



THE UNIVERSITY OF WINNIPEG

Stacey Belding, Human Rights &
Diversity Officer (HRDO)

Respectful Working and Learning Environment Policy - Staff and Faculty 2022



DISCOVER · ACHIEVE · BELONG

AGENDA

- Welcome and Introduction
- Role of Human Rights and Diversity Office (HRDO)
- Discussion of Respectful Working and Learning Environment Policy (understand definitions of key concepts: discrimination, reasonable accommodation and harassment) and Procedures under the Policy.
- Examples of discrimination and harassment
- Role of faculty/staff/administrators
- Questions/Comments?

Role of the HRDO

- ❑ Impartial – not an advocate for either party
- ❑ Provides advice and assistance to faculty, staff, students, and administration in connection with concerns under Respectful Working and Learning Environment Policy (RWLE), among other policies

Main contacts:

- ❑ Human Rights & Conflict Management Advisor, Paul Carrick
p.carrick@uwinnipeg.ca
- ❑ Sexual Violence & Human Rights Advisor, Hemali Krueger Vyas
h.kruegervyas@uwinnipeg.ca

The Law

Some of the legal sources that impose obligations on the University to create a safe and respectful working and learning environment:

- The Human Rights Code (of Manitoba)
- The Workplace Health and Safety Act and regulation
- The Sexual Violence Awareness and Prevention Act
- The Accessibility for Manitobans Act and regulations (standards)
- Employment case law
- Collective Agreements

Principles underlying the RWLE Policy

- Every member of the University community has the right to participate, learn and work in an **inclusive and respectful** environment that is **free from discrimination and harassment**
- Individuals should feel free to come forward with concerns without fear of **retaliation**
- The University will act promptly to deal with allegations and **take corrective action** as required. Policy is remedial, not punitive. Emphasis on informal resolutions where possible, i.e. coaching, mediation, education, etc.
- Confidentiality under the policy - on the parties, staff/management involved. FIPPA obligations.

Scope of the RWLE Policy

- ❑ Applies to **every member** of the University community – all *employees* and *students* engaged in activities with substantial connection to University
- ❑ Applies to activities both **on and off campus** - e.g. out of town events, social media - that have a substantial connection to the University
- ❑ **Third parties** engaged in activities at the University – e.g. visitors, volunteers – are also expected to adhere to the Policy

BALANCING RIGHTS

- ❑ Policy specifically recognizes academic freedom, freedom of expression, and activities which have legitimate work and learning-related purposes

BUT

- ❑ Actions must comply with Human Rights law, Workplace Health and Safety law, and University Policies
- ❑ Also balancing of human rights – no hierarchy of rights

What is discrimination?

- ❑ Treating a person or group **differently without reasonable cause** to their detriment, on the basis of an actual or presumed characteristic rather than on the basis of personal merit. (differential treatment)
 - *Includes imposing burdens or obligations, or withholding access to opportunities or benefits available to others.*
 - *Look at whether characteristic (i.e.: sexual orientation, nationality, etc.) was a factor – need not be the only factor - in the imposition of burden or withholding of benefit, etc.*
 - *Legally, intention does not matter, it is the effect on the person.*

- ❑ Failing to make **reasonable accommodation** for the special needs of an individual or group if those needs are based on a protected characteristic
 - » *See Section 9 of The Human Rights Code*

What are the protected characteristics?

- **Allegations of discrimination or accommodation requests must be based on a protected characteristic from the HRC (*immutable characteristics*):**
 - ancestry, including colour and perceived race;
 - nationality or national origin;
 - ethnic background or origin;
 - religion or creed;
 - age;
 - sex, including pregnancy;
 - gender identity (includes gender expression);
 - sexual orientation;
 - marital or family status;
 - source of income;
 - political belief;
 - physical or mental disability, including reliance on a service animal, a wheelchair, or any other remedial appliance or device; and
 - social disadvantage.

What is the duty to accommodate?

- The obligation to take special measures to accommodate someone who has a **special need based on a disability or another protected characteristic (e.g. religion, pregnancy)**
- Accommodation helps “**level the playing field**” (e.g. student with visual impairment uses adaptive software, person using wheelchair requires an accessible washroom)
- Duty is usually triggered by person requiring accommodation, may be duty to inquire, i.e.: uncharacteristic behaviour, awareness of certain facts related to substance use
- Reasonable accommodation requires an **adequate process**, as well as **substantive accommodation**. Need not to be preferred accommodation. All parties have a role to play.
- Accommodation must be provided to the point of **undue hardship**. Some hardship is considered ok. Factors = Health and safety, cost.
- Most student accommodation is handled by Accessibility Services. Employee accommodations handled by the Health and Wellness Specialist in Human Resources.

EXAMPLES: DISCRIMINATION/ FAILURE TO REASONABLY ACCOMMODATE

- Restricting access to opportunities due to sex, disability, or other characteristic, e.g. Meiorin case, or not hiring because accommodations needed
- Firing someone because of performance issues, and frequent medical appointments due to pregnancy, e.g. Szabo case (not only factor)
- Failing to make alternative arrangements for student who is unable to write exam on a religious holiday, because it requires extra work for the professor
- Not engaging in a process to determine if someone's disability can be accommodated, even if ultimately it cannot be substantively accommodated
- Not allowing a service animal in a classroom, due to fears of other students
- Not allowing a student extra time to hand in a paper or to reschedule an exam when experiencing effects of a medical condition

What about harassment?

