

DISCRIMINATION AND HARRASSMENT POLICY
(Employment)

LOCAL LAW NO.4 OF THE YEAR 1999

**A local Law Establishing an Employment Discrimination and
Harassment Policy for the Town of Kirkwood**

Adopted June 1, 1999

Be it enacted by the Town Board of the Town of Kirkwood as follows:

SECTION 1. PURPOSE

The Town of Kirkwood believes in the dignity of the individual and recognizes the right of any person to equal opportunities. In this regard, the Town has had a longstanding practice of protecting and safeguarding the rights and opportunities of any person who might seek or obtain employment without being subjected to illegal discrimination or harassment in the workplace.

SECTION 2. POLICY

- A. In addition to prohibiting illegal discrimination on the basis of race, color, sex, religion, age, disability, marital status, military status, national origin, or other unlawful conduct, the Town of Kirkwood also prohibits the illegal harassment of its employees or officers in any form. The Town will take all steps necessary to prevent and stop the occurrence of any illegal discrimination or harassment in the workplace.
1. This policy applies to all Town officers and employees and all individuals who serve as contractors to the Town. Depending on the extent of the exercise of control, this policy may be applied to the conduct of those who are not officers or employees or contractors of the Town with respect to illegal discrimination or illegal harassment of Town officers or employees in the workplace.
 2. The Town and this discrimination and harassment policy prohibit conduct that is illegal under State or federal law including, but not limited to, the inappropriate forms of behavior described in §3 of this policy under the section entitled "Definition of Sexual Harassment."
 3. Department heads and supervisory personnel are responsible for ensuring a work environment free from unsolicited, unwelcome, and intimidating unlawful discrimination or harassment. These individual must take immediate and, if authorized, appropriate corrective action when allegations of discrimination or harassment come to their attention to assure compliance with this policy. Should a department head or supervisor not be authorized to take corrective action, the matter shall be referred to the individual or body, as the case may be, having the authority to discipline.
 4. A person who is found to have committed an act of unlawful discrimination or harassment or other inappropriate behavior will be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or State law, as may be appropriate. Additionally, retaliation against someone who has complained about prohibited discrimination or harassment is strictly prohibited as is retaliation against an individual who cooperates with an investigation of a discrimination or harassment complaint. Any such retaliatory conduct is illegal and will result in disciplinary action against the

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retaliator, if that person is an officer or employee of the Town. Intimidation, coercion, threats, reprisals, or discrimination against any person for complaining about unlawful discrimination or harassment, as described in this policy, is prohibited.

5. All Town officers and employees will be held responsible and accountable for avoiding or eliminating the conduct prohibited by this policy. Town employees are encouraged to report violations of this policy to their supervisor or to a member of the employment discrimination/ harassment committee. This committee shall be appointed annually by the Supervisor and shall consist of 3 members, at least 2 of which shall be members of the Town Board. (Amended 12-27-07 by LL #13-2007)

SECTION 3. DEFINITION OF SEXUAL HARASSMENT

- A. Sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct of with sexual overtones constitute sexual harassment when:
 1. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; or
 2. submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions such as promotion, transfer, or termination, affecting such individual;
 3. or 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.
- B. Sexual harassment refers to behavior that an individual does not welcome; that is personally offensive; that fails to respect the rights of others; that lowers morale and that, therefore, interferes with an individual's work performance and effectiveness; or that creates an intimidating, hostile, or offensive working environment. Specific forms of behavior that the Town would consider sexual harassment include, but are not limited to, the following:
 1. **VERBAL HARASSMENT:**

Abusive verbal language related to a person's sex, including sexual innuendos; slurs; suggestive, derogatory, or insulting comments or sounds; whistling; jokes of a sexual nature; sexual propositions; and threats. Included would be any sexual advance that is unwelcome or any demand for sexual favors.
 2. **NON-VERBAL HARASSMENT:**

Abusive written language, showing or displaying pornographic or sexually explicit objects or pictures, graphic commentaries, leering or obscene gestures in the workplace such that it unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

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3. PHYSICAL HARASSMENT:

Any physical contact which is not welcome, including touching, petting, pinching, coerced sexual intercourse, assault, or persistent brushing up against a person's body.

