

12/10/96

SEXUAL HARASSMENT
POLICY AND PROCEDURE
OF THE TOWNSHIP OF EDISON

POLICY AND PROCEDURE FOR
SEXUAL HARASSMENT IN WORKPLACE

I. STATEMENT OF PURPOSE

The issue of people working together is vital to the public sector workplace. In recognition of the dignity and worth of each person in municipal employment, this Policy concerning sexual harassment is promulgated throughout the Township. All employees, regardless of sex or sexual orientation, shall be permitted to work in an environment free from all forms of unlawful discrimination and conduct which is sexually harassing.

Sexual harassment is a form of unlawful sex discrimination which undermines the integrity of the employment relationship. Sexual harassment is a violation of the Township's personnel policies and State and Federal Laws. It debilitates morale, is offensive, interferes with work productivity, and creates a hostile and intimidating work environment.

The goals of this Policy are to: inform Township employees as to what conduct constitutes sexual harassment; ensure that all employees understand that sexual harassment will neither be condoned nor tolerated; create a procedure to promptly, thoroughly, confidentially, and respectfully handle complaints; and ensure that retaliation against complainant or participants in any investigation does not occur. In keeping with these goals, sexual harassment in the workplace is strictly prohibited by the Township. You have the right to work in an environment which is free from discrimination of any kind. The establishment and observance of this sexual harassment policy is the foundation of the Township's commitment to the principles of true equality and respect in the workplace.

It is the primary responsibility of department heads, division heads and supervisory personnel to ensure that a working environment free from sexual harassment is provided to all employees. This responsibility pertains not only to conduct which may be undertaken by supervisory and non-supervisory Township employees, but also to actions taken by non-employees conducting business with the Township. To ensure all Township employees are aware of their rights and responsibilities, this policy is to be distributed to all Township employees. Furthermore, the policy and procedure on how and where to file a complaint will be included in the Township of Edison Personnel Policy. Additionally, as part of this Policy, the Township will provide training "do's and don'ts" to all of its employees on the topic of sexual harassment.

II. SCOPE AND EFFECTIVE DATE

This Policy applies to all employees in Township agencies, departments, divisions, authorities and instrumentalities under the control of this Township (hereinafter referred to collectively as "entities") as well as volunteers working on behalf of the Township of Edison in such entities, and prohibits such conduct by or towards all employees/volunteers in or at such entities, and/or toward any member of the public when interfacing with a Township personnel

service, activity, or program. Independent contractors, vendors, and all other parties engaged in any contracted business relationship with the Township of Edison are expected to adhere to the spirit and intent of this Policy. Behavior defined herein as sexual harassment may occur between people of the opposite or the same gender. Sexual harassment covers all business hours and the workplace. Instances in which it can occur also may include function or work-related meetings or social events, ceremonies, missions, or other work-related meetings or events or activities.

This Policy shall take effect on the date of adoption and apply to all complaints made on or after that date. This Policy shall continue in force until changed and approved by the Mayor.

III. WHAT CONSTITUTES SEXUAL HARASSMENT

A. LEGAL DEFINITIONS

(NOTE: All Township employees and volunteers are advised that the Municipality, in reviewing sexual harassment claims, will look to existing laws and regulations as well as court decisions defining sexual harassment.)

To provide some guidance, Sexual Harassment is currently defined in the Equal Employment Opportunity Commission's Guidelines (29 C.F.R. sec. 1604.1 as:

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

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (i.e., promotion or evaluation); 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 including, but not limited to:
 - (a) Gender Harassment: Generalized gender-based remarks and behavior (i.e., women to men, men to women, women to women, men to men, etc.;
 - (b) Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;
 - (c) Sexual Bribery: Solicitation of sexual activity or other sex-linked

behavior by promise of reward;

(d) Sexual Coercion: Coercion of sexual activity by threat of punishment; and

(e) Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

Authority Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. sec. 2000e-17) as amended; New Jersey Law Against Discrimination (N.J.S.A) 10:5 1 N.J.A.C. 4A:7-1.3.

