



**FÉDÉRATION  
QUÉBÉCOISE DES  
MUNICIPALITÉS**

## **Implementation guide of the harassment, incivility and workplace violence prevention policy**

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The masculine is used throughout this document and refers to both men and women for the sake of conciseness, without any discriminatory intent.

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## INTRODUCTION

Harassment, incivility or violence raises many issues in the workplace. This kind of behavior has many adverse consequences not only on the physical or psychological health of the workers but also on the work environment as well as on organizational productivity. The municipal sector is not exempt from this reality.

In the wake of recent events brought to light by the #MeToo movement, the legislator amended the *Act Respecting Labour Standards*<sup>1</sup> (hereafter: the “L.S.A.”). Among others, this law now obliges employers to adopt a psychological harassment prevention and complaint processing policy.

As a political and strategic leader in defending the interests of its members, the local and regional municipalities and towns (hereafter: the “municipalities”), the *Fédération québécoise des municipalités* (hereafter : the “FQM”) wishes to provide its members with tools adapted to their reality and which foster the adoption of best practises to prevent psychological harassment, incivility or workplace violence and take charge should an incidence occur.

On December 7, 2018, the FQM, in collaboration with the *Association des directeurs municipaux du Québec*, forwarded to all of its members a model of the *Harassment, incivility and workplace violence prevention policy* (hereafter: the “Policy”). A copy of this policy is attached as a schedule and a Word version is available to [download here](#). This guide is intended as a practical tool to facilitate the understanding and, above all the enforcement of this Policy that has been adapted to the work environment of municipalities.

This guide is distributed for information purposes only, with the intent of disseminating information about harassment and demystifying the concept. This guide is not exhaustive and cannot cover all possible situations. It cannot replace a careful reading of the relevant legislation. When in doubt, we invite you to contact your legal counsel or other specialists.

To get additional information, we invite you to contact the *service en ressources humaines et relations du travail* of the FQM at [1 866 951-3343](tel:18669513343).

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<sup>1</sup> RLRQ, c. N-1.1.

# SECTION 1

## UNDERSTANDING THE LEGAL FRAMEWORK OF HARASSMENT

### WHAT IS HARASSMENT?

The definition of psychological harassment is found in the L.S.A. It means any vexatious behaviors in the form of conduct, verbal comments, actions or gestures that have the following common characteristics:

- They are repeated.
- They are hostile or unwanted.
- They affect the employee’s dignity or physical or psychological integrity.
- They result in a harmful work environment.

A single serious incidence of such behavior may constitute harassment. In such a case, the repetitive character is not necessary, however such conduct must have a lasting harmful effect on the complainant.

Sexual harassment, for its part, manifests itself by gestures or verbal comments of a sexual nature that have the same characteristics as the behavior described above.

Harassment also includes harassment based on the grounds enumerated in article 10 of the *Charter of human rights and freedoms*<sup>2</sup> (hereafter: the “C.H.R.F.”), that is race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap. It is referred to as discriminatory harassment.

To make this implementation guide simpler, the word “harassment” refers to psychological, sexual and work discrimination harassment.

A few examples of behaviors that may be harassment:

- Someone no longer speaks to another person.
- Someone spreads rumours about another person.
- Someone sexually leers another person frequently, by focusing on their breasts, buttocks or private parts.
- Someone damages the property of another person.
- Someone uses their position to obtain favours of a sexual nature.

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<sup>2</sup> RLRQ, c. C-12

A few examples of behaviors that does not constitute harassment:

- The proper exercise of management rights.
- The filing in good faith of a harassment complaint.
- A justified administrative reorganisation.

## IN-DEPTH REVIEW OF THE CRITERIA

We shall examine in more detail the scope of each of the criteria that define harassment.

### **I. Vexatious behavior**

Vexatious behavior means behavior in the form of conduct, verbal comments, actions or gestures (hereafter collectively referred to as: the “behavior”) that is meant to offend, humiliate, hurt, torment, cause anguish to, frustrate or annoy the person who is subjected to such conduct. Vexatious behavior is to be assessed from the perspective of a reasonable, ordinarily cautious and prudent person, put in the same circumstances.

### **II. Repeated behavior**

It is the build-up that allows one to conclude there is harassment. The behavior must be assessed as a whole since the cumulative effect reveals the importance of the behavior.

### **III. Hostile or unwanted**

The behavior must be perceived as hostile or unwanted. Hostility can be defined as the conduct of a person acting in an adverse or a contrary manner. This does not necessarily imply aggressive conduct and it does not have to be specifically directed at the person; property can be the target. As for the unwanted character, it means undesirable conduct. It is important to mention that the person subjected to the unwanted conduct does not necessarily have to express disapproval verbally. For example, in certain circumstances, such as sexual misconduct, passive or implicit refusal is sufficient.

### **IV. That affects an employee’s dignity or psychological or physical integrity**

The behavior must have a negative impact on the person. The impact on the dignity affects the complainant’s self-respect: he may feel humiliated, diminished or denigrated. The impact on the integrity must leave traces or after-effects, temporary or not, on the physical or psychological health of the employee.

## **V. That results in a harmful work environment**

The workplace becomes harmful when the work environment or conditions deteriorate to the point where it becomes unhealthy, harmful or unfavorable. In short, a work environment that does not foster professional development. For example, it is the case when a person is afraid to go to work because he feels threatened or when a person is isolated from his colleagues.

When a person alleges being the subject of one single serious behavior, that is a behavior that carries with it a certain objective degree of seriousness, he must demonstrate the continuous harmful effect, without however proving the repetitive nature of the conduct.

## **VI. Continuous harmful effect**

A single serious incidence of such behavior must have a continuous harmful effect on the victim. This concept refers to the perpetration over time of the effect of the conduct.

**The evaluation of these criteria must be based on facts not on perceptions.**

### CONCEPTS TO BE DISTINGUISHED

We shall deal here with concepts which, rightly or wrongly, are associated with harassment.

#### **I. The exercise of management rights**

Management rights are all of the employer's rights to direct his employees and to make decisions related to the profitability of his organization in the interest and good governance of his activities. It includes, more particularly:

- Task assignment.
- Everyday performance management.
- Discipline management.
- Attendance and absenteeism management.
- Use of administrative and disciplinary measures.

