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Township of Limerick Complaints Policy & Procedure

56 INVESTIGATION PROCEDURE

56.1 Purpose

To provide a clear and consistent approach to conducting workplace investigations in a prompt, discreet and objective manner, in conjunction with the applicable Township of Limerick policies and procedures and legislative requirements. Specific provisions outlined in the Collective Agreement for the Roads Department shall govern those employees.

56.2 Scope

1. This investigation procedure will apply to investigations regarding:
 - a. Violence in the Workplace, further referred to as violence or misconduct;
 - b. Harassment in the Workplace Procedure, further referred to as inappropriate behaviour or objectionable conduct;
 - c. Ontario Human Rights Code Violation further referred to as discrimination or harassment; or
 - d. Situations (circumstances) in which Township of Limerick employees are harassed or subjected to violence in the workplace from individuals who are not employees of the Township of Limerick such as customers, clients and suppliers, although the available remedies may be constrained by the situation; or
 - e. Situations (circumstances) in which, a complaint is made against an employee of the Township of Limerick by an individual who is not an employee of the Township of Limerick.

2. The Township of Limerick expects a standard of practice with respect to individual departmental investigation procedures. Specific investigations procedures may be developed by Department Heads for their departments. The department will provide the Clerk-Treasurer/CAO with a copy of the procedures.

56.3 Definitions

An “**investigation**” is a fact-finding process in which evidence relevant to the complaint is reviewed and considered. It will almost always involve interviewing the complainant, respondent and witnesses (if any). It may involve a review of documents such as emails, memos, letters, diaries and physical evidence such as cards, calendars and photographs.

56.4 Procedure

1. As soon as a Supervisor or Management has been made aware of, or ought reasonably to be aware of a situation of workplace violence, harassment or a violation of the Ontario Human Rights Code he/she must review the complaint to ensure the following details have been included:
 - a. Specific information with respect to the complaint, behaviours and/or conduct (i.e. the exact nature of the complaint);
 - b. Where possible, times and dates of alleged incidents;
 - c. Where possible, witnesses to the alleged incidents;
 - d. Any information relating to informal attempts on the part of the complainant to stop or resolve the complained of behaviours and/or conduct; and
 - e. Expectations of the complainant (i.e. what outcome the complainant would like to see).
2. If an employee decides not to make a formal complaint, the Township of Limerick may still investigate the matter and take steps to prevent further concerns/incidents.
3. The Township of Limerick shall not apply the provisions of this Investigation following receipt of an anonymous complaint or complaints that cannot identify a complainant.
4. If a complaint is received more than six months from the date on which the most recent incident allegedly occurred, the Township of Limerick may decline to investigate. This decision would be made after considering the nature of the complaint and any extenuating circumstances.
5. The Supervisor will forward the formal complaint to the Clerk-Treasurer/CAO, or designate, ensuring that the utmost discretion is used to maintain confidentiality and to respect the rights and dignity of all parties involved.
6. The Clerk-Treasurer/CAO, or designate, will acknowledge receipt of the complaint. This receipt may include a letter, copies of applicable policies and procedures and the option of mediation prior to beginning the investigation process.
 - NOTE: If the complainant selects mediation, a written request will be sent to the Clerk-Treasurer/CAO by the complainant. If both the complainant and respondent agree to the mediation process, the Clerk-Treasurer/CAO or his/her designate will coordinate and assist in the selection of a mediator(s) agreeable to the parties. If mediation is successful, all files including any signed settlement agreed to in mediation will be sent to the Director of Human Resources, or designate. If mediation is not successful, the formal investigation process will commence. Details of mediation proceedings are confidential to the extent permitted by law unless both parties agree otherwise.

Progress reports may be given to the Employer. In addition, the Employer must be party to any Minutes of Settlement.

