



Workplace Anti-Harassment Policy

Policy owner: Director People and Culture, Property and Legal

Policy approved by: Chief Executive

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Distribution: Available on DENZEL in Knowledge Centre/Policies and Procedures. Hard copies will be provided where required.

This policy is accessible to all staff and Board members. It is the responsibility of each staff and Board member to understand and apply this policy. It also applies to contractors engaged by ENZ. It is the responsibility of the Manager engaging the contractor to ensure they are aware of all ENZ policies while working for ENZ.

Whilst this policy is based on New Zealand legislation the intent applies to all staff at ENZ. At times, other countries' legislation will also apply.

Purpose

Education New Zealand (ENZ) is committed to providing a work environment that is free from any form of harassment, including sexual harassment and bullying.

The purpose of this policy is to provide clear parameters around the definition of harassment; to assist in the resolution of any harassment or bullying complaints made by any member of the ENZ community against any other member and to provide a clear policy and fair procedure that is understood by all.

Scope

This policy applies to all fixed term and permanent employees, also to all contractors, consultants, or temporary agency staff.

1. Policy Statement – Principles

There are three guiding principles for this policy:

- Principle 1** Any form of harassment is totally unacceptable and ENZ recognises the adverse effect such behaviour has on people who work in or use ENZ's facilities.
- Principle 2** All people have a right to be treated with equal regard, dignity, concern and decency. Any action or inaction, communication or behaviour that could reasonably be interpreted as harassment or bullying will not be tolerated.
- Principle 3** Harassment of any kind denies the worth, integrity and dignity of human beings, fails to respect human rights, and may constitute unlawful discrimination. It affects all genders and no-one has to put up with it.

All ENZ employees, consultants, contractors and agency staff are expected to:

- Treat their colleagues with respect
- Behave in ways that contribute to a safe and positive workplace
- Be understanding of people's differences
- Report any behaviour which they genuinely consider to be a breach of this policy

In addition to this, ENZ people leaders are expected to:

- Lead by example and build a respectful work environment
- Encourage their team members to talk through any issues which may be considered harassment (where appropriate)
- Treat any complaint seriously and act promptly to get it resolved

2. Definition

We have a zero tolerance for workplace harassment. Everyone who works in or uses ENZ facilities has the right to be free from fear of or concern about being harassed or bullied. Harassment may be based on sex, gender, marital status, religious or ethical belief, disability, age, political opinion, employment status, family status or sexual orientation, ethnic or national origins, colour or race.

Harassment is where one person directs behaviour at an employee including watching, loitering, following, or accosting them, interfering with their property or acting in ways that causes them to fear for their safety. To be considered harassment, the behaviour must either be repeated, or of such a significant nature that it is humiliating, offensive or intimidating to an employee and creates a risk to their health and safety and/or has a detrimental effect on their performance at work. Generally, harassment will be intentional, but it can also be unintentional, where although the perpetrator's actions are not intended to cause humiliation, offense or intimidation, they have (and it is reasonable to expect that they could have) this effect.

Examples of harassment can include:

- Preventing or hindering access to the workplace
- Persistent following, watching, loitering near, or accosting an employee
- Giving offensive material to an employee, or leaving it where it will be found by, given to, or brought to their attention
- Perpetrating and circulating persistent and malicious gossip about an employee
- Interfering with an employee's property

Harassment (including sexual and racial harassment) is not:

- Behaviour based on mutual attraction, including the development of relationships
- Occasional and appropriate compliments on a person's appearance
- Appropriate performance management and feedback

"Bullying" means repeated, and unreasonable behaviour by a person towards a member (or members) of the ENZ community which is offensive, intimidating or humiliating and which detrimentally affects that member's well-being. It is not: -

- one-off or occasional instances of forgetfulness, rudeness or tactlessness
- setting high performance standards
- constructive feedback and genuine peer review
- a reasonable request from the employee's manager
- undertaking a disciplinary process in line with ENZ's policies
- a single incident of unreasonable behaviour, but incidents should be addressed to avoid escalation.

It can be physical, verbal, or relational/social (excluding someone or spreading rumours).

Unreasonable behaviours are actions that include (but are not limited to) victimising, humiliating, intimidating or threatening a person.

Bullying can happen between co-workers; managers and staff (or vice versa). It can involve external and internal parties. It can be intentional or unintentional. Behaviour can occur face to face, by email or text message, online or by other social media channels. Bullying also includes cyber-bullying – where technology (internet, mobile phone, digital camera etc) is used as a means to bullying.

