



AmeCare

Working with you on the canvas of your life




Workplace Bullying and Harassment

Policy and Procedure

Version 3.1

Document Control

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Bullying and Harassment

Policy

AmeCare strives to provide an environment where our staff and participants are surrounded by a safe and friendly space free from abuse, harassment and bullying. AmeCare has a **zero-tolerance** approach to bullying, abuse, neglect, harassment and exploitation.

Purpose and Scope

AmeCare is committed to ensuring that staff work in an environment where people are treated with mutual respect. It is important for a productive and harmonious workplace that staff are aware of the impact of their behaviors on others.

Bullying in the workplace is inappropriate and unreasonable behavior. Staff found to have either committed or condoned such behaviour in the workplace will be subject to disciplinary action which may include the termination of employment.

AmeCare will not tolerate bullying under any circumstances and will:

- Promote appropriate standards of behavior at all times.
- Treat complaints of bullying in a sensitive, fair, timely and confidential manner.
- Implement training and awareness-raising strategies to ensure all employees know their rights and responsibilities.
- Provide an effective procedure for complaints of bullying to be addressed.
- Encourage the reporting of behavior which breaches the bullying policy.
- Ensure protection from victimisation or reprisals for persons reporting bullying.

What is bullying?

Workplace bullying is repeated unreasonable behavior directed towards an employee or group of employees that creates a risk to health and safety.

Bullying usually occurs inside a workplace, for example, one employee may bully another employee, or a group of employees may bully an individual. However, customers, clients and contractors may also bully employees. Bullying may also amount to unlawful discrimination.

What are examples of bullying?

The following types of behavior where directed towards an individual and repeated, or occurring as part of a pattern of behaviour, could be considered to be bullying:

- Demeaning language or verbal abuse.
- Threats, physical or verbal intimidation.
- Outbursts of anger or aggression.
- Excluding or isolating employees.
- “Ganging up” on an employee.
- Psychological harassment or intimidation.
- Giving employees impossible assignments.
- Deliberately changing work rosters to inconvenience particular employees.
- Deliberately withholding information that is vital for effective work performance.

The above list is not exhaustive. Other types of behavior may also constitute bullying.

What isn't bullying?

Reasonable management actions carried out in a fair and reasonable manner are not bullying. For example, actions could include:

- Setting performance goals, standards, and deadlines.
- Allocating work to an employee.
- Rostering and allocating work hours.
- Deciding not to select an employee for promotion.
- Informing an employee about unsatisfactory work performance.
- Informing an employee about inappropriate behavior.
- Implementing organisational changes.
- Performance management processes.
- Constructive feedback.
- Downsizing.
- Requesting information from a worker regarding incidents, injury or return to work plans and programs.

Responsibilities

All employees have a legal responsibility to care for their own health and safety and that of co-workers, and therefore must not engage in acts which constitute bullying behaviour. In addition, employees are required to follow instructions given by their supervisor/manager relating to the prevention of workplace injuries and illnesses. This applies to measures to prevent workplace bullying which includes monitoring the work environment to ensure acceptable standards of conduct are observed at all times.

Therefore, all staff are responsible for promoting this policy by ensuring:

- You treat other staff with respect and courtesy.
- Comply with the Workplace Bullying Policy & Procedure.
- Incidences of bullying are reported to the appropriate manager or supervisor.
- You fully participate in any investigation into an incident of bullying, and maintain confidentiality.

Procedure

What can I do if I believe I am being bullied?

Employees may deal with bullying either by resolving the issues themselves by discussing the problem with the person involved, or by seeking assistance from their Manager/Team Leader

It is important that you do not ignore circumstances where you feel you are being bullied, thinking it will go away. Ignoring the behavior could be wrongly interpreted as approval by the person causing the bullying.

Below is a summary of the steps that can be taken to address individual concerns and who to contact:

- If you can, try to resolve the problem yourself with the person(s) involved as soon as possible. You may find that they didn't mean to do what they did.
- If you're unsure of how to handle the problem yourself, or you just want to talk about the problem with someone and get more information about what you can do, talk to your Manager/Team Leader.
- The HR Manager will be advised of the bullying complaint by your Team Leader/General Manager and may seek external advice and assistance from persons such as independent mediators or investigators.

