

## **2.02 NON-HARASSMENT/NON-DISCRIMINATION**

The Town of Perinton is committed to maintaining a workplace free from all forms of unlawful harassment, including sexual harassment. Harassment based on any legally protected basis is a form of workplace discrimination. The Town prohibits unlawful harassment against anyone, for any reason, including, but not limited to an individual's actual or perceived: race (including traits historically associated with race, such as hair texture and protective hairstyles), color, creed, religion (including wearing attire, clothing or facial hair in accordance with the tenets of religion), sex (including pregnancy, childbirth or related medical conditions and transgender status), gender identity or expression, reproductive health decisions, familial status, national origin, physical or mental disability (including gender dysphoria and being a certified medical marijuana patient), genetic information (including predisposing genetic characteristics), age (18 and over), veteran status, military status, sexual orientation, marital status, certain arrest or conviction records, domestic violence victim status and any other status protected by law. All employees, interns, and non-employees conducting business in our workplace must refrain from engaging in unlawful harassment.

Workplace harassment will not be tolerated at the Town of Perinton. All applicants, employees, interns (paid or unpaid), contractors and individuals conducting business with the Town of Perinton are required to conduct themselves in a manner that prevents sexual or other forms of harassment in the workplace. Any employee or individual covered by this policy who engages in workplace harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination. This policy is one component of the Town of Perinton's commitment to a discrimination-free work environment where all employees and interns are treated with dignity and respect.

Harassment based on a protected class is against the law. All employees have a legal right to a workplace free from illegal harassment. Employees can enforce this right by filing a complaint internally with the Town of Perinton, or with a government agency or in court under federal, state or local antidiscrimination laws.

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### **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 based on sex, sexual orientation, 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 complaining 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 consists of 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.

Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject the Town of Perinton to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including department heads who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

Any employee who feels harassed should report the harassment to the Finance Department/Human Resources or any department head 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 assaults of a sexual nature, such as:
  - Touching, pinching, patting, 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 victim'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, 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; or
  - Bullying, yelling, name-calling.

## **DEFINITION OF OTHER UNLAWFUL HARASSMENT**

The creation of an intimidating or hostile working environment, based on one or more of the above protected categories, constitutes unlawful harassment. Specific types of unlawful harassment, in addition to sexual harassment covered above, include, but are not limited to:

- Physical harassment refers to pushing, hitting, crowding, cornering or unwanted physical touching;
- Verbal abuse refers to verbal comments, including but not limited to jokes or the use of slurs or other offensive language regarding, or made because of, an individual's actual or perceived membership in one of the protected categories listed above;
- Written harassment refers to derogatory or degrading written comments regarding, or made because of, an individual's membership in one of the categories listed above. Specific examples include, but are not limited to: e-mail, text messages, memos, notes, graffiti, other visual depictions or pictures, cartoons, drawing, videos;

- Inappropriate, unwelcomed behaviors, such as offensive gestures and wearing clothes, jewelry, signage, etc. known to be offensive to particular protected classifications; and
- Any other unwelcome conduct that has the purpose or effect of creating an intimidating, hostile, or offensive working environment as defined by law, or has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affecting an individual's employment opportunities.

Unlawful harassment, whether it is physical, verbal or visual in nature, is a form of employee misconduct which undermines the integrity of the employment relationship within the Town.

### **WHO CAN BE A TARGET**

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. A perpetrator of workplace harassment 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 HARASSMENT OCCUR**

Unlawful 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.

### **REPORTING HARASSMENT**

Preventing workplace harassment is everyone's responsibility. The Town of Perinton cannot prevent or remedy harassment unless the Town knows about it. Any employee, intern (paid or unpaid) or non-employee who has been subjected to behavior that may constitute unlawful harassment is encouraged to report such behavior to the Finance Department/Human Resources or any department head. Anyone who witnesses or becomes aware of potential instances of workplace harassment should report such behavior to the Finance Department/Human Resources or any department head.

