (TTC) is committed to providing a work environment and service delivery that respects the dignity, self-worth and human rights of every individual, and is free from any form of discrimination or harassment. The TTC condemns harassment, denigration, discriminatory actions, and the promotion of hatred. The TTC will not tolerate, ignore or condone any form of discrimination or harassment perpetrated against or by any employee or customer. All employees and contractors are responsible for respecting the dignity and rights of their co-workers and the public they serve.

3.0 PURPOSE

This policy is intended to:

- define workplace discrimination, and workplace harassment, which includes racial harassment and sexual harassment
- provide instruction on TTC’s complaint reporting and investigation procedures in accordance with the *Ontario Human Rights Code* (the “Code”) and the *Occupational Health and Safety Act* (“OHSa”)
- create and foster a workplace free from discrimination or harassment
- establish and detail the responsibilities of all employees and contractors to maintain a workplace and service delivery free from discrimination or harassment
- ensure that incidents of discrimination or harassment are immediately reported
- ensure that incidents of discrimination or harassment are fully and fairly investigated in a timely manner, and that the complainant(s) and respondent(s) are informed of the results of an investigation.

4.0 APPLICATION

4.1 This policy applies to:

- all employees, including all full-time, part-time, temporary, student, co-op, intern, casual or term employees

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- any persons who perform work at a TTC workplace including, but not limited to, contractors, consultants, unpaid interns or co-op students. Any individual that is paid by a third party and uses TTC assets (e.g. computers) and performs work for the TTC (e.g. Non-employee Labour Assistants), collectively referred to as “contractors”
- customers.

- 4.2 All contractors will be advised of the applicable provisions of this policy and will be expected to adhere to and enforce these requirements for their employees, sub-contractors and agents.
- 4.3 Discrimination and harassment are serious forms of misconduct. Employees who are found to have engaged in discriminatory and/or harassing conduct against other employees, contractors or customers will be disciplined, up to and including dismissal.
- 4.4 A contractor or the contractor’s employee, sub-contractor or agent that is found to have engaged in discriminatory and/or harassing conduct against an employee, other contractor or customer may have its contract terminated or may be requested to remove or replace their employee, sub-contractor or agent.
- 4.5 Any employee or contractor who has authority to prevent or discourage discrimination and harassment will be held responsible for failing to exercise this authority and may be subject to discipline, up to and including dismissal or termination of its contract, as applicable.
- 4.6 This policy is subject to annual review, and in consultation with the Joint Health and Safety Committees, modifications will be made as deemed necessary to respond to current conditions and evolving needs.

5.0 DEFINITIONS

- 5.1 Complainant: The person alleging that discrimination or harassment occurred. There can be more than one complainant.
- 5.2 Discrimination: Every person has a right to equal treatment without discrimination by TTC with respect to its services and facilities, accommodation, contracts, and employment.

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Discrimination occurs when a person is subjected to differential treatment and/or denied an opportunity in employment, or excluded from access to service or facilities based on one or more protected grounds (as defined below). Discrimination can be direct or indirect and does not have to be intentional.

Protected grounds under the Code and this policy are: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed/religion, sex including pregnancy and breastfeeding, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status and disability.

- 5.3 Harassment: Every person has a right to equal treatment by TTC with respect its services and facilities, accommodation, contracts, and employment, without harassment.

Harassment is defined as engaging in vexatious comments or conduct against a worker or person that is known, or ought reasonably to be known, to be unwelcome, and involves a course of conduct or a single serious incident. Harassment does **not** have to be based on one or more protected grounds (as defined in section 5.2). Harassment also includes personal (non-Code) harassment.

Harassment may take many forms and includes, but is not limited to:

- a pattern of behaviour that a reasonable person would consider to be insulting, bullying, humiliating, malicious, degrading, unwelcome or otherwise offensive to an individual or group of individuals, including frequent insults, demeaning communications, public humiliation
- any offensive and/or discriminatory comments or behaviour arising from the use of electronic and/or social media, devices and systems
- any offensive or humiliating behaviour that is related to a person's sex or gender, as well as behaviour of a sexual nature that creates an intimidating, hostile work environment, or that could be reasonably thought to put sexual conditions on a person's job or employment opportunities (see definition of sexual harassment below)
- any behaviour that causes a work or service environment to be extremely hostile and/or isolating for an individual or group of individuals.

