

Updated Sexual Harassment Policy and Sample Anti-Discrimination Policy

As you know, state law requires employers to adopt a formal policy prohibiting sexual harassment in the workplace, copies of which must be provided to all employees on an annual basis (and to new employees at time of hire). G.L. c. 151B, §3A. The Massachusetts Commission Against Discrimination (“MCAD”) has promulgated a model policy, which provided the basic framework for many sexual harassment policies currently in place in municipalities across the Commonwealth.

Given the explosion in the use of social media/networking sites like Facebook and Twitter, as well as internet blogs, it is foreseeable that employees may utilize the Internet in ways that may constitute sexual harassment of co-workers. For that reason, we have revised our sample sexual harassment policy to address this possibility. In addition, as you may recall, the state’s anti-discrimination law (G.L. c. 151B) was recently amended to include a prohibition against discrimination based upon someone’s gender identity. In light of this recent statutory amendment, it is foreseeable that a court or administrative agency will consider conduct that is aimed at someone’s gender identity, as well as sexual orientation, as sexual harassment. Accordingly, we have added specific reference to gender identity and sexual orientation in the attached sample policy.

EEO and Anti-Discrimination

The MCAD recommends that employers adopt a broader equal employment opportunity (“EEO”) and anti-discrimination policy, which encompasses but is not limited to a sexual harassment policy. State law does not require the adoption of this broader anti-discrimination policy. However, there is a trend toward adopting such a policy, because the courts have recognized that harassment on the basis of someone’s membership in virtually any protected category can give rise to a hostile work environment claim. We have attached a sample of such a policy, in the event that you wish to consider adopting a broader EEO policy.

Time Frame for Employee Complaints

You will also note from the attached policies that an employee may file a complaint with either the MCAD or the Equal Employment Opportunity Commission within 300 days of the alleged discriminatory or harassing conduct. This statute of limitations was changed in 2002 (from 6 months to 300 days for state law claims). For more information on this change, please see our

Memorandum to All Municipal Clients, dated October 18, 2002. If you choose not to adopt one of the attached policies, you may wish to double check your existing policy to make sure that it notes the correct time period for such filings.

Collective Bargaining Implications

Finally, you may have collective bargaining obligations with your unions (if any) over the adoption of policies that impact the terms and conditions of employment. The extent of your bargaining obligation(s) will depend upon a variety of factors such as: what provisions you ultimately intend to include in the policy; the language of existing policies of your community; the language of any applicable collective bargaining agreement(s); and past practice. Given that the enclosed policies include specific reference to conduct that occurs outside of the workplace (including the use of social media or the internet in connection with conduct prohibited by the policies), it may be that your unions will view these policies as sufficiently different from the average sexual harassment policy that has become commonplace, triggering a demand to bargain over the implementation of such policies. We typically recommend that you provide notice to your unions of the anticipated adoption of any new or substantially revised policy impacting working conditions, and invite them to contact you with any questions or concerns. The onus will then be on the union to make a formal demand to bargain. You should consider this issue prior to implementation, to ensure that you do not run afoul of your obligations under G.L. c. 150E, the Public Sector Collective Bargaining Law.

For more information, contact Attorney Michele Randazzo at (617) 556-0007 or mrando@k-plaw.com.

**SAMPLE EQUAL EMPLOYMENT OPPORTUNITY, DISCRIMINATION,
AND SEXUAL HARASSMENT POLICY**

I. INTRODUCTION

It is the Policy of the [City/Town] of _____ to promote a professional and productive workplace in which all employees are treated with dignity and respect. Employees are expected to act in a positive manner and contribute to a productive work environment that is free from harassing or disruptive activity. Discrimination (including harassment), whether based upon race, color, gender, gender identity, national origin, religion, ancestry, age, sexual orientation, disability, maternity leave, genetic information, active military status, or another basis prohibited under state or federal anti-discrimination statutes, will not be tolerated. To achieve our goal of providing a workplace free from discrimination, we will implement the procedure described below to address any potential inappropriate conduct.