Reports of workplace harassment may be made verbally or in writing. The written complaint form is located on the Town's portal. All employees are encouraged to use this complaint form. Employees who are reporting potential harassment on behalf of other employees should use the complaint form and note that the complaint is being made on behalf of another employee.

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

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

## **MANAGEMENT RESPONSIBILITIES**

All department heads who receive a complaint or information about suspected workplace harassment, observe what may be harassing behavior or for any reason suspect that harassment is occurring, are **required** to report such suspected harassment to the Finance Department/Human Resources.

In addition to being subject to discipline if they engaged in harassing conduct themselves, department heads will be subject to discipline for failing to report suspected workplace harassment or otherwise knowingly allowing workplace harassment to continue.

department heads will also be subject to discipline for engaging in any retaliation.

## **COMPLAINT INVESTIGATION**

**All** complaints or information about suspected workplace harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected harassment will be prompt and thorough. All persons involved, including complainants, witnesses and alleged perpetrators, 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 workplace harassment. The Town of Perinton 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 will generally be conducted in accordance with the following steps:

- Upon receipt of complaint, the Finance Department/Human Resources will conduct an immediate review of the allegations, and take any interim actions, as appropriate. If the complaint is verbal, the individual will be encouraged to complete the “Complaint Form” in writing. If the complainant chooses not to complete the Complaint Form, the Finance Department/Human Resources will prepare a Complaint Form based on the complainant’s verbal report.
- If documents, emails or phone records are relevant to the allegations, steps will be taken to obtain and preserve them.
- The Finance Department/Human Resources will request and review all relevant documents, including all electronic communications.
- The Finance Department/Human Resources will interview all parties involved, including any relevant witnesses.
- The Finance Department/Human Resources will prepare 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 actions action(s).
- Written documentation and associated documents will be maintained by the Town.
- Following the investigation, the Finance Department/Human Resources will promptly notify the complainant and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- The Finance Department/Human Resources will inform the complainant of their right to file a complaint or charge externally as outlined in the Legal Protections and External Remedies section of this policy.

## **CORRECTIVE ACTION**

If a report of workplace harassment is found to be valid, immediate and appropriate corrective action will be taken. Employees or interns (paid or unpaid) who violate this policy, including the provision against retaliation, will be subject to disciplinary action, up to and including termination. This determination will be based on all the facts of the case.

## RETALIATION

The Town of Perinton will not tolerate retaliation against anyone who, in good faith, complains or provides information about suspected harassment.

Unlawful retaliation can be any action that could discourage an employee from coming forward to make or support a workplace harassment claim including, but not limited to being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action. 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).

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 a “protected activity.” Protected activity occurs when a person has:

- made a complaint of harassment, 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 department head of harassment;
- reported that another employee has been harassed; or
- encouraged a fellow employee to report potential harassment.

Even if the alleged harassment does not 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

Harassment is not only prohibited by the Town of Perinton but is also prohibited by federal, state and (where applicable) local law. Aside from the internal process at the Town of Perinton, 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, employees may seek the legal advice of an attorney.

### **New York State Division of Human Rights (DHR)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State regarding 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 DHR or in New York State Supreme Court.

Sexual harassment complaints may be filed with the DHR any time within **three years** of the harassment. All other harassment complaints may be filed with the DHR 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 discrimination. An individual may not file with DHR if they have already filed an HRL complaint in state court.

Complaining internally to the Town of Perinton does not extend your time to file with DHR or in court. The one (1) year or three (3) years is counted from date of the most recent incident of harassment.

An attorney is not needed 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 harassment/discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If harassment/discrimination 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 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, (718) 741-8400, [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.

### **United States Equal Employment Opportunity Commission (EEOC)**

The 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.



If an employee believes that he or she has been discriminated against at work, he or she can file a “Charge of Discrimination.” The EEOC has district, area and field offices where complaints can be filed. Contact the EEOC by calling (800) 669-4000 (800) 669-6820 (TTY), 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 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. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, NY, NY; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

### **Contact the Local Police Department**

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