3. Harassment

Sexual Harassment

Sexual harassment is language, visual material or physical behaviour of a sexual nature which is unwelcome or offensive to an employee, and which is either repeated or so significant that it has a detrimental effect on the employee's employment, job performance or job satisfaction.

Examples of sexual harassment can include:

- Unwelcome sexual advances or physical contact
- Sexually-oriented remarks or abuse
- Offensive gestures or comments
- Promise of preferential treatment or threat of detrimental treatment in return for sex
- Use of pictures/posters/videos of a sexual nature
- Persistent and unwelcome social invitations, phone calls or emails at work or home

Sexual harassment also occurs if a person directly or indirectly asks an employee for sexual intercourse, sexual contact, or another form of sexual activity, and their request contains an implied or overt promise of preferential or detrimental treatment, or an implied or overt threat about their present or future employment status.

It may be repeated, or of such a significant nature that it has a detrimental effect on the employee.

Racial Harassment

Racial harassment is unwelcome language, visual material or physical behaviour that directly or indirectly expresses hostility against, brings into contempt, or ridicules, an employee on the grounds of their race, colour, ethnicity or national origin, which is offensive or hurtful to the employee and which is either repeated or so significant that it has a detrimental effect on that person's employment, job performance or job satisfaction.

Examples of racial harassment can include:

- Jokes, remarks, insults, songs, innuendos or direct comments about cultural differences, ethnic origin or race
- Name-calling or deliberately mispronouncing names
- Making fun of the way people dress, speak or look relating to their ethnic origin
- Offensive material
- Threatening behaviour based on cultural differences, ethnic origin or race

Behaviour that is connected with ENZ may be considered bullying or harassment, even where it takes place outside of the workplace.

Further information

Within ENZ, harassment can be further defined as interference in the pursuit of work, or the proper enjoyment of ENZ amenities, by offensive, unwelcome or unwarranted attention from any member of the ENZ community towards another. If such behaviour makes a person feel offended and humiliated or intimidated and frightened or uncomfortable at work or leaves them feeling that their morale or work effectiveness has been affected, then it may constitute unlawful discrimination.

In addition, the improper use of power based on status (i.e. the use of a position to insult, bully, dominate, manipulate, disadvantage or discriminate) may also constitute harassment.

General Harassment

General harassment could include any unwanted and unjustified behaviour which another person finds offensive or humiliating and because it is serious or repeated it has a detrimental effect on the person's employment, job performance or job satisfaction. Other forms of harassment may be bullying if they are repeated.

Examples include:-

- comments or behaviour that express hostility, contempt or ridicule, repeated put-downs for people of a particular age, body shape, gender identity etc.
- A general work atmosphere of repeated jokes, teasing, or 'fun' at someone else's expense because of a particular characteristic they have.

4. Managing Workplace Harassment

ENZ has a process in place for any employee who considers that they are subject to harassing or bullying behaviour. The specific process is outlined in the attached appendix.

At all times, employees will continue to have access to the Employee Assistance Programme (EAP) or other external agencies for support.

5. Changes to this Policy

The Workplace Harassment Policy is subject to change when there are changes to related documentation or where changes impact on terms and conditions. This Policy will be reviewed every three years.

6. Related documentation.

<https://www.employment.govt.nz/resolving-problems/types-of-problems/bullying-harassment-and-discrimination/>
<https://worksafe.govt.nz/topic-and-industry/sexual-harassment/advice-for-workers/>

Document name	Location
Education New Zealand Equal Employment Opportunities Policy	Denzel
Education New Zealand Code of Conduct	Denzel
Employment Relations Act 2000	www.legislation.govt.nz
Human Rights Act 1993	www.legislation.govt.nz
Harmful Digital Communications Act 2015	www.legislation.govt.nz
Harassment Act 1997	www.legislation.govt.nz
Digital Communication Act	www.legislation.govt.nz
Crimes Act	www.legislation.govt.nz
Health & Safety at Work Act 2015	www.legislation.govt.nz
Privacy Act 2020	www.legislation.govt.nz
Public Service Act 2020	www.legislation.govt.nz



APPENDIX A: DEALING WITH WORKPLACE HARRASSMENT

ENZ does not tolerate any form of workplace harassment. If a staff member considers they have been harassed, there are a number of options available to assist. At all times, the choice about what action or process is the most appropriate is a matter for the person making the complaint (the complainant). All employees concerned are encouraged to seek assistance from Employee Assistance Programme (EAP) if appropriate.

