

Notes to Amendments to Working Document

Clause 2.0: Scope

Guided Review of the Clause

It was suggested that in instances where occupational health and safety regulations/legislation did not exist that this policy may be far reaching. The policy needed to be placed in the context of existing legislative and complimentary policy framework to maximise its effectiveness.

Queries

It was suggested that in Clause 2.4, where it says, “**any work-related setting outside the workplace**”, that work related setting should be clearly defined as in other sections of the policy. The proposed amendment would be

“any location or place where an employee is required to conduct the business of the employer or any location or place which that person sent by the employer for the purpose of receiving training or attending a conference on behalf of the employer”

Recommendations

- Expand the definition of the “work-related” in 2.4
- Include potential employees and former employees in the scope with clearly defined parameters. The inclusion of former employees is to ensure that dismissal does not terminate and investigation.

Amended Clause

2. Scope

2.1. This Policy shall apply to all employees in the establishment, including owners, boards, and managers.

2.2. The Policy shall apply to agents, guest, customers, vendors and all third parties who encounter employees in the course of their duties.

2.3. Third parties include persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants

2.4. The Policy applies to conduct in the workplace and in any work-related setting outside the workplace, such as

- 2.4.1. authorised social events, and business meetings or
- 2.4.2. any location or place where an employee is required to conduct the business of the employer, or any location or place which that person sent by the employer for the purpose of receiving training, or attending a conference on behalf of the employer or
- 2.4.3. business trips, tours and establishment-sponsored or authorized social events and other functions; places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; and in employer-provided accommodation¹
- 2.5. This policy will also apply to work-related communications, including those enabled by information and communication technologies.
- 2.6. This policy will also apply to former employees in instances where such employees are subject to investigation, have filed a complaint or have reported an incident and are active parties to ongoing investigations, regardless of duration of termination or separation from the establishment.
- 2.7. The application of this policy and its attendant procedures will be monitored in line with changes in the Collective Agreement of the Recognised Majority Union and will be reviewed and deliberated as a part of the collective bargaining process as and when necessary. (unionised)

Clause 8: Reporting GBV incidents

Guided Review of the Clause

Some participants considered that the reporting form should be standardized. There was a strong view that the persons identified as exceptions should be defined in the Clause. Perhaps the Clause could include a provision for the development of Terms of Reference for the investigating committee whether that committee is formally constituted or ad hoc. It is evident that this Clause will have to define reporting hierarchy based on the application to the specific organisation, given that different organisations have different sizes, structures and cultures. The deliberations suggest that there is a need to ensure training for the staff where there is a focus on sensitization on this issue of reporting. This training is also necessary as stigma and shaming can prove to be barriers to reporting GBV. Additionally, the participants shared their experiences of perceived challenges around confidentiality of information within reports and there was a concern about the intimidation of victims/survivors and witnesses. In some cases, participants felt that notwithstanding the reporting structure, the actual investigation would have more credibility if the investigators were external. It was also agreed that non-disclosures should be signed by all parties involved, as well as clear disciplinary action for breach of confidentiality.

¹ C190 - Violence and Harassment Convention, 2019 (No. 190)

Amended Clause

8. Reporting GBV incidents

- 8.1. Complaints may be submitted in writing or verbally; may be made in person, by email, or by telephone.
- 8.2. An employee who believes that she or he has been subject to Gender-based Violence and Harassment in the workplace shall have the option of reporting the matter to:
 - 8.2.1. A designated committee established by this policy comprising of person or persons trained and identified as GBV respondents with clearly defined Terms of Reference
 - 8.2.2. A trusted manager or supervisor
 - 8.2.3. The Human Resources Department
 - 8.2.4. The Health and Safety representative or committee
 - 8.2.5. Their trade union (unionised)
 - 8.2.6. Any individual in whom the survivor has an expressed degree of confidence
- 8.3. Every complaint will be investigated and resolved as expeditiously as possible, having regard to such things as the nature of the complaint, the number of witnesses and whether the investigation should be conducted internally or externally.
- 8.4. Where the conduct complained of is extremely serious, or where the conduct is alleged to have been made by senior management, an external and independent investigation will be preferred. In the event that there were witnesses to the complained about behaviour, witnesses will be interviewed.
- 8.5. Every effort will be made to prevent disclosure of confidential and/or sensitive information, while at the same time ensuring that each incident is carefully and completely investigated. Including:
 - 8.5.1. protect the privacy of those individuals involved and confidentiality, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused;
 - 8.5.2. All parties to the investigation, including administrative support shall be subject to non-disclosure and disciplinary action for breach of confidentiality

