



Harassment and bullying in the workplace

Refers to the following key documents/Legislation

Health and safety at work Act 2015
Harassment Act 1997
Bill of Rights Act 1990
Employment relations act 2000
Human Rights Act 1993

Refers to the following policies

- Health and safety in the Workplace

Document ID: CHRP	Version: 2.0
Facilitated by: Programmes Advisor, Registration office	Issue date: April 2021
Approved by: Midwifery Council	Review date: April 2023

Policy history

Replaced Harassment policy (2008)

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Policy statement

As responsible employer Te Tatau o te Whare Kahu, the Midwifery Council is committed to creating and maintaining a safe and harassment-free workplace.

The Council's position is that no form of harassment or bullying is acceptable.

The Council wishes to ensure procedural fairness for both parties in addressing allegations of harassment. This requires a factual determination based on all the evidence with both parties having the opportunity to be fully heard.

The Council recognizes that false allegations of harassment can have serious effects on innocent people. False allegations will also be addressed as a disciplinary matter.

Third party

The Council is committed to keeping the workplace a safe environment for all its employees. This means that no harassment or bullying will be tolerated from within the Council or from external third party individuals who interact with Council staff.

1 Roles, responsibilities, and accountabilities

The CE is responsible for ensuring that all staff are aware of this policy.

The Harassment and bullying in the workplace policy will be included in Council induction for all new employees.

The CE is responsible for undertaking investigations if a formal complaint of harassment or bullying occurs.

The Chair is responsible for undertaking investigations if a formal complaint of harassment or bullying about the CE occurs.

2 Definitions

Under the Harassment Act 1997, harassment is defined as a pattern of behaviour that is directed against a person, being a pattern of behaviour that includes doing any specified act to the other person on at least two separate occasions within a period of 12 months. This includes any type of conduct which is offensive to the recipient including but not limited to verbal, physical and visual harassment. It also includes retaliation or discrimination against a staff member for reporting harassment.

3 Forms of harassment

3.1 General harassment

General harassment could include any unwanted and unjustified behaviour which another person finds offensive or humiliating and because it is serious or repeated it has a negative effect on the person's employment, job performance or job satisfaction. Other forms of harassment sexual and racial harassment as well as bullying.

3.2 Sexual harassment

An employee is sexually harassed if any other colleague (or a representative of their employer):

- asks the employee for sex, sexual contact or other sexual activity, with a:
- promise (it can be implied) of better treatment in their employment, or
- a threat (it can be implied) either of worse treatment or about current or future job security
- subjects (either directly or indirectly) the employee to behaviour that they don't want or is offensive to them (even if they don't let the employer or the employer's representative know this) and which either is so significant or repeated that it has a negative effect on their employment, job performance or job satisfaction:
- by using (in writing or speaking) sexual language, or
- by using sexual visual material (eg pictures, diagrams, photos, videos, etc), or
- through sexual physical behaviour.

Whether a behaviour was sexual harassment is viewed objectively from the perspective of the complainant.

Examples of sexual harassment include but are not limited to:

- sexually offensive comments
- sexual or smutty jokes
- unwanted comments or teasing about a person's sexual activities or private life
- offensive hand or body gestures
- physical contact such as patting, pinching or touching
- sexual innuendo
- persistent and unwelcome social invitations (or telephone calls or emails) from workmates at work or at home

Any behaviour that is considered a criminal act will be reported to the police

- **Racial harassment**

An employee is racially harassed if their colleague (or a representative of their employer) uses language (written or spoken) or visual material, or physical behaviour that directly or indirectly:

- expresses hostility against, or brings the employee into contempt or ridicule, because of their race, colour, or ethnicity, or nationality and
- this is hurtful or offensive to the employee (even if they don't let the employer or the employer's representative know this) and
- it is significant or repeated and has a negative effect on their employment, job performance or job satisfaction.

The accused does not have to be intending to racially harass the employee, rather it is how it is interpreted by the employee.

