

**TOWN OF ESSEX PERSONNEL POLICY  
SEXUAL HARASSMENT**

*Adopted by Selectboard – March 24, 1997*

*Revised by Selectboard – December 1, 2003*

*(EEOC/MCAD Claim Windows & Persons to Report Complaints to in Town)*

**I. GENERAL CONSIDERATIONS AND GUIDELINES**

Sexual harassment in the workplace is unlawful. Employees and applicants for employment have a right to be free from harassment. Individuals who are victimized by harassment have statutory remedies which include filing a complaint with an administrative agency and/or the courts, both on a state and federal level. It is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment. The Town has developed this policy to familiarize employees with applicable guidelines. This policy affords those who feel they are victims of sexual harassment with a procedure for making the employer aware of the problem and allowing it to attempt to remedy the situation.

The Town is concerned with allegations of sexual harassment in the workplace, whether by superiors, coworkers or even non-employees. A copy of this policy will be given to a new employee at the start of employment and annually to all employees.

**II. DEFINITION OF SEXUAL HARASSMENT**

A. In Massachusetts, the legal definition for sexual harassment is this: “sexual harassment” means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

1. submission to or rejection of such advances, requests or conduct is made explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
2. such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor of: Sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

B. Sexual harassment is not, by definition, limited to prohibited conduct by a male employee toward a female employee. Rather:

1. A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser.
2. The harasser does not have to be the victim's supervisor. (S)he may also be an agent of the supervisor, a supervisory employee who does not supervise the victim, a non-supervisory employee (coworker), or, in some circumstances, even a non-employee.
3. The victim does not have to be the opposite sex from the harasser.
4. The victim does not have to be the person at whom the unwelcome sexual conduct is directed. (S)he may also be someone who is affected by such conduct when it is directed toward another person. For example, the sexual harassment of one female (or male) employee may create an intimidating, hostile, or offensive working environment for another female (or male) coworker or interfere with the coworker's work performance. The belief that such interference has occurred must be objectively reasonable.
5. Sexual harassment does not depend on the victim having suffered an actual economic injury as a result of the harasser's conduct. For example, improper sexual advances which do not result in the loss of a promotion by the victim or the discharge of the victim may, nonetheless, constitute sexual harassment where they interfere with the victim's work or create a harmful offensive work environment. The belief that such interference has occurred must be objectively reasonable.

### III. EXAMPLE OF SEXUAL HARASSMENT

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- A. Demanding sexual favors accompanied by overt threats concerning one's job, performance evaluation, promotion, etc.
- B. Engaging in reprisals (not granting promotions, assigning undesirable tasks, making negative statements about the victim's personal or work

conduct, etc.) as a result of an individual's refusing to engage in social/sexual behavior.

- C. Contact with any sexual part of a coworker's body (e.g., touching, patting, or pinching).
- D. Unwelcome sexual advances – whether they involve touching or not.
- E. Touching any nonsexual part of the body (e.g., shoulder, etc.) after that person has verbally or other wise indicated that such touching is unwanted.
- F. Refusing to take action or to enforce disciplinary measures against a person who has been sexually harassing another staff member or otherwise condoning such behavior.
- G. Inquires into one's sexual experiences.
- H. Continuing to ask a person to socialize after work when that person has verbally or in writing indicated no interest in such activities.
- I. Displaying sexually suggestive pictures, objects, cartoons or posters.
- J. Subtle pressure for sexual activities; e.g., continuing to write suggestive notes or letters after being informed they are unwelcome.
- K. Verbal harassment or abuse; e.g., referring to or calling a person an endearing, demeaning or sexualized term, or making reference to a person's physical characteristics (e.g. pregnancy) when that person has verbally or in writing indicated to the harasser or the Town (s)he does not wish to be addressed or referred to in that manner.
- L. Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
- M. Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess.
- N. Language in another's presence or conduct even if not directed to said individual – once it is known (s)he objects.
- O. Discussion of one's sexual activities.

