

Town of Queensbury
Sexual and Other Forms of Harassment Policy

A. Gender Identity and Sexual Orientation Non-Discrimination Policy

The Town does not discriminate in any way on the basis of sex, sexual orientation, transgender status, gender identity, or gender expression. This policy is designed to create a safe and productive workplace environment for all employees. This policy sets forth guidelines to address the needs of transgender and gender non-conforming employees and clarifies how the law should be implemented in situations where questions may arise about how to protect the legal rights or safety of such employees.

This policy does not anticipate every situation that might occur with respect to transgender or gender non-conforming employees, and the needs of each transgender or gender non-conforming employee must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of transgender or gender non-conforming employees while maximizing the employee's workplace integration and minimizing stigmatization of the employee.

The Town strives to create a workplace where employees of all sexual orientations, employees who are transgender, and employees of all gender identities can be their full selves without fear of discrimination, harassment, or retaliation. The Town is supportive of transgender or non-gender conforming employees who are considering or undergoing gender transition. Any discriminatory, harassing, or retaliatory actions taken against employees based on their gender identity, gender expression, gender transition, or sexual orientation are considered violations of the Town's EEO policy and are subject to discipline, up to and including termination.

The Town also recognizes that some employees may wish to keep information about their gender and/or sexual orientation private. The Town honors employees' preferences regarding when and with whom to share such information. The Town only shares information about employees' gender identity or sexual orientation as needed to implement changes they request, or to comply with the law and investigate complaints.

Many employees going through a gender transition choose to use a name that better reflects their gender identity, and/or may legally change their first and/or last names. We expect all coworkers to use the employees' correct names once they are advised of them, regardless of whether legal name changes have taken place. Similarly, we expect all coworkers to use the pronouns the employees have requested be used, or to not use pronouns at all and instead use their first names. At first, an occasional slipup in the use of the new name or correct pronouns may happen. That is understandable. However, if slipups continue or are purposeful, this will be deemed harassing behavior and considered prohibited under this policy.

The Town will change an employee's official record to reflect a change in name or gender upon request from the employee. Certain types of records, like those relating to payroll and retirement accounts, may require a legal name change before the person's name can be changed. Most records, however, can be changed to reflect a person's correct name without proof of a legal name change. A transgender or gender-non-conforming employee has the right to be addressed by the name and pronoun corresponding to the employee's gender identity. Official records will also be changed to reflect the employee's new name and gender upon the employee's request, to the extent possible.

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Transgender and gender non-conforming employees have the right to comply with the Town's dress codes in a manner consistent with their gender identity or gender expression. Employees shall have access to the restroom corresponding to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single-stall restroom, when available. No employee, however, shall be required to use such a restroom. All employees have a right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the employee's gender identity.

If an employee has questions or concerns regarding the restroom policy, they should contact Human Resources.

B. Prohibition of Sexual & Other Forms of Harassment and Discrimination

The Town is committed to maintaining a workplace environment free from all forms of harassment, discrimination, and retaliation. This policy outlines prohibited conduct, reporting and investigative procedures for employees who believe they may have been subjected to such behavior.

This policy applies to any individual involved in Town operations, including but not limited to employees, supervisors, managers, applicants for employment, interns, and non-employees including consultants, independent contractors, contractors, subcontractors, vendors, temporary workers, volunteers, or anyone providing services in our workplace.

The Town considers it a violation of this policy to discriminate in the provision of employment opportunities, benefits, or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, because of any of the protected classes as defined in Section II.A Equal Employment Opportunities.

Definition of Sexual Harassment

Sexual harassment is prohibited and is considered a form of employee misconduct. Any employee or covered individual who engages in sexual harassment, discrimination, or retaliation will be subject to action, including appropriate discipline. Harassment need not be severe or pervasive to be a violation of this policy. The conduct or behavior does not need to rise to a certain threshold to be reported.

Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, perceived identity, gender expression, gender identity, the status of being transgender, and includes gender role stereotyping.¹

Such behavior is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics.

¹ The NYS Department of Labor notes that the three most common ways people identify are cisgender, transgender, and non-binary. As such, they define a cisgender person as those whose gender aligns with the sex they were assigned at birth, (i.e., generally, male or female). A transgender person is someone whose gender is different than the sex they were assigned at birth (i.e., those who do not identify exclusively as a man or a woman). A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary.

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Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered a violation of this policy.

The impact of the behavior is relevant, not the intent of it (i.e., “making a joke”). Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual’s gender identity or expression (perceived or actual), or is of a sexual nature when:

- The purpose or effect of this behavior unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment. The impacted person does not need to be the intended target of the sexual harassment,
- Employment depends implicitly or explicitly on accepting such unwelcome behavior; or
- Decisions regarding an individual’s employment are based on an individual’s acceptance to or rejection of such behavior. Such decisions can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions.

Types of Sexual Harassment

Behaviors that contribute to a hostile work environment include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee finds offensive or objectionable, causes an employee discomfort or humiliation, or interferes with the employee’s job performance.

Sexual harassment that occurs when a person in authority tries to trade job benefits for sexual favors is referred to as quid pro quo and is prohibited. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment.

