Directive 1010: Respectful and Harassment Free Workplace

### RESPECTFUL AND HARASSMENT FREE WORKPLACE

### **PURPOSE:**

1. The Government of Nunavut (GN) is committed to the Inuit traditional values which emphasize the need for respectful words, actions, and attitudes towards other people at all times and under all circumstances. Inuit values are the foundation of societal health and wellbeing, and this extends to the workplace. An understanding of and abiding by the following Inuit Qaujimajatuqangit (IQ) principles are fundamental to workplace wellbeing, productivity, and IQ in our government:

Harassment in any form is unacceptable behaviour and is not tolerated by the GN.

# **PRINCIPLES**

2. The Government of Nunavut (GN) is committed to the value of Ujjiqsuittiarniq, where public service employees must perform their work in a courteous and conscientious manner and be respectful of the needs and values of co-workers. The GN strives to create an environment where Saimaniup Pimmariuninga (importance of harmony) in the workplace is emphasized through Ujjiqsuittiarniq and by committing to the guiding principles of:

ለል⊂<sup>ኈ</sup>∩∩Ր⊲ኄ-<sup>ኈ</sup>Ր ፟ σ<sup>ኈ</sup>- Piviliqtitigiaqannginniq: to be conscientious of one's own verbal expressions;

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▶ኄ᠕ጔՐ⊲ኄ™ՐዮԺኈ- **Uqapilugiaqannginniq:** refrain from speaking maliciously under any circumstances;

ΓC▶∩ ቴሌ⊲ቴ ՟Ր ՟σ ՟ • Mitautiqariaqannginniq: refrain from and be vigilant against any form of intimidation, humiliation, undermining, offending, hurting or belittling of a person; and

ՎԿ\_¬Րութեւ ՎԳ Գարգ - Ammuttirijariaqannginniq: discourage all behaviour that is belittling, humiliating, offensive, hurtful, or rude.



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All employees are entitled to perform their duties in a safe, respectful, and harassmentfree work environment.

All employees share in the collective responsibility for a safe, respectful, and harassment-free work environment, including bystanders who witness disrespectful and harassing behaviours.

All individuals are entitled to a fair, confidential and expeditious resolution process for complaints under this Directive.

The principles of fairness, integrity, and impartiality will be applied in any resolution and/or investigation of situations that may arise under this Directive to ensure that the rights, responsibilities, and obligations of all individuals are respected.

The most effective way to maintain a safe and respectful workplace is to prevent harassment from happening in the first place. Informal and formal processes are available to resolve workplace harassment.

Employees and managers are encouraged to resolve workplace harassment through open communication and co-operation. Wherever possible, managers should strive to resolve complaints in an informal manner. This could include dealing with the issue one on one with an employee or facilitated discussions.

### **APPLICATION**

 This Directive applies to all employees including Senior Managers and Executives of the GN and public bodies. Participation including assistance and cooperation is mandatory for all parties named in this Directive.

Behaviour that takes place outside the workplace will typically not fall within this Directive. However, this Directive will apply to harassment that occurs outside the workplace, where the harassment is likely to effect relationships within the workplace.

This Directive does not limit GN employees' rights to pursue other remedies. These may include private legal remedies, grievances, or complaints under applicable legislation. The GN will not be responsible for the provision of legal services to employees who pursue other remedies.

Bargaining unit employees should also consult their respective collective agreements.