B. TYPES OF CLAIMS

1. "QUID PRO QUO" SEXUAL HARASSMENT ("This for That"): This type of sexual harassment occurs when a supervisor or someone else with authority over the subordinate employee makes a "put out or get out" demand (i.e. "submit to my sexual requests or you will be fired, demoted, intimidated, passed over for promotion, or in some other way made miserable on the job"). (The language of Sections (1) and (2), under the legal definitions stated above, is fairly clear and serves to define these cases.)

2. "HOSTILE ENVIRONMENT" SEXUAL HARASSMENT: This type, while not necessarily sexual in nature, occurs when the sexually or gender-based conduct (words or deeds) of a supervisor, co-worker, or someone else with whom the employee comes in contact on the job unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive working environment. This conduct does not need to be directed to a particular person, or any person at all.

A sexually hostile work environment is determined on a case by case analysis, but it can be created by: discussing sexual activities, unnecessary touching, commenting on physical attributes, displaying sexually suggestive pictures, using demeaning or inappropriate terms (including, but not limited to, "dear", "honey", "girlie", "cutie", etc.), using unseemly gestures, ostracizing workers of one gender by those of the other, granting favors to those who participate in consensual sexual activity or using crude or offensive language. (Those cases falling under Section (3) above demonstrate "Hostile Environment" sexual harassment.)

In essence the conduct is sexual harassment when:

(a) it would not have occurred but for the employee's sex;

(b) the conduct is severe or pervasive enough to make a

12/10/96

reasonable

woman or a reasonable man, as the case may be, believe that the

conditions of employment are altered and the working environment hostile or abusive.

3. **THIRD PARTY SEXUAL HARASSMENT CLAIMS:** In addition, there are “Third Party” Sexual Harassment claims, which have been upheld by the courts, involving a person or persons not directly harassed, but employed in a situation where acts or harassment affect conditions of employment. A third party claim based on underlying “Quid Pro Quo” harassment occurs when:

- (a) An employee may be able to claim that he or she was denied job benefits as an implicit quid pro quo” that had become a general condition of employment;
- (b) An employee may be able to claim that he or she was denied job benefits based on the unlawful sex-based coercion of the favored employee.

A third party “Hostile Environment” claim based on underlying harassment occurs when:

- (a) An employee may be able to claim that conduct, directed at another employee, is sufficiently severe or pervasive to alter the conditions or their employment and create a hostile working environment.

Under the two “types of claims” stated above (Quid Pro Quo and Hostile Environment), sexual harassment may take different “FORMS”. One specific form is the demand for sexual favors. Other forms of harassment include, but are not limited to:

- (a) Verbal Sexual Harassment: Sexual innuendoes, unwelcome derogatory comments or suggestive slurs of sexual nature about an individual’s body, appearance or dress, questions about his or her sexual activity, sexually suggestive jokes, threats and unwelcome persistent requests for dates or to have sex.
- (b) Non-Verbal (Visual) Sexual Harassment: Leering and ogling, whistling, suggestive or insulting sounds, sexual gestures with hands or through body movements, publicly visible or accessible sexually explicit or sexually derogatory objects, pictures, posters or cartoons, sexually explicit or sexually derogatory magazines kept in the office or on a site or work setting away from the office which is regulated by the Township.
- (c) Physical Sexual Harassment: Assault, rape, impeding or blocking movement, or any other unwelcome physical contact of a sexual nature such as pinching, fondling, hugging, massaging, pushing, brushing, or rubbing against the individual’s body.

A. WHO MAY FILE

Any employee who has reason to believe that he/she has been subjected to sexual harassment or who witnesses acts of sexual harassment committed upon others is urged to report the incident to or directly file a complaint with the Business Administrator. The employee will have thirty (30) working days from the date of the last action complained of to initiate the complaint. Receipt of information, whether formal or informal will constitute a complaint and will be investigated to ensure that the rights of any person or work environment is protected from any sexual harassment.

