

TOWN OF KINDERHOOK

POLICY & COMPLAINT PROCEDURE REGARDING DISCRIMINATION AND HARASSMENT

I. POLICY:

It is the policy of the Town of Kinderhook to provide and maintain a work environment which is free from unlawful harassment and discrimination based on sex (with or without sexual conduct), race, creed, color, religion, national origin, age, disability, sexual orientation, marital status, military status, domestic violence victim status, arrest or conviction record, genetic characteristics, and any other class protected by law (collectively referred to as “discriminatory harassment” or “harassment”). Discrimination or harassment based on these characteristics is a form of unlawful discrimination and is a form of misconduct that undermines the integrity of the employment relationship and will not be tolerated. Accordingly, such conduct is prohibited in each and every work environment and each and every situation, which directly impacts the work environment.

As such the Town expressly prohibits any form of employee discrimination or harassment based on race, creed, religion, sex, national origin, age, disability, or an individual’s status in any class protected as stated above by applicable federal, state, or local law. Improper interference with the ability of our employees to perform their expected job duties will not be tolerated.

All Town employees will be expected to comply with this policy and with all applicable laws and regulations prohibiting sexual harassment and other forms of discrimination or harassment and must take appropriate measures to ensure that such conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include, but is not limited to, verbal or written reprimand, suspension or termination.

This policy applies to all applicants and employees of the Town of Kinderhook, as well as all interns, whether paid or unpaid, contractors, and persons conducting business with the Town of Kinderhook. This policy prohibits harassment, discrimination and retaliation whether engaged in by fellow employees, by a supervisor or manager or by someone not directly connected to the Town (e.g., an outside vendor, consultant or citizen).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during work trips, work meetings, and work-related social events.

The interpretation and administration of this policy shall be the responsibility of the Town Supervisor. This includes development of procedures for handling and investigating complaints of sexual harassment and other forms of harassment, and enforcement of appropriate sanctions for such conduct. The Town Supervisor will disseminate information

and training, in a manner that is consistent with and in furtherance of this policy. Any and all questions regarding this policy should be directed to the Town Supervisor.

II. DEFINITIONS:

A. Sexual Harassment is defined as:

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment (e.g., promotion, training, assignments, etc. . .);
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Examples of specific behaviors that may be considered sexual harassment include, but are not limited to:

- Spoken or written words related to an individual's sex
- Any sexual advance that is unwelcome
- Sexually oriented comments
- Showing or displaying pornographic or sexually explicit objects or pictures in the workplace
- Offensive touching, patting or pinching
- Requests for sexual acts or favors
- Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct
- Threats, demands or suggestions that an employee's work status is contingent upon her/his toleration of or acquiescence to sexual advances
- Subtle pressure for sexual activities
- Sexually charged or explicit jokes, stories and comments
- Leering at a person
- Visiting sexual or otherwise inappropriate websites or distributing the same via electronic mail.

Sexual harassment is gender neutral and may involve members of the same or different gender.

It is no excuse that the alleged conduct "meant no harm" or was "a joke."

B. Other unlawful harassment:

Discrimination or harassment on the basis of any other protected characteristic is also prohibited.

Prohibited discrimination or harassment is verbal or physical conduct that is offensive to or shows hostility or aversion toward an individual because of his/her race, creed, color, religion, national origin, age, disability, or any of the protected statuses enumerated above, and that:

- (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment;
- (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or
- (iii) otherwise adversely affects an individual's employment opportunities.

Examples of discrimination or harassment include, but is not limited to:

- Distributing epithets, slurs, jokes, remarks, or negative stereotyping that are derogatory or demeaning to an individual's or group's characteristics or that promote stereotypes
- Threatening, intimidating or hostile acts
- Displaying or circulating in the workplace (including through e-mail, internet, or social networking sites, such as, but not limited to Facebook, MySpace, Instagram, Snapchat or Google+) of written or graphic material that denigrates or shows hostility or aversion toward an individual or group, based on an individual's protected class.

III. *PROCEDURE:*

A. REPORTING DISCRIMINATION OR HARASSMENT

1. If an individual is subjected to a situation which he/she believes constitutes discriminatory harassment in violation of this Policy, the Town recommends that the individual advise the harasser that his/her behavior is not welcomed and will not be tolerated; note that neither this policy nor state/federal law requires that an individual tell an alleged harasser to stop his/her actions. Employees should feel free to keep written records of any alleged harassment incidents, including the date, time, location, names of people involved, witnesses (if any), and who said or did what to whom.
2. If an alleged incident of discriminatory harassment cannot be resolved directly between the parties involved, a written or verbal complaint should be filed by the affected individual with the individual's Department Head or the Town Supervisor. In the event the employee does not believe it would be appropriate to file the complaint with the Department Head, it may be

filed directly with the Town Supervisor. Moreover, all Department Heads are instructed to forward all complaints to the Town Supervisor.

