

Sexual Harassment

TOWN OF MARSHFIELD

Sexual Harassment Policy

I. Introduction

It is the goal of the Town of Marshfield to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by the Town. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Town of Marshfield takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

II. Definition of Sexual Harassment

In Massachusetts, the legal definition for sexual harassment is this:

"Sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

(a) Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;

Or, (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment. Sexual harassment is not limited to prohibited behavior by a male employee toward a female or by a supervisory employee toward a non-supervisory employee.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances- whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual
- gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences;
- Discussion of one's sexual activities.
- Derogatory comments about a person's sex or sexual orientation

- Physical interference with a person's movements; and
- The requirement that a person wear sexually revealing clothing.

The harasser does not have to be the victim's supervisor. The harasser may be a supervisor who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, even a non-employee, such as a recipient of public services or a vendor.

The victim does not have to be the opposite sex from the harasser. The victim does not have to be the person to whom the unwelcome sexual conduct is directed. The victim may be someone who is a witness to and personally offended by such conduct when it is directed to another person.

The Human Resources Department will ensure that each new hire receives a copy of this policy and complaint procedure as soon as possible after hire and annually thereafter.

Employees are responsible for the following:

- Ensure that their personal conduct does not sexually harass any other employee, applicant for employment or any other individual in the workplace;
- Cooperate in an investigation of alleged sexual harassment by providing any information that they possess concerning the matter being investigated.
- Actively participate in the Town's efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination.
-

The dissemination of sexually explicit voice mail, e-mail, graphics, downloaded materials or websites is expressly prohibited by this policy.

III. Complaints of Sexual Harassment

If any of our employees believes that he or she has been subjected to sexual harassment, the employee has the right to file a complaint with our Town. This may be done in writing or orally.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by

the Town. An employee believing s/he may have been retaliated against may amend his/her complaint or file a separate complaint, which will be investigated pursuant to this policy.

For purposes of this Policy the term "employee" shall include appointed officials, elected officials, members of Town boards or committees, and persons volunteering their services to the Town with the consent of a Town board, committee or elected official.

If you would like to file a complaint you may do so by contacting your direct supervisor, department head, Director of Human Resources, Town Hall, 870 Moraine Street, First Floor, or Town Administrator Michael Maresco, Town Hall, 870 Moraine Street, Second Floor or at 834-5563. The Town Administrator is also available to discuss any concerns you may have and to provide information to you about our policy on sexual harassment and our complaint process.

All complaints of sexual harassment will be addressed. The alleged harasser will be notified when a formal complaint is filed.

False accusations of sexual harassment (e.g. the alleging of incidents or behavior that are proven, through investigation, not to have occurred at all) may result in severe disciplinary action up to and including termination. A finding of no probable cause as a result of an investigation does not necessarily in itself establish that the accusation was false.

If the employee does not feel comfortable discussing the complaint with any of the above-named people, the complaint may be instead filed with the Massachusetts Commission Against Discrimination and the United States Equal Opportunity Commission (EEOC), the addresses for which are provided below.

IV. Sexual Harassment Investigation

When we receive the complaint we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with witnesses. We will document the complaint and the employee will complete a complaint form, if s/he has not already done so.

The complaint shall include a description of the incident(s), the name(s) of the alleged harasser(s), times, locations, specific words/actions, and any witnesses to the occurrence(s). Both accounts will be considered part of the investigation.

We will also interview the person alleged to have committed sexual harassment, as well as any individuals the alleged harasser identifies as substantiating his/her responses. We will document the content of that interview as part of the investigation. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

Witnesses shall be interviewed privately and individually, and neither the alleged harasser nor the complainant shall be present. The investigator will inform each interviewee that the investigation is confidential and should not be discussed with co-workers. The investigator should further inform them that the employer will not tolerate any retaliation against the complainant or anyone else who cooperates with the investigation. The investigator shall document the statements of all witnesses, and will inform both the complainant and the alleged harasser of the names of all witnesses interviewed.

During the course of the investigation, the investigator may determine it is necessary or advisable to take interim measures to separate the alleged harasser from the complainant. These measures shall be crafted to minimize the chance of continued harassment or retaliation against the complainant, while not having the measures themselves constitute retaliation against the complainant. In determining whether to take such measures, the investigator should consider; the supervisory authority, if any, over the complainant, the number of complainants, personal safety of the complainant, wishes of the complainant, nature and extent of the allegations and the alleged harasser's behavior. Interim measures may include; placing the alleged harasser on administrative leave, placing the complainant on administrative leave if requested, transferring the harasser or the complainant, if requested, to a different area or shift, instructing the harasser to stop the conduct, and eliminating supervisory authority over the complainant.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate we will also impose disciplinary action.

