

8.1.2 **Accommodation** ~~The duty to accommodate is a joint responsibility. The Employer has a duty to accommodate as defined in the Ontario Human Rights Code. The parties agree to act in accordance with all applicable legislation, including but not limited to the Ontario Human Rights Code, the Accessibility for Ontarians with Disabilities Act (AODA) and the Occupational Health and Safety Act (OHSA).~~

8.1.3 Accommodation requests shall be initiated by the member and shall be dealt with on a case by case basis.

8.1.4 Upon request of the member, who has an attested medical need, the Dean, the Health and Wellness Office, and, APUO (when requested by the member) shall develop an accommodation plan to be implemented in a timely manner. The member will be informed of their right to union representation.

8.1.5 The Health and Wellness Office shall forward the accommodation request and any appropriate functional limitations, if applicable, to the Dean. The Dean shall then, in consultation with the member, and APUO (where requested by the member) implement an accommodation plan as soon as possible.

8.1.6 Subject to 8.1.7, the medical report of the member's treating physician, or registered mental health professional, shall be accepted as verification of the disabling condition and need for accommodation.

8.1.7 The Employer, via the Health and Wellness Office may require that a member be examined by one or more physicians appointed and paid by the Employer.

(a) The Health and Wellness Office shall notify the member and APUO (where requested by the member) with the names of three (3) duly qualified medical practitioners and the member shall select one of those practitioners to conduct the examination. Upon choosing the independent medical practitioner, the member and APUO (if applicable), shall agree to the scope of the independent medical exam.

(b) The independent medical report shall be forwarded to the member's treating physician as appropriate. The member and APUO (where requested by the member) will be provided with a copy of the report upon written request.

Section 8.2 - Harassment, Sexual harassment and/or Discrimination

8.2.1 Purpose

8.2.1.1 The Employer is committed to maintaining a work environment that is free from harassment, sexual harassment and/or discrimination. The parties recognize the need to address any allegations of harassment, sexual harassment and/or discrimination as per the Ontario *Human Rights Code* and the *Occupational Health and Safety Act* and acknowledge that if there is a discrepancy between legislation and this article that legislation supersedes this Collective Agreement.

8.2.1.2 The parties agree that Policy 67a Prevention of Harassment and Discrimination (revised on February 21, 2012) is incorporated by reference into the collective agreement with the understanding that Policy 67a does not replace or supersede the collective agreement.

8.2.1.3 A Glossary of Terms can be found in Policy 67a.

8.2.1.4 In keeping with the Employer’s commitment to maintaining a work environment free from harassment, sexual harassment and/or discrimination, the Employer has established a Human Rights Office (“HRO”). If a member feels that she is the subject of harassment, sexual harassment and/or discrimination, she could contact the HRO and speak to a Discrimination and Harassment Prevention Officer (“Officer”).

8.2.2 Confidentiality All enquiries regarding an alleged incident of harassment, sexual harassment and/or discrimination will be treated in a confidential manner and in accordance with the *Freedom of Information and Protection of Privacy Act*. However, under the circumstances listed below, additional legal obligations may be triggered such that the University may not be able to assure confidentiality:

- a) an individual is at risk of self-harm;
- b) an individual is at risk of harming an identified individual;
- c) members of the University community or the broader community may be at risk of harm; and/or
- d) reporting is required by law (e.g., in the case of a minor).

8.2.2.1 All individuals involved in a complaint, mediation, a report or an investigation must keep the matter confidential during the investigation in order to safeguard individuals against unsubstantiated allegations, to protect the rights of those involved (including witnesses) in the allegation, and to preserve the integrity of the investigation.

8.2.3 Interim Measures There may be times when complainants and respondents need to be separated in order to stabilize the situation pending the outcome of the complaint. Such arrangements shall be made in collaboration with the HRO, the complainant’s and the respondent’s union or student association representative and the Dean and other Appropriate Authority (as defined in Procedure 36-1, clause 18) as the case may be, taking into consideration the nature of the complaint and feasibility of the request.

8.2.4 Informal Process

8.2.4.1 The informal resolution process described in this subsection is voluntary.

8.2.4.2 The complainant and the respondent, if applicable, shall be informed by the Officer of her right to be accompanied at any time by a union representative.

8.2.4.3 Once contact with the HRO has been made, the Officer will meet with the member to discuss the circumstances, the member’s expectations and outcome sought. The Officer will make every effort to assist the member and will discuss with the member possible and safe options to address or resolve the matter, for example:

- a) referral to suitable services or resources available at the University or in the community;
- b) providing information to the member on how they can directly intervene in the situation on their own behalf;
- c) communication with the person involved to inform that person of the alleged harassment, sexual harassment and/or discrimination that such conduct is unwelcome and must cease;
- d) informal processes such as mediation, facilitated dialogue, coaching or group intervention;
- e) opening a confidential report or incident; or filing a formal complaint.