- 8.6. Survivors must be informed of any exceptions to confidentiality. That is, all persons who must also be informed of the incident, as a matter of company protocol or obligations of existing national legislation, as in the case of a criminal matter.
- 8.7. In the specific case where a minor is involved, regardless of the circumstances which led to the minor being present at the work place:
- 8.7.1. The minor's guardian shall have the authority to file the report on behalf of the minor
- 8.7.2. Any witness or whistle-blower shall similarly have the authority to file a report
- 8.7.3. The internal investigation proceedings shall not prevent the minor's guardian from filing a complaint with external authorities
- 8.8. Any party interviewed during an investigation will be reminded in writing prior to their interview of the need to keep the investigation and their evidence confidential
- 8.9. All investigation shall be guided by the fundamental principles of natural justice, including treatment of the accused as innocent until proven guilty.
- 8.10. All investigations of GBV shall be consistent with the terms of any collective agreement in place. (Unionised)

Clause 9: Special Leave

Guided Review of the Clause

Special leave – the Clause should include basic criteria to access including evaluation by independent professional

There was no explicit position on whether the leave should be paid or not paid, but there was the possibility to have alternative work arrangements made, including transfers or work from home

Amended Clause

9. Special Leave

- 9.1. This policy shall provide for a special category of leave which may arise for a victim or survivor of GBV for a fixed period of time at the discretion of the employer using the incident report to justify the approved leave (non-unionised)
- 9.2. This policy shall support the provision of a clause in the Collective Agreement which identifies specific circumstances under which special leave may be granted for a survivor or victim of GBV, including considerations for duration and wages (unionised)

9.3. This leave shall be for a predetermined period with the possibility for extensions

9.4. The application of such leave may include:

9.4.1. Transfer to a new location

9.4.2. Facilitation of remote work for the survivor

9.5. The employer shall reserve the right to request an independent evaluation of the condition of the survivor where applicable prior to approval and application of Special Leave

Clause 10:1-3 Confidentiality & 11: Data Protection

Guided Review of the Clause

Clause 10

It was expressed that in Clause 10.3 which speaks to the survivor or victim of GBV giving consent to disclosure or report, may have exceptions. This also brought up the discussion of minors in the workplace who are not of the age to give consent; be it volunteers, interns, or employers/employees who have children that visit the workplace etc. Therefore, it was asked, what provisions can be put into place to safeguard minors and grant guardians the ability to report incidents of GBV in the workplace.

Participants expressed concern that while confidentiality might be adequately defined and covered in the document, their current workplace experiences suggested that the policy by itself may not represent the required level of protection.

A question was raised regarding the differentiation in process between unionised and non-unionised companies. The rationale was clarified given that the Collective Agreement would supersede any new policy and therefore the policy must be worded relative to the CA. No such provision exists in a non- unionised environment.

Clause 11

Participants raised a concern that many of their organisations did not have the resources to guarantee data protection.

Amended Clause

10. Confidentiality

- 10.1. Incidents reported under this policy, either formally or informally, will be treated in confidence (non-unionised)
- 10.2. Incidents reported under this policy will be subject the employee data protection provision clause in the Collective Agreement (Unionised)
- 10.3. Disclosure of incident details can only occur with the expressed consent of the survivor or victim, and having given due regard to the right of the workers

10.3.1. To be made aware of all implications of such disclosure and

10.3.2. To be made aware of all persons to whom such disclosure will be made

10.3.3. Except in instances involving minors where the responsibility for authorising disclosure will be vested in the guardian

11. Data Protection

It is important that Establishments assess their existing data security and develop a customized data protection protocol for GBV files. This is a vital part of ensuring confidentiality for the survivor and eliminating the risk of exposing them to further violence by parties who may gain access to information about their case, including what they have said and about whom (e.g., perpetrators). Therefore:

- 10.4. All staff employees in contact with the data must have a clear understanding of the sensitive nature of the data, and the importance of data confidentiality and security.
- 10.5. The Establishment should conduct a detailed risk assessment with employees to identify security risks specific to their context, including identification of implications in the event of breaches.
- 10.6. All data and files associated with GBV incidents should be isolated from regular employee files with restricted access as identified in this policy.