- 5.4 Poisoned Work Environment: A poisoned work environment is a form of indirect harassment. It occurs when comments or actions ridicule or demean a person or group creating real or perceived inequalities in the workplace.

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Pornography, pin ups, offensive cartoons, insulting slurs or jokes, innuendos, name calling, malicious gossip (even when they are not directed towards a specific employee or group of employees), have been found to “poison the work environment” for employees.

5.5 Racial Harassment: Is harassment (as defined in section 5.2) on the protected ground of race. Racial harassment/discrimination includes, but is not limited to:

- racial slurs or jokes
- ridicule, insults or different treatment because of your racial identity
- posting/emailing cartoons or pictures that degrade persons of a particular racialized group
- name calling because of a person’s race, colour, citizenship, place of origin, ancestry, ethnic background or creed.

5.6 Respondent: The person who is alleged to be responsible for the discrimination or harassment. There can be more than one respondent in a complaint.

5.7 Sexual Harassment: Is engaging in a course of vexatious comment or conduct in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome. Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the individual and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

It includes, but is not limited to:

- sexually suggestive or obscene remarks or gestures, leering at a person’s body
- demanding hugs
- unwelcome physical contact, including unwanted touching
- having to work in a sexualized environment (bragging or discussions about sexual activities)
- circulation or posting of sexist jokes, cartoons or pornographic images in the workplace
- display of pin up calendars or other objectifying images

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- negative stereotypical language, vexatious comments or conduct based on gender, gender identity, gender expression, sex or sexual orientation and gender related comments about an individual's physical characteristics or mannerisms
- engaging in a reprisal, or threat of reprisal if a sexual advance or solicitation is rejected.

5.8 Workplace: Includes all locations where TTC services are provided, or where business or social activities of the TTC are conducted, including all land, facilities, mobile equipment and vehicles owned, leased or otherwise directly controlled by the TTC for the purpose of conducting TTC business. It also includes any locations or worksites to which employees or contractors have been assigned or which they may access during the performance of their duties.

6.0 SUPERVISORY ACTIONS

Appropriate supervisory actions relating to the management and direction of employees or the workplace including, but not limited to, directing or assigning work, discipline, legitimate performance management, employee performance appraisals, management or operational directives, work related change of location, co-workers and/or job assignment, do not constitute discrimination or harassment under this policy.

7.0 RESPONSIBILITIES

7.1 Employee and Contractor

All employees and contractors are responsible for:

- understanding and upholding their rights, responsibilities and obligations under this policy, the Code, and OHS/A
- respecting and valuing individual differences in all employees and customers
- not engaging in offensive, discriminatory and/or harassing behaviour
- acting respectfully towards others, and not conducting themselves in a manner that will embarrass and/or jeopardize the integrity, business interests, image and/or reputation of the TTC
- co-operating with any efforts to investigate and resolve matters that violate this policy

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- reporting promptly all incidents of discrimination and/or harassment experienced, witnessed, or having knowledge of in accordance with Section 8.0 of this policy
- maintaining confidentiality as it relates to incidents or complaints of discrimination or harassment and any resulting investigations and/or mediations.

7.2 Managerial

In addition to the expectations set out in 7.1 above, all managers and supervisors are responsible for preventing, discouraging and addressing acts of discrimination and harassment by:

- ensuring that their workplace is free from harassment and discrimination, being aware of what is happening in their workplace and taking appropriate action upon becoming aware of discriminatory and/or harassing conduct contrary to this policy, the Code and/or the OHSA
- promoting understanding and compliance with this policy, the Code, and OHSA
- not engaging in behaviour contrary to this policy, the Code and/or OHSA
- not allowing or condoning behaviour contrary to this policy; the Code and/or OHSA
- ensuring that information obtained about an incident or complaint of discrimination or harassment, including identifying information, will be kept confidential and not be disclosed unless the disclosure is necessary for the purposes of investigating, taking corrective action with respect to the incident or complaint, or as required by law
- taking all complaints of discrimination and harassment seriously by responding to all complaints of discrimination and/or harassment in a prompt and sensitive manner, investigating allegations of discrimination and/or harassment, and taking prompt action to resolve the complaint
- documenting details of human rights concerns, actions taken, outcomes and remedies implemented
- consulting, and working in conjunction with the Employee Relations Section of the TTC's Human Resources Department to determine appropriate discipline and/or corrective action for individuals found to have engaged in discriminatory and/or harassing conduct, and notifying the complainant and respondent in writing of the results of the investigation and any corrective action that has or will be taken

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- consulting, and working in conjunction with, their safety consultant when contacted by the Ministry of Labour regarding complaint of workplace harassment.

7.3 Diversity & Human Rights Department

Diversity & Human Rights operates as an independent department responsible for preventing, discouraging, and addressing acts of discrimination and harassment. All complaints will be dealt with in an unbiased manner. Responsibilities include:

- promoting awareness, understanding and compliance with this policy, the Code, and OHSA
- responding to complaints of discrimination and/or harassment in an impartial, sensitive and timely manner
- conducting, co-ordinating and/or assisting management in informal resolutions, mediations, and investigations into complaints that are covered by this policy
- investigating, where appropriate, complaints regarding allegations of discrimination and/or harassment
- being the corporate liaison to the Human Rights Tribunal of Ontario (HRTO).

7.4 Human Resources Department

Human Resources is responsible for preventing, discouraging and addressing acts of discrimination and harassment by:

- promoting understanding and compliance with this policy, the Code, and OHSA
- removing barriers in employment policies and practices that may have the effect of discriminating against groups or individuals who are protected under the Code and the *Accessibility for Ontarians with Disabilities Act*
- in consultation with Diversity & Human Rights, developing and conducting training programs to educate employees on this policy, the Code, and OHSA
- advising managerial staff on the corrective action and/or discipline that arises from a breach of this policy, and on its disclosure to the complainant and respondent

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- participating in the review of this policy for continuous improvement.

7.5 Training & Development Department

Training & Development is responsible for preventing, discouraging and addressing acts of discrimination and harassment by:

- promoting understanding and compliance with this policy, the Code and *OHS*
- developing and conducting training programs to educate employees on this policy, the Code, and *OHS*, in consultation with Diversity & Human Rights and Human Resources.

7.6 Safety Consultants

Safety consultants are responsible for preventing, discouraging and addressing acts of discrimination and harassment by:

- promoting understanding and compliance with this policy, the Code and *OHS*
- liaising with the Ministry of Labour during investigations or inspections related to allegations of workplace harassment in consultation with the Legal, Human Resources and/or Diversity & Human Rights Departments, as appropriate
- participating in the review of this policy for continuous improvement.

8.0 COMPLAINT PROCEDURES

TTC has developed the following complaint procedures for investigating and resolving complaints that may arise concerning discrimination and/or harassment. These procedures require the full co-operation of all employees or individuals, including the complainant(s) and respondent(s).

8.1 Identify the Problem and Attempt to Resolve Informally

Employees who feel they have been discriminated and/or harassed in the workplace are encouraged to first make it known to the offending person(s) that the behaviour is offensive and/or unwelcome. TTC encourages employees to first try to resolve their concerns among themselves in a courteous and respectful manner where appropriate and safe to do so. Employees may speak

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to their management and/or Diversity & Human Rights to get ideas on how to resolve the problem informally.

8.2 Employees Filing a Complaint

8.2.1 If in the circumstances approaching the offending person(s) directly is either not appropriate or not possible, or if approaching the offending person(s) directly results in the discrimination and/or harassment continuing, employees are encouraged to immediately report in detail to:

- their immediate supervisor
- any member of their departmental management.

8.2.2 If in the circumstances the offending person is the employee's immediate supervisor, the employee is encouraged to immediately report in detail to:

- any member of their departmental senior management
- the Diversity & Human Rights Department.