The normal and legitimate exercise of management rights can be distinguished from harassment when the employer's decisions are made based on respect for the employee and in accordance with the law and the collective agreement, if applicable. Thus, if the employer's decisions are just and equitable, and that they are related to the proper functioning of the organization, they do not constitute harassment.

HERE ARE TWO SITUATIONS INVOLVING THE EXERCISE OF MANAGEMENT RIGHTS:

### Normal exercise of management rights

Monique is the director general of the municipality. Lately, she has noticed that Simon is often late for work. On more than one occasion, Monique has indicated to him that he must comply with his work schedule.

One day, she convenes Simon to a meeting to take stock of his tardiness on several occasions and she gives him a written warning. Simon perceives this written warning as an attack and believes the director general is always on his case.

A few days after this meeting, Simon is late once again. Monique meets with him and imposes a new disciplinary measure.

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Monique has properly exercised her management rights in regard to work schedule compliance. There was no hostility in her behavior towards Simon.

Also, she followed the principal of progressive sanctions and she gave him a disciplinary measure proportionate to the breach.

### Abusive exercise of management rights

Karine is the director general of the regional county municipality. She has given Joëlle, her coordinator with the Property Evaluation department, a mandate with specific objectives.

Even though Karine has given Joëlle the necessary latitude to carry out the project, Karine has not stopped publicly questioning the strategy, work methods and decisions taken by Joëlle, all the while with a condescending tone and contemptuous words directed at her. These elements are also raised in her work performance evaluation.

Mid-project, Karine questions, in a spiteful way, the credibility of Joëlle's work in front of the whole team.

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Karine has exercised her management rights in an abusive manner.



When assigning the mandate, she must give clear instructions and, if they are changed, she must re-explain them.

In this case, Karine used an inappropriate tone and words in the circumstances.

Karine must remain respectful even if she disagrees with the work method.

It is important to point out that even if an employer has exercised his management rights in an abusive manner, it does not automatically become harassment. However, these situations are conducive to harassment.

## **II. Uncivil behavior**

Incivility has been defined as low-intensity behavior that disregards the obligation of mutual respect that is expected in workplace relations. Without being major or severe, it is characterized by a lack of collaboration, respect, good manners or politeness. It is a lack of respect for the basic rules of life in society.

Incivility can manifest itself in many ways, among others, by:

- Frequently cutting others off.
- Accessing one's phone during conversations.
- Always arriving late to meetings.
- Making jokes in bad taste.
- Abruptly leaving a meeting for no reason.

Unlike harassment, incivility is not necessarily specifically directed to one person. On the contrary, all the work environment is affected, to varying degrees.

## **III. The presence of conflicts**

Conflict, on the other hand, is a situation in which two people are mutually hostile. The conflict may arise from a wide array of sources: personality conflict, divergent values or opinions, a different application of a directive, distinct positions on work methods or performance targets to be met, etc.

Unlike harassment, conflict does not identify a victim and a harasser.

#### IV. Workplace violence

Workplace violence means any form of aggression which affects the physical or moral integrity of a person. It may come in many forms and manifests itself, among others, by:

- Using force against someone, shoving for example.
- Damaging or vandalizing property.
- Verbally abusing a person.
- Intimidating or threatening a person.

Workplace violence is frequently associated with harassment. This is not surprising as violent behaviors indicate a degree of seriousness and as such may constitute a single serious incidence with a continuous harmful effect.

Faced with workplace violence, dealing with the complaint or the report can often be managed through disciplinary action. We refer you to Section 6 of the Policy which provides flexibility in the handling of these complaints. It is sometimes simpler to stick to disciplinary action as harassment criteria will not have to be demonstrated. The mere existence of the proven misconduct will suffice to impose a disciplinary sanction.

#### LEGAL CONCEPTS RELATED TO HARASSMENT

Even though there are provisions that provide certain forms of protection against harassment in the C.H.R.F., the *Quebec Civil Code*<sup>3</sup> and the *Act respecting occupational health and safety*<sup>4</sup>, the legal framework governing harassment is more specifically integrated in the L.S.A.

In addition to the definition of psychological and sexual harassment, this act also stipulates the rights and obligations of all in this matter.

First, the L.S.A. provides that all employees, namely union and non-union employees as well as supervisors, including the director general, have the right to a work environment free from harassment and as such may file complaints, if need be.

On the other hand, no one is free from a harassment complaint: whether an elected municipal officer, a subordinate, a colleague, a supervisor, a supplier, a citizen or even a volunteer.

Thus, it is important to remind everyone of their shared responsibility in maintaining a healthy and respectful workplace.

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<sup>3</sup> RLRQ, c. N-1.1.

<sup>4</sup> RLRQ, c. S-2.1.

The concept of workplace extends to all the places where an employee usually works as well as anywhere he must go to perform his duties. For example, places such as the municipal office, the home when one is working remotely, the place of training, convention centers as well as social activities organized by the employer can be part of the employee's workplace.

This concept has been broadly interpreted to include situations in which the employment relationship is determinative in the harassment. Among others, it may include texting between employees.

Next, the L.S.A. provides that an employer must take reasonable actions to prevent harassment. Practically speaking, this means that the employer must be proactive and provide suitable tools, practices or take preventive measures. Minimally, the employer must adopt and make available to their employees a psychological harassment prevention policy that includes a section on behavior that manifests itself in the form of verbal comments, actions or gestures of a sexual nature. This has been a formal requirement since January 1<sup>st</sup>, 2019.

Finally, pursuant to the L.S.A., every employer, whenever he becomes aware of such behavior, has the obligation to take reasonable actions to put an end to harassing behavior.

When an employer has taken reasonable actions to prevent or to put an end to harassing behavior and these steps fail, the employer will have nonetheless fulfilled his legal obligations. The employer cannot guarantee the outcome of his actions on the harassing behavior of an individual, but he must act.

Should the municipalities fail to comply with the L.S.A., the elected municipal officers as well as the senior managerial personnel (Ex.: the director general) are presumed to have committed the infraction themselves. Unless they can demonstrate that they exercised due diligence by taking all necessary precautions to prevent the offence, they may be liable to pay fines.

## SECTION 2

### THE COMPONENTS AND ADOPTION OF THE POLICY

Under the L.S.A., a harassment prevention policy must include a definition of psychological harassment, sexual harassment and a complaint handling.

