

EX6.2.1
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CITY OF TORONTO
EXECUTIVE COMMITTEE MEETING
TUESDAY, MAY 24, 2011

EX6.2 Whistle Blower Protection Policy

COTAPSA
ADVISE
ADVOCATE
ACT

*The City of Toronto
Administrative, Professional,
Supervisory Association Inc.*

77 Elizabeth Street, 3rd Floor
Toronto, ON M5G 1P4
e cotapsa@toronto.ca
t 416.392.7543
f 416.392.1379

cotapsa.ca

DEPUTATION

COTAPSA consulted with its Members regarding the City's Whistle-Blower Protection Policy. The following are key concerns and comments that have been sent to us:

- This could be a career ending move for whistle-blowers.
- It is extremely biased toward only one dynamic: exposing wrong doing and exposing what is assumed to be intentional wrong doing. It misconstrues "whistle-blowing" and the framework needed to enable, support and protect whistle-blowing.

Whistle-blowing is not only pointing out wrong-doing, fraud, illicit, and illegal activities; it is also and most often actually about drawing attention to ethically weak and rationally unsupported, and principally contradictory practices whether the intent is wrongdoing or not.

At this time of fundamental reviews of programs, seeking efficiencies and the City's program asking for employee recommendations and observations to assist in finding savings and improving service, a whistle-blower policy should be construed to protect anyone who brings ideas for improvement, reveals fixes to practices, exposes ineffective conventions, and weak performance management practices. All forms of censure should be prohibited... informal, social as well as formal and retaliatory.

And the policy should include an accountability clause that requires the organization to ensure the whistle-blower must be informed of the final disposition of the matter and the process commenced as a result of that person's intervention.

- Need clarification for the Definition of Toronto Employee – Include temporary, part-time, and contract staff, ABCs, summer students or co-op students.

- Is there a policy that protects vendors, contractors, or consultants from reprisal? If not, perhaps a clause should be included to protect them also.
- Ensure that the part at the end regarding any sort of “vexatious” or nuisance reports to the fraud and waste hotline or any other venues are taken quite seriously too. The fact that there is a guarantee of anonymity could provide just the conditions for employees to “rat” on each other. This is not only a morale issue, it’s costly to all concerned. The fraud and waste hotline should not be used to air dirty laundry that should be dealt with by mediation and proper management of staff.
- When Councillor’s cross the line and begin ‘directing’ staff when there is resistance to that direction, it’s simply a matter of the involved Councillor speaking to the DCM, or GM of the respective Division and the improper direction to staff is converted to a chain-of-command direction within an operating Division, notwithstanding internal discussion within that Division, wherein it is recognized that they are taking ‘direction’ from the Councillor in direct contravention of the Charter of Expectations.....

On the subject of ‘protection’ ...it’s almost laughable to think that any member of management who took it upon themselves to go directly to the ombudsman’s office with an issue would be surprised at suffering a ‘reprisal’ from the chain of command within their own Division....there isn’t an issue out there where a GM will make an enemy of a Councillor for the sake of not doing what they’re told to do.

- The definition does not appear to encompass a situation where the whistle-blower is repeatedly ignored or not given any fresh or relevant new files as a consequence of his/her whistle-blowing activities.
- This is a tough policy, but one that is required to protect people who believe they are doing the right thing. I’m impressed with the level of investigation, but will wait to see if it is true.
- Replace “Any” with “All” so that the first sentence would read “All allegations of reprisals will be subject of investigation.
- A whistle-blower who makes a complaint in bad faith MAY BE subject to discipline (and soft discipline) while the reprisal person WILL BE subject to discipline (and harsh discipline). Both disciplines should be the same.
- What if wrongdoing is associated with the City Manager or the Executive Director of HR? How is the employee protected in that case? There seems to be a gap there.
- It is ridiculous that people can accuse staff of wrong doing without any proof or without sharing their identity. I also think that it is wrong that management staff do not have anyone to come in with them to help protect us from these unfounded accusations.
- Under “wrongdoing” the first bullet should say “A violation of a City policy or council direction that is in accordance with the law”.

- I really have no problem with protecting an individual from reprisals if they have called in regarding a legitimate concern. I have serious concerns over protecting those who abuse this system and use it as a revenge tool against another individual or group of individuals. Where is their accountability for spreading false information or allegations? These individuals can basically do this with impunity.
- A reversal or remedy of a reprisal against an employee shall include, at minimum, an exoneration of the affected employee by the City Manager and City Council and his or her reputation made good and whole.
- My concern is that with the promise of protection from repercussions provided to any whistle-blower, that this may be used to fuel the whistle-blower into filing all kinds of complaints to offset some type of employee gripe or performance issue that the whistle-blower may be defending. Although this type of protection from repercussions is necessary and this may be unavoidable, I recommend it say "future" repercussions and not speak to "past" repercussions because it may lead to a bonanza of frivolous complaints.
- We have so many policies now that are administered without common sense
- Provide a link in the document to the Toronto Public Service Framework and Charter of Expectations for employees. Not everyone is aware of this.
- While it is not mentioned here and it might be elsewhere, if the whistle-blower is a contract employee coming in as a worker for someone, would that company be protected from reprisal if the employee reports wrongdoing?
- Under reprisal, there doesn't seem to be a time limit for reporting reprisal. Should there be a cap of 5 years after the issue has been investigated/settled? How far in the future is an employee protected from reprisal?
- Anything about accommodating a whistle-blower with movement to another office/section if the workplace becomes toxic?
- There is no statement about protecting the identity of the whistle-blower as much as possible. It does not protect employees from coming forward. Managers immediately circle their wagons, even in good faith.
- What if the manager/supervisor is the one that is doing the reprisal? This section is a bit weak. Should the employee report the incident to both his/her manager as well as the Executive Director of Human Resources or the City Manager?

- There is nothing about notifying the employee of the final results of the investigation into the accusation of reprisal.
- Draft policy (as written) does not provide "protection against reprisals" - only what will may happen if reprisals occur in the workplace.
- Policy should be written to protect the identity of the individual in all circumstances if they choose to come forward
- Draft a policy that focuses on the prevention of reprisals - not what The City is prepared to do when they happen....
- Investigation process should be independent - policy should not include phrases like "shall notify the Executive Director of HR or the City Manager" they should not be involved
- Include in the definition of reprisal....."unnecessarily disclose of the name of the whistle blower" and "act in any way to poison the work environment"

COTAPSAI is aware that employees have other avenues afforded to them by law to protect their rights IF reprisals take place in the workplace.

We recommend that:

- This policy be referred back to staff for further review
- To protect individuals, COTAPSA could be the conduit for the information.