B. PROCEDURE

There are various ways in which employees may file discrimination complaints, including sexual harassment, either concurrently or sequentially, as follows:

1. Discuss the matter with your immediate supervisor and indicate that you want corrective action to be taken. However, if you are uncomfortable with this party for whatever reason, or if the complaint involved discrimination/harassment by the supervisor, you may bypass this step and follow another option.
2. If the employee and/or the Union is not satisfied with the results of the discussion with the immediate supervisor, as set forth above, or if Step 1 is bypassed, the employee and/or the Union may contact the Business Administrator and/or designee by verbal or written complaint. (If the filing of the complaint is made orally, the person receiving the complaint shall reduce same to a writing which shall, if it is deemed accurate, be signed by the complainant.)

The complainant shall include the following information:

- (a) Date(s) and approximate times of all alleged occurrence(s);
- (b) Identities of all parties involved;
- (c) Location(s) of all incident(s);
- (d) Specific acts of all alleged sexual harassment which

IV. PROCEDURE FOR FILING COMPLAINTS

occurred; and

- (e) Names of all witnesses, if any and all persons with relevant knowledge or information and a summary of same.

In every case, all complaints of sexual harassment will be taken seriously and investigated discreetly, impartially, thoroughly and promptly. Investigations will vary from case to case, depending on a variety of circumstances; but, the internal investigation will aim to protect the reputations of both the alleged harasser and the complainant. The Union shall have the right to represent any employee requesting representation, but individual employees shall also have the right to elect to represent themselves. Complaints once made, whether formally or informally, may not be withdrawn and the complaining party shall cooperate fully in the investigation of a claim. The failure or refusal to cooperate fully in an investigation may result in the dismissal of a claim.

C. PROCESS

BUSINESS ADMINISTRATOR

- (a) The Business Administrator, upon receipt of a complaint, either himself or with the assistance of the Township Attorney, shall conduct one or more interviews with the Complainant as the Business Administrator deems necessary in order to fully investigate and evaluate all claims in the matter. The Complainant shall be advised that all information contained in the complaint shall be treated confidentially, but will be used for investigation purposes and will result in the person charged and apparent or possible witnesses being questioned in the matter, which may cause them to become aware of the matter.

All such persons will be instructed that the interview, investigation and disposition is confidential. The person(s) charged shall receive notice of the complaint. Neither the accuser, the accused nor any witnesses shall be permitted to have their Counsel participate in an investigation or attend any interview if they have Counsel. Interviews may be done informally or may be recorded or taken under oath at the exclusive discretion of the Business Administrator. If an accused, accuser or witness is represented by Counsel, his/her Counsel shall not interfere in any interviews of the client or of anyone else by the Business Administrator, which shall take place in the office of the Business Administrator, and may be attended by the Township Attorney or a designee. Any failure or refusal of the accused to cooperate fully with the investigation may be deemed an admission of the charges and may result in discipline up to and including termination. Full cooperation of the complainant, the accused and all employees is

IV. PROCEDURE FOR FILING COMPLAINTS

required and includes, but is not limited to, giving true, complete and fully responsive oral and written statements to the Business

Administrator and his designee, being available for multiple interviews on an as needed basis, and producing complete and true copies of all relevant documents.

(b) After interviewing the Complainant, the Business Administrator shall conduct a confidential investigation on the allegations contained in the complaint. The Business Administrator, with the assistance of the Township Attorney if requested, shall have authority to interview all appropriate persons having any knowledge of information relating to the allegation(s). The Business Administrator may request the assistance of the Township Attorney anytime during the investigation through submission of an investigative report and any recommendations that the matter might involve.

(c) The investigation shall be completed as promptly as possible within a period of thirty (30) working days from the receipt of the Complaint, circumstances permitting, but in no event shall exceed forty-five (45) working days. A confidential written report shall be prepared and submitted to the Mayor, Township Attorney and the Personnel Officer. Nothing herein shall preclude the issuance of a Preliminary Notice of Disciplinary Action.

