

TOWN OF TYNGSBOROUGH- PERSONNEL POLICY

SECTION 29: ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY

29.1: Introduction

It is the goal of our Town to promote a workplace that is free of unlawful discrimination and harassment (“harassment”) of any type, including sexual harassment. Harassment consists of unwelcome conduct, whether verbal or physical, that is based on a characteristic protected by law, such as race, color, religious creed, national origin, ancestry, sex/gender, gender identity, age, criminal record (inquiries only), handicap (disability) mental illness, retaliation, sexual harassment, sexual orientation, genetics, pregnancy and pregnancy-related conditions, active military status, or other bases prohibited under state or federal anti-discrimination statutes, will not be tolerated. Our Town will not tolerate harassing conduct that affects employment conditions, that interferes unreasonably with an individual’s performance, or that creates an intimidating, hostile, or offensive work environment.

This Policy applies to all employment practices and employment programs sponsored by the Town.

29.1.1: This Policy shall apply, but not be limited to, the areas of:

- a) Recruitment
- b) Selection
- c) Compensation and benefits
- d) Professional development and training
- e) Reasonable accommodation for disabilities or religious practices
- f) Promotion
- g) Transfer
- h) Termination
- i) Layoff, and
- j) Other terms and conditions of employment.

This Policy may apply to discrimination (including harassment) that occurs between co-workers that takes place outside the workplace (including, but not limited to, online conduct or conduct utilizing the internet or other electronic media). When the conduct complained of occurs outside of the workplace, the Town may consider the following and other factors in assessing whether the conduct constitutes conduct in violation of this Policy:

- a) Whether the event at which the conduct occurred is linked to the workplace in any way, such as at a Town-sponsored function;

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- b) Whether the conduct occurred during work hours;
 - c) The severity of the alleged outside-of-work conduct;
 - d) The work relationship of the complainant and alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and complainant come into contact with one another on the job;
 - e) Whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainant's work environment.
- Because the Town takes allegations of harassment seriously, we will respond promptly to complaints of harassment. Where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of harassment as defined above, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment.

29.2: Definitions

29.2.1: Harassment

“Harassment” means unwelcome conduct, whether verbal or physical, that is severe or pervasive and is based on a characteristic protected by law. Harassment includes, but is not limited to:

- a) Display or circulation of written materials or pictures that are degrading to a person or group as previously described.
- b) Verbal abuse, slurs, derogatory comments, or insults about, directed at, or made in the presence of an individual or group as previously described.

29.2.2: Sexual Harassment

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

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Under this definition, for example, direct or implied requests by a supervisor for 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.

The definition of sexual harassment is broad. In addition to the above examples, other unwelcome sexually oriented conduct that has the effect, whether intended or not, of creating a work environment that is hostile, offensive, intimidating or humiliating to either male or female workers may also constitute 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) Unwelcome sexual advances – whether they involve physical touching or not;
- b) 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;
- c) Displaying sexually suggestive objects, pictures, cartoons;
- d) Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- e) Inquiries into one's sexual experiences; and,
- f) Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual for having complained about discrimination and/or harassment, and retaliation against individuals for cooperating with an investigation of a harassment and/or discrimination complaint will not be tolerated by this organization.

29.3: Examples of Prohibited Discriminatory Behavior

It is not possible to list all the circumstances that may constitute discrimination in violation of this Policy. Discrimination may take many forms, including both verbal and nonverbal behaviors. Prohibited behavior includes, but is not limited to, the following behaviors connected to someone's membership in one or more groups protected by law as noted in the first paragraph above: slurs or other derogatory comments; sharing demeaning pictures, cartoons, or jokes; demeaning gestures, and; any conduct constituting sexual harassment.

29.4: Complaint Procedures

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All employees, managers, and supervisors of the Town share responsibility for avoiding, discouraging and reporting any form of discriminatory harassment. The primary responsibility for ensuring proper investigation and resolution of harassment complaints rests with the Town Administrator/Manager, or his/her designee, who will administer the policy and procedures described herein.

If any of our employees believes that he or she has been subjected to discrimination and/or harassment, the employee has the right to file a complaint with the Town. This may be done in writing or orally. In addition, residents, visitors, applicants, vendors, contractors, their agents and employees, or other third parties who believe they have been subjected to discrimination and/or harassment may also file a complaint with the Town using the procedures described herein. Furthermore, employees may also file a complaint if they have been subjected to harassment from residents, visitors, applicants, vendors, contractors, their agents and employees, or any other third parties in the workplace, while performing work-related duties, or during other work-related activities.

Prompt reporting of harassment is in the best interest of our Town and is essential to a fair, timely, and thorough investigation. Accordingly, complaints should be filed as soon as possible following the incident(s) at issue. If you would like to file a complaint you may do so by contacting the Town Administrator/Manager or the HR/Benefits Coordinator, both with offices located at Town Hall, 25 Bryants Lane. A complaint of harassment regarding the Town Administrator/Manager may be made directly to the Chair of the Board of Selectmen. These individuals will be available to discuss any concerns you may have and to provide information to you about our policy on harassment and our complaint process.

29.5: Complaint Investigation

When we receive a complaint, we will promptly investigate the allegation in a fair and expeditious manner to determine whether there has been a violation of this policy. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances, but confidentiality cannot be guaranteed. Our investigation may include private interviews with the person filing the complaint and with witnesses. We may also interview the person alleged to have committed harassment. The complainant, the person alleged to have committed harassment, and all witnesses are required to fully cooperate with all aspects of an investigation. When we have completed our investigation, we will inform the person filing the complaint and the person alleged to have violated the policy that the investigation has been completed. Notwithstanding any provision of this policy, we reserve the right to investigate and act on our own initiative in response to conduct which may constitute harassment or otherwise be inappropriate, regardless of whether an actual complaint has been filed.

29.6: Disciplinary Action

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If it is determined that a Town employee has violated this Policy, we will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

29.7: State and Federal Remedies

In addition to the above, if you believe you have been subjected to discriminatory harassment of any type, including sexual harassment, you may file a formal complaint with either or both government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies requires that claims be filed within 300 days from the alleged incident or when the complainant became aware of the incident.

The United States Equal Employment Opportunity Commission (“EEOC”)

One Congress Street, 10th Floor
Boston, MA 02114,
(617) 565-3200

The Massachusetts Commission Against Discrimination (“MCAD”)

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

Springfield Office:
436 Dwight Street, Room 220, Springfield, MA 01103
(413) 739-2145

Worcester Office:
484 Main Street, Room 320, Worcester, MA 01641
(508) 799-6379

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ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY INCLUDING SEXUAL HARASSMENT

This acknowledges that I have received and reviewed the Town's Anti-Discrimination and Anti-Harassment Including Sexual Harassment Policy ("Policy"). By signing this form, I agree to abide by the Policy and any Guidelines promulgated thereunder, and I agree to review periodically any changes or modifications. I recognize that the law and associated Policy regarding discrimination and harassment are continually evolving. Therefore, I understand that my regular review of this Policy, as it may be amended, is required.

Name _____

Title _____

Department _____

Date _____

To be included in employee's personnel file.