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GOVERNMENT OF YUKON

Policy 3.47

GENERAL ADMINISTRATION MANUAL

VOLUME 3: HUMAN RESOURCE POLICIES

TITLE: RESPECTFUL WORKPLACE

EFFECTIVE: October 27, 2015

PREAMBLE

The goal of this policy is to promote a respectful, healthy and well-functioning workplace. It was developed in consultation with the Yukon Teachers' Association and the Yukon Employees' Union, and reflects a spirit of co-operation and a willingness to work in partnership to achieve this goal. Underlying this policy is the expectation that all government employees, whatever their position or function, have a responsibility to make sure that every other employee receives the respect they deserve and need.

This policy also affirms the responsibility of deputy heads to protect employees from disrespectful conduct in the workplace. This responsibility stems from the legal obligation of Yukon employers to address and take care to prevent discriminatory conduct in their workplaces (as required by s.35 of the *Yukon Human Rights Act*) and to ensure their workplaces are safe and without risk to health (as required by s.3 of the *Yukon Occupational Health and Safety Act*).

1 SCOPE

1.1 Authority

This policy was issued under the authority of Cabinet Minute #94-40 (October 27, 1994) and amended under the authority of Deputy Ministers' Review Committee Minutes #08-11 (June 17, 2008), #13-05 (April 16, 2013) and #15-11 (October 27, 2015). It also forms part of the collective agreements with the YTA and the YEU.

1.2 Application

1.2.1 The policy applies to all persons hired under the Yukon *Public Service Act* and Yukon *Education Act*.

1.2.2 Procedures for this policy are available from the Public Service Commission (PSC).

1.3 Purpose

1.3.1 The purpose of this policy is to:

- (a) promote a respectful, healthy and well-functioning workplace;
- (b) address disrespectful conduct in the workplace;
- (c) affirm employee and manager responsibility and accountability for workplace conduct and relationships; and
- (d) build organizational capacity to manage conflict in a constructive and respectful way.

1.3.2 This policy and associated procedures outline the Government of Yukon's system to pursue these purposes, and set out the processes for managing conflict and addressing disrespectful conduct in the workplace.

1.4 Principles

1.4.1 The Government of Yukon strives to create a respectful and inclusive workplace that values and appreciates the diversity and contributions of all its employees.

1.4.2 A respectful workplace enhances the well-being of employees, improves job performance and inspires collaboration, all of which result in better service to the public.

1.4.3 All employees in the Yukon public service share in the collective responsibility to promote a respectful workplace, address incidents of disrespectful conduct when they occur, and participate in processes under this policy.

1.4.4 All employees, including deputy heads, assistant deputy ministers, managers, directors and supervisors are responsible for modeling respectful conduct in the workplace and are accountable for appropriate intervention when disrespectful conduct is occurring.

1.4.5 Early intervention and non-adversarial approaches to managing workplace conflict and disrespectful conduct prevent escalation.

1.4.6 Disrespectful conduct may lead to discipline up to and including termination of employment.

1.5 Definitions

Respectful Workplace: A workplace that is characterized by:

- *Spirited and respectful dialogue* about workplace issues, which welcomes diverse perspectives;
- *Inclusion* of people with different ancestries, backgrounds, religions, cultures, sexual orientations, and abilities;
- *Constructive resolution* of differences where workplace conflict is recognized as natural and is managed through collaborative processes;
- *Polite behaviour* where employees are courteous and considerate toward others;
- *Safety* from disrespectful, discriminating, and bullying behaviour, and from repercussions for taking action to deal with disrespectful conduct in the workplace; and
- *Support* for individuals to learn and practice personal conflict resolution and respectful workplace skills.

Disrespectful conduct: Behaviour by an individual directed against another individual that a reasonable person would consider disrespectful. For the purposes of this policy, disrespectful conduct is understood to be on a continuum from mild to grievous to illegal, and includes:

- Gossiping;
- Embarrassing practical jokes;
- Swearing and yelling;
- Inappropriately interfering in another individual's work;
- Ridicule;
- Making derogatory comments to or about another individual;
- Derogatory gestures;
- Shunning;
- Bullying;
- Abuse of authority;
- Discriminatory conduct contrary to the Yukon Human Rights Act, including sexual harassment; and
- Physical assault.