Examples of Sexual Harassment

The following is a non-exhaustive list of examples of unlawful harassment that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee’s body, or poking another employee’s body; or
 - Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
- Unwanted sexual comments, advances, or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target’s job performance evaluation, a promotion, or other job benefits;
 - This can include sexual advances/pressure placed on a service industry employee by a member of the public;
 - Subtle or obvious pressure for unwelcome sexual activities; or
 - Repeated requests for dates or romantic gestures, including gift-giving.
- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person’s sexuality, sexual experience, or romantic history which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual

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platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.

- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
 - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity; or
 - Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace;
 - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
 - Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, or name-calling;
 - Intentional misuse of an individual's preferred pronouns; or
 - Creating different expectations for individuals based on their perceived identities:
 - Dress codes that place more emphasis on women's attire;
 - Leaving parents/caregivers out of meetings.

Who Can be a Target of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. Discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. Employees are encouraged to be mindful and aware that words and actions might impact someone differently based on their personal and past experiences. For example:

- Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Where Can Sexual Harassment Occur?

Unlawful sexual harassment can occur while employees are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if it occurs away from the workplace premises, on personal devices, or during non-work hours, including those employees working remotely. Harassment can happen on virtual meeting platforms, in messaging apps, and

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after working hours between personal cell phones. Essentially, any behaviors that are illegal in the workplace can also be found to be illegal when one or more persons are working remotely.

Other Types of Prohibited Harassment

Depending upon circumstances, unlawful harassment may include, but is not limited to, the following if it is because of an individual's protected class, as outlined in Section II. A:

- Verbal conduct including taunting, jokes, epithets, slurs, negative stereotyping, threatening, derogatory comments;
- Physical conduct including assault, unwanted touching or blocking normal movement, or intimidating or hostile acts,
- Visual or written conduct including posters, photographs, calendars, cartoons, drawings, websites, emails, text messages, gestures, unwelcome personal comments or written or graphic material.
- Written conduct such as authoring threatening, derogatory or offensive letters or correspondence (including e-mails, text messages and social media posts);
- Retaliation for reporting harassment or threatening to report harassment.

Furthermore, prohibited conduct also includes any verbal, physical, or other communication or conduct that denigrates or shows hostility or aversion and has the:

- Purpose or effect of creating an intimidating, hostile, or offensive work environment; or
- Purpose or effect of unreasonably interfering with the individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

This policy prohibits not only behavior that constitutes unlawful harassment, but also other inappropriate or unprofessional behavior that may reasonably be considered offensive or otherwise inappropriate.

Reporting Measures

An employee who is subject to or who observes any such behavior is encouraged, but not required, to instruct the offending individual to stop the conduct as they find it offensive and unwelcome. Any employee who observes such behavior that violates this policy is encouraged to alert a Department Manager, the Town Supervisor, or Human Resources.

Any employee or covered individual who feels harassed is encouraged to report the behavior including a single incident. Reports can be made to the employee's Department Manager, Town Supervisor, or Human Resources. Employees do not need to follow the standard chain of command when reporting such violations. An employee or bystander may submit a verbal, or written complaint (i.e., via email). However, the Town encourages employees or bystanders to use the Town's complaint form found as an appendix at the end of the Employee Handbook to report any suspected violation of this policy. Employees who are reporting sexual harassment on behalf of other employees may use the complaint form and should note that it is on another employee's behalf.

Bystander Intervention

As noted, any employee who observes such behavior is encouraged to report it to the appropriate party. Additionally, bystanders may, if comfortable, intervene if witness to or present for such conduct, though not required to do so. A supervisor or manager that is a bystander to harassment

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is required to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

- A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
- A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
- A bystander can record or take notes on the harassment incident to benefit a future investigation;
- A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
- If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

Complaints and Investigations

Upon receipt of a complaint, or if the Town otherwise becomes aware of such conduct, the Town will initiate a fair, timely, thorough, and objective investigation. The Town will make a reasonable effort to keep the investigation confidential, to the extent possible and permissible by law. The Town will ask all parties involved to provide relevant information. The Town expects all employees to fully cooperate with the investigation. The investigation process may vary, but generally, upon receipt of a complaint, Human Resources will:

1. Conduct a prompt review of the allegations, determine scope of the investigation, and take any interim actions. For verbal complaints, the employee will be asked to complete a written form. If uncomfortable doing so, Human Resources will prepare the appropriate documentation for the employee's review.
2. Initiate a document request process to obtain, review, and preserve documents needed to assess the allegations, including electronic communications.
3. Attempt to interview all parties involved, including any relevant witnesses;
4. Prepare a written summary of the investigation, which may contain but is not limited to a list of all documents reviewed, list of names of those interviewed, along with a summary of their statements; a timeline of events; a summary of any prior relevant incidents disclosed in the investigation, reported or unreported;
5. Issue a final decision and resolution of the complaint including any corrective action(s). Parties, including the reporting individual will be informed of the investigations results.

The Town recognizes that participating in an investigation can be uncomfortable, therefore, those receiving claims and leading investigations will handle complaints with sensitivity, as reasonably possible.