The Policy, attached as a schedule, was drafted considering the characteristics of municipal organizations, including their organizational structure. Moreover, the Policy covers a wider range of situations than required by the L.S.A. as it also includes situations involving incivility and workplace violence. The aim is to provide additional means for an employer to prevent harassment and to provide a healthy work environment.

We suggest that municipalities take ownership of the Policy before adopting it. This means aligning the Policy with the reality of your organization that is, for example, considering your organizational structure, union or a non-union work environment, methods or processes in place or other existing policies. Also, the municipality may choose to remove the concepts of incivility and workplace violence or include complaints filed by an elected municipal officer.

In order to facilitate your ownership exercise, below is a brief description of the essence of each of the sections of the Policy:

#### THE PREAMBLE

The rationale behind the policy.

#### **1. Policy objectives**

What the employer wishes to accomplish through the implementation of the policy.

#### **2. Scope of application**

The circumstances under which the employer is authorized to act:

- People subject to the policy: employees, volunteers, supervisors, elected municipal officers, citizens, suppliers and third parties.
- Workplaces subject to the policy: in all work circumstances, including telework or social events.

#### **3. Definitions**

Psychological harassment, sexual harassment, incivility, workplace violence and management rights.

#### **4. Shared roles and responsibilities.**

The concrete actions to be taken according to the status of each person in the organization.

Municipal council or council of mayors, director general, direct supervisor, union, employees, complainant and respondent.

#### **5. Internal process for the handling of reports and complaints**

- The use of an informal dispute resolution process.
- The addition of a resource person other than the director general in the event that the complaint concerns this person.
- The complaint and investigation process further to a complaint or the reporting of a harassment situation.
- The choice between an internal or external investigation.

#### **6. The formal resolution process of incivility or workplace violence complaints or reports**

- The use of an informal dispute resolution process.
- The complaint and investigation process further to a complaint or the reporting of an incivility or workplace violence situation.

#### **7. Sanctions**

The employer has the latitude to determine the appropriate sanctions in each case.

#### **8. Confidentiality**

#### **9. Good faith**

Warnings to those acting in bad faith.

#### **10. Reprisals**

Affirmation of the protection of complainants from reprisal measures.

#### **11. Review and awareness**

#### **12. Schedule 1: Complaint form**

The Policy must be adopted by the municipal council or the council of mayors.

## SECTION 3

### THE OTHER COMPONENTS OF PREVENTION

The ownership and adoption of a policy does not suffice in and of itself to prevent harassment. All policies are not equal; a good policy plays an important part in harassment prevention. We believe that the proposed Policy contributes to reaching this objective. Also, prevention is only truly effective if the employer adopts the following practices:

#### I. **Communication and awareness**

Communication and awareness are key elements in harassment prevention. The Policy must be made clearly known to all employees and broadly circulated among them, taking your reality into account. If, for example, your public works employees do not have access to email, an in-person meeting must be organized.

As a matter of fact, the implementation of the Policy is an opportunity for the municipality to reiterate its undertaking to maintain a healthy workplace, but also to raise awareness among its staff and elected municipal officers of the importance that it places in the prevention of harassment, incivility and workplace violence and to advise them of expected behaviors.

The Policy objectives and its content must be frequently brought to everyone's attention to make sure that it is understood and complied with. Several methods of dissemination can be considered be it, for example, giving it to new employees when they begin working and explaining the broad concepts, publishing internal communication or holding information workshops.

You can even adopt a civility code to raise awareness among the population and suppliers: everyone is on the same basis. It is one more step on the road to prevention.

We suggest an annual refresher of the Policy. Make sure that your employees are aware of it by requesting that they sign an acknowledgement of receipt of the Policy. You can also take the opportunity to do the same for the *Code of ethics and conduct of municipal employees*.

#### II. **Staff training**

To ensure that the Policy is well understood, it is opportune to provide training to supervisors and staff. The training should explain the definition of harassment, incivility or workplace violence, and provide examples of what is harassment and what is not. The training should

also touch upon the reporting and resolution of complaints process as well as the role of everyone within the framework of the Policy. It is an opportunity to remind all that everyone is responsible in maintaining a healthy workplace.

Some additions should be made for the training intended for supervisors, more particularly risk factors and ways of maintaining a healthy work environment.

Understanding of the key elements of the Policy by the supervisors and employees is essential as such understanding plays a role in prevention and facilitates the Policy being applied uniformly.

The training can also be provided to the elected municipal officers so that they better understand what harassment is and what role they could be called upon to play in such situations.

### **III. The control of at-risk situations**

The causes of harassment are often related to a deterioration of the work environment or work conditions. For instance, think of tension amongst the staff, conflicts, the ambiguity or lack of precision of the tasks to be performed, a change in organizational structure or an uneven distribution of workloads.

An employer must be aware of any sign pointing to at-risk situations. If the employer recognizes the emergence or the existence thereof, he must put in place actions to control or eliminate the deplorable effects of these situations to prevent them from becoming harassment.

This creates difficult contexts where it might seem difficult for employer involvement with his employees, but one must remember that conflicts that are left to fester have a negative impact on workplace environment as well as on the employer's credibility and leadership. Therefore, it is important to show managerial courage and act!

The actions to be put in place are varied and must be adopted according to the circumstances. Do not hesitate to call upon specialists who can guide you in managing delicate situations to reach solutions adapted to your work environment. Especially since these external people guarantee a certain form of neutrality and give more weight to your actions, which may be particularly desirable in smaller workplaces.

For example, if alleged occurrences of harassment, incivility or violence involve the customer base or third parties, an employer could be tempted to provide training to his employees

that are in contact with the latter on how to react or in peacemaking techniques to lessen or control their reactions. The municipality could also adopt a civility code and post it in the municipal office.

Another example, if a personality conflict develops between two employees, the director general could attempt to act as a mediator to reach common ground and avoid seeing the situation deteriorate.



## SECTION 4

### IMPLEMENTATION OF THE POLICY AND EMPLOYER INTERVENTION

#### WHAT TO DO WHEN A PERSON FEELS BEING A VICTIM OF HARASSMENT, INCIVILITY OR WORK-PLACE VIOLENCE?

To effectively prevent harassment, incivility or workplace violence, an employer must promote an organizational culture of prevention amongst its supervisors and employees, so that such behavior will be reported and dealt with as soon as possible.

In reality, the filing of a complaint constitutes the ultimate step taken by a person who feels wounded, hurt or is going through difficult relational issues with one or more individuals of his work environment.