Self Help

The complainant may be able to stop the harassing behaviour by speaking up or writing to the harasser, indicating that the behaviour is unwelcome and offensive and needs to stop. Specifically the complainant may:-

- speak to the respondent in the presence of a support person of their choice requesting that the behaviour stop.
- focus on the behaviour, not the person
- be as specific as possible and give examples of the behaviour that is causing you concern
- explain why the behaviour is unwelcome
- be firm and confident - not aggressive or confrontational

or

- write to, or e-mail the respondent about the behaviour on a 'personal and confidential' basis requesting that the behaviour stop.

Often the person may not know their behaviour is causing distress and will stop immediately once told. Whatever action is taken, it should be documented by the complainant and their manager (if appropriate).

Informal complaints procedure

- Making an informal complaint means seeking assistance from a third party such as a colleague, manager, support person or legal representative to help resolve the situation.
- This person needs to talk both with the complainant and then with the person against whom the complaint is made.
- If the respondent accepts the accuracy of the complaint an attempt will be made to resolve the matter informally as requested by the complainant.
- If the respondent does not accept the facts or only accepts some of them, but is willing to settle the complaint informally and the complainant is satisfied with this, then the matter is resolved.
- If both parties agree to settle the complaint informally then the matter is resolved.
- Sometimes mediation may be an appropriate way to resolve the issue. Mediation can be a powerful tool for both parties to understand the intention and impact of the behaviours and to find practical solutions that will facilitate an on-going working relationship. It can also provide the basis for changing behaviour. It is not always appropriate and its use should be weighed up carefully by the parties involved. Mediation may be appropriate when:

- an appropriately skilled and trained mediator is available (usually from the Ministry of Business, Innovation and Employment);
- both parties are interested in trying to resolve the situation through mediation;
- an appropriately trained and skilled mediator is available who has the confidence of both parties.
- If the matter is not able to be resolved informally then the process will move to the formal complaints procedure outlined below.

Formal complaints procedure

- Anyone who believes they have been discriminated against, harassed, bullied or victimised has the right to make a formal complaint.
- If the matter is serious a formal complaint may be lodged without going through self-help and/or informal intervention. However in most circumstances, the complainant should be encouraged to work through ENZ's informal complaint system before lodging a formal complaint.
- A formal complaint can be given to any manager or directly to the Director People and Culture, Property and Legal, or Chief Executive. Anyone making a complaint of bullying or harassment will be protected from any retaliation, victimisation or discrimination from either the person (or people) they are complaining about, or anyone else at ENZ.
- Managers who receive formal complaints will liaise immediately with the Director People and Culture, Property and Legal to jointly identify an appropriate, impartial person to investigate the complaint.
- If a complainant explicitly lodges a personal grievance, the matter will be referred to the Director People and Culture, Property and Legal, and the Chief Executive.
- A formal complaint should be written and signed by the complainant outlining details of the alleged incident(s). It should be made by the person who has allegedly been discriminated against/harassed/bullied (the complainant). However, it may be made by a colleague at the complainant's request.
- A formal complaint should outline
 - the identity of the person(s) against whom the complaint is made;
 - what happened (including the time(s), date(s), place(s), what was said and done);
 - how the complainant responded and what impact the alleged behaviour had on them;
 - what actions (if any) the complainant has taken to stop the alleged harassing behaviour;
 - whether anyone else witnessed the alleged behaviour; and
 - an indication of the outcome that the complainant is seeking.
- The complainant and respondent will be advised of the formal complaint procedure, and encouraged to bring a support person or legal representative with them to any interview if they wish. This person may be a lawyer, or a friend/colleague. The complainant and respondent will be informed about what type of actions ENZ might take if the complaint is upheld or if it is not established.

