

SEXUAL HARRASMENT

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Drafted by		Approved by C of M on	Oct 2009
Responsible person	Chairman	Scheduled review date	

Introduction

EMBSI recognises it is the right of every employee and volunteers to be able to attend work and to perform their duties without being subjected to any form of sexual harassment.

Equally it is the obligation and responsibility of every employee and volunteers to ensure that the workplace is free from sexual harassment.

EMBSI is fully committed to its obligations to eliminate sexual harassment in the workplace and in customer relations.

Purpose

The purpose of this document is to outline EMBSI's position on sexual harassment and to document the process which is to be followed should any grievances arise.

Authorisation

EMBSI

Policy

EMBSI will not tolerate sexual harassment under any circumstances. Responsibility lies with all Operations Managers, Supervisors, employees and volunteers to ensure that Sexual Harassment does not occur.

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

The principles set out in this policy are intended to apply to any work-related context, including conferences, work functions, social events and business trips.

No employee or volunteer at any level should subject any other employee, volunteer, customer or visitor to any form of sexual harassment.

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

SEXUAL HARASSMENT

EMBSI 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, or in addition, 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.

No employee or volunteer 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.

All employees and volunteers reserve the right to seek the assistance of the relevant tribunal or legislative body to assist them in the resolution of any concerns.

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

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.

Responsibility

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

- they understand and are committed to the rights and entitlements of all employees and volunteers 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.
- guidance and education is provided, where requested and/or appropriate, to cases and subsequent decisions relating to sexual harassment;
- Operations 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 and volunteers in relation to the prevention of sexual harassment.

Procedures

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, Supervisor, Operations Manager, service provider, client or customer. Lack of intent is no defence in sexual harassment cases.

Employees or volunteers who believe they are the subject of sexual harassment should take firm, positive and prompt action.

If deemed appropriate, the employee or volunteer 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 employee or volunteer feels unable to speak to the person(s) directly, they should contact their Supervisor/Operations Manager. Alternatively an employee or volunteer may contact the Committee of Management or another Operations Manager they feel comfortable with. The Operations Manager will provide support; ascertain the nature of the complaint and the wishes of the complainant. The complainant does not have to request a full formal investigation if they will be satisfied by less formal treatment of the issue.

Informal Intervention

The Operations Manager will explain the employee or volunteer's rights and responsibilities under organisational policy, procedures and EEO/anti-discrimination legislation.

Informal Intervention may be done 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 complaining, particularly as witnesses or senior Management may become involved. The formal procedure will be co-ordinated by either the Operations Operations Manager, who will be guided by the appropriate legislation.

The Operations 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 Operations 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.

Sealed records are to be kept and filed in a confidential and secure place. 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 Operations 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 Supervisor(s) or Manager(s);
- examination of any relevant documents;
- determination of previous behaviours or issues.

The Operations 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;
- Supervisor'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 Operations Manager will determine a course of action to be taken. In most cases this will involve guidance from the relevant legislation.

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

- counselling;
- disciplinary action against the harasser (eg demotion, transfer, 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 in accordance with the Community Justice Centres Act 1983;
- 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 Operations Manager will advise all relevant parties of the outcome.

If the investigation determines that sexual harassment has occurred, the Manager must record all details and file securely. A copy may be placed in the respondent's personnel file.

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

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

The Operations Manager will monitor the outcome to ensure that the offensive behaviour has ceased, 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 EMBSI is committed to treat most sexual harassment complaints at a organisational level as far as possible, this type of conduct is not suited to internal resolution. Such complaints should 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 Human Resources Department. 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

Discrimination and Harassment Policy