8.2.3 If in the circumstances the offending person includes their departmental senior management, the employee is encouraged to immediately report in detail to Diversity & Human Rights.

8.2.4 If in the circumstances the offending person includes any member of the executive team, with the exception of the Chief Executive Officer (CEO), the employee is encouraged to immediately report in detail to the office of the CEO, which will co-ordinate with Legal, Human Resources, or Diversity & Human Rights, as appropriate, to retain an external investigator to investigate the matter.

8.2.5 If in the circumstances the offending person includes the CEO, the employee is encouraged to immediately report in detail directly to the office of the Chair of the TTC, which will make arrangements to have the complaint investigated. The office of the Chair can be reached at ttcchair@toronto.ca.

8.2.6 A complaint of an alleged violation of this policy may be recorded in writing by the employee, supervisor or management staff receiving the

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complaint. The alleged violation of this policy should provide as much information as possible, including but not limited to:

- identifying the date and time of when the conduct took place
- where the alleged discrimination and/or harassment occurred
- who the employee believes harassed and/or discriminated against him or her
- the details of what happened
- the names of any witnesses.

Anyone receiving a complaint about an alleged violation of this policy shall ensure that the complaint is also reported to Diversity & Human Rights.

8.2.7 In the absence of a written complaint or a complainant, management and/or Diversity & Human Rights may determine a need to investigate depending on the alleged actions, behavior and/or incident(s) reported.

8.2.8 Serious cases of harassment where a person’s safety is at risk (for example stalking) must be reported immediately to Transit Control who will immediately dispatch the appropriate police services, emergency personnel, and supervisory personnel. Any employee who is a victim of a criminal act may also directly contact the appropriate police services to lay criminal charges.

8.3 Customers Filing a Complaint

Customers are encouraged to bring forward their complaints of discrimination and/or harassment to TTC personnel through the Customer Service line at 416-393-3030, or online at www.ttc.ca. These complaints will be investigated and addressed as appropriate. In cases of emergency, customers must call 911.

8.4 Complaints against a TTC contractor

Complaints of discrimination or harassment by contractors should be brought to the attention of their direct TTC representative, Diversity & Human Rights and the contractor’s company. These complaints may be investigated and addressed as deemed appropriate depending on the alleged actions, behaviour and/or incident. In cases of emergency, contractors must call 911.

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8.5 Human Rights Tribunal of Ontario (HRTO) Complaints

Any person may file a complaint directly with the HRTO. If the person files a complaint with the HRTO, Diversity & Human Rights may choose to suspend any complaint investigation process under this policy pending final determination of the HRTO. All complaints filed with the HRTO shall be managed by Diversity & Human Rights and Legal.

8.6 Mediation

If a complaint has been submitted, and where appropriate, the employees involved are both willing to try to resolve the matter through mediation, Diversity & Human Rights will conduct or co-ordinate the mediation. Mediation is a voluntary process whereby the employees can meet with a mediator to determine whether their complaint can be resolved in a mutually satisfactory manner.

8.7 Investigation

8.7.1 Subject to sections 9.0 and 10.0 below, if a complaint is not resolved informally or through mediation, a formal investigation will be carried out as follows:

- Diversity & Human Rights will determine the nature of the investigation required given the circumstances of the incident(s)
- Diversity & Human Rights may assist management in conducting the investigation
- in situations where the allegations may pose a conflict of interest for the work location, involve multiple work locations or multiple departments, or allege that the respondent is his or her supervisor or in a managerial position above supervisor, Diversity & Human Rights may co-ordinate the investigation with senior management, conduct the investigation, or direct the investigation to an external investigator
- in situations where the allegations are against a member of the executive team, the investigation may be conducted by an external investigator.