- The investigation will involve interviews with the complainant, the respondent, and any other relevant people. A copy of the written complaint, including the complainant's name, will be provided to the respondent.
- At all times ENZ will strive to ensure confidentiality is maintained by all parties involved, recognising the needs of natural justice. Each complaint will be investigated sensitively, objectively, thoroughly and in a timely way.
- The complainant and respondent will be provided with a copy of a report of the investigation and they will be entitled to provide a written response within an indicated time period, prior to a decision being made. The report will then be submitted to the Chief Executive who will decide whether the complaint is upheld or not and what action will be taken.
- The Director People and Culture, Property and Legal will seek appropriate legal assistance and advice when necessary and they will hold all documentation on any investigation, report, decision and action taken in a secure confidential physical and electronic file.
- Interim measures to ensure the complainant and the respondent do not work closely together until the matter is resolved may be appropriate, dependent upon the nature of the complaint and the relationship between the complainant and respondent.
- Such measures could include moving the complainant or respondent to another area, arranging for the complainant or respondent to work from home or for the complainant or the respondent to be on paid or unpaid special leave until the matter has been investigated and resolved.
- Factors to be taken into account when deciding on interim measures include eliminating the risk of disruption to the workplace or retaliatory action, and whether the complainant or respondent is likely to experience further stress by the presence of the other party.
- If any interim measures are to be taken, they will be discussed with the complainant and respondent before any decision is made. The decision to implement any interim measure will be made by the Chief Executive in consultation with the Director People and Culture, Property and Legal. Such action does not mean that ENZ has accepted the complaint, but is providing interim relief before resolution of the issue.
- The complainant and the respondent will be advised not to attempt to contact each other about the complaint. The complainant will be advised that they are entitled to contact support people and that they can report harassment to the police, particularly where an assault or serious intimidation is alleged to have taken place.
- The complainant, the respondent, other ENZ employees or community members, and any family members involved will also be advised that they can contact the Employee Assistance Programme (EAP) for confidential counselling.

Note: In all cases the Chief Executive may select an alternative person to act in their place should they judge that to be the right thing to do in the particular circumstances of the situation.

Natural justice

- As part of the formal complaint process the rights of both parties will be protected by the principles of natural justice. These are:
 - freedom from bias on the part of the person making the decision/judgment; and
 - transparency and fairness of the procedure.
- Guidelines for a fair process include:
 - taking a complaint seriously and acting on it immediately;
 - maintaining confidentiality;
 - giving the problem resolution priority and responding in a timely manner;
 - informing a respondent of the allegations against them;
 - giving a respondent the opportunity to respond to the allegation;
 - not asking irrelevant questions;
 - keeping both parties informed about progress of an investigation;
 - ensuring the parties' safety is protected during an investigation, including protection from retaliation or victimisation;
 - giving both parties a full opportunity to read/see and respond to all evidence collected in an investigation before a decision is made;
 - considering all the evidence and weighing it carefully before deciding whether there is substance to the complaint;
 - providing both parties with a copy of the decision and the reasons for the decision, and their options in terms of settlement, review, etc;
 - ensuring any disciplinary action is proportionate to the level of behaviour complained of; and
 - offering the right of appeal or review.
- Care will be taken during the investigation of any complaint of alleged harassment and afterwards to prevent any disadvantage to the complainant or respondent.
- Care will also be taken during the investigation to protect the mana/respect of the person against whom the complaint was made and any other parties involved.
- Retaliation against people who have been involved in a harassment complaint in any way is unacceptable.
- Any work difficulties experienced by people involved in either an informal or formal complaint should be reported immediately to their manager or to the Director People and Culture, Property and Legal.

External complaints procedure

- A complainant can, at any time, lodge a personal grievance under the Employment Relations Act 2000.

- The Employment Relations Act promotes mediation as the preferred way to resolve any employment relationship problem. If a personal grievance cannot be resolved by direct discussion between the parties involved, they are encouraged to use the mediation services provided by the Ministry of Business, Innovation and Employment.
- Alternatively, if an employee believes they have been discriminated against, sexually harassed or racially harassed they can lodge a personal grievance under the Human Rights Act 1993.
- A complainant can also lodge a claim under the Health & Safety at Work Act 2015 claiming harm due to workplace stress.
- Complaints of a criminal nature, for example physical or sexual assault or stalking, are a police matter as well as an employment matter. If a complaint of this nature is made the Director People and Culture, Property and Legal will seek appropriate legal advice.

Harassment by clients or contractors

- When harassment or bullying is being carried out by a client, member of the public, or contractor, the employee should inform their manager, another manager, or the Director People and Culture, Property and Legal.
- ENZ will investigate and take all reasonable steps to stop it happening again.
- This may involve, but is not limited to, speaking directly with the person concerned, lodging a complaint with the contractor's employer, or obtaining a trespass order against the person.