8.2.4.4 Information disclosed by a person during the informal process is made without prejudice to that person and cannot be used during subsequent steps of the complaint process. Any person conducting an informal process of a complaint may not be called to testify in a subsequent proceeding in relation to information disclosed during mediation, unless ordered or compelled by a court, tribunal or arbitrator.

8.2.5 Formal Process

8.2.5.1 Since a formal process may lead to disciplinary measures, the procedure of the formal process is defined by the collective agreement of the bargaining unit that the respondent is a member of, or University policies if the respondent does not belong to a bargaining unit or the collective agreement in question is silent on the matter. The procedure below applies when an APUO member is a respondent to a formal complaint.

8.2.5.2 If the parties are unable to resolve the matter via the informal process, a written complaint can be filed within twelve (12) months of the last incident or from the date of the single severe incident, unless there are extenuating circumstances, such as prolonged sick leave.

8.2.5.3 If it appears that the time required to follow the informal process will be more than the twelve (12) month time limit as prescribed for filing a formal complaint, the person has an option to proceed with filing the written complaint and requesting, in writing, that it be held in abeyance while continuing to pursue the informal process. This will protect her right to later avail herself of the formal process if needed.

8.2.5.4 The Officer will provide guidance on how to file a complaint and response, but the onus remains on the complainant to provide sufficient information and be as precise and detailed as possible in order to allow the respondent to understand the allegations and respond to them. Members may seek assistance from APUO at any time.

8.2.5.5 Upon receipt of the complaint, the Officer acknowledges receipt in writing and will send a notice of complaint to the respondent, the complainant's and the respondent's respective Deans, or other Appropriate Authority, that a formal complaint has been filed.

8.2.5.6 The respondent shall respond in writing to the formal complaint within ten (10) working days from the date the formal complaint was sent to the respondent. If a response is provided, the complainant can file a reply within (10) working days. If the respondent does not provide a written response, the complaint will proceed to assessment in the absence of a response.

8.2.5.7 Once the parties have had the opportunity to file and respond to the complaint and reply, the HRO will conduct an assessment to determine if the complaint falls within the scope of harassment, sexual harassment and/or discrimination. If the HRO determines that the matter does fall within one or both the definitions the HRO will send a copy of its assessment and recommendations, if any, to the complainant, the respondent and the Dean(s) or other Appropriate Authority.

If the HRO recommends that the matter requires investigation, the Officer, with the assistance of the complainant and the respondent, shall prepare a list of witnesses which will be forwarded to the Dean.

8.2.5.8 A complainant may withdraw a complaint without fear of reprisal at any time.

8.2.5.9 If the Officer determines that the complaint is frivolous or vexatious or falls outside the scope of harassment, sexual harassment and/or discrimination, the complaint will not be forwarded to the Dean or Appropriate Authority for investigation and the matter will end.

8.2.6 Dean Investigation

8.2.6.1 For the purposes of a harassment and/or discrimination complaint, article 39.1.2.1 shall apply with the following modification, “the Dean may assign the investigative procedure to a third party external investigator.” The Employer, the complainant, respondent and appropriate union representatives shall agree to the appointment of the bilingual investigator.

8.2.6.2 After the investigation is completed, the complainant, respondent, and Dean or other Appropriate Authority shall receive a copy of the report. If the Dean has reasonable grounds to believe the member has committed an act of harassment, sexual harassment and/or discrimination, the Dean shall proceed under article 39.4. Should the Dean decide not to proceed under article 39.4, no record of the matter shall be placed in the member’s file. The Dean shall inform the HRO of the outcome of the investigation.

8.2.7 Grievances

8.2.7.1 It is agreed that the provisions of 13.2.2, 13.2.6, and 13.2.9 of the collective agreement apply, *mutatis mutandis*, to the meetings and exchanges of information leading up to any action by the Officer up to and including subsection 8.2.5.6.

8.2.7.2 It is agreed that the Officer is neither compellable nor competent to give testimony in any proceeding under the collective agreement.

8.2.7.3 It is agreed that members who are involved in a complaint shall retain all rights and protections accorded to them under the collective agreement with respect to any investigation, hearing, or action by the Employer and, without limiting the generality of the foregoing, these shall include:

- a) the right to have access to and receive copies of letters of complaint or any relevant documents,
- b) the right to be represented and make representations at meetings or hearings relating to the matter in accordance with the rules of natural justice,
- c) the right to have the matter dealt with in accordance with the terms of 5.2.1 of the collective agreement, *mutatis mutandis*, and
- d) the right to grieve against the interpretation, application, or administration of the complaint as well as any decision taken pursuant to it.

8.2.7.4 Any provision of the collective agreement not explicitly modified herein shall continue to be applicable to any investigation, hearing, recommendation, or decision respecting a complaint.

Section 8.2.3 – Further provisions

ARTICLE 12 – Member’s files

Section 12.1 – General provisions

12.1.3 Status of files before 1981 Documents obtained under protection of confidentiality before 1 May 1981, remain confidential. However, when any material that was in the confidential section of the file before 1 May 1981 is considered in a personnel decision in accordance with this agreement, the member shall receive copies of all such material in accordance with the provisions of