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#### **DEFINITIONS**

- 4. **Alternative Dispute Resolution (ADR) -** processes that usually involve a neutral third-party, whose job it is to provide the parties to a dispute with assistance aimed at reaching resolution through facilitated problem-solving or mediation. This process is non-disciplinary.
- 5. **Bystander -** an individual who is not the subject of harassment but who has witnessed or is otherwise aware of behaviour that contravenes this Directive.
- 6. **Complainant -** an individual who believes they have experienced harassment and makes a complaint.
- 7. **Complaint** a formal, written complaint against an individual or group of individuals which the complainant alleges has engaged in behaviour which constitutes a violation of this Directive.
- 8. **Deputy Head -** a deputy minister of a department, the deputy head, chief executive officer or president of a public body.
- 9. **Facilitated Discussion -** a problem solving session led by the manager, in which both parties are directed to participate, and from which the manager may provide direction on future behaviour.
- 10. **Investigator -** a designated person with investigation training and/or experience who has been authorized by a Deputy Head to investigate a complaint.
- 11. **Manager -** an employee who operates in a supervisory or managerial capacity, regardless of employment title.
- 12. **Prima Facie** allegations, which, if true, would mean that harassment has occurred.
- 13. **Respondent** the person or persons against whom a complaint has been made.
- 14. **Workplace Harassment -** means any behaviour that satisfies one or more of the following definitions as defined in this Directive.
  - (a) **Abuse of Authority -** occurs when an employee improperly uses the power and authority inherent in their managerial position to endanger an employee's job,



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undermine the performance of that job, threaten the economic livelihood of the employee, or in any way interferes with or influences the career of the employee. It does not include the legitimate and proper exercise of a manager's responsibilities including disciplinary measures, distribution of work assignments, training, staffing decisions or performance evaluations.

- (b) **Harassment** unwanted conduct including through email and/or social media, that can be reasonably considered to have the purpose or effect of violating an individual's dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual based on one or more prohibited grounds of discrimination listed in the Nunavut *Human Rights Act* that is known or ought reasonably to be known to be unwelcome, sexual, and/or personal harassment. The prohibited grounds set out in the Act are: race, colour, creed, religion, sex, sexual orientation, gender and gender identity, age, disability, ancestry, ethnic origin, place of origin, citizenship, marital status, family status, pregnancy, lawful source of income, and a conviction for which a pardon has been granted.
- (c) **Personal Harassment -** unwanted conduct including through email and/or social media, that can be reasonably considered to have the purpose or effect of violating an individual's dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment. Personal harassment does not have to be based on a prohibited ground of discrimination listed in the *Human Rights Act*.
- (d) **Sexual Harassment** unwanted sexual conduct including through email and/or social media, that can be reasonably considered to have the purpose or effect of violating an individual's dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual, whether on a one-time basis or in a series of incidents; or that an individual might reasonably perceive as placing a condition of a sexual nature on their employment or on an opportunity for training or promotion.

#### **PROVISIONS**

15. Complaint Resolution – Informal Process

### a. Direct Response

i. Where safe and reasonable to do so, an employee who believes that they are subject to workplace harassment should, as a first (direct) response, advise the respondent that the behaviour is offensive and request that the behaviour stop.



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ii. Where circumstances do not permit this course of action or where a direct response has not prevented a recurrence of the workplace harassment, the employee should inform their manager, in writing. The manager will review the situation and, where necessary, take appropriate action. If the respondent is the manager, the employee should inform the next level of management.

### b. Facilitated Discussion

Managers may choose to use facilitated discussion as a resolution tool.

## c. Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is a process that allows the parties involved to discuss the behaviours, reactions and options for resolution in a nonjudgmental way. Formal ADR requires the agreement of both parties and is facilitated by a third party. Formal ADR can occur at any time during the process when agreed to by both parties.

## 16. Complaint Resolution - Formal Process

- a. Written Complaint (Appendix A)
  - i. A formal written complaint shall be made to the complainant's Deputy Head.

    The complaint, at a minimum, will specify the details of the allegation, including:
    - Name of the respondent;
    - A description of the action/circumstances of the complaint;
    - Date(s) of incident(s); and
    - Name of witnesses, if any.
  - ii. If the complaint is against a Deputy Head, it can be filed with the Deputy Minister of Executive and Intergovernmental Affairs. If the complaint is made against the Deputy Minister of Executive and Intergovernmental Affairs, it can be filed with the Deputy Minister of Human Resources.
  - iii. Deputy Heads will provide written acknowledgment of receipt of a complaint.
  - iv. Deputy Heads will send formal written complaints to the Deputy Minister of Human Resources for an assessment of whether the complaint fits within the mandate of this Directive and for a determination of whether the allegations, if true, would constitute harassment under the Directive.
  - v. If the allegations, if proven, <u>would not</u> constitute harassment, then the matter may be referred to another process or may be at an end.
  - vi. If the allegations, if true, <u>would</u> constitute harassment, the complaint may be referred to an investigator, who will investigate to determine whether the allegations are true.
  - vii. Deputy Heads will advise the complainant and the respondent, separately, in writing, of the result of the assessment and next steps, if necessary.