If you do make a complaint about bullying, you are responsible for ensuring that you:

- Make the complaint honestly and in good faith.
- Provide all the facts relevant to the complaint.
- Co-operate with the investigation and resolution processes.

AmeCare may not assist you to deal with a complaint of bullying where:

- The complaint has been satisfactorily dealt with or resolved previously (unless another bullying incident has occurred since).
- The complaint is made anonymously without sufficient detail being provided to allow investigation or resolution of the matter.
- The complaint is frivolous, vexatious, or malicious, for example where false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution. (Note: Depending on the circumstances, these types of complaints could lead to disciplinary action including dismissal action being taken against the person making the complaint).

If you observe an incident in which another employee is being bullied, bring it to the attention of your Manager/Team Leader

If a complaint of bullying has been made about you, you are responsible for ensuring that you:

- Cooperate with the investigation and resolution processes.
- Provide a written or verbal response to the complaint which has been made.
- Provide all relevant facts to the person conducting the investigation.

Confidentiality

Anyone involved in a complaint of bullying, or its investigation, must ensure that the circumstances and facts of the complaint are disclosed only to those people who are directly involved in progressing its investigation and resolution, or have a 'need to know'. In particular, it is important that staff who either make a complaint or may be witnesses to the circumstances giving rise to the complaint, do not discuss the matter outside the investigation and resolution processes.

Management responsibility

If an employee brings an allegation of bullying to your attention:

DO

- Behave consistently with the Workplace Bullying and Harrassment Policy.
- Resolve the complaint as quickly as possible.
- Be sympathetic, sensitive and serious; the complaint is obviously serious to the person making it.
- Enquire into the matter within 2 working days, and attempt to resolve it as soon as possible.
- Take preventative measures in the workplace (eg. staff education).

DO NOT

- Ignore the complaint.
- Tell the employee making the complaint to sort it out themselves.
- Make a judgement about whether the complaint is true or not.
- Say that the employee should put up with the bullying.
- Talk to anyone about the issue except those involved in the investigation and resolution of the complaint.
- Prejudge the merits of the complaint.

Manager's action steps

1. Notify the HR Manager immediately.
2. Document the complaint
3. In discussion with the General Manager/HR Manager or their designate, determine who should investigate, and if possible, mediate the complaint.

Investigation and mediation

- Investigation of the complaint of bullying must commence within 2 working days of receipt of the complaint.
- With the General Manager/HR Manager or their designate, determine who is the appropriate person to investigate the complaint.
- The investigator must be someone who is impartial, suitably qualified and is competent to conduct investigations. This person may need to be sourced from outside the organisation.
- The investigator must speak to the parties involved, and all witnesses if any. The investigator must report on whether or not the complaint has been substantiated, and the proposed action to be taken in response.
- The investigator must document all findings and outcomes on Brevity and keep detailed notes of conversations including messages left.
- Keep the complainant, and the person against whom allegations were made, informed of progress. This should be done in the form of written memos.
- Mediation should be the first consideration in resolving a bullying complaint. This form of dispute resolution is appropriate only if the person making the complaint agrees.
- The appropriate action, based on the findings of the investigation, must be undertaken promptly. Such action may include:
 - An apology
 - Changes to work practices
 - Disciplinary action
 - Training
 - Notes placed in personnel file etc.
 - Referring to external mediators