The investigator will provide a summary of the investigation and outcome and give it to both the complainant and alleged harasser. This finding does not in any way affect the complainant's right to pursue a sexual harassment complaint with any appropriate state or federal agency. The investigator shall inform complainants of any specific time frames involved in pursuing complaints with outside agencies.

The Human Resources office will keep a complete record of all complaints, their supporting documentation and their resolution, in confidential files separate from official personnel files. If the complaint is substantiated or determined to be a false accusation, the report will be placed in the personnel file of the harasser or the employee making the false accusation, respectively.

I. Disciplinary Action

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such disciplinary action as is appropriate under the circumstances. Discipline may include the following:

- An oral warning or reprimand;
- A written warning or reprimand to be placed in a personnel file; Sensitivity training (e.g. role-playing, to raise person's awareness of the effects of his/her behavior on others);
- Suspension, demotion, transfer termination; or

A combination of the above.

VI. State and Federal Remedies

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim.

1. The United States Equal Employment Opportunity Commission ("EEOC")

1 Congress Street - 10th Floor

Boston, MA 02114 (617)-565-3200

300 Day Period for Filing

2. The Massachusetts Commission Against Discrimination ("MCAD")

Boston Office:

One Ashburton Place - Rm 601

Boston, MA 02108 (617) 727-3990

Springfield Office:

436 Dwight Street, Rm 220

Springfield, MA 01103 (413) 739-2145

300 Day Period for Filing

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-six

AN ACT RELATIVE TO SEXUAL HARASSMENT, EDUCATION AND TRAINING IN THE WORKPLACE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION I Chapter 151B of the General Laws is hereby amended by inserting after section 3 the following section:

Section 3A. (a) All employers, employment agencies and labor organizations shall promote a workplace free of sexual harassment.

(b) Every employer shall:

(I) adopt a policy against sexual harassment which shall include:

(i) a statement that sexual harassment in the workplace is unlawful;

(ii) a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;

(iii) a description and examples of sexual harassment;

(iv) a statement of the range of consequences for employees who are found to have committed sexual harassment;

(v) a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and

(vi) the identity of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact such agencies.

(2) provide annually to all employees an individual written copy of the employer's policy against sexual harassment; provided, however, that a new employee shall be provided such a copy at the time of his employment.

(c) The commission shall prepare and provide to employers subject to this section a model policy and poster consistent with federal and state statutes and regulations, which may be used by employers for the purposes of this section.

(d) An employer's failure to provide the information required to be provided by this section shall not, in and of itself, result in the liability of said employer to any current or former

employee or applicant -in any action alleging sexual harassment. An employer's compliance with the notice requirements of this section shall not, in and of itself, protect the employer from liability for sexual harassment of any current or former employee or applicant.

- (e) Employers and labor organizations are encouraged to conduct an education and training program for new employees and members, within one year of commencement of employment or membership, which includes at a minimum the information set forth in this section. Employers are encouraged to conduct additional training for new supervisory and managerial employees and members within one year of commencement of employment or membership, which shall include at a minimum the information set forth in subsection (b), the specific responsibilities of supervisory and managerial employees and the methods that such employee should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints. Employers, labor organizations and appropriate state agencies are encouraged to cooperate in making such training available.

SECTION 2. Notwithstanding the provisions of subsection (b) of section three A of chapter one hundred and fifty-on* B of the General Laws, employers shall provide individual copies of their written policies on sexual harassment to all employees as required in said section three A, on or before September first, nineteen hundred and ninety-six; provided, however, that for mly person hired between the effective date of this act and the date the copy of such written policy is given hereunder, the employer shall not be required to provide such a copy at the time of employment, unless the employer has previously provided such a copy to other employees within the twelve months preceding said time of employment.

SECTION 3. Notwithstanding any provision of subsection (e) of section three A of chapter one hundred and fifty-one B of the General Laws to the contrary, employees and labor organizations are encouraged to conduct an education and training program on sexual harassment consistent with the provisions of said section three A on or before September first, nineteen hundred and ninety-six, for persons employed on the date such program is conducted and employers are encouraged to conduct such an additional training program consistently.

Sexual Harassment Policy - Employee Confirmation of Receipt

I certify that I was given a copy of this policy and provided the opportunity to ask questions about its content.

Employee Name Printed:

Employee Signature:

Payroll/Benefits Manager/Date