

Employer's Guide to the Law Society of Alberta's Respectful Workplace Model Policy

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Introduction

A respectful workplace policy is an important element of every organization's plan to prevent and address discrimination and harassment in the workplace. While it is only one step which organizations should take, it communicates the organization's commitment to addressing incidents of harassment and discrimination as they arise. A key element of the respectful workplace is that the organization must implement and follow its own policies and protocols.

Once organizations have a policy in place, the next step is to consider its implementation. This means having a plan as to how the organization will appropriately respond to a complainant, investigate the complaint, and report the results of the investigation. Each step needs a clear established process. If implementation is planned, the organization will not be delayed when a complaint is raised. This is key to employee safety, avoiding toxicity in the workplace and high morale. These factors will in turn contribute to higher productivity and employee loyalty, lower turnover and the delivery of high-quality legal services. The [Law Society of Alberta's Respectful Workplace Model Policy](#) incorporates some elements of implementation.

Workplace training is an additional element which organizations should consider. Training creates awareness about principles such as unconscious bias, micro-aggressions, and working relationships so that employees have the skills to identify and address problems before they worsen and require more serious steps such as a formal complaint.

This Guide, and the [Law Society of Alberta's Respectful Workplace Model Policy](#) are tools to help workplaces manage conflict, and address and prevent harassment and discrimination. The Guide highlights some steps which an organization can take to effectively implement and enforce its respectful workplace policy. It is not an exhaustive guide, and organizations are encouraged to locate additional resources, training and supports. In providing this Guide, the Law Society of Alberta is not dictating what organizations must do, but instead offers a resource to assist lawyers in Alberta in meeting their obligation to maintain a respectful workplace, as required by the [Occupational Health and Safety Act](#) ("OHS"). Similarly, this Guide does not offer legal advice.

We operate as a law firm or legal department. Are we required to have a respectful workplace policy?

Yes. Under Human Rights legislation, Occupational Health and Safety legislation and the Law Society of Alberta's [Code of Conduct](#), all organizations, whether they are law firms, in-house legal departments, *pro bono* legal organizations or government divisions, must take steps to prevent and address harassment, discrimination and violence in their workplace. One of the steps which the [OHSA](#) requires is a safe workplace policy. The [Law Society of Alberta's Respectful Workplace Model Policy](#) can be implemented to comply with this requirement.

What is the goal or aim of a respectful workplace policy?

A written policy allows employees to understand clearly what is expected of them in contributing to a respectful workplace, and what they can in turn expect from their employer and workplace. It provides a focused vision for the workplace that can be monitored, adjusted and, when necessary, enforced to meet the organization's needs.

Should a respectful workplace policy include a covering memorandum or policy statement?

An organization should consider using a covering memorandum to the respectful workplace policy. That memorandum may itself be a tool that encourages employees to trust the organization and the processes it has implemented. It also communicates clear support for the policy, and the protection of complainants.

The respectful workplace policy may also include a "policy statement", though this is not required under the applicable legislation. The introduction to the policy may make clear that harassment, sexual harassment, violence and discrimination will not be tolerated. A policy statement communicates a strong commitment by the organization to eradicate harassment, sexual harassment, and discrimination (including gender bias).

The [Law Society of Alberta's Respectful Workplace Model Policy](#) contains an example of a policy statement.

We operate a law firm. Can partners be considered "employees" for the purposes of a respectful workplace policy?

Yes. Organizations are required to protect the health and safety of all people who work there. In the [Law Society of Alberta's Respectful Workplace Model Policy](#), for example, the definition of "employee" includes "workers". It captures all people at the workplace, and includes partners and contractors. These parties may not be considered "employees" in other legal contexts.

An organization's respectful workplace policy should clearly identify those who are subject to its coverage. The best policies are inclusive and broadly drafted, covering students, employees, contract workers, support staff, associates and partners. Current employees should be included

as well as applicants (law students seeking articling positions, for example), potential employees and former employees.

The policy should also address and include protections of employees from harassment and discrimination by third party contractors, service-providers and clients whom the organization permits to be on the office premises. Examples of these contractors includes couriers, cleaners, movers etc. An employer may be liable for the actions of such third parties.