Disrespectful conduct does not include the proper use of authority related to the exercise of managerial responsibility: including, providing advice and assigning work, performance evaluation and appropriate discipline.

Discriminatory conduct contrary to the Yukon Human Rights Act: Behaviour towards another employee or group of employees that treats them unfavourably on any of the grounds set out in the *Yukon Human Rights Act*, as amended, and which at the date this policy came into effect were:

- (a) ancestry, including colour and race;
- (b) national origin;
- (c) ethnic or linguistic background or origin;
- (d) religion or creed, or religious belief, religious association, or religious activity;
- (e) age;
- (f) sex, including pregnancy, and pregnancy related conditions;
- (g) sexual orientation;
- (h) mental or physical disability;
- (i) criminal charges or criminal records;
- (j) political belief, political association, or political activity;
- (k) marital or family status;
- (l) source of income; and
- (m) actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed above.

Under the *Yukon Human Rights Act*, it is not discrimination if treatment is based on:

- reasonable requirement or qualifications for the employment;
- a criminal record or criminal charges relevant to the employment;
- sex, so as to respect the privacy of the people to whom accommodations or a service or facility is offered; or
- other factors establishing reasonable cause for the discrimination.

Sexual Harassment: Conduct, comment, gesture, display or contact of a sexual nature that might reasonably be expected to cause offense or humiliation, or that might reasonably be perceived as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

Abuse of Authority: Improper use of power that flows from a supervisor or manager's position of authority over an employee: in particular, intimidation, threats or coercion, which could reasonably be expected to endanger an employee's ability to perform his or her job, threaten the employee's economic livelihood, or significantly affect his or her physical or emotional well-being. It is not abuse of authority to exercise managerial responsibility legitimately.

Examples of abuse of authority include:

- Removing areas of responsibilities arbitrarily;
- Constantly changing work guidelines;
- Establishing impossible deadlines that will set up the individual to fail;
- Withholding necessary information or purposefully giving the wrong information;
- Assigning unreasonable duties or workload which are unfavourable to one person (in a way that creates unnecessary pressure);
- Underwork - creating a feeling of uselessness;
- Criticizing a person persistently or constantly; and
- Blocking applications for training, leave or promotion.

Bullying: Repeated or systematic assertion of power through aggressive behaviour – physical, verbal or psychological – including shunning, which would be seen by a reasonable person as intending to belittle, intimidate, coerce or isolate another person or group of people. Key elements of bullying include: repetition, duration, escalation and power disparity.

Examples of workplace bullying include:

- Spreading malicious rumours, gossip, or innuendo that is not true;
- Excluding or isolating someone socially;
- Intimidating a person;
- Undermining or deliberately impeding a person's work;
- Physically abusing or threatening abuse;
- Making jokes that are 'obviously offensive' by spoken word or e-mail;
- Intruding on a person's privacy by pestering, spying or stalking;
- Yelling or using profanity;

- Belittling a person's opinions; and
- Tampering with a person's personal belongings or work equipment.

2 RESPECTFUL WORKPLACE OFFICE

- 2.1 The Respectful Workplace Office (RWO) is the government office set up to promote, administer and implement this policy.
- 2.2 The mandate of the RWO is to:
- (a) be a resource for employees experiencing conflict or disrespectful conduct in the workplace;
 - (b) be a resource for those with the responsibility to manage conflict and disrespectful conduct in the workplace;
 - (c) assess concerns about conflict and disrespectful conduct in the workplace, and determine and manage the appropriate process to address those concerns;
 - (d) provide various conflict management services including:
 - employee orientation, training and education;
 - conflict coaching;
 - mediation and facilitated conversations;
 - work group conflict assessment; and
 - group facilitation and circle processes;
 - (e) ensure that employees are provided information regarding conflict resolution/management processes and outcomes (as appropriate);
 - (f) collaborate with the department and union, as applicable, in addressing disrespectful conduct and promoting respectful workplaces;
 - (g) advise the Public Service Commissioner on action in individual cases; and
 - (h) recommend to the Public Service Commissioner, and others, systemic changes to promote respectful workplaces within the Government of Yukon.
- 2.3 In all its interventions, the RWO will seek to strengthen workplace relationships and enhance organizational capacity to manage conflict effectively.