Examples of racial harassment include but are not limited to:

- making offensive remarks about a person's race
- copying or making fun of the way a person speaks
- making jokes about a person's race
- calling people by racist names
- deliberately mispronouncing or mocking people's names.

3.3 Bullying

Workplace bullying is repeated, and unreasonable behaviour directed towards a employee or a group of employees. Bullying can be physical, verbal or relational/social such as excluding someone or spreading rumours.

Unreasonable behaviour may include victimising, humiliating, intimidating or threatening a person. Workplace bullying is not one-off or occasional instances of rudeness or misjudgement, but these incidents could escalate and should not be ignored

Bullying is not limited to employers targeting employees, or vice versa. It may happen between co-workers or involve practitioners, clients or visitors.

Bullying is a health risk which may increase the potential for workplace safety risks and can result in serious physical or mental health issues.

Bullying may cause anxiety, depression, stress, fatigue and burnout, which in turn leads to loss of productivity and absences from work.

Some of the signs of workplace bullying include but are not limited to:

- being excluded from team meetings or activities.
- someone consistently taking credit for your work.
- someone spreading false rumours about you.
- swearing or yelling at you.
- isolating the employee.

4 Raising concerns

If an employee considers that the behaviour they are experiencing is harassment or bullying they should gather information of each incident and keep records of:

- the date, time, evidence and where it happened,
- what happened (who was present, what was said, who said what),
- if there were any witnesses, and
- how they felt.

This information should then be brought to the attention of the CE, or if the behaviour involves the CE, the Board Chair. This should be done as soon as possible after the behaviour occurs. If the staff member is not comfortable doing this by themselves, they can ask a colleague or support person to help them.

Enquiries related to harassment or bullying will be discussed in private and kept confidential, unless the employee specifically authorises action. No staff member will be required to make a complaint of harassment or bullying if they choose not to.

5 Investigations

The Council takes all complaints of harassment or bullying seriously. Serious incidents and repeated harassment or bullying after a staff member has been asked to stop certain behaviours will lead to disciplinary action, including the possibility of dismissal.

Depending on the concerns raised and the willingness of the complainant to raise a formal complaint, a combination of informal or formal enquiries, and in some cases 'self-help' solutions, may be suggested.

Allegations of harassment or bullying are considered serious any enquiries leading to potential formal action will include hearing from all parties involved before a decision is reached.

When a formal complaint has been made, interim measures may be necessary during the investigation. This may include physical separation of the complainant and the person whose behaviour is the subject of the complaint. This will be

discussed with the parties before any decision is made, and such action should not be taken to mean that the complaint has been accepted.

After investigation and if the complaint is justified, the Council will, if appropriate, attempt to resolve the complaint by mediation or reconciliation between the complainant and the person whose behaviour or language is the subject of the complaint.

If mediation or reconciliation is not appropriate because of the seriousness or circumstances of the complaint, the Council may take disciplinary action, which will include the possibility of dismissal.

6 Complaints under the Employment relations Act 2000

Harassment or bullying may be grounds for a personal grievance under the Employment Relations Act. The complainant may wish to seek advice on what action might be taken. Employees have 90 days from when the action happened to raise a personal grievance claim under the Act.

7 Complaints under the Human Rights Act 1993

Alternatively, harassment or bullying may be grounds for a personal grievance under the Human Rights Act 1993. It is important to note that a complainant cannot lodge a complaint under both the Employment Relations Act 2000 and the Human Rights Act 1993.

If a complaint involves criminal behaviour (such as physical assault), this behaviour should also be reported to the Police.

8 Compliance

The contents of this policy will be included in the induction material provided to new staff and a signed acknowledgment from staff confirming that they have been informed of the policy and understand it will be obtained.

This policy will be reviewed by all staff at their time of appraisal where they will be asked to reconfirm that they understand it.

Appendix A

Bullying formal complaint form

Informal report of unreasonable behaviour