SECTION 4. PROCEDURE

- A. Any Town officer or employee is encouraged to report an incident of suspected employment discrimination or harassment to a department head or to the employment discrimination/harassment committee as soon as possible after an alleged incident. A victim does not have to be the opposite sex of the harasser. The harasser does not have to be the victim's immediate supervisor. The harasser could be an agent of a supervisor, another supervisor, a co-worker, or even someone not on the payroll of the Town who might have occasion to appear at a work site or enter a Town building or facility. A victim of sexual harassment does not necessarily have to be the person at whom unwelcome sexual conduct is directed. Such an individual could be someone who is affected by such conduct when it is directed towards another person thereby creating a hostile work environment. Such conduct is unlawful and is prohibited by the Town and by this policy.
- B. Should an officer or employee believe that he or she has been discriminated against or harassed and would like guidance as to how to proceed in filing a complaint, that individual should review the Town's employment discrimination and harassment complaint procedure or contact any member of the employment discrimination/harassment committee.
- C. Should an individual file a complaint, the procedures of the employment discrimination/harassment committee must be followed, including the time limit of 180 days. The procedures describe the steps to be taken when an employee has filed a complaint, details the responsibilities of all involved parties, and provides the time frames for actions to be taken.
- D. All complaints will be handled in a timely and confidential manner. In no event will information concerning a complaint be released by the Town to any third party or to anyone within Town employment who is not directly involved with or in the investigation. A breach of this prohibition will result in disciplinary action.
- E. The investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. The particular facts of the allegation will be examined individually, with a review of the nature of the behavior and the context in which the incident or incidents occurred. Confidentiality will be maintained throughout the investigatory process. The employment discrimination/harassment committee will also investigate cases in which a supervisor requests or requires assistance.
- F. An individual who believes that he or she has been unjustly charged with employment discrimination or harassment in violation of this policy will be afforded every opportunity to offer and present information in defense of the complaint. Any information will be confidential.
- G. A person who participates in this procedure may do so without fear of retaliation. Retaliation against anyone who has filed a complaint under this policy is prohibited and may well be a violation of federal or State law. Any such retaliation will result in disciplinary action by the Town.

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- H. A person who is found to have committed an act of employment discrimination or harassment will be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or State law, as may be appropriate.
- I. 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 to take any legal action which he or she may deem advisable.

SECTION 5. EMPLOYMENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURE

A. STEP ONE

1. An aggrieved person, hereafter referred to as the complainant, will meet with his or her department head to discuss an allegation of employment discrimination or harassment and may file a complaint of discrimination or harassment. If a complaint is filed, the department head shall send a signed complaint on a form available from the Town to the employment discrimination/harassment committee. Should an individual feel uncomfortable raising an issue of alleged employment discrimination or harassment with a department head, any other department head or a member of the employment discrimination/harassment committee may be approached. Verbal complaints may be handled informally.
2. Any written complaint must be filed by a complainant within 180 days of an alleged act of employment discrimination or harassment on a form available from the Town.
3. The complainant may withdraw his or her complaint at any time by filing a notice in writing on a form available from the Town.

B. STEP TWO

1. When a written complaint is filed, the department head or committee member shall have 15 working days to try to resolve the allegation informally by 1) gathering and assessing the facts deemed necessary to resolve it; 2) meeting with the alleged abuser and the complainant separately; and 3) using whatever other methods deemed necessary or appropriate to attempt to resolve the complaint.
2. Regardless of whether the complaint is written or verbal, 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 employment discrimination/harassment committee. The case will be considered closed.
3. If a complaint is not resolved, it will be turned over to the employment discrimination/harassment committee. The committee will investigate the complaint, call witnesses to appear before the committee, and review any other evidence the committee feels credible and probative of the allegation or allegations. Notice of the complaint must be given to the accused, who shall also be afforded an opportunity to appear before the committee, with or without counsel, if he or she so desires. The committee will have ten (10)

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working days to investigate the complaint and an additional ten (10) working days to render a decision.

4. Written notice of the committee's decision will be given to both the complainant and the accused.

SECTION 6. REPEAL

Any portions of ordinances, resolutions or regulations heretofore adopted in conflict with this local law are hereby repealed.

SECTION 7. SAVING CLAUSE

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 8. EFFECTIVE DATE

This local law shall take effect as provided in Section 27 of the Municipal Home Rule.