

## **TOWN OF BIG FLATS SEXUAL HARASSMENT POLICY**

1. In recognition of the dignity and value of each person employed by the Town of Big Flats, this policy concerning sexual harassment is promulgated. All employees should be allowed to work in an environment free from all forms of discrimination and conduct which may be considered harassing, coercive or disruptive, including sexual harassment. Sexual harassment undermines the integrity of the employment relationship, debilitates morale and interferes with work productivity and therefore will not be tolerated.

The Town of Big Flats is committed to providing a work environment where women and men, be they heterosexual, lesbian, gay, bisexual, or transgender can work together comfortably and productively, free from harassment because of their **actual** or **perceived** sexual orientation.. Such behavior is illegal under both state and federal law and will not be tolerated in the Town. Sexual harassment is prohibited by federal law, specifically by Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e). Sexual harassment also is prohibited by New York State law under the New York State Human Rights Law, Executive Law Section 296.

### **Policy statement and coverage.**

This policy applies to all phases of employment, including recruiting, testing, hiring, upgrading, promotion or demotion, transfer, layoff, termination, rates of pay, employment duties, benefits and selection for training, travel or municipal social events and is applicable to all officers or employees elected or appointed by the Town of Big Flats.

### **2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated.

#### **SEXUAL HARASSMENT**

Generalized sexist remarks and behavior. Sexual harassment is a form of gender-based discrimination. It involves unwelcome sexual conduct that:

- Is used as the basis for hiring or other employment decisions, such as promotions, raises or job assignments; or
- Creates an intimidating, hostile or offensive work environment.

The harasser can be a supervisor, a co-worker or someone who is not an employee, such as a client or customer. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision.

Sexual harassment may be verbal, visual and/or physical, including:

- Sexually offensive remarks or jokes;
- Unwanted touching or groping;
- Coerced sex acts;

- Requests for sexual favors of a sexually suggestive nature (e.g., asking employee to dig coins out of a supervisor's pants pocket);
- Displaying pornographic images;
- Comments (either complimentary or derogatory) about a person's gender or sexual preferences;
- Sexual gestures (e.g., pantomiming sex acts).

And it can also include the following:

**SEDUCTIVE BEHAVIOR**

Inappropriate, unwanted, offensive physical or verbal sexual advances.

**SEXUAL BRIBERY**

Solicitation of sexual activity or other sex-linked behavior by promise of reward.

**SEXUAL COERCION**

Coercion of sexual activity by threat of punishment.

**SEXUAL ASSAULT**

Gross sexual imposition, like touching, fondling, grabbing or assault.

The law protects both men and women, and also covers incidents in which the harasser and/or the victim are of the same sex, regardless of one's actual or perceived sexual orientation. Third parties (non-employees) may complain when one or more of the following occurs: (1) submission to sexual demands is a general condition of employment; (2) harassment directed at others adversely affects the third party's work environment; or (3) offensive sexual conduct, even if consensual between the parties involved, is creating a hostile work environment for the third party.

**3. Prohibited behavior.**

Sexual harassment of any type, as defined in Section 2, is prohibited. Additionally, if the unwelcomed behavior does not fit into the above categories but is the inappropriate sexualization of an otherwise nonsexual relationship, it will be considered sexual harassment.

**4. Harassment by nonemployees.**

In addition, the Town of Big Flats will take all reasonable steps to prevent or eliminate sexual harassment by non-employees, including vendors, sales personnel or members of the public who are likely to have workplace contact with the employees.

**5. Monitoring.**

The Town of Big Flats shall take all reasonable steps to see that this policy prohibiting sexual harassment is followed by all employees and others who have contact with employees. This prevention plan will include training sessions and ongoing monitoring of the work site

**6. Complaint procedure.**

The Supervisor of the Town of Big Flats (or his/her delegate) is hereby appointed to administer this policy. All complaints of sexual harassment and retaliation for reporting or participating in an investigation shall be directed to the Supervisor, in writing. The Supervisor or his delegate shall promptly investigate and attempt to resolve complaints involving violations of this policy and recommend to the Town Board the appropriate penalties to be imposed against violators. All investigations shall be conducted as confidentially as possible. (In any case where the Supervisor

shall be the subject of a complaint, such complaint shall be made to the Town Clerk and not to the Supervisor.)