With this in mind, the Policy contains other measures that can and should be taken before an official complaint is filed by the person that feels being a victim of harassment, incivility or workplace violence (hereafter: the “complainant”).

#### **I. Foster communication**

Any person, whether the one subject to improper behaviors or a witness, is encouraged to express his discomfort to the person responsible for the harassing, uncivil or violent behaviors (hereafter: the “respondent”). Insofar as possible, he may express his discomfort and request that such behaviors stop. Inaction leads to a build-up of undesirable behaviors; an employee has a better chance of preventing harassment by reacting at the outset of such behaviors.

#### **II. Inform the direct supervisor and set in motion the informal settlement process**

Should the behavior continues, the Policy provides that the complainant or a witness should inform the direct supervisor.

First, the direct supervisor must try to understand the situation, gather information concerning the steps taken by the complainant to have the behaviors stopped and help the complainant indicate his intentions.

Secondly, the direct supervisor must advise the complainant of the existence of the reporting process as well as give the complainant a copy of the Policy. He should also propose to the persons involved that they participate in an informal resolution process such as conciliation if the situation lends itself to it. If there is hesitation, he can try to encourage the parties to participate in it, but must bear in mind that the success of this approach is based primarily on the cooperation of the parties involved.

The informal dispute resolution process is first and foremost a dispute resolution method based on a win-win approach. Under the proper supervision of a neutral and impartial person, this process may help to reconnect the communication channel between the parties through a better understanding of the other party's perception. In addition, it generally leads to lasting solutions over time as it allows the parties to play an active role not only in finding solutions but in choosing them as well.

The informal settlement process allows for rapid intervention, with the goal of preserving a healthy work environment, while empowering the key players.

Should the process fail, the direct supervisor must inform the person designated in the policy, often the director general, to follow-up on the matter, if necessary.

#### WHAT TO DO WHEN A PERSON DOES NOT WANT TO FILE AN OFFICIAL COMPLAINT?

What to do when a person does not want to file an official complaint pursuant to the Policy, but reports disturbing behaviors?

The employer must exercise caution in such situations. As a matter of fact, the failure or the refusal to file an official complaint pursuant to the Policy does not waive the employer's obligation to act. Also, the fact that the complainant does not use the form attached to the Policy does not automatically constitute a refusal to file a complaint.

The L.S.A. does not require, at any time, the filing of an official complaint for a person to have the right to a healthy work environment. Therefore, as soon as an employer is aware of evidence indicating the presence of harassment, he must act. In short, a report to the direct supervisor or to another representative of the employer or simply knowledge of harassing behavior suffices.

Failure to act will undermine the work environment as well as expose the employer to legal actions.

When a person who feels he is the victim of harassment does not wish to file a formal complaint

pursuant to the Policy, several approaches are still possible. In particular, you can inform the person of the difficult position you are faced with in view of your legal obligations if no formal complaint is filed or offer an informal settlement process.

Simultaneously, you can take steps to maintain a healthy work environment, such as a campaign to raise awareness or training activities for the municipal employees.

## IMPLEMENTATION OF THE FORMAL SETTLEMENT PROCESS

We wish to emphasize that confidentiality is in order throughout the process of handling complaints. Therefore, the employer must be careful when forwarding a summary of the complaint to the respondent. He must limit the summary to the main components of the complaint without disclosing the name of the complainant, unless and until a confidentiality agreement has been signed.

### **I. How to proceed once a harassment, incivility or workplace violence complaint has been filed?**

#### THE EMPLOYER MUST:

- Listen to the complainant;
- Ask the complainant to complete the complaint form identifying the essential information to handle the complaint or compile this information;
- Acknowledge receipt of the complaint;
- Check if an informal settlement process was attempted between the persons involved and, if not, if the situation allows for it, support them in such a process.

#### IN THE SPECIFIC CASE OF THE FILING OF A HARASSMENT COMPLAINT, THE EMPLOYER MUST ALSO:

- Assess the need of undertaking an investigation and analyze the admissibility of the complaint;
- If so, determine which investigation process is the most appropriate in view of the circumstances (internal or external);
- Verbally advise the complainant and the respondent of the investigation and the steps to follow;
- Implement the temporary measures, if required;
- Proceed with the investigation, if need be.

These steps do not necessarily have to occur in the order set out above. Also, this list is not exhaustive and the actions taken may vary according to the policy in place as well as the circumstances.

When an employer receives a complaint, he may have reason to implement temporary measures. The purpose of these measures is to limit contact between the parties involved while the employer does some fact-checking and, if need be, proceed with an investigation.

An employer may, for example, move the complainant or the respondent to another work team or shift, or authorize telework.

## **II. Analyzing the admissibility of a harassment complaint**

When a formal harassment complaint is filed, the director general must first analyze its admissibility. Under the Policy, this aspect may be outsourced to an external investigator.

At this stage only, the investigator must take the complainant's version of events as fact and check the following three criteria:

1. Check if the complainant may institute proceedings under the Policy;
2. Check if the complaint was filed within the prescribed deadline;
3. Ensure that the allegations meet the harassment criteria as described on page 5 of this guide.

The admissibility of the complaint for harassment, incivility or workplace violence does not have to be analyzed when it is filed.

## **THE INVESTIGATION PROCESS OF A HARASSMENT COMPLAINT**

The purpose of the investigation, in particular, is to review each of the harassment allegations to determine whether there is harassment or not and, as such, let the employer know if he must take measures to put an end to it.

It is an essential and crucial step that must be carried out with the greatest respect of professional standards since failure to do so may expose the employer to reproach for failing to take reasonable actions to prevent and put an end to any harassing behaviors.

Under the Policy, the investigation is carried out by the director general. However, nothing prevents you from entrusting it to another representative of the employer, having the choice to proceed internally or outsource it externally, or provide from the outset that every investigation will be handled externally.

The investigation includes many stages. The purpose of this guide is not to support you through the stages of an investigation. Rather, we just summarily indicate the nature of the investigation. During an investigation, you must, at a minimum, review all the relevant documents, meet the persons involved, review the evidence according to the existing rules and write an investigation report based on the facts revealed during the investigation.

As with any process, an internal investigation comes with risks and limits. At the outset, the person tasked with the investigation must have the required expertise. The person must also know and understand the legal framework and the different concepts involved in harassment, must master the concepts of running an investigation as well as master the terms set out in the internal policy. Finally, the designated person must be up-to-date with the constantly evolving regulations developed through legislation, the courts and experts in the field.