Investigator's discussion with the complainant

1. Determine whether an interpreter is required.
2. The complainant may bring a support person with them (eg. Chaplin, family member, friend).
3. Arrange an appropriate venue to meet with the complainant. The venue should be private and free of interruptions, and wherever possible put the complainant at ease. The venue must be conducive to maintaining confidentiality.
4. Allocate enough time to discuss the complaint in full.
5. Explain how the investigation process is conducted, and the possible outcomes.
6. Advise the complainant that the matters discussed are confidential, and that the complainant must only discuss the issue with those people investigating the complaint, or who are formally supporting them through the process.
7. Obtain a broad outline of the complaint, followed by a detailed description of what is alleged to have happened, when it is alleged to have happened (including dates and times), where it is alleged to have happened and by whom. Obtain and record all relevant facts.
8. Ask the complainant whether there are any witnesses, or other evidence that supports their version of events. Record the names of any witnesses to the alleged bullying and obtain copies of any documentation provided to support the allegations. Advise the complainant that witnesses will be interviewed, and that the complainant should not speak to the witnesses about the issues.
9. Explain any other action that will be taken, eg. speaking to the alleged bully.
10. Ask the complainant what they want done regarding the alleged bullying. It is at this point that mediation should be offered as a means of resolving the complaint. If mediation is accepted, the mediation should be arranged to occur as soon as possible.
11. Counselling should be offered to the complainant. If accepted, this may be arranged through the Employee Assistance Program provider.
12. Advise the complainant when they can expect to be advised of an outcome to their complaint.

Investigator's discussion with the person about whom the complaint is made.

1. Determine whether an interpreter is required.
2. The respondent may bring a support person with them (eg. family member, friend).
3. Arrange an appropriate venue to meet with the respondent. The venue should be private and free of interruptions, and wherever possible put the respondent at ease. The venue must be conducive to maintaining confidentiality.
4. Allocate enough time to discuss the allegation(s) in full.
5. Explain to the respondent your role in the investigation of the complaint against them, and that it is important that their version of events is obtained.
6. Advise the respondent that the matters discussed are confidential, and that the respondent must only discuss the issue with those people investigating the complaint, or who are formally supporting them through the process.
7. Explain to the respondent exactly what it is that they have been accused of saying or doing, including names, dates, times and locations.
8. Provide the respondent with a written memo stating the allegations.
9. Ask the person to respond, either verbally or in writing, to the allegations.
10. Use Brevity to take notes of the respondent's version of events. Obtain and record all relevant facts.
11. Ask the respondent whether there are any witnesses, or other evidence that supports their version of events. Record the names of any witnesses and obtain copies of any documentation. Advise the respondent that witnesses will be interviewed, and that the respondent should not speak to the witnesses about the issues.
12. If the allegations are denied, ask the respondent if they can think of a reason why these allegations have been made.
13. Ask the respondent what they believe may resolve the matter.
14. Inform the respondent that they must not victimise or bother the complainant in any way. Doing so will result in immediate action against them, eg. being stood down pending the outcome of the investigation.

15. Counselling should be offered to the respondent. If accepted, this may be arranged through the Employee Assistance Program provider.

16. Advise the respondent when they can expect to be advised of an outcome of the investigation.

The outcome

- Determine whether or not the allegations are substantiated, or whether there is insufficient evidence or information to make a conclusion. Record in writing your conclusions, and the reason for them.
- If the alleged bullying is substantiated, there may be a basis for disciplinary action against the person responsible. If termination of employment is appropriate, this must comply with unfair dismissal laws.
- If the allegations of bullying are unsubstantiated, ensure that there is no action taken against the person whom the complaint was made. Complaint of alleged bullying will be kept on file in a confidential location only accessible by executive members to alleviate and safeguard any inequity of their employment.
- If there is insufficient information to make a determination in regard to an allegation of bullying, the report notes should be kept in the HR Managers files, and no action is to be taken against either party.
- Advise the complainant and the person about whom the complaint was made of the investigation findings and actions. If the allegation is substantiated, action will include a written record of the investigation being placed in the perpetrators personnel file.
- Provide a written summary to the General Manager/HR Manager.
- The HR Manager will store all bullying complaints files securely and confidentially.

Vicarious liability

Vicarious liability is the responsibility an employer or principal has for the actions of their workers or agents while they are on the job. It means that if an employee is harassed, discriminated against, or vilified by another employee of the business in the course of their work, a complaint can be lodged against the business itself as well as the individual employee.

Where does vicarious liability apply?