Developing and Implementing a Respectful Workplace Policy

How do we begin developing and implementing a respectful workplace policy?

a. Establish a committee

A reasonable starting point is establishing a committee devoted to respectful workplace issues. The [OHSA](#) requires an organization that employs 20 or more workers to establish a Joint Work Site Health and Safety Committee (section 16). Where an employer employs 5 to 19 employees, the employer is required to designate a health and safety representative (section 17(1)).

The Joint Work Site Health and Safety Committee or health and safety representative (as the case may be) must, among other things, develop and promote measures to protect the health and safety of persons at the work site, and check the effectiveness of those measures (sections 19(c) and 20 of the [OHSA](#)).

The committee should include respected staff members and lawyers: people who appreciate the importance of the issues and who will be willing and able to communicate with the rest of the organization. The composition of the committee will be critical to the credibility and success of the process and the policies. Committee Membership should include directing minds, partners, associates and staff. Leaders who are in a position both to set and enforce policy should sit on the Committee. Their participation confirms the organization's commitment to the respectful workplace and establishes credibility for the policy.

Committee membership should also be diverse, and should include people of diverse gender, age, race, ethnic origin, family status, sexual orientation and religion, as well as individuals with disabilities. If there are lawyers or individuals in the organization with knowledge of employment and human rights law, one or more of them should be included.

b. Develop the Policy

Committee members should educate themselves about respectful workplace policies. They should consider the following points in doing so.

i. Review the organization's current policies

Consider the organization's current policies, which ones are required, which have been effective, which have not been effective (and why not), and which need to be updated.

Importantly, this review will allow the organization to consider whether its existing policy or policies comply with the updated requirements of the [OHSA](#). The review should also consider how complaints are currently addressed, whether there is a formal process, and if not, whether there should be a formal process. Also important is whether employees understand the policies, and trust that the policies apply equally to all employees.

ii. Review the law and literature

Ensure the policies reflect and comply with employment and human rights law. Consider that this area of the law is rapidly changing. An older policy likely will not reflect updates to the law. Amendments to the [OHSA](#), for example, will impact older policies, requiring that they be updated.

c. Write the Policy

The policy itself should reflect the organization's vision of a respectful workplace. In writing the policy, the committee should consider the organization's short and long-term objectives, including potential reactions to change within the organization, resources, and integration of the policy into strategic planning. The policy should also incorporate informal and formal conflict resolution processes. The policy should clearly incorporate the employer's duties not to tolerate workplace harassment or discrimination, and to take timely action whenever it has knowledge of behaviour that may constitute harassment or discrimination, regardless of whether a "formal" complaint is raised.

The [Law Society of Alberta's Respectful Workplace Model Policy](#) may be adapted by workplaces. It may be tailored as necessary for a particular organization to effectively address the organization's situation and needs.

What steps should organizations take to comply with the Occupational Health and Safety, and Human Rights legislation, and with the Law Society of Alberta's *Code of Conduct*?

Steps should include, but are not limited to:

1. Implementing and promoting a respectful workplace policy.
2. Developing a policy statement which indicates the organization's commitment to proactively prevent harassment, discrimination and violence, and to address those behaviours once they occur.
3. Developing and implementing reporting procedures, and training all employees on reporting procedures.
4. Proactively addressing or minimizing circumstances where harassment or discrimination may occur or appear to be occurring.
5. Developing and implementing processes and procedures to address incidents and complaints.
6. Training employees about relevant policies and policy statements, as well as steps taken by the organization to prevent or minimize harassment and discrimination.
7. Training employees on their obligations and rights under the [OHSA](#), Human Rights legislation and, where applicable, the [Code of Conduct](#).
8. Training supervisors and employees to recognize, respond to and report incidents and complaints of harassment and discrimination.
9. Regularly reviewing policy statements, policies (including the respectful workplace policy) and procedures for reporting incidents and complaints. At the very least, the [OHSA](#) requires an organization to conduct such a review of its respectful workplace policy every three years.

