

31 October 2019

Email: ailsac@adhb.govt.nz

Re: Official Information Act request – Complaints made by staff

I refer to your Official Information Act request dated 24 October 2019 requesting the following information under the Official Information Act:

1. **The number of bullying, harassment or other complaints laid by staff**
2. **The outcomes of the complaints**
3. **How many were taken to mediation**
4. **What was the outcome of mediation**
5. **Any anonymous information regarding the nature of the complaints**
6. **How many times was bullying or harassment stated as a reason for leaving the DHB in exit interviews**

RNZ requests the above information for the last 5 financial years.

The information you have requested in questions 1 - 4 is provided in the table below.

Please note the following important points:

1. Auckland DHB has a formal "speak up" programme which encourages staff to talk about workplace bullying and provides a support network where people can go if they feel they are being bullied at work. The programme also provides a mechanism for staff to formally raise a complaint if they consider they are being bullied at work and a process for dealing with substantiated complaints. The information provided below does not include informal complaints or actions an individual may choose to take to resolve a matter directly.
2. There may be more than one complaint about an individual.
3. The Auckland DHB bullying and Harassment policy encourages all employees to speak up if they encounter bullying or any kind of inappropriate behaviour in the workplace. The data provided should not be interpreted as an increase in the amount of bullying taking place. The increase in the number of bullying and harassment cases being investigated and resolved is because more people are feeling confident about speaking up about bullying and that their concerns are being taken seriously.

4. Although all the complaints listed below were investigated, not all the complaints were substantiated.
5. The outcome reflects the action taken to ensure the bullying behaviour does not recur. That is - the outcome for the person complained about not the outcome for the person making the complaint.

We sometimes receive anonymous complaints and anonymous information about complaints. Where the same consistent information is being provided anonymously about the same person or work area, these cases are investigated. Other random, one-off unsolicited anonymous complaints are often not able to be investigated.

6. Auckland DHB staff are invited to participate in exit interviews when they leave the organisation. They are asked to respond to the following question. "I experienced discrimination or harassment while working at Auckland DHB". Not all employees who leave Auckland DHB answer this question.

Of those employees who have left Auckland DHB during the last 5 years and completed an exit interview, no one has identified bullying or harassment as their primary reason for leaving. 28% of those that recently responded to the question "I experienced discrimination or harassment while working at Auckland DHB" responded that they either agreed or strongly agreed with the statement.

2015

Number of Cases	Outcome	Mediation
1	No formal outcome	

2016

Number of Cases	Outcome	Mediation
6	1 written warning 1 verbal warning 1 letter of expectation 1 apology 1 resignation during disciplinary process	1 resolved by mediation during disciplinary process

2017

Number of Cases	Outcome	Mediation
6	2 formal written warnings 1 resignation during disciplinary process	1 mediated settlement 1 restorative justice resolution 1 mediated outcome
Note; one case included several complaints about the same person		

2018

Number of Cases	Outcome	Mediation
13	1 termination 6 complaints did not meet the bullying threshold 2 formal written warnings 1 coaching session	3 mediated settlements
Note; one case involved 8 anonymous complaints about 5 different people		

2019

Number of Cases	Outcome	Mediation
37	9 complaints did not meet the bullying threshold 6 informal action/verbal warning 2 formal written warning 3 complaints withdrawn 1 resignation during disciplinary process 1 termination 7 letters of expectation	1 mediated settlement
Note; 7 cases are currently under investigation. No formal outcome available.		

For your information we have also attached Auckland DHB's harassment and bullying policy.

I trust this information answers your questions.

You have the right to seek a review of the response by the Ombudsman under section 28(3) of the Official Information Act. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that this response, or an edited version of this response, may be published on the Auckland DHB website.

Yours faithfully



Ailsa Claire, OBE
Chief Executive

HARASSMENT & BULLYING POLICY

Overview

Document Type	Policy
Function	Corporate Administration, Management and Governance
Directorates	Organisation Wide
Department(s) affected	All departments, services and units
Applicable for which Patients, Clients or Residents?	n/a
Applicable for which Staff?	All workers
Keywords (not part of title)	
Author – role only	Human Resource Director Partnering and Management
Owner (see <u>ownership structure</u>)	Owner: Chief Executive Issuer: Chief of People & Capability
Edited by	Document Controller
Date first published	Yet to be determined
Date this version published	10 May 2017 - updated
Review frequency	3 yearly
Unique Identifier	PP01/STF/026

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File:	Harassment-&-Bullying_2017-05-10.docx	Authorised by:	Chief Executive
Classification:	PP01/STF/026	Date Issued:	10 May 2017 - updated

HARASSMENT & BULLYING POLICY

Overview, Continued

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HARASSMENT & BULLYING POLICY

Introduction

Purpose

The purpose of this policy is to:

- Ensure all workers know their rights and responsibilities regarding workplace bullying and / or harassment.
 - Provide definitions for identifying workplace harassment and bullying.
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Associated Document

The table below indicates other documents associated with this policy.