In addition to these skills, the designated person must also avoid any apparent or real conflict of interest. To ensure impartiality, a neutral party should run the investigation.

Because of the complexity of a workplace harassment complaint, we strongly recommend that you quickly consult with a specialist for guidance as to the steps to be taken.

### CLOSING A HARASSMENT INVESTIGATION

The employer, whatever the outcome of the investigation, must meet with the complainant and the respondent individually to present them with the conclusions of the investigation as well as any remedial action that concerns them, if any.

### THE INVESTIGATION PROCESS OF AN INCIVILITY OR WORKPLACE VIOLENCE COMPLAINT

A lot less procedural than a harassment complaint, an employer can conduct the same type of investigation before imposing disciplinary action to deal with an incivility or workplace violence complaint. As such, an employer must get the version of the people involved to bring to light the events that occurred, sorting out the roles and responsibilities of those involved to determine his intervention framework and discipline, if any. Rather than a formal investigation report, the reasons for the employer's decision must be put down in writing. In such a case, in a unionized environment, it is important to refer yourself to the disciplinary rules and to follow the procedure and the deadlines set out in the collective agreement.

### WHAT IS TO BE DONE AFTER AN INVESTIGATION?

Whether the investigation concludes that there is harassment, incivility or workplace violence or

not, the filing of a report or a complaint reveals the existence of discomfort not only between those directly involved, but also for the whole team and organization.

An investigation, in and of itself, is not sufficient to settle the matter.

At all times, the employer should offer support and guidance on an equal basis to the parties involved in the harassment investigation, namely the complainant, the respondent and the witnesses. This can range from the follow up meeting with the manager up to psychological support.

Also, the employer must remain sensitive to the risk factors that may alter the workplace environment after the filing of a report or a complaint. To do so, he must implement measures aimed at protecting and stabilizing the work environment.

These measures are varied and can come in many forms: coaching the supervisor under whose supervision the event occurred, supporting the work team or even strengthening team cohesion.

In any case, we recommend that you follow up on the situation with the people involved as long as necessary to make sure everything is working normally.

#### CORRECTIVE MEASURES REGARDING THE RESPONDENT

If the investigation or the report concludes that there is harassment, incivility or workplace violence the respondent may be sanctioned with one or more of the following measures:

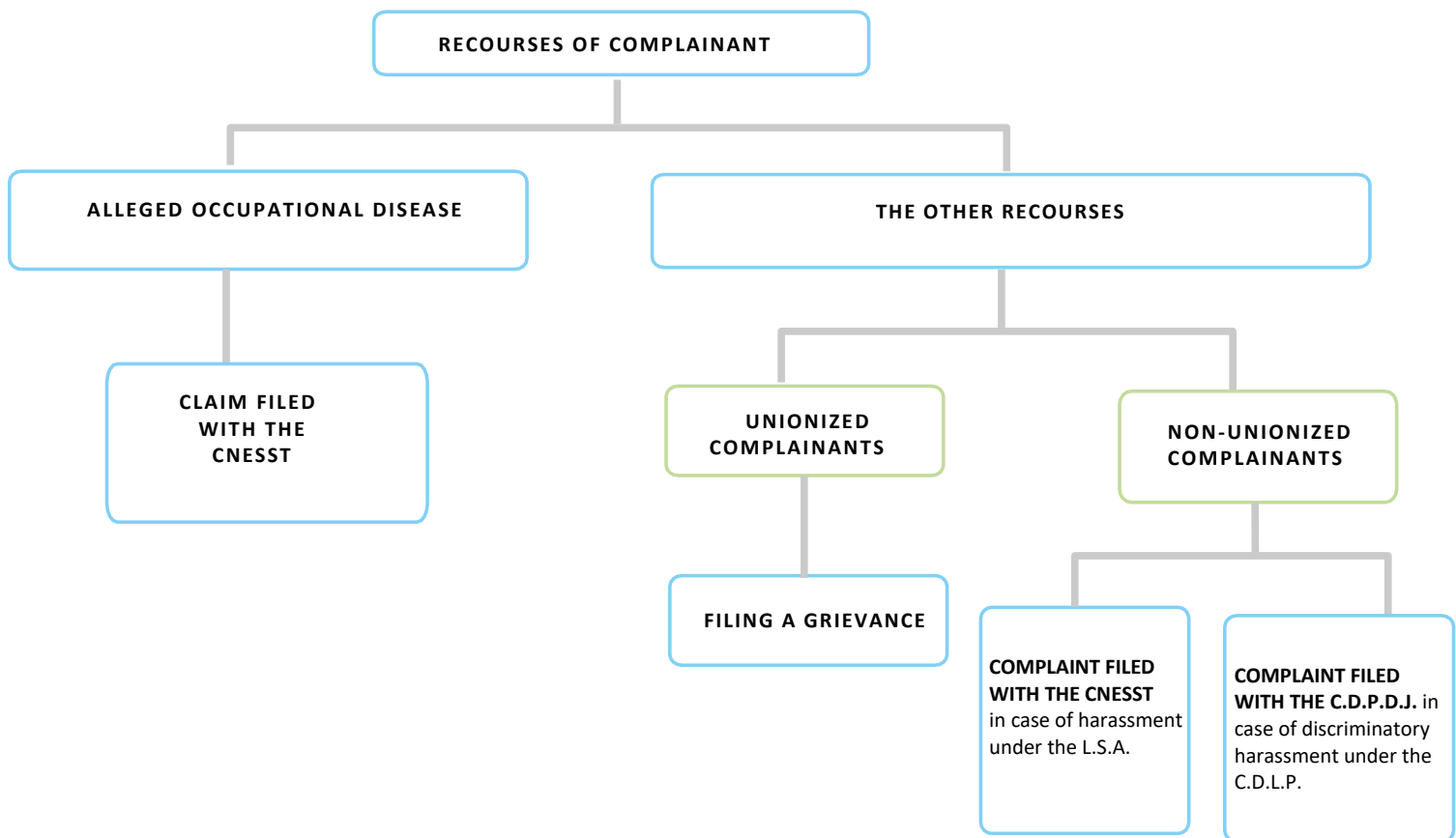
- Written reprimand;
- Suspension without pay;
- Transfer, in the case where it would be unreasonable that the people involved in the complaint continue to work together;
- Demotion;
- Termination of employment;
- Harassment training.