Specifically, what are the *minimum* steps the organization must take to comply with the Occupational Health and Safety and Human Rights legislation, as well as with the Law Society of Alberta’s Code of Conduct?

Employers should take at least the following steps to ensure compliance with the applicable legislation. Ideally, the organization should do more than the minimum by following other steps and recommendations set out within this Guide. Set out below are steps that represent the minimum to establish a respectful workplace.

1. Establish the Joint Work Site Health and Safety Committee or health and safety representative (as the case may be).
2. Develop and implement policies respecting harassment, discrimination and violence in the workplace.
3. Develop and implement procedures for employees to report incidents or complaints.
4. Develop and implement procedures to address and investigate complaints.
5. Develop and implement procedures to report the outcome of the investigation into complaints.
6. Develop and implement procedures to train employees on the measures implemented to prevent and address complaints of harassment, discrimination and violence in the workplace.
7. Regularly review policies and procedures.

Should the organization’s policy and processes require that the complainant address the offending behaviour with the offender?

No. Raising the offending behaviour with the person who is doing it may not be safe, and may result in further harm to the complainant. The [Law Society of Alberta’s Respectful Workplace Model Policy](#) contains a provision that, where an employee feels comfortable doing so, they may raise the unwelcome conduct with the offender. They may do so either before or in conjunction with making an official complaint.

However, to be effective, policies should recognize that disparities in power and status may deter any direct confrontation by those who experience harassment. An organization’s respectful workplace policy should **not** make such notice a prerequisite to a complaint, or a required element of the complaint process.

Should the complainant address the complaint with their immediate supervisor? What if their supervisor is the person engaging in the harassment or discrimination?

In implementing a respectful workplace policy, employers might consider implementing a structure whereby employees are not required to report harassment or discrimination to their immediate supervisor. While that supervisor may not be involved in the complaint, knowledge of the complaint could adversely impact workplace relationships. Whatever structure an organization chooses, provision should be included for confidential reporting to the organization’s management.

Can an organization take preventive steps? What might they include?

Preventing harassment and discrimination is a key element of an organization's respectful workplace plan. It requires planning, proactive and preventive action.

Preventive steps can include:

1. Direction and supervision of affected employees.
2. Offering training on managing difficult situations.
3. Imposing workplace arrangements to minimize risks of harassment, discrimination and violence.
4. Developing a diversity plan by undertaking a review of diversity within the organization, establishing goals to increase diversity, and regularly reviewing and revising the plan.

What are the employer's obligations in working with employees with respect to possible complaints of harassment or discrimination?

The key here is taking proactive steps and planning so that an organization has procedures in place and knows what to do when a complaint is made.

Employers should clearly indicate to employees how an employee can report a workplace harassment or discrimination complaint. Before a complaint is raised, employers should develop and implement procedures that:

- Facilitate employees' reporting of incidents, including how, when, and to whom an employee should report
- Include provisions for reporting if the employer, supervisor, or person acting on the employer's behalf is the alleged wrongdoer
- Include provisions to avoid an employee having to complain to their immediate supervisor
- Include provisions for reporting harassment and discrimination from others who are beyond the organization itself (for example, clients, contractors, delivery-people, service-providers etc.)
- Reference how relevant documentation and supporting evidence is to be submitted
- Address how the findings of the investigation will be reported and who will receive what information. This requires a balancing of the organization's human rights obligations with its privacy obligations

Procedures should address:

- How and when investigations will be conducted and by whom. An organization will be better able to respond to complaints if it has a plan and has identified in advance the kinds of complaints which it can effectively investigate internally, and the circumstances under which an external investigator will be engaged
- What the investigation will include, including who will be interviewed, and confirming that evidence such as emails and text messages will be preserved, and how it will be preserved

- Roles and responsibilities of the employer, supervisor, other employees, and others, such as investigators (including external investigators), or witnesses
- Support mechanisms, including employee assistance programs, available to the complainant and witnesses

How should we, as an employer, communicate the respectful workplace policy to employees?

An organization is obliged to advise all employees of the organization's policy, and of steps the organization has taken to minimize bullying and harassment. This can be effectively done during new employee orientation and during scheduled staff meetings.