#### IV. RESPONSIBILITIES OF ALL EMPLOYEES

A. Each employee is personally responsible for:

1. Ensuring that (s) he does not sexually harass any other employee, applicant for employment, or other individual in the workplace;
2. Cooperating in the investigation of complaints of alleged sexual harassment by providing any information (s)he possesses concerning the matters being investigated; and
3. Otherwise cooperating with the Town's efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such unlawful discrimination.

#### V. SANCTIONS

A. Any employee found to have engaged in sexual harassment in violation of this policy is subject to disciplinary action up to and including termination of employment.

#### VI. REPORTING PROCEDURES

A. Any employee who believes (s)he has been the victim of sexual harassment shall report this fact as soon as possible to his/her supervisor. The supervisor shall report such information to the applicable Department Head. If the employee believes that the nature of the sexual harassment or the identity of the alleged perpetrator is such that (s)he is not comfortable discussing the situation with her/his immediate supervisor, the employee may contact the Department Head. In the event the employee feels it is not appropriate to contact the Department Head, an employee may contact the Board of Selectmen or their agents (see Section XI).

#### VII. INFORMAL PROCEEDINGS

- A. The supervisor, Department Head or Board of Selectmen who receives the initial complaint may propose informal remedies. If the victim agrees to pursue this approach, the supervisory, Department Head or Board of Selectmen will meet with the alleged harasser, relate the fact that a sexual harassment incident or practice has been reported, and propose a remedy.
- B. If the informal remedy is accepted by the alleged harasser, the situation will be monitored closely by the supervisor, Department Head or Board of Selectmen to determine whether the work climate changes or whether

there are further incidents. If the victim reports that the situation has not been rectified or if the alleged harasser declines to agree to informal adjustment, the victim will be encouraged to file a formal complaint.

- C. The Board of Selectmen and the Personnel Board should be notified when a complaint is received and informal proceedings are instituted. The Personnel Board shall maintain records reflecting the substance of the informal remedy agreement.

#### VIII. FORMAL PROCEEDINGS

- A. The victim institutes a formal procedure by filing a written complaint with the Board of Selectmen.
- B. The Board of Selectmen or the Personnel Board shall conduct an investigation, which shall include an attempt to obtain a statement from the alleged harasser. An attempt will be made to resolve the matter within 30 business days of receipt of the complaint.
- C. In a situation where the victim and the alleged harasser will still be working in the same general area or environment during or after completion of the investigation, it may be necessary or appropriate to clearly define the terms of the continued professional interaction.

#### IX. CONFIDENTIALITY

- A. The Town will maintain the confidentiality of the allegations of the complaint, the complainant and the alleged harasser to the extent practical without handicapping the Town's ability to perform an investigation.

#### X. OTHER LEGAL REMEDIES

- A. Following the procedures outlined above does not preclude a complainant from seeking legal remedies outside the process. Complainants are cautioned that following these procedures does not affect the statute of limitation for filing discrimination complaints with the Massachusetts Commission Against Discrimination (300 days) or the Equal Employment Opportunity Commission (300 days).

## XI. FILING COMPLAINTS

Persons wanting to file a complaint of sexual harassment in the workplace may contact the following:

Department Head	at work site
Brendhan Zubricki, Personnel Officer, Town Hall	978-768-6531
Pamela Witham, Selectmen's Assistant, Town Hall	978-768-6531

These persons are also available to discuss any concerns you may have and to provide information to you about our policy on sexual harassment and our complaint process.

In addition to the above, if you believe you have been subject to sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a specific time period for filing a claim (EEOC – 300 days; MCAD – 300 days).

### **1. THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (“EEOC”)**

One Congress Street – 10<sup>th</sup> Floor  
Boston, MA 02114  
(617) 565-3200

### **2. THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION**

Boston Office:  
One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 727-3990