If the investigation does not find evidence to support the complaint, or alternatively there has been no harassment, incivility or workplace violence, no document relating to the complaint will be part of the respondent's disciplinary file. If the investigation shows that there was in fact harassment, incivility or workplace violence, the incident as well as the disciplinary measure will be clearly documented in the employee's file.

## SECTION 5 RECOURSES AVAILABLE TO EMPLOYEES

Aside from the filing of a complaint under the Policy, a complainant also has other recourses against the employer in the event of harassment<sup>5</sup>. To protect his rights, it is not uncommon to see a complainant undertake simultaneous proceedings. The nature of these recourses depends on whether the employee is covered or not by a collective agreement.

Also, when the employee alleges suffering from a employment injury due to the harassing, uncivil or violent behaviors, the complainant may file a parallel claim with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (hereafter : the "CNESST") pursuant to the *Act respecting Industrial Accidents and Occupational Diseases*<sup>6</sup> (hereafter : the "L.A.T.M.P.").



<sup>5</sup> For the purposes of this guide, we have ignored civil, criminal and statutory recourses.

<sup>6</sup> RLRQ, c. A-3-001.

When several recourses are undertaken, we strongly recommend contacting a professional in this field as soon as possible to ensure appropriate action is taken at the right time and thus avoid negative consequences of an untimely reaction.

## CONCLUSION

Harassment prevention is everybody's job. Both employees and elected municipal officers must behave to facilitate the professional fulfilment of everyone in the workplace. As for supervisors, it requires constant management since the work environment is constantly evolving.

This guide aims to equip you to help prevent harassment, and help you understand the ins and outs of this concept which may seem vague, and at the least, get you better acquainted with the stages of an investigation process.

Designed to foster a healthy workplace, the Policy includes incivility and workplace violence. We strongly believe that this will help municipalities prevent inappropriate behaviors as soon as it occurs.

In many cases, in the municipal world, we notice a lack of resources when it comes to human resource management. In such a context, preventing and stopping harassment might appear to be an insurmountable task.

We want to reassure you, not all complaints are substantiated. According to the data compiled by the CNESST between 2014 and 2017, more than half of the complaints filed under the L.S.A. were closed after the CNESST evaluated their admissibility, without considering withdrawals and rejected complaints. As for occupational diseases, for the same period, less than twenty percent (20 %) of the complaints were accepted<sup>7</sup>. So actual harassing behavior is not the standard in the workplace. However, harassing behaviors or similar behaviors must never be taken lightly in view of the repercussions on the work team as well as the inconvenience of legal proceedings for the municipality. It is important to bear in mind the potentially devastating effect of a public decision issued against the municipality. Moreover, the situation addressed in the decision may still be

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<sup>7</sup> COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL DU QUÉBEC, *Statistique sur la violence, le stress et le harcèlement en milieu de travail 2014-2017*, <cnesst.gouv.qc.ca> Statistics on workplace violence, stress and harassment 2014-2017 (our translation).



unresolved.

The FMQ's professional staff will only be happy to support you if you are faced with delicate situations, always with the objective of maintaining a healthy workplace, but also ensuring that the municipality respects its legal obligations.



## SCHEDULE 1

### MODEL OF A HARASSMENT, INCIVILITY AND WORKPLACE VIOLENCE PREVENTION POLICY

#### FOREWORD

This model was drafted following the adoption of *An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance*, on June 12, 2018. Under this law, every employer must adopt a psychological harassment prevention and complaint processing policy as of January 1st, 2019.

In order to help the towns, the municipalities and the regional county municipalities (hereafter: the “RCM”) to adopt a psychological harassment prevention policy or to review the existing one, the Fédération québécoise des municipalités (hereafter: the “FQM”), in collaboration with the Association des directeurs municipaux du Québec (hereafter: the “ADMQ”) suggests a policy model.

The suggested policy model goes further than the requirements of the Act respecting Labour Standards since it includes incivility and workplace violence. In our opinion, these are additional tools that not only help prevent harassment in the workplace but also allow you to intervene in case of incivility or violence in the workplace.

In unionized environments, we recommend that the union be made aware of the policy when it is adopted.

It is important to use judgement in the implementation of this policy: each intervention must be adapted to the particular context. When in doubt, do not hesitate to contact the *service en ressources humaines et relations du travail* of the FQM.

The masculine is used throughout this document and refers to both men and women for the sake of conciseness, without any discriminatory intent.

It is suggested that you adapt the text for the specific needs of your organization in the grey shaded areas throughout the text.

*It should be noted that this policy model is for information purposes only. It can be adapted, modified and customized to meet the particular needs of each organization. The FQM or the ADMQ can not in any way be held responsible for any damages or inconvenience that may result from the adoption or the implementation of this policy.*

*This project is made possible through the financial support of the Commission des normes, de l'équité, de la santé et de la sécurité du travail. We thank the Commission for its support.*

**HARASSMENT, INCIVILITY AND WORKPLACE VIOLENCE PREVENTION POLICY**  
**[DATE OF LAST UPDATE OR ADOPTION]**

**WHEREAS** every person has the right to work in an environment that protects their health, safety and dignity;

**WHEREAS** the Act respecting Labour Standards (hereafter : the “LSA”) stipulates that every employer must adopt a psychological harassment prevention policy and make it available, and this policy shall include a section dealing with sexual harassment;

**WHEREAS** the [town, municipality, RCM] undertakes to adopt proactive and preventive conduct relating to any psychological harassment, incivility or workplace violence situation and as well as empowering the whole organization in this regard;

**WHEREAS** the [town, municipality or RCM] intends to put in place measures to prevent any psychological harassment, incivility or violence situations in its work environment;

**WHEREAS** the [town, municipality or RCM] does not tolerate or allow any form of psychological harassment, incivility or violence in its work environment;

**WHEREAS** it is up to each member of the municipal organization to promote the maintenance of a work environment free from psychological harassment, incivility or workplace violence;

**THEREFORE**, the [town, municipality or RCM] adopts this harassment, incivility and workplace violence prevention Policy.