Type	Document Titles
NZ Legislation	<ul style="list-style-type: none">• Employment Relations Act 2000• Health and Safety at Work Act 2015• Human Rights Act 1993
Board Policy	<ul style="list-style-type: none">• <u>Complaints Management</u>• <u>Discipline & Dismissal</u>• Values & Behaviours (Consultation Draft)
Other	<ul style="list-style-type: none">• College codes of practice and associated documents

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HARASSMENT & BULLYING POLICY

Definitions

Term	Definition
Workers	<ul style="list-style-type: none"> • Employees • Contractors • Honorary staff / observers • Volunteers • Partner-organisation employees and representatives
Harassment	<p>Harassment is any type of unreasonable, unwelcome comment or behaviour which offends, humiliates or intimidates the person at whom it is directed.</p> <p>Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable.</p> <p>Some forms of harassment, such as sexual and racial harassment (defined below), are unlawful and are prohibited under the New Zealand Human Rights Act 1993 (HRA) and the Employment Relations Act 2000 (ERA).</p> <p>Harassment can take many forms – it may be verbal, physical, written or pictorial. <u>Examples include, but are not limited to:</u></p> <ul style="list-style-type: none"> • Verbal or written abuse or comments • Physical or verbal assault • Bullying (set out in detail below) • Embarrassing, threatening, humiliating, patronising or intimidating remarks • Belittling opinions or constant criticism • Spreading of a malicious, unfounded rumour • Subjecting a person in the workplace to unreasonable scrutiny • Undermining another's authority / standing in the workplace • Isolating or excluding a person in the workplace (eg dealing with him / her through a third party) • Publicly insulting / humiliating a person in the workplace; • Engaging in favouritism (both overt and covert) • Sabotaging or impeding work performance by deliberately withholding work-related information and / or resources or by supplying incorrect information • Jokes or offensive gestures.

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Definitions, Continued

Term	Definition
<p>Harassment, continued</p>	<p>The behaviour may either be repeated or be a one-off incident which is significant enough to have a detrimental effect on the recipients(s) health and safety, employment, job performance or satisfaction. Repeated behaviours do not have to be directed at one individual to constitute harassment.</p> <p>The intentions of the alleged harasser are not relevant to the definition of harassment; it is the effect of the behaviour on the individual and its reasonableness which are key to defining behaviour that constitutes harassment.</p> <p><u>Harassment can take place in a range of relationships, including between:</u></p> <ul style="list-style-type: none"> • A worker and a manager • Co-workers • A worker and a patient • A worker and another person in the workplace • A worker and a member of the public. <p>Harassment may also occur through electronic means such as electronic messages, voicemail, phone and / or video calls, Internet chat-rooms and other social media platforms or chat-rooms, both inside or outside the workplace and / or work time.</p>

<p>Sexual Harassment</p>	<p><u>Sexual harassment in the workplace occurs when:</u></p> <ul style="list-style-type: none"> • a person makes a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment or an implied or overt threat about present or future employment status; or • a person is subjected to behaviour that is unwelcome or offensive to that person and has a detrimental effect on that person's employment, job performance or job satisfaction through: <ul style="list-style-type: none"> – the use of language (whether written or spoken) of a sexual nature; – the use of visual material of a sexual nature; or – physical behaviour of a sexual nature.
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Definitions, Continued

Term	Definition
Sexual Harassment, continued	<p>Sexual harassment is one form of unlawful harassment and it includes any unwanted or unwelcome conduct of a sexual nature that makes a person feel offended, humiliated or intimidated. As with harassment, conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person.</p> <p><u>Sexual harassment may take many forms including the following:</u></p> <ul style="list-style-type: none"> • Requests or demands for sexual activity which carry overt or implied threats or promises regarding the employee's employment • Offensive sex-oriented gestures or comments • Sex based insults, taunts, teasing or name calling • Unwanted and deliberate physical contact, including pinching, touching, grabbing, kissing or hugging • Persistent and unwelcome social invitations or telephone calls and / or propositions / inappropriate attention. • Leering and suggestive staring at a person or parts of their body • Obscene phone calls. Sending rude or offensive emails, attachments, text messages or movie files. Sending sexual material in any form or format • Displays or circulation of sexual material such as posters, magazines, pictures, screen savers, internet material etc. • Accessing, downloading or transmitting sexually explicit or inappropriate material in the workplace; • Sexual jokes, comments or innuendo, including sexually provocative remarks and suggestive or derogatory comments about a person's body or physical appearance • Questions or probing about a person's sex life • Sexually explicit conversations.