This Policy applies to all employment practices and employment programs sponsored by the [City/Town]. This Policy shall apply, but not be limited to, the areas of:

- Recruitment,
- Selection,
- Compensation and benefits,
- Professional development and training,
- Reasonable accommodation for disabilities or religious practices,
- Promotion,
- Transfer,
- Termination,
- Layoff, and
- 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:

- whether the event at which the conduct occurred is linked to the workplace in any way, such as at a [City/Town]-sponsored function;
- whether the conduct occurred during work hours;
- the severity of the alleged outside-of-work conduct;
- 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;
- whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainant's work environment.

Because the [City/Town] takes allegations of unlawful discrimination and harassment seriously, we will respond promptly to complaints and where it is determined that such 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 discrimination and harassment, **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 legal definitions of discrimination or harassment.**

II. Examples of Prohibited Discriminatory Behaviors

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.

III. Definition of Sexual Harassment

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:

(a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;

or,

(b) 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 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 legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment. The victim or complainant as well as the harasser may be male or female. The victim or complainant does not have to be of

the opposite sex. The complainant does not have to be a person directly harassed, but may be someone affected by the offensive conduct.

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:

- Unwelcome sexual advances - whether they involve physical touching or not;
- 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;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences, and;
- Discussion of one's sexual activities.

All employees should take special note that, as stated below, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the [City/Town].

IV. Complaints of Sexual Harassment

If any of our employees believes that they have been subjected to sexual harassment, it is our Policy to provide the employee with the right to file a complaint with our organization. This may be done in writing or orally.

If you would like to file a complaint you may do so by contacting [redacted]. If you prefer, you may file your complaint with [redacted]. These persons are also available to discuss any concerns you may have and to provide information to you about this Policy and our complaint process.

V. Sexual Harassment Investigation

When we receive the complaint, we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed sexual harassment. When we have completed our investigation, we will, to the extent appropriate inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where appropriate we will also impose disciplinary action.

Given the sensitive nature of complaints of discrimination and/or harassment, all parties and witnesses in a complaint, as well as Department Heads, supervisors, etc. who are aware of a complaint or investigation thereof, are strongly encouraged to maintain this information as confidential, so as not to negatively impact an investigation. All employees are reminded of the provisions of G.L. c. 268A, §23(c)(2), which prohibit a municipal employee or official from improperly disclosing information that is protected from disclosure under the public records law, and acquired by an employee or official in the course of official duties. Section 23 also prohibits a municipal employee or official from using such information to further the employee's/official's personal interest. Violations of the prohibitions of Section 23 may lead to disciplinary action, up to and including termination.

VI. Complaints Concerning Other Forms of Discrimination and/or Harassment

Complaints alleging forms of discrimination and/or harassment, other than sexual harassment, will be processed in accordance with Sections IV and V, above.

VII. Retaliation

Any retaliation against an individual who has formally or informally complained about discrimination (including harassment), or has cooperated with an investigation of a discrimination complaint, is prohibited.

Retaliation can be overt or subtle. Retaliation may include, but is not limited to, treating a complainant or witness differently, more harshly or in a hostile manner; physical interference with movement such as blocking a path; derogatory comments or action which would tend to have a chilling effect on other complainants; sudden investigations of the complainant's private life, or; sudden strict enforcement of work rules. Retaliation in any form will not be tolerated.

VIII. Disciplinary Action

If it is determined that discrimination, harassment, retaliation, or other inappropriate conduct has been committed by one of our employees, the [City/Town] will take such action as is appropriate under the circumstances. Such actions may include: counseling, informal or formal reprimands, written or verbal warnings, suspension, reduction in pay, reduction in duties, transfers, and other formal sanctions, **up to and including termination of employment.**

IX. State and Federal Remedies

In addition to the above, if you believe you have been subjected to unlawful discrimination and/or 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 short time period for filing a claim (EEOC – 300 days; MCAD – 300 days).