The organization should consider regular training on topics related to the respectful workplace. Potential topics might include respect in the workplace, unconscious bias, microaggressions, cultural competence (particularly in respect of Indigenous culture), and workplace communication.

Reports or Complaints of Harassment or Discrimination

What is a “report” or “complaint” of harassment or discrimination?

A “report” of “complaint” of harassment or discrimination will not always be a *formal* complaint by an employee. As soon as an employer becomes aware of circumstances that may be a breach of the employer’s obligation to maintain a respectful workplace, the employer should take steps to address the situation. A formal complaint by an employee is not required for the organization to have notice of a problem such that it must initiate the steps it has committed to take in its respectful workplace policy, and that the [OHSA](#) requires.

For example, in a private practice setting, where one partner becomes aware that another partner appears to be harassing an associate, the employer has notice of circumstances that may be a risk to the respectful workplace and the firm’s obligations under the respectful workplace policy and under the [OHSA](#) will be triggered. At that point, the firm is required to take steps to address the situation.

We have become aware of possible harassment or discrimination in our workplace, what should we do?

Where discrimination or harassment is reported or complained about, it must be taken seriously. Even in a workplace that seems free of conflict, harassment and discrimination may be occurring. The organization should not make assumptions and should immediately take steps to address the complaint, while keeping the complaint confidential.

One of the first steps will be to interview the complainant, keeping in mind that the complainant may be a by-stander and not the subject of the behaviour complained about.

When listening to a complainant:

- Do not make assumptions about the complainant’s truthfulness
- Do not reach conclusions
- Consider whether the complaint involves discrimination
- Remain open as to whether an investigation is required
- Take notes and advise the complainant that you are doing so

Another early step will be to identify witnesses and potential evidence and to preserve that evidence.

Also, determine whether the incident is being discussed between other employees. Consider making a statement to the workplace, or meeting with other employees to advise that you are aware of an incident and are taking steps to address it.

The next step will be to determine whether an investigation is necessary and what kind of investigation should be done.

An investigation should be conducted in accordance with the organization's procedures. In that investigation, all witnesses should be interviewed, including the complainant and alleged wrongdoer. In addition, all evidence should be collected and securely maintained.

Should an external investigator be engaged, or can the organization conduct an internal investigation?

An investigation by an external investigator will be costly and potentially prohibitive to smaller organizations. The [OHSA](#) requires that an investigation be conducted but does not mandate the process and does not stipulate that an external investigator be engaged.

If a complaint is minor, it may be appropriate to address it internally. In some situations, it will be necessary to retain an external investigator. In deciding whether to retain an external investigator, consider the context and content of the complaint, who is involved, and the potential consequences of the complaint.

For example, if the accusations have become public, numerous employees are involved, the complaint is against a high-ranking member of the organization, or if the complaint alleges criminal conduct, the organization should engage an external investigator. This list is not exhaustive. Other circumstances may arise in which an external investigator should be engaged.

If a circumstance necessitates an external investigation, organizations may consider options besides a formal investigator. Possibilities include:

- Reporting to Occupational Health and Safety at <https://www.alberta.ca/file-complaint-online.aspx>. Organizations are cautioned to be aware of Occupational Health and Safety's mandate before requesting that Occupational Health and Safety investigates. There may be additional consequences to the organization for any findings by Occupational Health and Safety.
- Reporting to the Law Society of Alberta. This should be done in cases of serious breaches as discussed in this Guide. An organization is encouraged to discuss the situation with the [Equity Ombudsperson](#) or [Practice Advisors](#) when it is considering whether to report to the Law Society. Conversations with the Equity Ombudsperson are confidential and may not be disclosed without the consent of the parties involved ([Law Society Rule 31.2](#)).
- Entering into a reciprocal arrangement with another law firm to do each other's workplace investigations when an external investigator is required.
- Training lawyers within the organization to conduct workplace investigations. This will not obviate the need for an external investigator in all circumstances, but may do so in many.

This list is not exhaustive. Organizations are encouraged to consider possible ways to approach cost-effective external investigations.

