



CITY OF KINGSTON POLICY AND COMPLAINT PROCEEDURE REGARDING DISCRIMINATION HARASSMENT

I. PURPOSE:

It is the policy of the City of Kingston to provide and maintain a work environment which is free from unlawful discrimination based on sex (meaning “gender”) (with or without sexual conduct), race, color, religion, national origin, age, disability, marital status, sexual orientation, military status and any other class protected by law (collectively referred to as “discriminatory harassment” or “harassment”). Harassment based on these characteristics is a form of unlawful discrimination and is prohibited in each and every work environment and each and every situation, which directly impacts the work environment.

This policy also prohibits conduct of one employee toward another that may not rise to the level of discrimination or harassment, but nonetheless creates a degree of hostility, embarrassment or intimidation that adversely affects the work environment. This includes, but is not limited to, gender identification.

II. POLICY:

The City of Kingston considers sexual and/or discriminatory harassment to be a form of employee misconduct and considers this type of misconduct to be a serious offense, which will not be tolerated. Allegations of harassment will be investigated thoroughly and if substantiated, will be met with appropriate corrective and/or disciplinary action to the extent of the seriousness of the offense(s), and consistent with the union contract and/or state and federal law.

This Policy also includes and incorporates the Sexual Harassment Policy and Procedure of the City of Kingston, adopted in April 2002 and is attached for your records.

III. DEFINITIONS

A. **Sexual Harassment** is defined as:

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submitting to the conduct is made either explicitly or implicitly a term or condition of an individual’s employment or of obtaining public services;
2. Submitting to or rejecting the conduct is used as the basis for an employment decision affecting an individual’s employment or public services; or,
3. Such conduct has the purpose or result of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work or public service environment.

Examples of specific behaviors that may be considered sexual harassment include, but are not limited to:

- Spoken or written words related to an employee’s sex
- Any sexual advance that is unwelcome
- Sexually oriented comments
- Showing or displaying pornographic or sexually explicit objects or pictures in the workplace

- Offensive touching, patting or pinching
- Requests for sexual acts or favors
- Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct
- Threats, demands or suggestions that an employee's work status is contingent upon his/her tolerance of or acquiescence to sexual advances
- Subtle pressure for sexual activities
- Leering (*excessive staring*) at a person

Sexual harassment is gender neutral and may involve members of the same or different gender

Harassment on the basis of any other protected characteristic is also prohibited.

B. Discriminatory Harassment: Under this policy, discriminatory harassment is defined as any verbal or physical conduct that is offensive to or shows hostility or aversion toward an individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristic or marital status and that:

1. Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

Examples of this harassing conduct include, but are not limited to:

- Epithets (*abusive language or insults*)
- Slurs or negative stereotyping;
- Threatening, intimidating or hostile acts;
- Denigrating jokes; and,
- Display or circulation in the workplace (including through email) of written or graphic material that denigrates or shows hostility or a strong dislike toward an individual or group, based on an individual's protected class.

Individuals and conduct covered:

This policy applies to each and every employee and official of the City of Kingston, including the Mayor, Common Council, and members of all boards and commissions. The City of Kingston prohibits harassment, discrimination and retaliation whether engaged in by fellow employees, by a department head, supervisor or manager or by someone not directly connected to the City (e.g., an outside vendor, consultant or citizen).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events.

IV. PROCEDURE:

A. REPORTING HARASSMENT

1. If an individual is subjected to a situation which he/she believes constitutes harassment in violation of this Policy, the City recommends that the employee confront the harasser directly and advise the harasser that his/her behavior is not welcomed and will not be tolerated; *note that neither this policy nor state/federal law requires that an individual tell an alleged harasser to stop his/her actions.* Employees are encouraged to keep written records of any alleged sexual/discriminatory harassment incidents, including the date, time, location, names of people involved, witness (es), if any, and who said or did what to whom.
2. If an alleged incident of harassment cannot be resolved directly between the parties involved, a written complaint should be filed by the affected employee with the employee's immediate supervisor. In the event the employee does not believe it would be appropriate to file the complaint with the immediate supervisor, it may file directly to the appropriate Department Head or to the City's Human Rights Commission.
3. All harassment complaints will be investigated as promptly as possible and resolved within a reasonable time after receipt of the complaint. If a complaint is filed with the City's Human Rights Commission, the Director of the Kingston Human Rights will coordinate an investigation of the complaint. Following the investigation, the Human Rights Director shall issue a written report of findings and conclusions to the Chairman of the Human Rights Commission.
4. Thereafter, an initial determination on the complaint will be issued from the Human Rights Office to the complainant and respondent.

