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Sexual Harassment Policy & Procedure

APPROVED BY: Pathways SouthWest Board of Management

APPROVAL DATE: May 2019

REVIEW DATE: March 2022

VERSION: 5

THIS POLICY & PROCEDURE APPLIES TO: Pathways SouthWest Board of Management, Staff, Students, Volunteers, Consumers, Carers, other Stakeholders and the General Public

Sexual Harassment Policy & Procedure

Policy

This policy is to outline Pathways SouthWest's position on sexual harassment and to document the process which is to be followed should any grievances arise.

This Policy applies to all staff, volunteers, clients and contractors of Pathways SouthWest Inc..

Pathways SouthWest will not tolerate sexual harassment under any circumstances. Responsibility lies with every person to ensure that sexual harassment does not occur. This policy applies to any work-related context, including conferences, work functions, social events and business trips.

Most organisations are subject to both federal and state EO legislation, all of which provide that sexual harassment is unlawful. Pathways SouthWest considers that legislative obligations under the Acts establish minimum standards of behaviour for all employees.

Allegations of criminal conduct or offences eg rape or sexual assault must be referred to the Chief Executive Officer. Such complaints may be treated by the criminal justice system.

Definitions

Sexual harassment means any unwelcome sexual advance, unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, and where that reaction is reasonable in the circumstances. Examples of Sexual Harassment could include but are not limited to:

- intrusive enquires into an employee's private life;
- reference to their sexuality or physical appearance;
- unwanted body touching or physically molesting a person;
- standing too close;
- excessively lengthy handshakes;
- unwanted brushing against another's body;
- indecent exposure;
- sexual assault;
- obscene, suggestive or offensive communications, including electronic mail;

- pornographic or offensive posters, handouts or screensavers;
- sexual jokes or anecdotes;
- leering or staring;
- unwanted sexual compliments or excessive flirting.

Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect.

Procedure

A breach of this policy will result in disciplinary action. Depending upon the severity of the case, consequences may include apology, counselling, demotion, dismissal, or other forms of disciplinary action deemed appropriate, including termination of employment.

Pathways SouthWest strongly encourages any employee who feels they have been sexually harassed to take action, preferably by making it clear that such behaviour is unwelcome and offensive; alternatively to follow the procedures for reporting the behaviour.

Any reports of sexual harassment will be treated seriously and promptly with sensitivity and complete confidentiality.

Complainants have the right to determine how to have a complaint treated, have support or representation throughout the process, and the option to discontinue a complaint at any stage of the process.

The alleged harasser also has the right to have support or representation during any investigation, as well as the right to respond fully to any formal allegations made. There will be no presumptions of guilt and no determination made until a full investigation has been completed.

Nobody will be treated unfairly as a result of rejecting unwanted advances. Disciplinary action may be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment or against any employee or volunteer who has been alleged to be a harasser.

The right to seek assistance of the relevant tribunal or legislative body is reserved for everyone to assist them in the resolution of any concerns.

Managers who fail to take appropriate corrective action when aware of harassment of a person will be subject to disciplinary action.

Responsibility

It is **Management's** responsibility to ensure that:

- they understand and are committed to the rights and entitlements of all employees to attend work and perform their duties, without fear of being sexually harassed in any form;
- all reasonable steps are made to eliminate sexual harassment;
- all employees and volunteers are regularly made aware of their obligations in relation to providing a workplace free from sexual harassment;
- they provide an environment which discourages harassment and victimisation and set an example by their own behaviour;
- they treat all complaints seriously and confidentially;
- they take immediate and appropriate corrective action if they become aware of any offensive action.

It is the **Chief Executive Officer** responsibility to ensure that:

- guidance and education is provided to employees, where requested and/or appropriate, and implements subsequent decisions relating to sexual harassment;
- Managers are aware of their obligations and responsibilities in relation to sexual harassment, and the rights and entitlements of their employees and volunteers;
- ongoing support and guidance is provided to all employees in relation to the prevention of sexual harassment.

Complaint Process

Sexual harassment can occur at any level of the organisation, can be experienced by both men and women and may involve a co-worker, volunteer, manager, service provider or service users. Lack of intent is no defence in sexual harassment cases.

Anyone who believes they are the subject of sexual harassment should take firm, positive and prompt action.

If deemed appropriate, an individual should make the perceived harasser(s) aware that they find their behaviour offensive, unwelcome, unacceptable, and that it needs to stop immediately.

If the behaviour continues, or if the individual feels unable to speak to the person(s) directly, they should contact their line Manager. Alternatively they may contact the Chief Executive Officer or another Manager they feel comfortable with. The Manager will provide support; ascertain the nature of the complaint and the wishes of the complainant. The complainant can choose either a formal or an informal investigation process.

