



## **Town of Lewisboro Sexual Harassment Policy October 2018**

### **Introduction**

The Town of Lewisboro (hereinafter the “Town”) is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of discrimination and is against the law. The Town has a zero-tolerance policy for any form of sexual harassment, and all employees are required to work in a manner that prevents sexual harassment in the workplace. This Town Policy (hereinafter the “Policy”) is one component of the Town of Lewisboro’s commitment to a discrimination-free work environment.

All individuals have a legal right to a workplace free from sexual harassment, and can enforce this right by filing a Sexual Harassment Report (hereinafter the “Report”) internally with the Town, with another government agency, or in court under federal, state or local antidiscrimination laws.

This policy aims to prevent incidents of sexual harassment to the best of the Town’s ability. However, if and when incidents of sexual harassment occur, this policy also aims to encourage reporting to mitigate the situation and to address such incidents. This policy works in tandem with other standards of practice the Town engages in, including but not limited to mandatory training and a commitment to revisit this policy in a timely manner, and at least once a year.

### **Policy:**

1. This Policy applies to all employees, applicants for employment, interns (whether paid or unpaid), contractors, non-employees<sup>1</sup> and persons conducting business with the Town (hereinafter referred to as “Covered Individuals”).
2. Sexual harassment will not be tolerated. Any Covered Individual who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, which may include termination.

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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 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.

The adoption of a policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

3. Retaliation Prohibition: No Covered Individual shall be subject to adverse employment action including, but not limited to, being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the Covered Individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment report. The Town has a zero-tolerance policy for such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any Covered Individual who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, which may include termination. Any Covered Individual who believes they have been subject to such retaliation should inform their direct supervisor, a supervisor of another Department, the Office of Supervisor which consists of the Supervisor, the Deputy Supervisor and the Confidential Secretary to the Supervisor, or any duly elected member of the Town Board (hereinafter referred to as "Report Recipients"). Any Covered Individual who believes she/he has been the victim of such retaliation may also seek compensation in other available forums, as explained below in the section on Legal Protections.

4. Sexual harassment is offensive, is a violation of the Town policies, unlawful, and may subject the Town to liability for harm to victims of sexual harassment. Offenders may also be individually subject to liability. Covered Individuals of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be penalized for such misconduct.

5. Upon receipt of a Report, the Town will conduct a prompt, thorough and confidential investigation that ensures due process for all parties. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All Covered Individuals are required to cooperate with any internal investigation of sexual harassment.

6. All Covered Individuals are encouraged to report any harassment or behaviors that violate this Policy. The Town will provide all Covered Individuals a Report Form. Please see attached form entitled "Town of Lewisboro Sexual Harassment Report Form".

7. Report Recipients are required to communicate any Report that they receive to the Office of the Supervisor, and all managers, department heads and supervisors are required to report any harassment that they observe to the Supervisor's Office.

8. This Policy must be posted prominently in all work locations and be provided to employees upon hiring. All Covered Individuals will have access to this form online at [www.lewisborogov.com](http://www.lewisborogov.com).

### **What Is "Sexual Harassment"?**

Sexual harassment is a form of discrimination and is unlawful under federal, state, and local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, gender identity and/or expression.

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:

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- 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 reporter is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly as 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.

Sexual harassment can create a hostile work environment and comes in many forms including, but 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.

Any Covered Individual who feels harassed should file a 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 assaults of a sexual nature, such as:
  - Touching, pinching, patting, grabbing, poking or brushing against another;
  - 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.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:

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- 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/or expression, 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. A perpetrator of sexual 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 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 or not during work hours.

### **What is "Retaliation"?**

Unlawful retaliation can be any action that would keep a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation.

Such retaliation is unlawful under federal, state, and 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:

- filed a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;

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- complained that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

### **Reporting Sexual Harassment**

Preventing sexual harassment is everyone's responsibility. The Town cannot prevent or remedy sexual harassment unless we know about it. Any Covered Individual who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Supervisor's Office. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Supervisor's Office. Copies of all Reports must be submitted to the Office of the Supervisor.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form (referred to in this Policy as the "complaint form" or the "Report"). Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Covered Individuals who believe they have been a victim of sexual 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 sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the Supervisor's Office.

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

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

### **Report and Investigation of Sexual Harassment**

All reports or information about suspected sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation will be conducted in a timely manner and will be confidential to the extent possible. The investigation will be led by the Office of the Supervisor, or as otherwise directed by the Town Board.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, and should be completed within 30 days. The investigation will be confidential to the extent possible. All persons involved, including

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reporters, witnesses and alleged perpetrators will be accorded due process to protect their rights to a fair and impartial investigation.

Any Covered Individual may be required to cooperate as needed in an investigation of suspected sexual harassment. Covered Individuals who participate in any investigation shall not be retaliated against.

Investigations will be done in accordance with the following steps:

- Upon receipt of a report, the Supervisor's Office will conduct an immediate review of the allegations and take any interim actions, as appropriate. If the report is oral, the reporter will be encouraged to complete the Report in writing. If she/he declines, the Report Recipient will submit a Report based on the oral reporting.
- Collect and preserve any documents, emails or phone records that may be relevant to the allegations.
- Request and review all relevant documents, including 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 reviewed documents with a detailed summary of relevant documents;
  - A list of names of those interviewed, and a detailed summary of their statements;
  - A timeline of events;
  - A summary of prior relevant incidents, reported or unreported; and
  - The final resolution of the Report, including any corrective action(s) taken.
- Keep the written documentation and associated documents in the employer's records.
- Promptly notify the individual who reported and the individual(s) who responded of the final determination and implement any corrective actions identified in the written document.
- Inform the reporter of their right to file a complaint or charge externally as outlined below.

### **Legal Protections and External Remedies**

Sexual harassment is not only prohibited by the Town of Lewisboro but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the Town of Lewisboro, employees may also choose to pursue legal remedies with the following governmental entities at any time.

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## **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 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 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 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 Lewisboro 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 discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If 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.

If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where

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complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (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, Covered Individuals in Westchester may file reports of sexual harassment with the Westchester Human Rights Commission. Contact their main office at Westchester Human Rights Commission, 112 E. Post Rd. #3, White Plains, New York; call (914) 995-7710; or visit <https://humanrightscommission.westchestergov.com>.

### **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.

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