(d) Within no more than ten (10) working days from the parties being informed by the Personnel Officer of the issuance of the Business Administrator's written report, either the complainant or charged party may make a written demand to the Business Administrator for a disciplinary hearing, in lieu of a determination based on the report, which hearing shall be commenced as soon as possible within no more than ten (10) working days from receipt of the request. At the hearing, the parties thereto shall be entitled to proceed with Counsel. The final determination by the Business Administrator or his/her designee shall be made within ten (10) working days after the completion of the hearing or review of the report. Nothing in this section shall prevent the complainant or party charged from providing other information or documents that he/she believes is essential to the fair decision of the case.

(e) The decision of the Business Administrator or his/her designee shall be conveyed confidentially, in writing, to the complainant and/or the Union and the charged party, who shall treat such information confidentially.

(f) Upon finding that sexual harassment has occurred, the Business

IV. PROCEDURE FOR FILING COMPLAINTS

Administrator shall cause disciplinary action to be taken commensurate with the degree of misconduct. Any disciplinary action taken against an

employee shall be in accordance with any collective bargaining agreement and/or rules and regulations of the New Jersey Department of Personnel.

(g) Upon completion of the investigation, the entire file shall be kept confidential by the Personnel Office in a location separate from all other personnel records and/or files.

(h) Following the decision of the Business Administrator or his/her designee, a complainant may then continue further action at his/her own expense. This may include:

- (1) Filing a formal complaint with the Court, or
- (2) Filing a formal complaint with any of the following agencies:

Division of EEO/AA
N.J. Department of Personnel
Three Station Plaza, CN 315
Trenton, NJ 08625
(609) 520-0299

Division on Civil Rights
N.J. Department of Law and Public Safety
1548 Atlantic Avenue, Second Floor
Atlantic City, NJ 08401
(609) 441-3100

Regional Civil Rights Director
Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza - 33rd Floor
New York, NY 10278
(212) 264-5180 TTY (212) 264-9464

U.S. Equal Employment Opportunity Commission
1421 Cherry Street, 10th Floor
Philadelphia, PA 19102
(215) 597-9350

D. MANAGEMENT RESPONSIBILITIES

In order to ensure the integrity of the work environment, supervisory personnel

IV. PROCEDURE FOR FILING COMPLAINTS

are required to ensure adherence to and compliance with this Policy; and, upon being informed of possible sexual harassment, are required to take appropriate immediate action in response, including, but not limited to informing employees of their right to file a complaint with the Business Administrator and/or his designee, and taking any possible preliminary action designed to protect the interest of the accuser, the accused and the Township, without same being any admission of wrongdoing or liability by any party.

Employees are encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. At the very least, employees should refuse to participate in such behavior.

Employees are encouraged to promptly report all alleged incidents of sexual harassment.

V. CONFIDENTIALITY

To the extent possible, the sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser, all witnesses, and any other persons involved. All parties involved in the proceedings will be advised to maintain strict confidentiality, from the initial meeting to the final decision to safeguard the privacy and reputations of all involved.

VI. RETALIATION

Retaliation in any job-related adverse action taken against an individual because of the filing of a good-faith sexual harassment complaint, and is a violation of this Policy.

Threats, other forms of intimidation, and/or retaliation may be cause for disciplinary action. A complaint of retaliation shall be reported to the Business Administrator and/or designee who shall investigate the complaint in the same manner as a sexual harassment complaint.

VII. PROTECTION OF ALL PARTIES

All complaints will be investigated and subject to discipline when deemed appropriate by the Business Administrator.

A finding of no probable cause as a result of an investigation does not necessarily establish that an accusation is false. However, this Policy shall not be used to intentionally bring frivolous or malicious charges against any employee.

VIII. REMEDIAL ACTION

Unclassified Employee

Remedial action for employees/volunteers found in violation of the Policy may be progressive in nature and include, but is not limited to, the following:

- An apology and unclassified direction to cease the offensive behavior;
- Referral to counseling;
- Oral or written reprimand; -
- Reassignment or change of work schedule to minimize contact between parties;
- Demotion;
- Suspension (with or without pay);
- Termination;
- Referral to criminal justice system for possible violation; or any other remedy the Township determines to be appropriate.