Employers can be held vicariously liable for discrimination and harassment that occurs in the workplace, or in connection with a person's employment, including but not limited to:

- employer-sponsored events, such as seminars, conferences and training workshops
- work-related social functions, such as Christmas parties
- business or professional development trainings and events.

Employers can also be liable when computers, phones or tablets are used to harass a person; for example by sending text messages, posting on social media sites or sending emails that have a connection to the workplace.

Whose conduct is covered?

An employer may be vicariously liable for acts of discrimination or harassment by:

- individual employees or groups of employees
- directors, supervisors or managers
- workplace participants (where two people work on the same premises but have different employers)
- agents (such as insurance salespersons operating on behalf of the company)
- contract workers or people being paid commission
- a partner of a company harassing another partner
- members of organisations which grant occupational qualifications
- a person employed by a trade union harassing a member
- a person operating an employment agency who harasses someone who uses the agency.

What is the liability of the individuals involved?

Individuals who harass, bully or discriminate against others in the workplace are directly liable for their own actions.

However, if an employer can not demonstrate that they have taken 'all reasonable steps' to prevent the discrimination or harassment from occurring, then both the individual and the employer could be jointly liable for the behaviour.

What does 'all reasonable steps' mean?

Anti-discrimination laws do not provide a clear-cut definition of 'all reasonable steps' because what may be 'reasonable' for a large corporation may not be 'reasonable' for a small business. Instead, it is worked out on a case-by-case basis.

The key point is that employers must take active steps to minimise the risk that discrimination or harassment can occur in their workplace.

When deciding what level of preventative action is reasonable, an employer should consider:

- the size, structure and available resources of the organisation
- the type and nature of the work undertaken by the organisation
- the mix of employees in the workplace, including women, young and older workers, people with disabilities and people from culturally and linguistically diverse backgrounds
- the culture of the workplace
- previous incidents of workplace discrimination and harassment
- levels of employee supervision
- relevant provisions in industrial awards or agreements, and any other relevant factors, such as working hours, geographic isolation, live-in arrangements or duties which require working in close physical proximity with others
- CALD Policy

Responsibilities

The CEO is responsible for maintaining this policy, its related procedures and associated documents.

The AmeCare Manager is responsible, and will be held accountable for the following:

- Ensuring the policy is effectively implemented across the service;
- Monitor staff compliance with the requirements of the policy
- Ensure training and information is provided to staff to carry out this policy

Team Leaders and Site Managers are responsible and will be held accountable for the following:

- Ensuring staff are familiar with the requirements of the policy, and have sufficient skills, knowledge and ability to meet the requirements.
- All Staff will be held accountable for the following:
- Complying with the requirements of this policy.

Review

This policy will be reviewed yearly with participants, their families, stakeholders and staff of AmeCare.

This policy is not intended to be a static document and AmeCare will make a commitment to its ongoing development and implementation in order to provide evidence as to the planning and review principles, guidelines and procedural direction as per the nationally recognised Standards Framework of the National Disability Agreement (NDA) and National Disability Insurance Scheme.

Related AmeCare policies and documents

Related Documents

- Employment Agreement
- Staff Handbook
- Human Resources Policy
- Discipline procedure
- Incident Reporting Policy
- Employee Assistance Program
- Feedback and Complaints

Related Legislation

- National Disability Insurance Scheme (2013)
- National Disability Service Standards
- Disability Services and Inclusion Act 2023
- Disability Act 2006
- Disability Discrimination Act 1992
- Equal Opportunity Act 2010
- United Nations' Convention on the Rights of persons with Disabilities 2006
- Occupational Health and Safety Act 2004
- Sex Discrimination Act 1984
- Race Discrimination Act 1984
- Equal Opportunity Act 2010
- Human Rights and Equal opportunity Commission Act 1986
- Workplace Relations Act 1996
- Fair Work Act 2009
- Preventing and responding to bullying at work (WorkSafe Victoria Guidance Note).
- How WorkSafe applies the law in relation to employing or engaging suitably qualified persons to provide health and safety advice (WorkSafe Victoria Guideline).