

# SEXUAL HARASSMENT

POLICY & PROCEDURE NO. <b>4.02</b>	ISSUE DATE:07/01/2003
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MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>26.1.3</b>	REVISION DATE: 07/01/2014

## I. GENERAL CONSIDERATIONS AND GUIDELINES

This policy addresses sexual and other forms of harassment. Massachusetts General Law ch. 151B, s.3A prohibits sexual harassment in the workplace.

Employees and applicants for employment with this department have a right to be free from sexual and other forms of harassment. Sexual harassment in the workplace is unlawful. This department will not tolerate sexual harassment in the workplace, whether by superiors, coworkers or even non-employees. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated.

Individuals who are victimized by sexual harassment have statutory remedies which include filing a complaint with an administrative agency and/or the courts, both on a state and federal level. The department has developed this policy to familiarize employees with applicable legal guidelines.

This policy affords those who feel they are victims of sexual harassment with a procedure for making the department aware of the problem and allowing it to attempt to remedy the situation. It is the policy of this department to promptly investigate all complaints of sexual harassment. When it has been determined that inappropriate conduct has occurred, the department will act promptly to eliminate such conduct and impose any necessary corrective action, including disciplinary action where appropriate.

This policy shall be provided annually to all department employees and to all new employees at the time of their employment.

## **II. DEFINITION**

- A. *Sexual Harassment:*** M.G.L. c. 151B, s.1 (18) defines sexual harassment as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
1. Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
  2. Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment; or
  3. Discrimination on the basis of sex.
  4. Sexual harassment is not limited to prohibited conduct by a male towards a female or by a supervisor towards one of lower rank.
  5. Men and women may be the victims of sexual harassment, and a woman as well as a man may be the harasser.
  6. The harasser does not have to be the victim's supervisor. [S]he may also be an agent of the supervisor, a supervisory employee who does not supervise the victim, a non-supervisory employee (coworker), or, in some circumstances, even a non-employee.
  7. The harasser may, but need not, be the same sex and have the same sexual orientation as the victim.
  8. The victim does not have to be the person at whom the unwelcome sexual conduct is directed. [S]he may also be someone who is affected by such conduct when it is directed toward another person. For example, the sexual harassment of one employee may create an intimidating, hostile, or offensive working environment for another coworker or interfere with the coworker's work performance. The belief that such interference has occurred must be objectively reasonable.
  9. Sexual harassment does not depend on the victim having suffered an actual economic injury as a result of the harasser's conduct. For example, improper sexual advances which do not result in the loss of a promotion by the victim or the discharge of the victim may, nonetheless, constitute sexual harassment where they interfere with the victim's work or create a harmful or offensive work environment. The belief that such interference occurred must be objectively reasonable.

### III. EXAMPLES OF SEXUAL HARASSMENT

- A.** Demanding sexual favors accompanied by direct or overt threats concerning one's job, performance evaluation, promotion, salary increases, increased benefits, or continued employment.
- B.** Engaging in reprisals (not granting promotions, assigning undesirable tasks, making negative statements about the victim's personal or work conduct, etc.), as a result of an individual's refusing to engage in social/sexual behavior.
- C.** Contact with any sexual part of a coworker's body (e.g., touching, patting or pinching).
- D.** Touching any nonsexual part of the body (e.g., shoulder, etc.) after that person has verbally or otherwise indicated that such touching is unwanted.
- E.** Refusing to take action or to enforce disciplinary measures against a person who has been sexually harassing another staff member or otherwise condoning such behavior.
- F.** Continuing to ask a person to socialize after work when that person has verbally or in writing indicated no interest in such activities.
- G.** Displaying sexually suggestive pictures, objects, cartoons or posters after being told they are offensive.
- H.** Subtle pressure for sexual activities; e.g., continuing to write suggestive notes or letters after being informed they are unwelcome.
- I.** Verbal harassment or abuse; e.g., referring to or calling a person an endearing, demeaning or sexualized term, or making reference to a person's physical characteristic (e.g., pregnancy) when that person has verbally or in writing indicated to the harasser or the department [s]he does not wish to be addressed or referred to in that manner.
- J.** Leering (i.e., prolonged staring) at a person's body or whistling.
- K.** Language of a sexual nature in another's presence or conduct, even if not directed to said individual, once it is known that [s]he objects; such as sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comments about an individual's body, comments about an individual's sexual activity, deficiencies, or prowess.
- L.** Inquiries into one's sexual experience or discussion of one's sexual activities, after it is known that the individual does not welcome such inquiries or discussions.

## IV. PROCEDURE

### ***A. Generally***

#### 1. PROHIBITIONS

- a. Sexual harassment in the work place is unlawful and is prohibited.
- b. Other forms of harassment are also prohibited.
- c. It is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating with an investigation of a complaint for sexual harassment.