7. If the respondent is a Township of Limerick employee, he/she will be advised of the specific nature of the allegations in question, applicable policies and procedures and he/she will have an opportunity to provide a written response.
8. The Clerk-Treasurer/CAO will determine what personnel are required as members of the investigation team.
9. The investigation may include:
 - a. Reviewing all available evidence and documentation;
 - b. Determining who needs to be interviewed and the order of the interviews usually beginning with the complainant;
 - c. Conducting interviews in person, in a location that provides an atmosphere of privacy or over the phone and ensure written notes are taken to document the interviews;
 - d. Interviewing the complainant;
 - e. Interviewing the respondent;
 - f. Interviewing witnesses and all those who have knowledge of the incident(s) (separately and privately) and obtaining their written statements;
 - g. Interviewing witnesses that the respondent may wish to submit and obtaining their written statements;
 - h. Reviewing and analyzing all evidence and determine findings;
 - i. Completing a written report of the investigation including a summary statement of the complaint, a summary statement of the respondent's position; summary of the investigation process; any evidence surrounding the allegation, analysis of the evidence, a summary of the investigation findings and recommendations for resolution of the complaint; and
 - j. Forwarding a completed report in a sealed envelope (usually within thirty (30) calendar days from the completion of the investigation to the Director of Human Resources, or designate.
 - Note: Employees may be accompanied by a union representative or a colleague, as appropriate, during their interviews.
10. The complainant and/or respondent may contact a Supervisor, Manager or member of the Human Resource Team to discuss the applicable policies and procedures as well as their rights and responsibilities.

56.5 Recommendations and Actions:

1. The investigator's report may include:
 - a. Details of the complaint, including when it was made;
 - b. Process followed;
 - c. Evidence of the complainant, respondent and witnesses regarding each allegation;
 - d. Findings of fact with respect to each allegation;

- e. Meaning of findings of fact in relation to the policy, procedure and/or applicable law;
 - f. Copies of documents (as appendices), which supported the process.
2. Depending on the findings, the recommendations for corrective measures may include one or more of the following:
- Apology
 - Education
 - Training
 - Counselling
 - Conflict Resolution
 - Warning
 - Reassignment or transfer
 - Demotion
 - Suspension
 - Termination
3. The seriousness of the misconduct and any prior related misconduct will be factors in determining the severity of the recommendations. If there is not enough evidence to substantiate the complaint, corrective measure will not be taken. If these allegations were made with good intentions, the employee will not be subject to disciplinary action.
4. In consultation with the Department Head, Director of Human Resources, or designate, the report will be reviewed with the Supervisor or Manager to determine the appropriate actions for resolution.
5. The complainant will be:
- 1. advised when the investigation is complete;
 - 2. advised whether certain aspects or all aspects of the allegations were substantiated;
 - 3. advised that appropriate actions have been taken; and,
6. The respondent will be:
- 1. advised when the investigation is complete;
 - 2. advised whether certain aspects or all aspects of the allegations were substantiated;
 - 3. advised what appropriate actions will be taken on behalf of the employer to correct the situation and have been taken; and
7. Where the concern/incident has originated from an external source, recommendations may include changes to the physical workspace, changes to the procedures to offer better support and protection, withdrawal of services, policy intervention, or the use of appropriate court orders.
8. The decision regarding any discipline to be imposed against the respondent will be provided in writing as soon as possible. Discipline will be imposed in accordance with the provisions of the applicable collective agreement, policy and/or bylaws. The Clerk-Treasurer/CAO, or designate, will advise the complainant as to the outcome of the investigation. Details of disciplinary actions against the respondent will remain confidential (only conveyed to the respondent and his or her Supervisor).

9. Where allegations are unsubstantiated and whereby the complaint is found to have been frivolous or made in bad faith, it is regarded as a serious offence and the complainant may be disciplined.

56.6 Appeals Process:

The complainant and/or the respondent may submit a written appeal of the decision within ten (10) working days. The appeal must include all of the same information as in Formal complaint as well as reasons why the action/decision was not satisfactory. The other party (complainant or respondent) will be notified by the Clerk-Treasurer/CAO of the appeal. The Clerk-Treasurer/CAO (or designate) will review all of the information pertaining to the investigation and may repeat, or have repeated, any or all of the actions outlined in the Investigation. Once the Clerk-Treasurer/CAO (or designate) has completed his/her investigation, and a decision has been made, the outcome of that investigation and decision and/or any action plan will be forwarded to both the complainant and respondent.

56.7 Other Procedures

1. Any reprisal or threat of reprisal against an employee making a complaint or participating in the investigation of a complaint will be immediately reported to the alleged offender's Department Head (or designate), Clerk-Treasurer/CAO and/or investigating authority. In consultation with the Department Head and the Clerk-Treasurer/CAO, the Clerk-Treasurer/CAO (or designate) will investigate. In the event there is sufficient supporting evidence of such reprisal, or threat of reprisal, he/she will take appropriate disciplinary action. Such discipline could entail a reprimand, suspension or dismissal for cause.
2. This policy and its procedures do not abrogate any employee's right to file a grievance with the appropriate bargaining unit or to access other provisions of the Collective Agreement which may apply or to exercise their rights under other relevant employment-related legislation.