Harassment generally means unwelcome and objectionable conduct --- it may take different forms (verbal/written comments, actions, etc)

3 Types covered by the RWLE:

1. Human Rights Harassment – based on a protected characteristic (e.g. sexual orientation, gender identity)
2. Sexual Harassment - unwelcome, objectionable sexual solicitations or comments
3. Personal Harassment - bullying or cyberbullying

Types of Harassment

Human rights: A course (series) of **abusive and unwelcome** conduct or comment on the basis of a *protected characteristic*

Examples: series of derogatory comments, graffiti, pictures, remarks, jokes or e-mail messages on basis of ethnic origin, sexual orientation, sex, or another applicable characteristic

Sexual: Series of unwelcome sexual comments/conduct, and/or a series of objectionable and unwelcome sexual solicitations or advances (or single advance, if power imbalance), and/or retaliation for rejecting a sexual solicitation or advance

Examples: sexist jokes, displaying pornographic or sexually offensive materials, persistent and unwelcome requests for dates, inappropriate touching. Also sexualized environment, e.g. A+ Financial case

Unwelcome? an objective standard is applied - would a reasonable person know it would be unwelcome; victim of harassment does not have to object

Types of Harassment (Cont'd)

Personal Harassment: a) objectionable and unwelcome comments or actions directed toward a specific person or group of persons which serve no legitimate work or academic related purpose and have the effect of creating an intimidating, humiliating, hostile or offensive environment or excluding, isolating or undermining an individual's effectiveness in the workplace/learning environment for no legitimate work or academic-related reason; and
b) verbal or written abuse or threats.

Examples: repeated incidents of yelling, name-calling, or threats; inappropriate comments which are humiliating and have no legitimate purpose.

Harassment is not:

- Proper exercise of management authority, e.g. performance reviews, disciplinary proceedings OR
- Evaluation of academic performance done in a respectful way, correction of inappropriate student behavior, and maintaining order in a classroom including evicting those who disrupt order.

Options for resolution under the RWLE

Policy encourages informal resolutions

- Address concerns directly, letting person know their conduct is unwelcome, i.e.: ask the person to stop. Good approach may be to explain how it made you feel and/or how it could be perceived.
- Address concerns with assistance, i.e.: ask the HRDO to bring the concerns to the person, for education and training, mediation, or to assist with a no-contact agreement.

Formal complaints

- Complaint must be provided in writing and will be screened (timely, within jurisdiction, within scope of policy, + prima facie case)
- External investigator will be appointed by AVP HR to conduct interviews and review evidence, and write report with recommendations
- If RWLE Policy has been breached, corrective action will be taken, which could include discipline, education, or other remedial actions

Role of Faculty/Staff

- If you witness possible Discrimination or Harassment in a classroom or area, or a disclosure is made to you, you have a duty to take action.
- Report to your supervisor or the Human Rights and Diversity Office.
** Obligation is to ensure adequate steps are taken to stop harassment/discrimination*
- Offer support and assistance to student/co-worker/staff member as appropriate, and can refer them to HRDO.
- Record details of incident asap.
- If you are being harassed or discriminated against, you can discuss with the person directly or contact the HRDO for assistance. You can also consult with your supervisor or union.
- Comply with policy, cooperate with student/staff member accommodations.

ROLE OF ADMINISTRATOR – INCLUDES WHO?

Who is an Administrator?

- anyone who has sufficient **authority** to take or ensure the taking of remedial action
- Deans, Directors, Supervisors, Department Chairs, Heads of administrative units, the Registrar, Provost, Deputy Provost, Vice-Presidents, Associate Vice-Presidents, and the President

In the case of a student, the Administrator would be:

- Their Dean, the Registrar, Director, or Department Chair

(from definitions, in RWLE Procedures)

DUTY OF AN ADMINISTRATOR

What must an Administrator do if a complaint or concern under the Policy is brought to her or his attention?

1. Contact the Human Rights Officer to receive advice and assistance with respect the handling of the matter. The Complainant will be advised of this contact.
2. Keep a written record of the date, time and nature of any incident that is brought to his/ her attention, along with the names of any witnesses and the steps taken to deal with the matter.

(from RWLE Procedures)

COSTS OF A DISRESPECTFUL ENVIRONMENT

- Damage to University's reputation
- Impact on recruitment
- Poor morale
- Psychological impact on victims and others
- Loss of productivity and increased absenteeism
- Retention issues/higher turnover
- Human rights complaints, grievances, lawsuits: may be expensive, time-consuming and stressful for all
- Others?



THE UNIVERSITY OF WINNIPEG

QUESTIONS?

Stacey Belding

Human Rights & Diversity Officer

s.belding@uwinnipeg.ca (204) 988-7508

DISCOVER · ACHIEVE · BELONG