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HARASSMENT & BULLYING POLICY

Definitions, Continued

Term	Definition
<p>Racial Harassment</p>	<p><u>Racial harassment occurs in the workplace when a person uses:</u></p> <ul style="list-style-type: none"> • Language (written or spoken); or • Visual material; or • Physical behaviour that directly or indirectly expresses hostility against or brings into contempt or ridicule another person on the grounds of their colour, race, ethnic or national origins, is hurtful or offensive to that person and has a detrimental effect on that person's employment, job performance or satisfaction. <p><u>Racial harassment may take many forms including the following:</u></p> <ul style="list-style-type: none"> • Making offensive remarks about a person's race; • Jokes or songs of a racial nature • Mocking others' accents or mimicking the way they speak • Deliberately mispronouncing names • Racial or ethnic oriented jibes or abuse • Calling people by racist names • Displaying offensive material • Distribution of racist material. <p>Auckland DHB recognises that behaviour that may be regarded as harmless, trivial, a joke or acceptable by one person may be racial harassment to those who find offence. However, conduct can amount to racial harassment even if the person did not intend to hurt or offend the other person.</p>

<p>Other Forms of Harassment</p>	<p>Harassment covers many activities, events and situations which may occur in the workplace. This policy cannot identify every behaviour or conduct that may constitute harassment. In general, Auckland DHB will consider any conduct that creates a hostile and / or offensive environment as breaching this policy.</p>
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Definitions, Continued

Term	Definition
<p>Other Forms of Harassment, continued</p>	<p>What constitutes acceptable behaviour to one person may not be acceptable to another. This can be for various reasons such as different backgrounds, experiences and / or personal beliefs that people hold, or because a worker is new to a workplace and has not formed relationships with the other workers, and is unfamiliar with the behavioural norms (ie what is and is not acceptable) of that particular workplace.</p> <p>For these reasons, workers should be careful in all of their dealings with colleagues to ensure that their behaviour is acceptable.</p> <p>Additional details on appropriate behaviour can also be found in Auckland DHB's Values and Behaviours Policy.</p> <p>However, no unreasonable behaviour which causes distress to other workers is acceptable. All workers need to consider their own behaviour and that of their colleagues and reflect whether it might be unacceptable or offensive.</p>

<p>Bullying</p>	<p>Workplace bullying is a form of harassment. It is behaviour directed towards a person or group of people within Auckland DHB that is:</p> <ul style="list-style-type: none"> • Repeated; and • Unreasonable; and • Creates a risk to health and safety. <p>Repeated behaviour is persistent and includes a range of actions and behaviours over time. One-off incidents of unreasonable behaviour are not generally considered to be workplace bullying. However a single, serious incident may constitute harassment and / or a breach of Auckland DHB's policies, and such behaviour is not acceptable.</p> <p>Violent behaviour is a highly objectionable form of direct bullying. However, bullying can be manifested in more subtle ways that impact on the health and well-being of the victim.</p>
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Definitions, Continued

Bullying, continued	<p><u>Examples of bullying include (but are not limited to):</u></p> <ul style="list-style-type: none"> • Physical assault or threats; • Initiation rites; • Verbal abuse or name calling; • Practical jokes; • Teasing / inappropriate comments; • Intimidating actions; • Psychological abuse such as excluding or isolating workplace participants; • Deliberately withholding information necessary for effective work performance. • Giving unachievable tasks / impossible deadlines; • Persistent and / or public criticism.
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Behaviour That Is Not Harassment or Bullying

Managers have responsibilities to manage their workers, particularly with regard to unsatisfactory performance of duties. Therefore, harassment and / or bullying must not be confused with advice, feedback and comment from managers regarding an individual's work performance.

Some examples of behaviour that are not bullying or harassment include are:

- A Manager reasonably counselling a worker about their performance or behaviour. Performance management and / or counselling is a necessary part of ensuring that workers meet company standards of work and behaviour;
- Setting high standards because of quality, safety and team cooperation;
- The raising of genuinely held concerns by a manager about a worker's conduct or behaviour;
- Constructive and / or negative feedback;
- A Manager requiring reasonable verbal or written work instructions to be carried out;
- Other reasonable managerial actions such as disciplinary action, organisational change, work directions and orders, and allocation of work and leave in compliance with business needs and systems;

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Definitions, Continued

Other examples of behaviours that are not bullying or harassment include:

- Personality conflicts or difference of opinions;
 - One off or occasional instances of forgetfulness or tactlessness.
 - Mutual friendships or relationships or physical contact based on mutual consent.
 - Constructive peer review.
 - Friendly banter, light-hearted exchanges, mutually acceptable jokes and compliments;
 - A single incident of unreasonable behaviour (unless serious).
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Policy Statements