Pending the completion of this investigation, separation of the parties may be appropriate. The investigation should end with a written report setting forth all allegations, statements by witnesses, action taken and conclusion. Statements of witnesses should be put in writing and sworn to.

## 7. Legal issues and other resources beyond the workplace.

a. **COURT ACTION** You may also have the right to file a lawsuit against your employer in either state or federal court. Filing in federal court requires that you first file a complaint with the EEOC before bringing a lawsuit. No such requirement applies in state court.

If the issues are not resolved internally and the “victim” chooses to pursue “litigation” it may be necessary to try to impose liability on the employer by proving the existence of a hostile workplace. Litigation is very complex. Federal or state court action is usually the last resort.

“In general, to prevail on a hostile work environment claim, a plaintiff [the employee] must show that (1) he or she was a member of a protected class; (2) he or she was subjected to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the charged sexual harassment created a hostile work environment; and (5) the employer is liable. *Randolph v. Ohio Dep’t of Youth Servs.*, 453 F.3d 724, 733 (6th Cir. 2006). To establish employer liability where the harasser is a co-worker, a plaintiff must show that the employer knew or should have known of the conduct and failed to take prompt and appropriate corrective action. *E.E.O.C. v. Harbert Yeargin, Inc.*, 266 F.3d 498, 518 (6th Cir. 2001)” *Smith v. Rock-Ten, Inc.* (Federal Court of Appeals for the 6th Circuit February 2016 at page 8).

Generally a hostile workplace is proved when it is established that the workplace was permeated with discriminatory intimidation, ridicule and insult such that it is **severe or pervasive** and that the workplace is proven to be hostile **subjectively and objectively**.

An employer has actual notice of harassment when sufficient information either comes to the attention of someone who has the power to terminate the harassment, or it comes to someone who can reasonably be expected to report or refer a complaint to someone who can put an end to it. Actual notice is such notice as is positively proved to have been given to a party directly and personally, or such as he is presumed to have received personally because the evidence within his knowledge was sufficient to put him upon inquiry. In the context of sexual harassment claims, actual notice is established by proof that management knew of the harassment.

*Sandoval v. American Bldg Maintenance Industries, Inc.*, 578 F.3d 787, 802 (8th Cir. 2009)

Finally, “The last requirement for [a TitleVII] hostile work environment claim is employer liability. To impose liability on an employer for the harassing conduct of a plaintiff’s co-worker, a “plaintiff must show that the employer’s response to the plaintiff’s complaints ‘manifest[ed] indifference or unreasonableness in light of the facts the employer knew or should have known.’” *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 814 (6th Cir. 2013) (quoting *Hawkins*, 517 F.3d at 338). A plaintiff must therefore show that the employer “knew or should have known of the harassment” and “failed to take prompt and appropriate corrective action.” *McCombs v. Meijer, Inc.*, 395 F.3d 346, 353 (6th Cir. 2005) (quoting *Harbert-Yeargin*, 266 F.3d at 518). “Generally, a response is adequate if it is reasonably calculated to end the harassment.” *Waldo*, 726 F.3d at 814. Appropriate steps “may include promptly initiating an investigation.” *Id.* Even separating the harasser and victim immediately may not be enough without further

action on the employer's part. *West v. Tyson Foods, Inc.*, 374 F. App'x 624, 633 (6th Cir. 2010)." *Smith v. Rock-Ten* pages 13-14

#### **b. OTHER PROCEDURES**

Generally, however, court is not necessary as there are other routes that can be pursued.

The aggrieved employee should always follow employer procedures first by contacting the person or office who may have been designated by your employer to receive such complaints.

One should also consult with an attorney experienced in these matters as there is no one right answer about how to proceed. It is advisable to consult an attorney who can explain all of the available options. This area of the law can be very complicated, factually as well as legally. Note also that there are deadlines for filing a complaint under each of the laws prohibiting sexual harassment.

Consult with the agencies listed below about specific procedures and time limits that apply:

#### **New York State Office of the Attorney General (OAG) Civil Rights Bureau**

The Civil Rights Bureau determines whether the experiences are evidence of a pattern, practice or policy of sexual harassment affecting a significant number of people. The Bureau may then commence an investigation and/or initiate legal action against the employer. NOTE: The Attorney General represents the People of the State of New York, not the individual making a complaint. Filing a complaint with the OAG is not a substitute for bringing a case in court or elsewhere, and it does not affect any of the filing deadlines or other administrative prerequisites for filing a case in court or with other government agencies. One may contact the Bureau at: Civil Rights Bureau, New York State Attorney General's Office, 120 Broadway, New York, NY 10271; or at (212) 416-8250 or (800) 771-7755; or at [civil.rights@ag.ny.gov](mailto:civil.rights@ag.ny.gov).