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8.7.2 The investigation conducted by management or Diversity & Human Rights will include, but not be limited to the following steps, as appropriate:

- a documented interview with the complainant(s) to establish the scope of the complaint and to review details that support the allegations in the complaint
- a documented interview with the alleged respondent(s) to provide him or her with the allegations of the complaint
- obtaining information from the respondent for a full response to the allegations
- informing the complainant of any counter-allegations made by the respondent and providing them an opportunity to respond to the new allegations
- documenting interview(s) with the relevant witness(es)
- providing an opportunity for each party to respond to allegations and counter-allegations that arise during the investigation
- collecting and reviewing all relevant documentation for the investigation
- any other step the investigator deems necessary to fully and fairly investigate the complaint
- providing a written report of the results of the investigation to Employee Relations, management of the complainant and respondent, and Diversity & Human Rights
- sending a debrief letter to the complainant and respondent informing them of the results of the investigation and any corrective action taken or that will be taken as deemed appropriate by management and Employee Relations
- handling the investigation in a manner that protects the privacy and confidentiality of the parties involved to the extent possible by law, and protects the integrity of the investigation.

8.8 Remedial Actions

Pending the completion of an investigation, appropriate measures will be taken to ensure the workplace is free from discrimination and/or harassment. Such measures may include an employee alleged of engaging in discriminatory or harassing conduct being transferred to another work location; re-assigned duties; suspended; and/or relieved of duty. Management should consult with

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Employee Relations to determine the most appropriate course of action pending the completion of an investigation.

All employees involved or affected by an incident of discrimination or harassment should be offered support from the TTC's Employee Family Assistance Program, together with any other remedial measures deemed appropriate including, but not limited to, initiating training programs, refresher training programs, or changing a policy or practice.

Once an investigation is complete, management should consult with Employee Relations prior to taking any disciplinary action based on the results of an investigation.

9.0 TIME LIMITS

A complaint of discrimination or harassment will be dismissed:

- if the incident occurred more than one year prior
- if there was a series of incidents, more than one year after the last incident in the series,

unless Diversity & Human Rights is satisfied that the delay was incurred in good faith.

10.0 BAD FAITH COMPLAINTS

10.1 It is a violation of this policy to put forward a vexatious and/or bad faith complaint. These include complaints that are filed:

- without reasonable grounds
- with the intention to embarrass or harass
- with no factual basis.

10.2 If it is determined in an investigation that an employee or contractor made a complaint in bad faith and/or the complaint was frivolous or vexatious, he or she will be subject to discipline, up to and including dismissal or termination of its contract, as applicable.

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11.0 REPRISAL

Any person who files a complaint, participates in an investigation, or acts as a witness in good faith is protected from reprisal, the threat of reprisal, or further discrimination or harassment. Reprisal is defined as any act of retaliation, either direct or indirect. Any employee who engages in reprisal against anyone who has filed a complaint or who is co-operating in an investigation of a complaint will be disciplined, up to and including dismissal.

12.0 CONFIDENTIALITY AND RECORDS

12.1 To protect all parties involved in a complaint of discrimination or harassment and the integrity of the complaint handling and investigation procedures, strict confidentiality will be required and maintained during and after the investigation and/or mediation to the extent practicable and appropriate in the circumstances. Information obtained about an incident or complaint of workplace harassment or discrimination, including identifying information about the individuals involved, will not be disclosed unless the disclosure is necessary:

- to conduct the investigation
- to protect the safety of employees, customers, the public and/or contractors
- to administer corrective action with respect to an incident of harassment or discrimination
- where required by law, for example, pursuant to OHSA; arbitration proceedings, proceedings before the HRTO or criminal proceedings.

If a complaint involves allegations of workplace discrimination or harassment, information relating to the corrective action taken will be disclosed to a complainant.

12.2 If it is determined that an employee or contractor has breached confidentiality during or after an investigation and/or mediation, he or she will be subject to discipline, up to and including dismissal, or termination of its contract, as applicable.

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13.0 REFERENCE SOURCES

- Accommodation in the Workplace Policy
- At Work Program
- Code of Conduct Policy
- Collective Agreements
- Conditions of Employment Policy
- Criminal Code
- Criminal Misconduct Policy
- Discipline Policy
- Diversity and Inclusion Policy
- Employee Complaints and Grievances Policy
- Ontario *Human Rights Code*
- *Occupational Health and Safety Act*
- Whistle Blower Reporting and Protection Policy
- Workplace Violence Policy

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