



## **TOWN OF FISHKILL DISCRIMINATION, HARASSMENT, INCLUDING SEXUAL HARASSMENT, AND RETALIATION PREVENTION POLICY**

### **CODIFIED IN SECTION 903 OF THE TOWN OF FISHKILL EMPLOYEE HANDBOOK**

**Policy Statement** – It is the policy of the Town of Fishkill (“Town”) to promote a productive work environment in which all employees are treated with fairness, respect, and dignity. The Town will not tolerate discrimination, harassment, including sexual harassment, or retaliation of any kind in the workplace. To that end, the Town will take all steps necessary to prevent and stop the occurrence of discrimination, harassment, and retaliation in the workplace, including that of providing mandatory training on an annual basis.

This policy is intended to provide an effective mechanism for preventing, reporting, and promptly resolving complaints of discrimination and harassment, including sexual harassment, without any risk of repercussion to a complaining employee for filing a complaint in good faith. All employees are encouraged to report discrimination and harassment by filing a complaint internally with the Town on a complaint form adopted as part of this policy. Employees can also file a complaint with a government agency or court under federal, state, or local antidiscrimination laws.

The prohibited conduct described herein is offensive, is a violation of our policies, is unlawful, and may subject the Town to liability for harm to targets of discrimination and harassment. Those allegedly engaging in the conduct may also be individually subject to liability. Employees of every level who engage in discrimination and harassment, including managers and supervisors who engage in, or who allow such behavior to continue, will be penalized for such misconduct.

The Town will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint pursuant to this policy, or otherwise knows of the possible occurrence of discrimination or harassment. The Town will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever such prohibited conduct is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation discrimination or harassment.

**Applicability of Policy** – This policy applies to all Town employees and officials regardless of supervisory level, whether employed full or part-time, temporary or seasonal, whether elected or appointed and regardless of compensation level, and all personnel in a contractual relationship with the Town. Depending on the extent of the Town’s exercise of control, this policy may be applied to the conduct of non-Town employees with respect to harassment of Town employees in the workplace<sup>1</sup>. Conduct prohibited by these policies is unacceptable in the workplace and in

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<sup>1</sup> A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as

any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events.

**Definition of Harassment** – Harassment on the basis of any protected characteristic is strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, sexual orientation, national origin, age, disability, marital status, citizenship, genetic information or any other characteristic protected by law or that of his/her relatives, friends or associates, and that a) has the purpose or effect of creating an intimidating, hostile or offensive work environment; b) has the purpose or effect of unreasonably interfering with an individual's work performance; or c) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes epithets, slurs or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on company time or using company equipment via e-mail, phone (including voice messages), text messages, tweets, blogs, social networking sites, or other means.

**Definition of Sexual Harassment** – Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

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independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

### **Examples of sexual harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

### **Who can be a target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker, or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer, or visitor.

### **Where can sexual harassment occur?**

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts,

emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

**Notification of Policy Violations** – The Town cannot prevent or remedy discrimination or harassment in the workplace unless it knows about it. Any employee, paid or unpaid intern, or non-employee who has been subjected to behavior that may constitute sexual harassment, or anyone who witnesses or becomes aware of potential instances of sexual harassment, is encouraged to report such behavior to his or her Department Head, the Town Supervisor, any member of the Town Board, or the Office of Human Resources and Risk Management. All complaints of discrimination will be investigated discreetly and promptly. An employee who reports harassment or discrimination in the workplace will not suffer adverse employment consequences as a result of making the complaint.

Employees, paid or unpaid interns, or non-employees who believe they have been a target of discrimination or harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

**Supervisory Responsibilities** – All supervisors and managers who receive a complaint or information about suspected workplace harassment, including sexual harassment, observe what may be harassing behavior, or for any reason suspect that harassment is occurring, are required to report such suspected sexual harassment to the Office of Human Resources and Risk Management, who will coordinate an investigation.

In addition to being subject to discipline if they engaged in harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected harassment or otherwise knowingly allowing the harassment to continue.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

**Complaint Procedure** – All complaints or information about harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information or knowledge of suspected harassment will be prompt and thorough, commenced immediately, and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses, and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected harassment. The Town will not tolerate retaliation against employees who file complaints, support another's complaint, or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, the Office of Human Resources and Risk Management will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails, or phone records are relevant to the investigation, take steps to obtain and preserve them.

- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses.
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - A list of all documents reviewed, along with a detailed summary of relevant documents;
  - A list of names of those interviewed, along with a detailed summary of their statements;
  - A timeline of events;
  - A summary of prior relevant incidents, reported or unreported; and
  - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

**Confidentiality** – Complaints of harassment will be handled and investigated promptly and in a manner that is as impartial and confidential as possible. In no event will information concerning a complaint be released by the Town to third parties or to anyone within Town employment who is not directly involved in the investigation of the complaint unless otherwise required by law.

**Employee Defense** – Any employee accused of engaging in harassing behavior will be afforded a full and fair opportunity to offer and present information in the employee's defense. Such information will be confidential to the extent possible.

**Employee Rights** – Nothing in this policy should be construed as in any way limiting employees' rights to use the Dispute Resolution Procedure as described in this Employee Handbook or the Grievance Procedure contained in the collective bargaining agreement.

**Disciplinary Action** – Any employee or official who is found to have committed an act of harassment will be subject to disciplinary action, up to and including termination of employment, as provided by Town operating procedures.

**Prohibition Against Retaliation** – No person covered by this Policy shall be subject to adverse action because the employee reports an incident of discrimination or harassment, provides information, or otherwise assists in any investigation of a complaint. The Town will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected discrimination or harassment, including sexual harassment. Any Town employee who retaliates against anyone involved in an investigation will be subjected to disciplinary action, up to and including

termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or the Office of Human Resources and Risk Management. All employees, paid or unpaid interns, or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a discrimination, harassment or hostile work environment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- Made a complaint either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving harassment under the Human Rights Law or other anti-discrimination law;
- Opposed harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

**Legal Protections and External Remedies** – Discrimination and harassment, including sexual harassment, is not only prohibited by the Town, but is also prohibited by state, federal, and, where applicable, local law.

Aside from the Town of Fishkill’s internal process, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

### **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 the Town 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](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://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.

### **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](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto: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.

### **Local Protections**

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

**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 your local police department or law enforcement agency.



## TOWN OF FISHKILL DISCRIMINATION AND HARASSMENT COMPLAINT FORM

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to discrimination or harassment, including sexual harassment, you are encouraged to complete this form and submit it to your Department Head, Town Supervisor, member of the Town Board, or the Office of Human Resources and Risk Management. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its discrimination and harassment prevention policy by investigating the claims as outlined at the end of this form.

**For additional resources, visit: [ny.gov/programs/combating-sexual-harassment-workplace](http://ny.gov/programs/combating-sexual-harassment-workplace)**

### COMPLAINANT INFORMATION:

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email  Phone  In person

### SUPERVISORY INFORMATION:

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

**COMPLAINT INFORMATION:**

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) the discrimination or harassment occurred:

Is the conduct continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

*The last question is optional, but may help the investigation.*

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

*Signature:* \_\_\_\_\_ *Date:* \_\_\_\_\_

### **Instructions for Employers**

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.