**1. Policy objectives**

This policy aims to:

- ✓ Develop a respectful organizational culture;
- ✓ Take all reasonable actions to prevent and put an end to any form of harassment, psychological or sexual, incivility or workplace violence;
- ✓ Clarify the roles and responsibilities of all organization members in connection with this policy;
- ✓ Efficiently manage and put an end to the behavior of psychological harassment, incivility or workplace violence;

- ✓ Encourage the employees of the [town, municipality or RCM] to report any harassment, incivility or workplace violence situation;
- ✓ Provide the appropriate support, to the extent possible, to the psychological harassment, incivility or workplace violence victims.

## **2. Scope of application**

This policy addresses relations between colleagues, between supervisors, between supervisors and subordinates, between employees and citizens, between employees and elected municipal officers, between the employees and the suppliers of the [town, municipality or RCM] as well as those between the employees and any other third-party. This policy applies to conduct that may occur in the workplace or during social events related to work.

## **3. Definitions**

### **Employee**

Person who works under the direction or control of the employer. For the purposes of this policy, a volunteer is deemed to be an employee.

### **Employer**

[name of town, municipality or RCM].

### **Management rights**

The right of the employer to manage his employees and organizations and to ensure the proper functioning and profitability of the [town, municipality or RCM] For example, following up on work performance, absenteeism, task assignment or the implementation of a disciplinary or administrative process.

Psychological harassment must not be confused with the exercise of the employer's authority as long as the employer does not exercise it in an abusive or discriminatory manner.

### **Psychological harassment**

Psychological harassment is vexatious behavior in the form of repeated and hostile or unwanted verbal comments, actions, conduct or gestures, that affects an employee's dignity or psychological or physical integrity or could result in unfavourable work conditions in a harmful work environment.

Generally, harassment is made up of repeated gestures. However, one single event that has a lasting harmful effect can also be deemed to be harassment.

This definition includes harassment related to grounds for discrimination set out in the rights and freedoms charters, administrative harassment (abuse of power) and sexual harassment (hereafter collectively: “harassment”).

### **Sexual harassment**

For greater certainty, sexual harassment is characterized by verbal comments, conduct, actions or gestures of a sexual nature or with a sexual connotation. Among other examples, it can manifest itself by:

- ✓ Inappropriate advances, requests for favours, unwanted invitations or requests of a sexual nature;
- ✓ Comments of a sexual nature, comments about a person’s body or appearance, jokes that denigrate the sexual identity or orientation of a person;
- ✓ Unwanted physical contact, such as fondling, pinching, grabbing, voluntary touching;
- ✓ Threats, reprisals or any other injustice associated with sexual favours.

### **Incivility**

Behaviour that disregards the obligation of mutual respect that is expected in workplace relations.

### **Respondent**

The person who has allegedly behaved in a harassing, uncivil or violent manner and who has been reported or is the subject of a complaint for same. It may be an employee, including a supervisor and the director general, an elected municipal officer, a supplier, a citizen or a third party.

### **Complainant**

The person who believes they are the victim of harassment, incivility or workplace violence. It may be an employee, including a supervisor or the director general.

### **Direct supervisor**

First-line supervisor with direct authority over the employee and who exercises direct control over the work performance of the latter.

### **Workplace violence**

Any aggression which affects the physical or moral integrity of a person.

#### **4. Roles and responsibilities**

All the people governed by this policy, [and the union,] must have behavior devoid of harassment, incivility or workplace violence. They must also contribute to the establishment of a healthy work environment, more particularly by reporting to the employer any incidents of harassment, incivility or workplace violence.

##### **4.1. The council [municipal or of the mayors ]**

- a) Takes reasonable measures to prevent, or, when it is made aware of such behavior, put an end to the harassment, incivility or workplace violence;
- b) Supports senior management and the direct supervisors with the implementation of this policy;
- c) Receives any complaint involving senior management, in which case, the articles of this policy are applicable, appropriately adapted for such a context.

##### **4.2. The director general**

- a) Has the responsibility of enforcing this policy;
- b) Diligently handles any report or complaint and investigates or refers the investigation to an external expert.

##### **4.3. The direct supervisor [or the director general if there is no direct supervisor]**

- a) Ensures the dissemination of this policy and raises awareness of it among the employees;
- b) Diligently handles any report or complaint by taking reasonable actions to maintain a healthy work environment;
- c) Facilitates the dispute resolution process of any conflict and collaborates with the different stakeholders;
- d) Informs the director general of any report, complaint or intervention of interest.

#### **4.4. [The union]**

- a) [Quickly informs the employer of any conflict that might resemble harassment, incivility or workplace violence;]
- b) [Collaborates in the dispute resolution process.]

#### **4.5. The employee**

- a) Takes cognizance of this policy;
- b) Collaborates in the dispute resolution process, when required.

#### **4.6. The complainant**

- a) Reports any harassment, incivility or workplace violence situation to the potential respondent in order to request the latter put an end to such behavior;
- b) Reports the situation to a direct supervisor if the harassment, incivility or workplace violence continues;
- c) Collaborates in the dispute resolution process.

#### **4.7. The respondent**

**4.8.** Collaborates in the **dispute** resolution process.

### **5. Internal process for the handling of reports and complaints**

- a) Every report or complaint will be handled with diligence, equity, discretion and impartially;
- b) In as much as possible, the complainant must rapidly indicate to the respondent that he should immediately stop his undesirable or harassing behavior;
- c) The processes set out in this policy do not prevent a person from exercising his legal rights within the legal deadlines.



## 5.2. Informal resolution process

- a) The informal resolution process aims to avoid unduly disturbing the workplace and to involve the complainant and the respondent in the search for informal dispute resolution solutions. The parties can resort to this process at any time during the handling of a reported incident or complaint;
- b) The complainant reports the conflict to his immediate supervisor (or to senior management if his immediate supervisor is involved) and is informed of the options open to him to resolve the conflict;
- c) The person who receives the report or the complaint must:
  - ✓ Verify the will of the parties to begin an informal resolution process;
- d) If the parties wish to take part in the informal resolution process, the person handling the report or the complaint must:
  - ✓ Get each party's side of the story;
  - ✓ Spark discussion and suggest ways of resolving the conflict;
  - ✓ Identify the accepted solutions with the parties in order to resolve the conflict;
- e) If the process fails, the person who has received or is handling the report or the complaint informs the complainant of the possibility of proceeding with the formal resolution process. He informs the director general of the failure of the informal process. The latter may decide to investigate and determine applicable measures, if required.

