

Employee Sexual Misconduct Policy

This policy is prepared in accordance with sections 32.0.1 and 32.1 of the Ontario Career Colleges Act, 2005 and serves as the Employee Sexual Misconduct Policy for 11033280 CANADA INC. o/a CanadaWide Truck Driving School.

Definitions

This policy applies to sexual misconduct involving a student enrolled at CanadaWide Truck Driving School and applies to employees and includes faculty, staff, administrators, contractors, and volunteers of CanadaWide Truck Driving School.

Actions that constitute sexual misconduct include, but are not limited to physical, verbal, non-verbal, and/or written acts, including comments, jokes, gestures, the posting of images, sexual advances, the offering of sexual incentives, and the threat of consequences for the refusal of sexual advances. It involves comments or behaviour of a sexual nature that another person may find offensive.

Misconduct includes:

- a) physical sexual relations with the student, touching of a sexual nature of the student or behaviour or remarks of a sexual nature toward the student by an employee of CanadaWide Truck Driving School where:
 - (i) the act constitutes an offence under the Criminal Code (Canada),
 - (ii) the act infringes the right of the student under clause 7 (3) (a) of the Human Rights Code to be free from a sexual solicitation or advance
- b) any conduct by an employee of CanadaWide Truck Driving School that infringes the right of the student under clause 7 (3) (b) of the Human Rights Code to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance. (“inconduite sexuelle”) 2022, c. 22, Sched. 2, s. 1.

Discharge or discipline

(2) If an employee of CanadaWide Truck Driving School commits an act of sexual misconduct toward a student enrolled at CanadaWide Truck Driving School, the school will discharge or discipline the employee for that act, and,

- (a) the discharge or disciplinary measure is deemed to be for just cause for all purposes;
- (b) the employee is not entitled to notice of termination or termination pay or any other compensation or restitution because of the discharge or disciplinary measure; and
- (c) despite subsection 48 (17) of the Labour Relations Act, 1995, and despite any provision of a collective agreement or employment contract specifying a penalty for the infraction, no arbitrator, arbitration board or other adjudicator shall substitute any other penalty for the discharge or disciplinary measure imposed by CanadaWide Truck Driving School 2022, c. 22, Sched. 2, s. 1.
- (d) disciplinary actions may include, but are not limited to, suspension from duties, disciplinary letter or letter of expectations, placement of certain restrictions on the employee’s ability to access certain premises or facilities; and/or any other actions that be appropriate in the circumstances.

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No re-employment

(3) If an employee of CanadaWide Truck Driving School commits an act of sexual misconduct toward a student enrolled at the school and the school discharges the employee for that act or the employee resigns from their employment, the school shall not subsequently re-employ the employee. 2022, c. 22, Sched. 2, s. 1.

(4) If CanadaWide Truck Driving School determines that it has re-employed an individual contrary to subsection (3), the school shall discharge the employee, and clauses (2) (a) to (c) shall apply to the discharge. 2022, c. 22, Sched. 2, s. 1.

Agreement

(5) Subject to subsection (6), an agreement between CanadaWide Truck Driving School and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after the day section 1 of Schedule 2 to the Strengthening Post-secondary Institutions and Students Act, 2022 comes into force, shall not contain any term that, directly or indirectly, prohibits CanadaWide Truck Driving School or any person related to CanadaWide Truck Driving School from disclosing that an allegation or complaint has been made that an employee of CanadaWide Truck Driving School committed an act of sexual misconduct toward a student of CanadaWide Truck Driving School, and any such term that is included in an agreement is void. 2022, c. 22, Sched. 2, s. 1.

Exception

(6) CanadaWide Truck Driving School may enter into an agreement that contains a term described in subsection (5) if the student requests that the school do so, provided that,

- (a) the student has had a reasonable opportunity to receive independent legal advice;
- (b) there have been no undue attempts to influence the student with respect to the request;
- (c) the agreement includes an opportunity for the student to decide to waive their own confidentiality in the future and the process for doing so; and
- (d) the agreement is of a set and limited duration. 2022, c. 22, Sched. 2, s. 1.

Contrary term, rule, etc.

(7) Subsections (2) to (6) apply despite any contrary term in an employment contract or collective agreement, or any contrary rule or principle of common law or equity. 2022, c. 22, Sched. 2, s. 1.