- 2.4 The following principles will apply to the RWO and to the participants in the processes under this policy:
- (a) Responsibility to address respectful workplace issues will remain with employees, supervisors and managers in the workplace, as much as possible, or be directed back to the workplace as soon as practical and appropriate;
 - (b) The process used to address concerns raised about conflict or disrespectful conduct in the workplace will be proportional to the seriousness of the concerns;
 - (c) Concerns about workplace conflict and disrespectful conduct will be addressed with timeliness, tact, confidentiality and discretion, taking into account the safety of those affected;
 - (d) Persons about whom a concern is raised will be notified of the concern in a timely fashion, and provided an opportunity to be heard;
 - (e) The interests of all affected parties will be taken into account in the process, and affected parties will be included in the process as appropriate;
 - (f) Everyone will be expected to adhere to any timelines set in a process;
 - (g) The outcome of the process will be as transparent as possible, taking into account legitimate confidentiality interests; and
 - (h) Follow-up by the RWO, to check whether the anticipated outcomes of the process have been achieved and maintained, will be an integral part of every process and will be conducted as soon as practical and reasonable in the circumstances.
- 2.5 The Director of the RWO (the "RWO Director") will manage the RWO and report to the Public Service Commissioner.

3 STEERING COMMITTEE

- 3.1 A Respectful Workplace Steering Committee (the "Steering Committee") will be created to support this Policy.
- 3.2 The Public Service Commissioner will chair the Steering Committee, and its membership will include one (1) representative from the YEU, one (1) representative from the YTA, one (1) representative from the Aboriginal

Employees' Forum, one (1) deputy minister, and one (1) department human resources director.

3.3 The RWO Director will support the Steering Committee.

3.4 The mandate of the Steering Committee is to:

- (a) provide advice and support to the Director RWO;
- (b) deliberate on difficult policy issues as they arise;
- (c) approve an evaluation framework and outcome measures;
- (d) monitor the progress of the respectful workplace system and make recommendations for modifications; and
- (e) determine who will be on the list of qualified investigators.

4 PROCESS

4.1 To the extent that it is reasonable and safe to do so, individuals will attempt to manage conflict and disrespectful conduct in the workplace setting by:

- (a) raising their concern directly with the other individual(s) involved; and
- (b) seeking assistance from a supervisor, a manager, a human resources staff member, their union or the RWO.

4.2 A request for assistance related to workplace conflict or disrespectful conduct will be made as soon as possible, but no later than six months of the occurrence of the conflict or conduct.

4.3 The following people may make a request for assistance to the RWO:

- (a) an individual experiencing workplace conflict or disrespectful conduct;
- (b) a supervisor or manager with responsibility to manage conflict and maintain a respectful workplace;
- (c) a human resources staff member;
- (d) a union representative; or
- (e) any employee who witnesses conflict or disrespectful conduct in the workplace, and has concerns about its impact.

- 4.4 On receiving a request for assistance, the RWO Director or delegate will assess the presenting problem and the workplace context, consult with departmental human resources staff and the union, where applicable, and determine the appropriate response to the request.
- 4.5 The RWO Director may decide that the RWO will not take on a concern, if:
- (a) the concern does not fall within the mandate of the RWO;
 - (b) the expression of concern appears to be in bad faith;
 - (c) the Director is of the view that the concern would be better managed within the relevant department or by some other agency of the Government of Yukon;
 - (d) the resources required to deal with the concern are out of proportion to the seriousness of the reported conflict or conduct; or
 - (e) the concern is not brought within six months of the occurrence of the conflict or conduct.
- 4.6 The RWO Director may waive the six-month time limit referred to in section 4.2 on a consideration of the circumstances.
- 4.7 The appropriate responses to a request for assistance to the RWO include, but are not necessarily limited to, the following:
- (a) conflict coaching for an employee who has raised a concern about workplace conflict or disrespectful conduct, or an employee about whom such a concern has been raised;
 - (b) referral back to the appropriate supervisor or manager, with or without coaching assistance for the supervisor or manager;
 - (c) mediation or a facilitated discussion between individual employees in conflict,
 - (d) workgroup conflict assessment;
 - (e) workshops for skill building;
 - (f) group facilitation or circle process; and
 - (g) an investigation by an external investigator.