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viii. Deputy Heads may take interim measures, such as separating employees or restricting contact pending the investigation of a formal complaint. These measures are not disciplinary and do not confirm the validity of the complaint.

## b. Investigation

- If the Deputy Head of Human Resources determines that the complaint contains allegations which, if true, would constitute harassment, the responsible Deputy Head will authorize an investigation as soon as possible.
- ii. The investigator may interview the complainant, respondent, and any witnesses, to determine whether, on a balance of probabilities, the allegations are true.
- iii. The investigator will provide a written report to the Deputy Head that includes findings of fact.

## c. Outcome of an Investigation

- Deputy Heads will consider investigation findings and determine what appropriate action should be taken. Parties involved will be notified as required.
- ii. Where workplace harassment is found to have occurred, possible actions include, but are not limited to:
  - education and training;
  - written reprimand;
  - disciplinary suspension;
  - dismissal:
  - other remedial measures applicable to specific circumstances.
- iii. Deputy Heads will monitor the situation following resolution to ensure that recommendations are followed.

### d. Retaliation

Retaliation, reprisals, or threats as a result of filing a complaint or being party to the investigation of a complaint are subject to disciplinary measures including, but not limited to:

- warning or written reprimand;
- transfer or demotion, or both;
- suspension:
- dismissal.



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## e. Fabricated, Frivolous, or Vexatious Complaints

Where false information has been provided, the person responsible will be subject to disciplinary measures including, but not limited to:

- warning or written reprimand;
- transfer or demotion, or both;
- suspension;
- dismissal.

## f. Written Complaint Withdrawal (Appendix B)

A complainant may withdraw a complaint by submitting a "Harassment Complaint Withdrawal Request Form" (Appendix B) to the complainant's Deputy Head. The withdrawal request should specify the reason for withdrawal.

- Name of the respondent;
- Detailed explanation of why the complaint is being withdrawn.

## 17. Bystander Intervention

Individuals who witness behaviour that contravenes this Directive have a responsibility to take appropriate action and report the behaviour to someone in authority. A bystander who reports behaviour that contravenes this Directive will not be considered as a complainant. However, the individual may be interviewed as a witness if there is an investigation into the concerns raised.

### 18. Anonymous Complaints

Anonymous personal complaints will not be addressed under this Directive, but may be subject to a workplace investigation at the discretion of the GN. Anonymity cannot be granted when a complaint is filed as the Respondent has the right to know who made the complaint and to respond to any allegations that have been made against the Respondent.

### 19. Confidentiality and Records Management

- a. All matters and material relating to a workplace harassment complaint are to be treated with the utmost confidentiality by all participants involved and are subject to a strict need-to-know basis. Any employee who fails to comply may be subject to disciplinary measures.
- b. Information provided during an investigation may be disclosed in the event of an arbitration; a court proceeding, or an information request under the *Access to Information and Protection of Privacy Act*.



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- c. The Human Resources Department will retain the investigation report and related documentation in a secure location in accordance with the records retention schedule of the Department.
- d. No reference to a complaint or investigation will be placed on an employee's personnel file unless formal disciplinary action has been implemented.
- e. Investigation files may be re-opened where:
  - new and relevant information is provided to the investigators or the Deputy Head that was not available to the investigators at the time of the original investigation; or
  - retaliation is alleged to have occurred; or
  - a similar allegation is made against the respondent.