Informal Intervention

The Manager will explain the person's rights and responsibilities under Organisational policy and procedures, Equal Opportunity and anti-discrimination legislation. Informal Intervention may be carried out through a process of either mediation or conciliation. During Informal Intervention the respondent will be made aware of the allegations being made against them and given the right to respond.

This procedure will be complete when the alleged harasser respects the individual's request to cease unwanted and unwelcome behaviour. If this does not occur, the formal procedure should be followed.

Formal Complaints Procedure

Proceeding with a formal complaint requires the consent of the person raising the complaint, particularly as witnesses or senior Management may become involved. The formal procedure will be co-ordinated by the Manager, who will be guided by the Chief Executive Officer or President of Board.. The Chief Executive Officer does not need to know the specific details of the sexual harassment case to provide this guidance.

The Manager should clarify the complaint and obtain a step by step account of the incident. In serious cases, more than one interview may be necessary. The Manager will document all such interviews accurately and avoid irrelevant information. Relevant information will include parties involved, timing, location, and nature of conduct complained against.

Records are to be kept and filed in a confidential and secure place in the Chief Executive Officer's locked filing cabinet. These records should be kept for a period of seven years. Under no circumstances will records be placed on the complainant's personnel file.

The Manager will organise an investigation, which in most cases may involve but is not be limited to:

- a private interview to ascertain the facts and what the complainant expects to happen as a result of making the complaint;
- an interview with the alleged harasser(s) to ascertain their defence;
- interviews with other employees, volunteers or individuals who may be able to assist;
- interviews with other Manager(s);
- examination of any relevant documents;
- determination of previous behaviours or issues.

The Manager should forward all evidence to the person conducting the investigation. Such evidence may include:

- supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;
- Manager's reports and personnel records (e.g. unexplained request for transfer or shift changes, sudden increase in sick leave);
- complaints or information provided by other employers or volunteers about the behaviour of the alleged harasser;
- records kept by the person claiming to have been harassed;
- information on whether the evidence was presented by the parties in a credible and consistent manner;
- information on the absence of evidence where it should logically exist.

On completion of the investigation the complainant and the Manager will determine a course of action to be taken. In most cases this will involve guidance from the Chief Executive Officer.

Possible course of actions may include, but not be limited to, any combination of the following:

- counselling;
- disciplinary action against the harasser (eg demotion, suspension, probation or dismissal);
- official warnings that are noted in the harasser's personnel file;
- disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious;
- formal apologies and undertaking that the behaviour will cease;
- conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution;
- reimbursing any costs associated with the harassment;
- re-crediting any leave taken as a result of the harassment.

Outcomes will depend upon factors such as:

- the severity and frequency of the harassment;
- the weight of the evidence;
- the wishes of the person who was harassed;
- whether the harasser could have been expected to know that such behaviour was a breach of policy;
- the level of contrition;
- whether there have been any prior incidents or warnings.

The Manager will advise the complainant and respondent of the outcome.

If the investigation determines that sexual harassment has occurred, the Manager must forward a summary of the complaint and the action taken to the Chief Executive Officer. A copy may be placed in the respondent's personnel file by the Chief Executive Officer, in accordance with the Staff Disciplinary and Termination Policy and Procedure.

If there is insufficient proof to decide whether or not the harassment occurred the Manager will:

- remind those involved of expected standards of conduct;
- conduct further training and awareness raising sessions for staff and volunteers;
- monitor the situation carefully.

The Manager will monitor the outcome to ensure that appropriate behaviours are displayed at all times and that neither party has been victimised. This may involve follow-up interviews. If there has been any substantiated victimisation, disciplinary procedures will be followed.

Procedures for Dealing with Criminal Conduct

Some forms of severe sexual harassment (e.g. sexual assault, stalking, indecent exposure, physical molestation, obscene phone calls) may constitute criminal conduct. While Pathways is committed to treat most sexual harassment complaints at an organisation level as far as possible, any criminal conduct is not suited to internal resolution. Such complaints may be treated by the criminal justice system.

In relation to alleged criminal offences such as rape or sexual assault, the matter must be referred to the Chief Executive Officer. Employees/volunteers should be advised of the option of police support or intervention. It is not the obligation or duty of the organisation to report such matters to the police on behalf of the complainant.

Related Documents

Equal Opportunity Policy & Procedure (EO)
Staff Disciplinary and Termination Policy & Procedure
Staff Code of Conduct
Statement of Rights and Responsibilities