Organizations are also encouraged to research insurance coverage for complaints brought under the [OHSA](#). Such coverage may insure against the cost of external investigations.

Are forms of alternative resolution reasonable?

Yes. In addition to formal investigations, an organization should consider including informal resolution in its policies and procedures.

Informal resolution is a voluntary process, requested by either the complainant or respondent before the investigation is concluded and agreed to by both of them. It may include one or a combination of elements. Possibilities include:

- Letter of apology from the respondent
- Impact statement from complainant
- Training programs
- Mediation
- Restorative justice

If an organization incorporates an informal process into its policy, it should develop a clear process to be followed in all cases to ensure the parties are consistent in their understanding of the issues and process. For example, the organization should provide a written notice to each party that discloses:

- The allegations
- The requirements of the informal process, including any circumstances which preclude the parties from resuming a formal complaint arising from the same allegations
- Whether and at what stage the parties can withdraw from the informal process and resume the formal process
- Any consequences resulting from participating in the informal process, including the records that will be maintained and disclosed

If the complaint involves a lawyer, should the matter be reported to the Law Society of Alberta?

Rule 6.3 of the Law Society of Alberta's [Code of Conduct](#) stipulates that a lawyer must not engage in harassment or discrimination.

Rule 7.1-3 requires a lawyer to report to the Law Society of Alberta when a lawyer participates in criminal activity, conduct that raises their competency, or conduct that raises a substantial question about capacity to provide professional services. While harassing or discriminatory conduct may fall within these categories, the scale of the alleged conduct will determine whether the Law Society should be involved.

If a lawyer is the subject of a workplace report of harassment or discrimination, the organization should consider whether that conduct should be reported to the Law Society of Alberta. Whether a report should be made to the Law Society will depend on the facts.

If the allegation is serious and, on initial investigation, appears to be well-founded, a report to the Law Society should be made. Examples include sexual assault, and repeated and obvious sexual harassment of a particular employee or employees.

Less serious allegations would not rise to the level of a complaint to the Law Society, though they would nonetheless require action within the organization. Examples include telling or emailing jokes of a sexual or discriminatory nature, or making inappropriate comments about an employee's clothing.

If a lawyer, student or staff member observes conduct and does not know whether it should be reported to the Law Society, they should contact the [Practice Advisors](#) or [Office of the Equity Ombudsperson](#) to discuss the matter. Conversations with the Equity Ombudsperson are confidential and may not be disclosed without the consent of the parties involved ([Law Society Rule 31.2](#)).

When the organization reports the matter to the Law Society, the complainant should be engaged in discussions about that report. This will ensure that the complainant does not feel disempowered by the process, or that they have lost control over their role in the process.

The Law Society has a [safe reporting process](#) for complaints of harassment or discrimination. Lawyers, students and staff are welcome to contact the [Office of the Equity Ombudsperson](#) at the Law Society to discuss concerns about harassment or discrimination.

What about consensual relationships, are they covered by the respectful workplace policy?

Consensual relationships can be difficult to address for many reasons. For example, where the parties are in a supervisory/subordinate relationship, it may be difficult to determine whether the junior individual is acting freely. Even if the relationship is consensual, other employees may perceive the fact or appearance of favouritism. Also, relationships that begin as consensual may sour and result in risks of retaliation or strained work environments which impact the involved parties and other employees.

Organizations should turn their minds to what their position is on romantic relationships between employees, and specifically, what their position is on romantic relationships between those in a supervisory/subordinate relationship. An appropriate provision can then be included in the organization's respectful workplace policy.

Once the respectful workplace policy is implemented, what is the employer's obligation to review and revise it?

The [OHSA](#) requires employers to review their respectful workplace policies and procedures at least every three years. This should be done to clarify the policies and procedures and to amend them as needed, taking any incidents into consideration. During this review, the employer should determine whether existing preventive steps are effective, or if they need to be amended, and whether further training and clarification should be provided to employees.

A good time to review the policy is after an incident. The employer can consider whether the policy was effective, whether it fell short in any particular respects, and whether additional processes or procedures are needed.