If it is found that an employee has violated this policy, appropriate disciplinary action will be taken, up to and including termination of employment. Individuals involved will also be notified of external

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remedies available, as outlined in this policy. Final reports will be kept in a confidential and secure location.

Required Duty of Supervisors

All supervisors and managers bear heightened responsibility when it comes to maintaining a workplace free of harassment and discrimination by taking steps to ensure the successful implementation of this policy. Supervisors and managers will be disciplined if they are found to have engaged in sexually harassing or discriminatory behavior themselves.

All supervisors and managers have a duty to report any complaint or information they receive, or any potential violation of this policy that they otherwise have learned of or become aware of. As a reminder, it is not the responsibility of the supervisor or manager to make a determination of whether this policy has been violated. Rather, it is an employee's obligation in a leadership role to report any possible violation. Managers and supervisors may not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must report it. Failure to report suspected sexual harassment or allowing sexual harassment to continue after they know about it will result in disciplinary action of the supervisor or manager.

Supervisors and managers should be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and subsequently questioned can be intimidating, uncomfortable and re-traumatizing. Supervisors and managers must accommodate the needs of those individuals to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

Retaliation Protections

Any employee who files a good faith complaint of harassment or discrimination will not be subject to retaliation, even if said complaint is not substantiated at the conclusion of an investigation. This extends to internal and external complaints.

Retaliation protections extend to any employee that reports behavior they have been subjected to, witnessed, or otherwise learned of; or testifies, assists, or participates in any investigation, proceeding, or hearing. It includes protections to those including, but not limited to, an employee who opposes, attempts to stop, or speaks out against sexual harassment; or who files a complaint on behalf of another employee; or encourages another employee to file a complaint of harassment or discrimination. It also extends its protections to those who have made a complaint to an external agency, to those who have testified or assisted with an agency proceeding. Separate and aside, any supervisor or manager engaging in prohibited retaliation will also be subject to discipline, up to and including termination.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama;"
- Undermining an individual's immigration status; or

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- Reducing work responsibilities, passing them over for a promotion, or moving an individual's desk to a less desirable office location.

Any employee who believes they have been retaliated against should immediately report it to the Town Supervisor or Human Resources. Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, this provision does not protect those intentionally making false claims of harassment.

Other Information

Harassment is prohibited by federal, state, and local law, as applicable. Aside from the internal process described in this policy, individuals may pursue legal remedies with the following governmental entities.

The New York State Division of Human Rights (DHR) enforces the Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., which applies to employers in New York State and protects employees, interns and non-employees providing services in the workplace pursuant to a contract, regardless of immigration status. A complaint alleging a violation of the HRL may be filed either with DHR, subject to a three-year statute of limitations, or in New York State Supreme Court, also subject to a three-year statute of limitations. Complaining internally to your employer does not extend the time to file with DHR or in court. The three years is counted from date of the most recent incident of harassment.

An attorney is not needed to file a complaint with DHR, and there is no cost to file with DHR. The DHR will investigate the complaint to determine if unlawful harassment occurred. If unlawful harassment is found after a hearing, the DHR or the court may award relief, which may include requiring your employer to take action to stop the harassment, and redress the damage caused by paying monetary damages, attorney's fees, and civil fines. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 www.dhr.ny.gov. The DHR can be contacted at (888) 392-3644. More information about filing a complaint is available at dhr.ny.gov/complaint. The website has a complaint form and contact information for DHR's regional offices across New York State. The DHR also maintains a confidential hotline to provide individuals with complaints of workplace sexual harassment counsel and assistance, available at 1-800-HARASS-3 (1-800-427-2773).

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An employee must file a charge with the EEOC within 300 days from the conduct giving rise to the complaint. There is no cost to file a complaint with the EEOC. The EEOC also investigates complaints but does not hold hearings or award relief. The EEOC may take other action including pursuing cases in federal court on behalf of complaining parties or issuing a Right to Sue Letter that allows an individual to pursue their claims in federal court. Federal courts may award remedies if discrimination is found to have occurred. The EEOC can be contacted at 1-800-669-4000 (1-800-669-6820 (TTY)), via email at info@eeoc.gov, or by visiting their website at www.eeoc.gov. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

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Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

Disclaimer: Note that nothing contained in this section, or any section herein, constitutes legal advice, and is intended for informational purposes only

C. Workplace Bullying

In furtherance of the Town's Fair Treatment policies, workplace bullying will not be tolerated by any employee, manager, vendor, contractor, or subcontractor. Workplace bullying can include but is not limited to the use of force, threats, or coercion to abuse, intimidate, or humiliate another employee. Specifically, using offensive, demeaning, and harmful remarks or insults, or sabotaging, or obstructing or disrupting another's work performance will not be tolerated. Workplace bullying can also occur on a cyber platform and can occur through email, cell phone, or other devices that transmit electronic information.

This policy is in no way intended to limit an employee's protected activities under Section 7 of the National Labor Relations Act, (if applicable) which includes the right of employees to speak with others, and engage in workplace debates, or protest about terms and conditions of employment.

An employee who feels they have been subjected to, or witnessed, workplace bullying should notify the Department Managers, Town Supervisor or Human Resources.