Classified Employee

All of the above is applicable along with any other disciplinary action allowable according to NJDOP rules and regulation and/or existing collective bargaining unit agreements.

All remedies shall be implemented in a timely manner and a summary of the complaint and the action taken shall be furnished to the parties by the Business Administrator or his/her designee. Where harassment has been found to have occurred, a summary will be placed in the harasser's personnel file. The Township shall keep a record of all proceedings in a separate, confidential file.

IX. DOCUMENTATION

It will be the responsibility of the Business Administrator and/or his designee to receive and collect data regarding complaints filed under this Policy. It shall be maintained under lock and key separate from all other employee personnel files.

X. APPLICABILITY OF THIS POLICY TO CERTAIN NON-MEMBERS OF THE MUNICIPALITY

Non-Employees of the Municipality, including, but not limited to, those interacting with Township employees as vendors of goods and services, independent contractors, substitute or temporary workers or fill-ins, subject to State and/or Federal laws against sexual harassment shall also be subject to each and every term of this Policy to the fullest extent possible, should it be alleged by a complainant that they committed an act or conducted themselves in such a way as to commit an offense of sexual harassment in the course of providing a Township service or a Township sponsored activity.

Unclassified Employee

All management and supervisory employees of the Township, as well as all elected officials of the Township, shall undergo training, in one or more sessions, on sexual harassment in the workplace, with a person trained to lead or implement such training.

They also shall receive training or updated materials on an on-going basis, at least once every year in order to provide or discuss any significant changes, or developments, in the law, and/or to operate as a refresher on the subject.

All other employees of the Township shall also undergo similar training, led by a person trained to lead such sessions, to raise their awareness and understanding of impermissible behavior, the consequences of such behavior and to reduce confusion about which actions or conduct are acceptable and which are not. These employees shall also be required to undergo this training once a year with regular up-dates thereafter.

The distribution of the Policy shall consist of:

(1) Posting this Policy, together with any necessary signage, in a prominent location within all of the Township's buildings, and in each department, division or agency located outside a Township-owned building;

(2) Distribution to all current Township employees and volunteers;

(3) Distribution to all persons hired as Township employees or volunteers subsequent to the effective date of this Policy;

(4) Issue an annual memorandum to update all Municipal employees concerning the Policy of the Township of Edison against sexual harassment; and

(5) Discuss the Policy against sexual harassment during any new employee orientation meetings, seminars, or training sessions held subsequent to the effective date of this Policy.

*The Personnel Officer shall ensure that a copy of this Policy is circulated to all of the above and that all employees/volunteers are aware of the sexual harassment reporting procedures.

XIII. FALSE ACCUSATIONS

Since a charge of sexual harassment is a grave and serious one, false accusations of sexual harassment are, and will be treated as, a disciplinary offense and shall result in a level of

XI. TRAINING

punishment appropriate for a person actually engaging in such behavior, and may result in termination.

A person who knowingly and/or recklessly and/or maliciously fails to give a complete and fully truthful and responsive statement for a complaint or investigation or withholds disclosing relevant information, or encourages others to do so, may be deemed to have made false accusation or statement and may be subject to discipline up to and including termination.

XIV. RIGHTS UNDER THE LAW

The Township of Edison is committed to maintaining a heightened awareness of the personal dignity of others by fostering a work environment free of sexual harassment.

This Policy shall not be construed as abrogating any rights or remedies established under the laws, rules or regulations of New Jersey or the United States.

XV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

If an employee fails to follow the Township's policies and procedures for the filing and handling of sexual harassment claims as set forth herein, and the employee or their representative, heir or spouse thereafter institutes an administrative or legal action against the Township or any officer, agent or employee thereof, they shall have the right to assert as the law permits, the employee's failure to exhaust their administrative remedies as a defense to the action.