- 4.8 When concerns about workplace conflict or disrespectful conduct interact with issues of disability, employee performance or discipline, the RWO will take an integrated case management approach to the concern, working with others as appropriate.
- 4.9 At any time after a request for assistance has been made, the Director may recommend to the Public Service Commissioner separation of employees while the appropriate process is conducted. Such a recommendation does not require, nor does it imply, a finding that disrespectful conduct has occurred.
- 4.10 When and as appropriate, RWO will ensure a customized communication plan is developed for any RWO intervention. Working in collaboration with departmental human resources staff, management, deputy heads, the Yukon Employees' Union and/or the Yukon Teachers' Association, responsibilities for communicating and implementing will be determined, balancing the values of confidentiality and transparency, and taking into account the following:
- (a) the confidentiality interests of those involved;
 - (b) the risks of communicating or not communicating;
 - (c) who needs to know what; and
 - (d) how to avoid or correct misinformation being circulated.
- 4.11 The RWO will develop a customized follow-up plan for each RWO intervention, will implement its part in the plan and may recommend follow up action by others.
- 4.12 When union members are involved in any RWO processes, the applicable union will be consulted about the design of the processes and invited to participate in the processes, as appropriate. If a union member does not wish the union to be involved, the union member's wishes will be respected.

5 CONFIDENTIALITY

- 5.1 Unless otherwise agreed by the individual bringing forward a request for assistance, or as required by law, a request for assistance under this policy will be treated confidentially.
- 5.2 Unless otherwise agreed by process participants, or determined in the communication plan referred to in section 4.10, all employees involved in a process arising from a request for assistance will keep the process and anything said in the course of the process confidential.

- 5.3 If it comes to the attention of the RWO that the confidentiality provisions of this policy may have been breached, the RWO will investigate and make recommendations for remedial action.

6 EXTERNAL INVESTIGATIONS

- 6.1 In circumstances in which a request for RWO assistance involves a concern about disrespectful conduct that could lead to severe discipline, including termination of an employee, or in other exceptional circumstances, the RWO Director may appoint an external investigator.
- 6.2 The decision to appoint an external investigator rests solely with the RWO Director.
- 6.3 The Steering Committee will agree to a roster of qualified neutral external investigators, from which the RWO Director will choose an investigator on a rotation and availability basis.
- 6.4 The Steering Committee will approve general Terms of Reference for external investigators, and all external investigators will be expected to work within those Terms of Reference.
- 6.5 An external investigation will include the following elements:
- (a) a formal written statement of allegations;
 - (b) the interviewing of key witnesses;
 - (c) a draft written report of findings and recommendations, for comment by the individual alleging the disrespectful conduct and the individual against whom the allegations are made and others as deemed appropriate;
 - (d) a final report containing final and binding determinations of fact about what occurred and a final and binding determination as to whether the occurrence(s) constitute(s) disrespectful conduct under this policy; and
 - (e) recommendations to the Public Service Commissioner for remedial action.
- 6.6 The external investigator's recommendations to the Public Service Commissioner may include the following:
- (a) separation of employees;
 - (b) steps to be taken for workplace restoration; and

(c) monitoring measures to ensure that workplace restoration has been realized and maintained.

- 6.7 When an external investigator makes findings of disrespectful conduct or recommendations for workplace restoration to the Public Service Commissioner after an external investigation, the Public Service Commissioner will decide whether or not to accept the recommendations, and where appropriate, will recommend to the applicable deputy head that he or she take restorative and/or disciplinary action.

7 APPEALS AND GRIEVANCES

- 7.1 Except as provided in this policy, in legislation or in the applicable collective agreement, the decisions of the RWO Director (or delegate), a properly appointed external investigator or the Public Service Commissioner are not reviewable.
- 7.2 Any discipline rendered as a result of a finding of disrespectful conduct under this policy will be subject to the appeal and grievance processes otherwise available under Section 132 of the *Public Service Act*, with respect to suspension or dismissal, or under the applicable collective agreement for bargaining unit members.
- 7.3 Any findings of fact or of disrespectful conduct made by an external investigator will be treated as final and binding in any grievance or appeal of discipline arising from a finding of disrespectful conduct under this policy.

8 HUMAN RIGHTS COMPLAINTS

- 8.1 Any allegations of disrespectful conduct that would also be violations of the *Human Rights Act* will be handled under this policy, rather than through the grievance procedure.