#### **NYS Division of Human Rights (SDHR)**

Complaints may be filed with the SDHR office located within the city or county in which you work. If that office is not located in that city or county, it may be located in a nearby city or county. This agency can investigate complaints and conduct hearings before an administrative judge. The matter can be resolved via that hearing but if one is not satisfied with the result then court action can be pursued.

**U.S. Equal Employment Opportunity Commission (EEOC)** This federal agency handles complaints of discrimination in the workplace. The EEOC investigates sexual harassment charges against all employers with more than 15 employees.

#### **8. Training.**

A. The Town of Big Flats shall establish training sessions for all employees regarding their rights and obligations in maintaining a work site free of sexual harassment and the legal or other procedural options available if they are harassed, as well as in training supervisory personnel in how to keep the work site as free from harassment as possible.

B. The Supervisor, Town Clerk and any other individuals administering the response process to sexual harassment complaints shall receive additional and continual training.

#### **9. Groundless or malicious charges.**

It shall be a violation of this policy for any employee of the Town of Big Flats to make any groundless, untruthful, malicious, unfounded or otherwise a false report regarding alleged sexual harassment by any other person and subject such employee to all the sanctions and/or remedies herein provided.

#### **10. Procedural elements.**

In accordance with NYCRR (New York Code of Rules and Regulations), Equal Employment Opportunity and Affirmative Action, the procedures promulgated shall include the following elements:

A. **Confidentiality.** Sexual harassment investigations and proceedings will be conducted in a manner to protect the confidentiality of the complainant, the accused harasser and all witnesses to the extent reasonably possible. All parties involved will be advised to maintain strict confidentiality to safeguard the privacy and reputation of all involved.

B. **Retaliation.** Any employee bringing a sexual harassment complaint or assisting in investigating such a complaint shall not be adversely affected in terms and conditions of employment or discriminated against or discharged because of the complaint. Complaints of any such retaliation may be cause for disciplinary action and will be promptly investigated and the offender punished if the complaint is sustained.

#### **C. Protection of parties.**

(1) All complaints will be investigated. Complainants and the alleged harasser will be kept fully abreast of the steps taken during the investigation process.

(2) The accused harasser will have an opportunity to be heard and will be allowed to present any witnesses, documentation or other evidence prior to the Supervisor making a finding or rendering a decision as to whether probable cause exists to believe the accusation is true or false. If the accused harasser is a member of a union representing town employees, he/she shall have the right to have an official union representative present. The Supervisor or his/her delegate shall notify that union of the fact that an investigation is going to be conducted regarding the conduct of one of its members. At no time shall said union representative or any lawyer unreasonable delay or otherwise the investigation as a speedy resolution is very important.

(3) If probable cause is found to exist, the accuser will also be allowed to bring in a collective bargaining association representative and/or legal counsel.

(4) The accused harasser shall also be entitled to the benefits of any other procedures available pursuant to any existing collective bargaining or employment agreement then in effect if said procedures are applicable.

#### **D. Sanctions/remedies.**

Sanctions for employees found in violation of this policy will be subject to progressive discipline, when appropriate and subject to the union contract with the Town, which includes:

- (1) Referral to counseling.
- (2) Oral reprimand.
- (3) Written reprimand.
- (4) Reassignment.
- (5) Suspension.

(6) Termination.

(7) Referral to the criminal justice system for possible sexual assault violations.

**11. Discipline.**

Any employee found to have violated this policy shall be subject to the appropriate disciplinary action, including warnings, reprimand, suspension or termination, according to the severity of the offense and with regard to prior offenses, following a complaint investigation. If such an investigation reveals that sexual harassment has occurred, the harasser may also be held legally liable for his or her actions under state and federal antidiscrimination laws or in separate legal action.

**12. Distribution.**

A copy of this policy shall be distributed to all officers and employees of the Town of Big Flats and posted in areas where it will be available for review by employees and persons dealing with them.