Policy Statements

- Auckland DHB is committed to providing a safe workplace free of harassment and bullying.
- Harassment or bullying of any type is not acceptable at Auckland DHB and such behaviour will result in disciplinary consequences, including dismissal or summary dismissal.
- Harassment and bullying fail to respect a person's dignity.
- Harassment and bullying can affect workplace morale and performance including patient safety

All workers are personally responsible for:

- Making themselves aware of this policy;
 - Behaving in a responsible, respectful and professional manner;
 - Listening and responding appropriately to the views and concerns of others; and
 - Treating others in the workplace with courtesy and respect.
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HARASSMENT & BULLYING POLICY

Scope

Scope

This policy applies to all Auckland District Health Board (Auckland DHB):

- Employees
- Contractors
- Honorary staff / observers
- Volunteers
- Partner-organisation employees and representatives

For purposes of this Policy the above parties are defined as workers.

This policy applies to behaviours that occur:

- Within the workplace and / or during work hours
 - In connection with work, even if it occurs outside normal working hours and / or away from the workplace
 - During work activities, for example when dealing with patients
 - On social media where workers interact with colleagues and their actions may affect them directly or indirectly.
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HARASSMENT & BULLYING POLICY

Obligations & Liability

Obligations & Liability

Auckland DHB has obligations under the Employment Relations Act 2000, Human Rights Act 1993 and Health and Safety at Work Act 2015 (and amendments) to actively address complaints of harassment or bullying made by or against workers.

All reported instances of harassment and / or bullying will be treated seriously and, if substantiated, may result in the disciplinary process being invoked. One possible outcome of a disciplinary process is termination of the offender's employment.

Where Auckland DHB becomes aware of harassment or bullying related incidents, Auckland DHB may, at the discretion of the Chief of People and Capability, decide to investigate, even in the absence of an allegation from an individual (or the retraction of a complaint by an individual), depending on the seriousness of the issue.

Complaints made by, or on behalf of, patients / clients will be investigated through the Auckland DHB Complaints Process.

Workers are legally responsible for their own behaviour and as such they may be personally fined or convicted by a relevant court for unlawful conduct. In circumstances where a worker's conduct may involve a breach of any New Zealand law and could be a criminal offence (eg some forms of sexual harassment). Auckland DHB may be legally obliged to notify the Police.

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Obligations & Liability, Continued

Duty of Managers & Supervisors

Managers are responsible for:

- promoting appropriate standards of conduct in the workplace;
 - making workers aware of, and providing guidance on, what behaviour constitutes harassment and / or bullying and that harassment and / or bullying will not be tolerated at ADHB;
 - ensuring that a culture of unacceptable behaviour is not tolerated or allowed to develop;
 - ensuring that no form of harassment or bullying takes place at the workplace;
 - taking reasonable steps to make sure any person complaining of harassment and / or bullying is protected and supported;
 - identifying and mitigating any risk when harassment or bullying concerns are raised or identified.
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Making a false or misleading complaint

It is defamatory to make a false statement about someone which is likely to harm his or her reputation. Complaints or allegations found to be false or misleading or malicious may result in disciplinary action being taken against the complainant.

Formal Complaint to an External Body

An individual has the right to make a formal complaint to the Human Rights Commission.

HARASSMENT & BULLYING POLICY

Support Available

Purpose To provide information about available support systems

Support Team At Auckland DHB there are a number of individuals who are specially trained in dealing with bullying and harassment.

These include:

- Human Resources Manager
- Occupational Health and Safety Staff Support team

Their role is to:

- Provide workers with information on bullying and harassment and clarify any questions or concerns they may have
 - Provide confidential advice on the options that are available for dealing with bullying and harassment
 - Support an individual who wishes to confront a person displaying harassing or bullying behaviours themselves
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Employee Assistance Programme (EAP)

In some circumstances employees may wish to seek confidential counselling services. EAP can be used to address issues of a work or personal nature that may be impacting on health and wellbeing. EAP contact details are available 0800 SELF HELP (0800 735 343)

Other Support

Alternatively, an individual may seek support and guidance from another individual that they choose as a support person. This could be a union representative, whanau, family doctor, a friend or solicitor. In many cases it will not be appropriate to have a colleague act as a support person due to confidentiality and in case they need to be interviewed as part of an investigation.

Any individual approached as a support person must be aware of the requirement to regard any information discussed with them as confidential.

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Support Available, Continued

Human Rights Commission

The Human Rights Commission is a statutory body, which administers the Human Rights Act 1993. The commission's primary functions are to promote human rights through education of the public and to investigate and attempt to resolve complaints of discrimination. The Commission's website is www.hrc.co.nz and its toll free number is 0800 496 877.

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