1. The United States Equal Employment Opportunity Commission

John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone: (800) 669-4000
TTY: (800) 669-6820

2. The Massachusetts Commission Against Discrimination

Boston Office One Ashburton Place Sixth Floor, Room 601 Boston, MA 02108 Phone: 617-994-6000 TTY: 617-994-6196	Springfield Office 436 Dwight Street Second Floor, Room 220 Springfield, MA 01103 (413) 739-2145
Worcester Office Worcester City Hall 455 Main Street, Room 100 Worcester, MA 01608 (508) 799-8010 (508) 799-8490 – FAX	New Bedford Office 800 Purchase St., Rm 501 New Bedford, MA 02740 (508) 990-2390 (508) 990-4260 - FAX

X. Reasonable Accommodation

Employees seeking reasonable accommodations may submit their request in writing to [Name, address and telephone number of the appropriately trained individual to whom requests should be addressed].

XI. Equal Employment Opportunity Statement

The [City/Town] of [redacted] will not discriminate in its employment practices, on the basis of race, color, gender, gender identity, national origin, religious creed, ancestry, age, sexual orientation, disability, maternity leave, genetic information, active military status, or another basis prohibited under state or federal anti-discrimination statutes. This shall include such areas as recruitment, selection, compensation and benefits, professional development and training, reasonable accommodation for disabilities or religious practices, promotion, transfer, termination, layoff, and other terms and conditions of employment.

SAMPLE SEXUAL HARASSMENT POLICY

I. Introduction

It is the goal of the [City/Town] of _____ to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

This Policy may apply to conduct 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), or during non-work hours. When the conduct complained of occurs outside of the workplace or during non-work hours, the [City/Town] may consider the following and other factors in assessing whether the conduct constitutes conduct in violation of this policy:

- whether the event at which the conduct occurred is linked to the workplace in any way, such as at a [City/Town]-sponsored function;
- whether the conduct occurred during work hours;
- the context of conduct that occurs outside of normal work hours and whether there is any connection to the workplace;
- the severity of the alleged outside-of-work conduct;
- 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;
- whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainant's work environment.

Because the [City/Town] takes allegations of unlawful discrimination and harassment seriously, we will respond promptly to complaints and where it is determined that such 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 sexual harassment, **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 legal definitions of discrimination or harassment.**

II. Definition of Sexual Harassment

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(a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;

or,

(b) 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 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 legal definition of sexual harassment is broad and in addition to the above examples, other sexually-oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment. This can include conduct that is aimed at a person's sexual orientation or gender identity.

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:

- Unwelcome sexual advances - whether they involve physical touching or not;
- 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;
- Displaying sexually suggestive objects, pictures, cartoons;
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- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

III. Complaints of Sexual Harassment

If any of our employees believes that they have been subjected to sexual harassment, it is our policy to provide the employee with the right to file a complaint with our organization. This may be done in writing or orally.

If you would like to file a complaint you may do so by contacting _____ . If you prefer, you may file your complaint with _____. 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.

IV. Sexual Harassment Investigation

When we receive the complaint we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed sexual harassment. When we have completed our investigation, we will, to the extent appropriate inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where appropriate we will also impose disciplinary action.

V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as is appropriate under the circumstances. Such actions may include: counseling, informal or formal reprimands, written or verbal warnings, suspension, reduction in pay, reduction in duties, transfers, and other formal sanctions including termination from employment.

VI. State and Federal Remedies

In addition to the above, if you believe you have been subjected 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 short time period for filing a claim (EEOC – 300 days; MCAD – 300 days).

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<p>Worcester Office</p> <p>Worcester City Hall 455 Main Street, Room 100 Worcester, MA 01608 (508) 799-8010 (508) 799-8490 – FAX</p>	<p>New Bedford Office</p> <p>800 Purchase St., Rm 501 New Bedford, MA 02740 (508) 990-2390 (508) 990-4260 - FAX</p>