## 20. Reporting

The Human Resources Department is responsible for monitoring and reporting on the implementation of this Directive within the GN.

## **ROLES AND RESPONSIBILITIES**

#### 21.General

- a. Ministers:
  - GN Ministers are accountable for the implementation of this Directive in their Departments and Public Bodies.
- b. Deputy Heads:
  - GN Deputy Heads are accountable for the administration and implementation of this Directive in their Departments and Public Bodies.

## 22. Specific

- a. Human Resources Department
  - Makes information available on prevention and resolution of workplace harassment.
  - ii. Provides support, direction, and advice on the mandate of this Directive and the process for filing a complaint.
  - iii. Receives and assesses written complaints to determine if there is prima facie case of workplace harassment.



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- iv. Leads formal investigations or mediation resulting from formal written complaints.
- v. Arranges for experienced persons to lead formal investigations or mediations resulting from formal written complaints.
- vi. Promotes timely resolution of mediations or investigations.

## b. Deputy Heads

- i. Establish and provide a work environment that is free from all types of workplace harassment.
- ii. Ensure information on prevention and resolution of workplace harassment is available to all employees.
- iii. Ensure that all employees, volunteers, and contractors are made aware of this Directive.
- iv. Take appropriate action, as soon as possible, to resolve any complaints or claims brought to their attention.
- v. Ensure that all parties treat complaints and the investigation or mediation process as confidential.
- vi. Provide training on workplace harassment to all employees and managers.
- vii. Communicate information about the Harassment Free Workplace to all new employees.

### c. Managers

- i. Promote and provide a work environment that is free from all types of workplace harassment.
- ii. Ensure that all employees under their supervision are aware of this Directive.
- iii. Take appropriate action, as soon as possible, to resolve any complaints or claims brought to their attention.
- iv. Monitor situations where complaints have been substantiated to ensure corrective measures have been successful.

## d. All Employees

- i. Be aware of and comply with this Directive.
- ii. Treat all persons in the workplace with dignity and respect.



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- iii. Refrain from inappropriate behaviour or objectionable conduct that may constitute workplace harassment.
- iv. Cooperate with formal investigations, facilitated discussions and mediations conducted under this Directive.
- v. Treat complaints and the investigation or mediation process as confidential.

### **RECOURSE**

### 23. Recourse

- a. Filing a complaint pursuant to this directive does not prevent employees from filing a complaint under the *Nunavut Human Rights Act* or a grievance under the applicable grievance procedure. The same is true once the formal resolution process has been completed pursuant to this directive.
- b. A member of the bargaining unit may file a grievance under their collective agreement or file a complaint pursuant to the *Nunavut Human Rights Act*.
- c. A management or excluded employee may proceed under the grievance procedure pursuant to the *Public Service Act* and Regulations or file a complaint pursuant to the *Nunavut Human Rights Act*.

### PREROGATIVE OF EXECUTIVE COUNCIL

24. Nothing in this directive shall in any way be construed to limit the prerogative of Executive Council to make decisions or take action respecting the harassment free workplace directive of the GN, outside the provisions of this directive.

#### **AUTHORITIES AND REFERENCES**

- 25. Public Service Act and Regulations
- 26. Canadian Human Rights Act
- 27. Nunavut Human Rights Act
- 28. Access to Information and Protection of Privacy Act
- 29. Collective Agreement with the Nunavut Employees Union



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- 30. Collective Agreement with the Nunavut Teachers Association
- 31. <u>Senior Managers' Handbook</u>
- 32. <u>Excluded Employees' Handbook</u>
- 33. Harassment Free Workplace Policy
- 34. Human Resources Manual

  <u>Directive 701 Grievances and Complaints</u>

  <u>Directive 801 Employee Discipline</u>

  <u>Directive 1018 –Workplace Conflict Management</u>

  Directive 1609 Indemnification

## CONTACT

35. For further information or clarification, please contact:

Director, Employee Relations and Job Evaluation Department of Human Resources Iqaluit, Nunavut 867-975-6211