

Topkaya Enterprise Ltd. O/A Topstone Career College Employee Sexual Misconduct Policy

The amendments to the *Ontario Career Colleges Act, 2005* came into force on **July 1, 2023** and will:

- strengthen tools available to institutions to address instances of faculty or staff sexual misconduct toward students;
- prevent the use of non-disclosure agreements, unless one is requested by the student, and;
- require institutions to have employee sexual misconduct policies that, at a minimum, include the institution's **rules with respect to sexual behaviour** that involves employees and students of the institution; and **examples of disciplinary measures** that may be imposed on employees who contravene the policy.

- (1) “**Sexual Misconduct**” means, in relation to a student enrolled at Topstone Career College,
1. 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 our college where,
 - a. the act constitutes an offence under the *Criminal Code* (Canada),
 - b. 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, or
 - c. the act constitutes sexual misconduct as defined in this policy or contravenes the policy or any other policy, rule or other requirements of our college respecting sexual relations between employees and students, or
 2. any conduct by an employee of our career college that infringes the right of the student under clause 7 (3) (b) of the *Human Rights Code* to be free from 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 Topstone Career College commits an act of sexual misconduct toward a student enrolled at our career college, we may 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 as a result of the discharge or disciplinary measure; and

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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 the career college. 2022, c. 22, Sched. 2, s. 1.

No re-employment

(3) If an employee of our career college commits an act of sexual misconduct toward a student enrolled at our career college and we discharge the employee for that act or the employee resigns from their employment, we shall not subsequently re-employ the employee.

(4) If we determine that it has re-employed an individual contrary to subsection (3), the career college shall discharge the employee, and clauses (2) (a) to (c) shall apply to the discharge.

Agreement

(5) Subject to subsection (6), an agreement between Topstone Career College 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, not contain any term that, directly or indirectly, prohibits the Topstone Career College or any person related to our career college from disclosing that an allegation or complaint has been made that an employee of our career college committed an act of sexual misconduct toward a student of our career college, and any such term that is included in an agreement is void.

Exception

(6) Topstone Career College may enter into an agreement that contains a term described in subsection (5) if the student requests that our career college 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.

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The 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.

Employee sexual misconduct policy

(8) It is a condition of every registration that Topstone Career College has an employee sexual misconduct policy that includes, at a minimum,

- a. Topstone Career College rules with respect to sexual behaviour that involves employees and students enrolled at our career college; and
- b. examples of disciplinary measures that may be imposed on employees who contravene the policy.