3. All harassment complaints will be investigated as promptly as possible and resolved within a reasonable time after the receipt of the complaint. The Town, through an investigator and with the oversight of Town Supervisor or his/her designee, will coordinate an investigation of the complaint. Following the investigation, a written report of the Findings and Conclusions shall be issued by the investigator to the Town Supervisor. All information gathered during an investigation of a harassment complaint will be handled in a confidential manner, to the extent possible.
4. Based upon the Findings and Conclusions of the investigation, a Determination on the complaint will be issued by the Town Supervisor. Thereafter, the Town Supervisor will communicate the results back to the complainant. In the event the alleged harasser is also an employee, they will also receive notification of the results of the investigation.

IV. RETALIATION:

1. No person covered by this Policy shall be subject to adverse action for reporting incidents of harassment or discrimination, or assisting in any investigation of such a complaint.
2. Retaliation against any individual making a discrimination or harassment complaint or assisting in the investigation of such a complaint is strictly forbidden.
3. Retaliation is a form of misconduct.
4. Retaliation, like discrimination and harassment, is against the law and is a serious violation of this policy.
5. Employees who retaliate against other employees who complain about discrimination or harassment and/or participate in an investigation of discrimination or harassment will be subject to disciplinary action.
6. Individuals subject to this policy who believe they have been subject to retaliation should immediately reports same to the Town Supervisor.

V. MISCELLANEOUS:

- a. In the event a complaint of discriminatory harassment is determined to be founded, the Town will take disciplinary action in accordance with the provisions of applicable collective bargaining agreements and/or state law.

- b. If disciplinary charges are filed against an employee on the grounds that the Town has determined the employee is guilty of discriminatory harassment, the accused employee may exercise his/her rights through the disciplinary procedure provided for in his/her labor contract and/or state law.
- c. This Policy does not preclude the filing of harassment complaints with either the New York State Division of Human Rights or the Federal Equal Employment Opportunity Commission, or the pursuing of any other remedies as permitted by law, including any applicable local laws. (See VII below)
- d. File your complaint as soon as possible as some time limitations may preclude bringing an action in certain forums.
- e. The following is contact information for the New York State Division of Human Rights - General inquiries may also be directed to info@dhr.ny.gov and local offices are also available at infoAlbany@dhr.ny.gov.
- f. The following is contact information for the Federal Equal Employment Opportunity Commission: www.eeoc.gov.

VI. RESPONSIBILITIES OF MANAGERS/SUPERVISORS:

- a. All managerial and supervisory personnel of the Town of Kinderhook shall be responsible for enforcing this Policy and shall have particular responsibility for ensuring that the work environment under their supervision is free from discriminatory harassment and its effects. Failure of a manager or supervisor to comply with this responsibility may result in disciplinary action.
- b. All managerial and supervisory personnel who receive discriminatory harassment complaints will be responsible for immediately forwarding such complaints to the Town Supervisor.
- c. The Town of Kinderhook will conduct annual training for managerial and supervisory personnel on the issues surrounding discriminatory harassment, its effects and its appearances, and the role and responsibility of managerial/supervisory personnel in preventing incidents of harassment complaints.
- d. The Town of Kinderhook shall distribute this Policy to all Town employees and all others covered by its parameters. Copies of this Policy will be distributed to new employees as they are hired and provided at each annual training.

- e. Copies of this Policy will be conspicuously posted.

VII. LEGAL PROTECTIONS AND EXTERNAL REMEDIES

1. State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to Town of Kinderhook does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

2. Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC.

The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

3. Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

4. Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police or sheriff's department.

Attachments: Acknowledgment Form
Harassment Complaint Form

Acknowledgment Form

I acknowledge that I have received a copy of the Town of Kinderhook's Policy and Complaint Procedure Regarding Discrimination and Harassment. I agree that I have read the policy thoroughly and agree to abide by such policy. Further, I agree that if there is any provision that I do not understand, I will seek clarification from the Town Supervisor.

Date: _____

Signature: _____

Print Name: _____

**TOWN OF KINDERHOOK
HARASSMENT COMPLAINT FORM**

Instructions:

If you have a complaint, please complete this form and hand deliver to the Town Supervisor.

To protect your rights, it is important that you file your complaint as soon as possible after the alleged discriminatory act took place.

A. General Information:

Name: _____

Address: _____

Telephone #: (Work) _____

(Home) _____

Department Employed In: _____

Department Head: _____

NATURE OF HARASSMENT

B. Alleged Harassment Incident:

1. Please describe the incident (If necessary, attach additional sheets to this form.):

2. Specifically:

a. Name(s) of the party responsible for the alleged incident:

b. Date & Time: _____

Place: _____

c. First Incident: Yes _____ No _____

If not first incident, please list date, time and place of previous incident(s):

d. Describe your reaction(s) the alleged incident(s):

e. List any witness(es) to the alleged incident(s):

I, _____, affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief.

Signature

Date