

Trending: Equal Employment Opportunity and Anti-Discrimination And Harassment (including Sexual Harassment) Policy

Every city and town in Massachusetts is required by the provisions of G.L. c. 151B, §3A to adopt a sexual harassment policy and to distribute that policy annually to existing employees, and to all new employees upon hire.

In recent years, however, the trend has been to move toward adopting a unified policy addressing sexual harassment and harassment and discrimination with respect to the broader range of protected categories covered by state and federal anti-discrimination laws. Employers that adopt this broader policy do not need to also adopt a separate sexual harassment policy. Once adopted, however, this broader policy must be distributed to employees on an annual basis and at hire in the same manner as required by G.L. c.151B, §3A for stand-alone sexual harassment policies.

Attached is our sample Equal Employment Opportunity and Anti-Discrimination and Harassment (including Sexual Harassment) Policy. It has been updated to include the most recent statutory protections enacted for pregnancy and pregnancy related conditions, which take effect on April 1, 2018.

As you may recall, the Massachusetts Pregnant Workers Fairness Act requires employers to notify employees by April 1, 2018 of their rights to be free from discrimination based upon pregnancy and pregnancy-related conditions and to certain reasonable accommodations under the law. Be aware, however, that reference in the attached policy to the protections afforded under this new law is just one step in the notification process. Employers must also post or distribute to employees information specific to the requirements of the Pregnant Workers Fairness Act.

If you have any questions regarding the attached sample policy or any requisite bargaining obligations, please contact any member of the KP Law Labor and Employment Practice Group at 617-556-0007.

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[CITY/TOWN] OF _____

**EQUAL EMPLOYMENT OPPORTUNITY, ANTI-DISCRIMINATION
AND HARASSMENT POLICY (including SEXUAL HARASSMENT)**

I. PURPOSE

This Policy describes the [City/Town]'s prohibition of unlawful discrimination and harassment in the workplace, in order to ensure compliance with all applicable federal laws and state statutes and regulations.

II. APPLICATION

The Policy applies to all employees of the [City/Town of _____], excluding those employees under the supervision and control of the School Committee. Employees whose employment is governed by a collective bargaining agreement are subject only to those provisions of this Policy not specifically regulated by law or agreement.

III. POLICY

It is the Policy of the Town 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, pregnancy or pregnancy-related condition, genetic information, military service, or other bases prohibited under state or federal anti-discrimination statutes, will not be tolerated. To achieve the goal of providing a workplace free from discrimination, the [City/Town] will implement the procedure described below to address any potential inappropriate conduct.

A. Coverage

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

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- 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 [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 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, officials will respond promptly to complaints and, where it is determined that such inappropriate conduct has occurred, 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 the [City/Town]'s goals of promoting a workplace that is free of discrimination and harassment, the Policy is not designed or intended to limit the [City/Town]'s authority to discipline or take remedial action for workplace conduct which is deemed unacceptable, regardless of whether that conduct satisfies the legal definitions of discrimination or harassment.

B. 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.

C. Definition of Sexual Harassment

Sexual Harassment - That conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, which may constitute sexual harassment when:

- 1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
- 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- 3) 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.

Hostile Work Environment – A form of sexual harassment, where pervasive and sexually hostile working conditions unreasonably interfere with an employee's ability to do his or her job.

Quid Pro Quo – Another form of sexual harassment, where tangible job benefits are offered or withheld in exchange for sexual favors.

Note: 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.

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.

IV. PROCEDURES**A. Complaints of Sexual Harassment**

If an employee believes that the employee has been subjected to sexual harassment, it is the [City/Town]'s policy to provide the employee with the right to file an internal complaint. This may be done orally or in writing.

An employee may file a complaint of sexual harassment by contacting _____. Alternatively, an employee may file a complaint with _____. These persons will remain available to discuss any concerns employees may have and to provide information about the [City/Town]'s Policy on sexual harassment and the complaint process.

B. Sexual Harassment Investigation

When a complaint of sexual harassment is received, the [City/Town] 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. The [City/Town]'s investigation will include a private interview with the person filing the complaint and with any witnesses. The [City/Town] will also interview the person alleged to have committed sexual harassment. When the investigation has concluded, the [City/Town] 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, the [City/Town] will act promptly to eliminate the offending conduct, and where appropriate, impose disciplinary action.

C. 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 Paragraphs 1 and 2, above, whenever appropriate.

D. Confidentiality

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. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances.

All employees are reminded of the provisions of the Conflict of Interest Law, particularly 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. General Laws c.268A, §23 also prohibits a municipal employee or official from using such information to further the employee's/official's personal interest. Violations of this statute may lead to disciplinary action, up to and including termination.

E. 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.

IV. SANCTIONS

If it is determined that inappropriate conduct has been committed by an employee, 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, including termination from employment.

V. STATE AND FEDERAL REMEDIES

In addition to the above, if an employee believes that the employee has been subjected to sexual harassment, the employee may file a formal complaint with either or both of the government agencies listed below. Using the [City/Town]’s complaint process does not prohibit an employee from filing a complaint with either of these agencies. Please note that both agencies have a short time period for filing a claim (300 days).

1. The United States Equal Employment Opportunity Commission (EEOC)

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 (MCAD)**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

Denholm Building
484 Main Street, Suite 320
Worcester, MA 01604
(508) 453-9630

New Bedford Office

Demello International Center
128 Union Street, Suite 206
New Bedford, MA 02740
(774) 510-5801

VI. REASONABLE ACCOMMODATIONS

The [City/Town] will not discriminate against people with disabilities in any employment practices or in terms, conditions or privileges of employment, including, but not limited to: application, testing, hiring, assignment, evaluation, disciplinary action, training, promotion, medical examination, layoff/recall, termination, compensation, leaves or benefits. The [City/Town] will make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless such action would cause an undue hardship to the operations of the [City/Town].

In addition, the Town complies with the provisions of G.L. c. 151B, §1E, requiring certain reasonable accommodations for an employee's pregnancy or pregnancy-related condition.

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].

VII. EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

The [City/Town] will not discriminate in its employment practices, on the basis of race, color, gender, gender identity, national origin, religion, ancestry, age, sexual orientation, disability, pregnancy or pregnancy-related condition, genetic information, military service, 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.

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

This acknowledges that I have received and reviewed the [City/Town] of _____ Equal Employment Opportunity, Discrimination, and 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.

Print Name: _____

Signature: _____

Date: _____

To be included in employee’s personnel file.

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