## 5.3. Formal harassment resolution process

- a) The formal harassment resolution process does not apply to reports or complaints related to incivility or workplace violence, unless they can be construed as harassment;
- b) The complainant may file a formal complaint with the director general within two (2) years of the last harassing conduct. If the complaint involves the director general, the complainant must forward it directly to [the mayor, the warden, the human resources

committee or the elected municipal officer so designated by resolution];

- c) A complaint form identifying the essential information for the handling of same is attached as a schedule to this policy. The complainant or the person reporting the issue must set out in writing the allegations supporting the complaint on the basis of facts and listing, if possible, the dates of the events and the names of the witnesses.

#### **5.4. Investigation**

- a) Upon receipt of a complaint, the director general:
  - ✓ Ascertains on a preliminary basis what has been attempted to resolve the conflict;
  - ✓ Determines if it will conduct its own investigation or if it will outsource the investigation to an external expert (hereafter collectively : the “designated person”);
  - ✓ Establish temporary measures, when required;
- b) The director general or the designated person then ascertains if the complaint is admissible and communicates its decision in writing to the complainant;
- c) If the complaint is deemed admissible, the director general or the designated person reviews all of the facts and circumstances related to the allegations submitted by the complainant;
- d) The director general or the designated person, at the outset, verbally advise the respondent that an investigation will be held. A written notice of meeting is then sent to the latter at least forty-eight (48) hours before the meeting to get his version of events. The notice of meeting sets out the main components of the complaint;
- e) The investigation involves meeting with the parties to the complaint as well as the relevant witnesses. During these meetings, the complainant and the respondent may be accompanied by the person of their choice [or the union representative] who is not otherwise involved in the complaint. Every person met, including the accompanying person, must sign a confidentiality agreement. An accompanying person cannot be a witness.

#### **5.5. Conclusions of the investigation**

- a) The director general or the designated person shall produce a written report concluding as to harassment or not. As a follow-up to the investigation, he may in particular:

- ✓ Meet the complainant and the respondent on an individual basis to inform them whether the claim is substantiated or not;
  - ✓ Meet with the [municipal council or the council of mayors] or senior management to inform them whether the complaint is substantiated or not and to share his recommendations with them, if any;
  - ✓ Intervene in the complainant's work environment to put an end to the harassment;
  - ✓ Impose sanctions;
  - ✓ Agree on a reasonable accommodation when the complaint involves an elected municipal officer, a citizen, a volunteer or a supplier;
  - ✓ Direct the complainant or the respondent to an employee counselling service or any other professional resource;
- b) The complainant may withdraw his complaint at any time in writing. When the complaint is withdrawn by the complainant, the director general reserves the right to continue the investigation if he believes the situation justifies it;
- c) Certain actions may be implemented to ensure a healthy work environment even if no harassment allegations are substantiated.

## **6. The formal resolution process of incivility or workplace violence complaints or reports**

- a) The complainant may file a formal to the director general no later than thirty (30) days after the last incident of uncivil behavior or workplace violence. If the complaint involves the director general, the complainant must forward it directly to [the mayor, the warden, the human resources committee or the elected officer so designated by resolution];
- b) A complaint form identifying the essential information for the handling of same is attached as a schedule to this policy. The complainant or the person reporting the issue must set out in writing the allegations supporting the complaint on the basis of facts and listing, if possible, the dates of the events and the names of the witnesses;
- c) Should the informal resolution process fail and, faced with allegations of incivility or of violence, the director general or the designated person may decide to investigate and, in accordance with generally applicable rules, determine the applicable measures, if required;

- d) This process is usually applied when a supplier, a citizen, a third-party, or a volunteer is the subject of an incivility or violence complaint. In such a situation, the director general or the designated person determines the applicable reasonable accommodations, if any;
- e) In the case of an elected municipal officer or the director general being the subject of the complaint, it is the responsibility of the [municipal or of the mayors] council to determine the appropriate process to handle the conflict.

## **7. Sanctions**

- a) The employee, including a supervisor and director general, who does not comply with this policy can be subject to administrative and disciplinary measures depending on the severity of the acts committed, which may go as far as the termination of his employment;
- b) The elected municipal officer, citizen, volunteer, supplier or third party who does not comply with this policy can be subject to administrative or judicial measures depending on the severity of the acts committed.

## **8. Confidentiality**

The employer shall respect the privacy of confidential information involved in the implementation of this policy. Any report or any complaint shall be handled with discretion, and confidentiality is required of all those involved. Consequently, the employer agrees that this information shall remain confidential to the extent that the employer must adequately fulfill the obligations described above. Any resolution process or any investigation report is confidential.

## **9. Good faith**

- a) The good faith of the parties is essential to the resolution of any situation. The search for the best possible solution, with the collaboration of each of the parties, is the preferred option to reach a just and equitable resolution for all;
- b) Any person to whom this policy is applicable and who refuses to take part in the investigation that is part of the formal resolution process shall be liable to a sanction;
- c) The complainant who has filed a complaint deemed to be malicious, frivolous or in bad faith shall be liable to a sanction.

## **10. Reprisals**

No person can be the subject of reprisals for having used the processes provided for in this



Schedule 1  
Complaint form

COMPLAINT FORM		
INFORMATION ABOUT THE COMPLAINANT		
Name:	First name:	
Job/Position:	ID:	
Department:		
Address:		
INFORMATION ABOUT THE RESPONDENT(S)		
Name:	First name:	
Job/position:		
Department:		
Name:	First name:	
Job/Position:		
Department:		
EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT (S)		
<input type="checkbox"/> Manager/Supervisor	<input type="checkbox"/> Direct supervisor	<input type="checkbox"/> Colleague/Fellow worker
<input type="checkbox"/> Subordinate/Employee	<input type="checkbox"/> Citizen	<input type="checkbox"/> Supplier
<input type="checkbox"/> Senior manager	<input type="checkbox"/> Other:	
INFORMATION ABOUT THE WITNESS(ES)		
Name:	First name:	
Job/Position:		
Department:		




**ACCURACY OF THE INFORMATION:**

I certify that the information provided above is exact and I am aware that false allegations are subject to sanctions stipulated in the harassment, incivility and workplace violence prevention policy.

**Signature:**

**Date:** \_\_\_\_\_  
**YYYY-MM-DD**

**Please transmit the completed form to the care of : [Director general, mayor, warden, human resources committee or the elected representative designated by resolution]**

**ADDRESS**

**or by email to :** \_\_\_\_\_