9 EVALUATION OF SYSTEM AND CONTINUOUS IMPROVEMENT

- 9.1 An evaluation framework of the respectful workplace system will be established by the Steering Committee, and outcome measures put in place.
- 9.2 The system established by this policy will be formally evaluated by the Steering Committee.
- 9.3 The Steering Committee may make recommendations to the Public Service Commissioner for changes to the system.

10 ROLES AND RESPONSIBILITIES

- 10.1 Deputy heads are responsible and accountable for establishing and maintaining a respectful workplace, and for ensuring concerns raised about conflict or disrespectful conduct are addressed promptly.

This includes:

- (a) modeling respectful conduct in the workplace;
- (b) ensuring that preventive activities are in place to foster a respectful workplace and that results are achieved in a manner that respects employees;
- (c) ensuring that those who are involved in managing workplace conflict and disrespectful conduct have the required competencies; and
- (d) taking corrective measures when issues of non-compliance with this policy arise in their department.

- 10.2 Supervisors, managers, directors and assistant deputy ministers are responsible and accountable for:

- (a) taking ownership of workplace conflict and disrespectful conduct issues and working collaboratively with human resources staff, the RWO and/or others to resolve those issues;
- (b) modeling respectful conduct in the workplace;
- (c) familiarizing themselves with this policy;
- (d) taking seriously all concerns raised about workplace conflict or disrespectful conduct, and promptly addressing these concerns;
- (e) intervening when they witness disrespectful conduct;
- (f) ensuring all employees are made aware of the content, significance and implications of this policy, and are provided such education on a regular and recurring basis;
- (g) providing guidance and assistance to employees who report occurrences of workplace conflict or disrespectful conduct to them;
- (h) seeking the assistance or advice of their department human resources staff or the RWO for constructive intervention when they witness or are made aware of conflict or disrespectful conduct in the workplace;

- (i) attaching significance to this policy when evaluating the performance of employees who report to them; and
- (j) participating fully in any interventions under this policy.

10.3 Employees are responsible and accountable for:

- (a) modelling respectful conduct in the workplace
- (b) conducting themselves in a respectful manner in the workplace and at work-related gatherings;
- (c) attempting to resolve differences with other employees in a respectful manner;
- (d) approaching their supervisor, manager, departmental human resources staff or the RWO for assistance to do this;
- (e) participating fully in any interventions under this policy; and
- (f) identifying any medical restrictions or limitations to participation in interventions.

10.4 The Public Service Commissioner is responsible for:

- (a) chairing the Respectful Workplace Steering Committee;
- (b) implementing recommendations of the Steering Committee that he or she determines will strengthen this policy;
- (c) implementing recommendations of the RWO Director to make systemic changes to promote respectful workplaces, or to separate employees on a temporary or permanent basis, that he or she determines will be beneficial;
- (d) providing advice to deputy heads, assistant deputy ministers and departmental human resource directors about the application of this policy where requested;
- (e) monitoring compliance with this policy within the Government of Yukon and, where appropriate, addressing issues of non-compliance; and
- (f) deciding on appropriate actions following receipt of an investigation report and making any recommendations for disciplinary action to the applicable deputy head.

10.5 Human resources staff of each department are responsible for:

- (a) advising supervisors, managers, directors, assistant deputy ministers and employees about the application of this policy within their department;
- (b) assisting supervisors, managers, directors, assistant deputy ministers and employees in relation to identifying and resolving workplace conflict, and dealing constructively with disrespectful conduct;
- (c) seeking advice and assistance of the RWO, when necessary, about appropriate intervention strategies and processes;
- (d) collaborating with the RWO to design and implement appropriate intervention processes to resolve workplace conflict and correct disrespectful conduct;
- (e) collaborating with RWO in determining appropriate communication with the workplace following an intervention; and
- (f) reporting issues of willful non-compliance to their deputy head.

10.6 The union is responsible for:

- (a) ensuring their members' rights under the collective agreement are protected;
- (b) providing advice, support and assistance to members as needed;
- (c) encouraging respectful conduct in the workplace;
- (d) collaborating with the RWO to design and implement appropriate intervention processes to resolve workplace conflict and correct disrespectful conduct;
and
- (e) collaborating with the RWO in determining appropriate communication within the workplace following an intervention.