B. APPEAL PROCEDURE

In the event that the Complainant is not satisfied with the determination issued by the Human Rights Office, an appeal may be filed with the Mayor. Thereafter, the Mayor or his/her designee will review the appeal and issue a decision within twenty-five (25) working days after receipt of the appeal.

If no appeal is taken within thirty (30) calendar days from the date of the initial determination, the initial determination will constitute the final determination in the matter.

C. MISCELLANEOUS

1. In the event a complaint of harassment is determined to be founded, the City will take disciplinary action in accordance with the provisions of union contract agreements and/or state and federal law.
2. If disciplinary charges are filed against an employee on the grounds that the City has determined the employee is guilty of unlawful harassment, the accused employee may exercise his/her rights through the disciplinary procedure provided for in his/her labor contract and/or state and federal law.
3. The reporting of a false complaint is a serious act and the City will not tolerate it. In the event it is found that the individual bringing the complaint has made false accusations, the City will take action in accordance with the provisions of the union contract and/or state and federal law.
4. All information gathered during an investigation of a harassment complaint will be handled in a confidential manner, to the extent possible.

5. Retaliation against any individual making a harassment complaint or assisting in the investigation of such a complaint is forbidden. Retaliation is a serious violation of this policy which may result in disciplinary action.
6. This Policy does not preclude the filing of harassment complaints with either the New York State Division of Human Rights or the Federal Equal Employment Opportunity Commission (EEOC), or the pursuing of any other remedies as permitted by law.

D. RESPONSIBILITIES OF DEPARTMENT HEADS/SUPERVISORS

1. All department heads and supervisory/managerial personnel of the City of Kingston shall be responsible for enforcing this Policy and shall have particular responsibility for ensuring that the work environment under their supervision is free from harassment and its effects. Failure of a department head or supervisor/manager to comply with this responsibility may result in disciplinary action.
2. All department heads and supervisory/managerial personnel who receive harassment complaints will be responsible for immediately forwarding such complaints to the Human Rights office.
3. The City of Kingston will conduct periodic training for department heads and supervisory/managerial personnel in each Department of the City on issues surrounding harassment, its effect and its appearances, and the role and responsibility of department heads and supervisory/managerial personnel in preventing incidents of harassment complaints.
4. The City of Kingston shall distribute this Policy to all City employees. Copies of this Policy will be distributed to new employees as they are hired.
5. Copies of this Policy will be conspicuously posted.

Drafted by Human Rights Commission:

June 6, 2008

Adopted by Common Council:

August 5, 2008

Signed by the Mayor and City Clerk:

August 8, 2008



CITY OF KINGSTON SEXUAL HARASSMENT POLICY

1. It is the policy of the City of Kingston to maintain a respectful work and public service environment. The City of Kingston prohibits, and will not tolerate, harassing or offensive behavior by or towards any employee, or *non-employees*. Any employee or officer of the City who engages in such behavior is subject to consequences.
2. Sexual harassment is one specific kind of harassing or offensive behavior. Sexual harassment, which can consist of a wide range of unwanted and unwelcome sexually directed behavior, is defined as:

Unwelcome sexual advances, requests for sexual favors and other offensive verbal or physical conduct of a sexual nature when:

 - a. Submitting to the conduct is made either explicitly or implicitly a term or condition of an individual's employment or of obtaining public services;
 - b. Submitting to or rejecting the conduct is used as the basis for an employment decision affecting an individual's employment or public services; or,
 - c. Such conduct has the purpose or result of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work or public service environment.
3. Behavior prohibited by this policy includes unwelcomed sexual remarks or compliments, sexual jokes, sexual innuendos or propositions, sexually-suggestive facial expressions, sounds or gestures, kissing, touching and sexual contact as well as the showing or displaying of pornographic or sexually explicit material or objects.
4. Any person who feels he or she is being subjected to the harassing or offensive behavior of any kind should feel free to object to the behavior and shall also report the behavior to their department head or to a member of the Sexual Harassment Panel. Any supervisor who receives a discriminatory, violent or offensive behavior complaint or, who has reason to believe that such behavior is occurring, shall report these concerns to the Sexual Harassment Panel. The Mayor shall annually designate two City employees, one of each sex, who shall serve together with the Director of Human Rights on the three members Sexual Harassment Panel.
5. All complaints of harassing or offensive behavior will be investigated promptly, fairly and completely. The facts shall determine the response to each complaint. Each situation will be handled as discreetly as possible. Resolution of complaints can include, but not limited to, an apology, transfer, direction to stop the offensive behavior, counseling, or training, verbal or written warning, suspension with or without pay or termination. In the event that the harassment or offensive behavior reoccurs, it should immediately be reported to the department head or to the Sexual Harassment Panel.
6. This policy applies to each and every employee and official of the City of Kingston, including the Mayor, Common Council, and members of all boards and commissions. The City of Kingston prohibits and will not tolerate retaliation or intimidation or discrimination towards anyone who makes a complaint. *The City of Kingston will not tolerate the filing of false complaints. Such a filing may result in disciplinary action by the City.*



CITY OF KINGSTON SEXUAL HARASSMENT COMPLAINT PROCEDURE

1. Any city employee is encouraged to report an incident of sexual harassment to a department head or to the Sexual Harassment Panel as soon as possible after the alleged incident. An aggrieved person, hereafter referred to as the complainant, will meet with his or her department head to discuss an allegation of sexual harassment and may file a complaint of harassment. Should an individual feel uncomfortable raising an issue of alleged harassment with the department head, any other department head or a member of the Sexual Harassment Panel may be approached. If a complaint is filed, the department head shall send a signed complaint on a form available from the City to the Sexual Harassment Panel. The accused shall be provided with a copy of the complaint upon filing. Verbal complaints may be handled informally.
2. A complaint *should* be filed by a complainant *as soon as possible after* an alleged act of harassment on a form available from the City.
3. The complainant may withdraw his or her complaint any time by filing a notice in writing on a form available from the City.
4. All complaints will be handled in a timely and confidential manner *to the extent possible*. In no event will information concerning a complaint be released by the City to any third party or to anyone within the City who is not directly involved in the investigation.
5. When a written complaint is filed, the department head or panel member shall have fifteen (15) working days to try to resolve the allegation informally by:
 - a. gathering and assessing the facts deemed necessary to resolve it;
 - b. meeting with alleged abuser and complainant separately; and
 - c. using whatever other methods deemed necessary or appropriate to attempt to resolve the complaint.
6. An individual who believes that he or she has been unjustly charged with sexual harassment will be afforded every opportunity to offer and present information in defense of the complaint.
7. If a resolution is achieved by a department head, he or she will prepare a statement that the complaint has been resolved. All parties must sign the statement which shall be sent to the Sexual Harassment Panel. The case will be considered closed.
8. If a complaint is not resolved, it will be turned over to the Sexual Harassment Panel. The Panel will investigate the complaint, call witnesses to appear before the Panel, and review any other evidence it requires. The accused shall be afforded an opportunity to appear before the panel with or with counsel, if he or she desires. The panel will have ten (10) working days to investigate the unresolved complaint and an additional ten (10) working days to render a decision.
9. *Notice* of Panel's decision will be *communicated* to both the complainant and the accused.
10. Retaliation against anyone who has filed a sexual harassment complaint is in violation of federal law and may result in disciplinary action by the City. *Employees have the right to be free from retaliation for participation in the complaint procedures.*

11. A person who is found to have committed an act of sexual harassment may be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or state/federal law, as may be appropriate. Resolution of complaints can include, but is not limited to, an apology, transfer, direction to stop the offensive behavior, counseling, or training, verbal or written warning, suspension with or without pay or termination.
12. Nothing in this policy should be construed to limit an individual's existing right to file a complaint with the New York State Division of Human Rights or the U. S. Equal Employment Opportunity Commission, or take any legal action which he or she may deem advisable.

*Adopted by Common Council:
Signed by the Mayor and City Clerk:*

*April 2, 2002
April 9, 2002*