#### 2. TRAINING

- a. All employees shall receive a written copy of the sexual harassment policy annually.<sup>1</sup>
- b. All new employees shall receive a copy of the sexual harassment policy at the time of employment.<sup>2</sup>

### ***B. Responsibilities of All Employees:*** Each employee is personally responsible for:

1. Ensuring that [s]he does not sexually harass any other employee, applicant for employment, or other individual, either in the workplace or at a work-related activity;
2. Informing any individual that their words or actions are unwelcome and offensive, when any type of harassment is encountered;
3. Immediately reporting acts of harassment;
4. Cooperating in the investigation of complaints of alleged sexual harassment by providing any information [s]he possesses concerning the matters being investigated; and
5. Otherwise cooperating with the department's efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such unlawful discrimination.

### ***C. Sanctions***

1. Any employee found to have engaged in sexual harassment in violation of this policy is subject to disciplinary action up to and including termination of employment.
2. Retaliation against an individual that has complained about sexual harassment or has cooperated with an investigation of a sexual harassment complaint is such a serious violation of this policy and the law that disciplinary action, most likely discharge, will be taken.

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***D. Reporting Procedures***

1. Any employee who believes [s]he has been the victim of sexual harassment shall report this fact, either orally or in writing, as soon as possible to his/her supervisor.
  - a. The supervisor shall report such information, through the chain of command, to the Chief.
  - b. See department telephone directory for name, work address and telephone number of supervisor.
2. If the employee believes that the nature of the sexual harassment is such that [s]he is not comfortable discussing the situation with her/his immediate supervisor, the employee may make such report to a higher level of supervision in the chain of command, up to and including the Chief.
3. If the alleged harasser is a supervisor or otherwise in the chain of command, the employee should make such report to a higher level of supervision in the chain of command, up to and including the Chief.
4. If a supervisor is contacted, [s]he shall report such information, through the chain of command, to the Chief. See department telephone directory for name, work address and telephone number of supervisor.
5. In the event the employee feels it is not appropriate to contact the Chief, [s]he may contact Board of Selectmen at Erving Town Hall 12 East Main Street Erving, Massachusetts 01344 or 413-422-2800

***E. Investigations***

1. INFORMAL PROCEEDINGS
  - a. The supervisor, individual in the chain of command or the Chief who receives the initial complaint may propose informal remedies. If the complainant agrees to pursue this approach, the supervisor, individual in the chain of command or the Chief will meet with the alleged harasser, relate the fact that a sexual harassment incident or practice has been reported, and propose a remedy.
  - b. If the informal remedy is accepted by the alleged harasser, the situation shall be monitored closely by the supervisor, individual in the chain of command or the Chief to determine whether the work climate changes or whether there are further incidents. If the complainant reports that the situation has not been rectified or if the alleged harasser declines to agree to informal adjustment, the complainant will be encouraged to file a formal complaint.

- c. The Chief shall be notified when a complaint is received and informal proceedings are instituted and the Chief shall maintain records reflecting the substance of the informal remedy agreement.
2. Formal Proceedings
  - a. An employee may institute a formal procedure by filing a written complaint with the Chief.
  - b. A thorough investigation will be conducted by the Chief or his/her designee, which shall include attempting to obtain statements from the alleged harasser and co-workers of the complainant and alleged harasser. The Chief should resolve the matter within 30 business days of receipt of the complaint.
  - c. The Chief shall maintain records of all complaints, investigations, and actions taken.
  - d. The Chief or his/her designee shall handle complaints with confidentiality, sensitivity and due concern for the dignity of all parties involved.
  - e. In a situation where the complainant and the alleged harasser will continue working in the same general area or environment during or after the completion of the investigation, it may be necessary or appropriate for the Chief to clearly define the terms of the continued professional interaction.
3. In a situation where the complainant is transferred to another position during or after the completion of the investigation, there shall not be a detrimental change in the terms and conditions of the complainant's employment. This includes but is not limited to: a demotion or a decrease in pay, responsibilities, benefits, or prestige.
4. CONFIDENTIALITY: The department will maintain the confidentiality of the allegations of the complaint, the complainant and the alleged harasser to the extent lawful and practical without handicapping the department's ability to perform an investigation.

### ***F. Other Legal Remedies***

1. Following the procedures outlined above does not preclude a complainant from seeking legal remedies outside this process.
2. A complaint may be filed with one or both of the following:
  - a. **United States Equal Employment Opportunity Commission (EEOC)**  
John F. Kennedy Federal Building  
Government Center  
Room 475  
Boston, MA 02203

(617) 565-3200

**b. Massachusetts Commission Against Discrimination (MCAD)**

**Boston Office**

One Ashburton Place, Rm 601  
Boston, MA 02108  
(617) 727-3990

TTY: 617-994-6196

**Springfield Office**

State Office Building  
436 Dwight St., Rm 220  
Springfield, MA 01103  
(413) 739-2145

**Worcester Office**

Worcester City Hall  
455 Main Street, Room 101  
Worcester, MA 01608  
(508) 799-8010  
(508) 799-8490 - FAX

**New Bedford Office**

800 Purchase St., Rm 501  
New Bedford, MA 02740  
(508) 990-2390  
(508) 990-4260 - FAX

3. Complainants are cautioned that following department complaint procedures does not affect the 300 day statute of limitations for filing sexual harassment discrimination complaints with the MCAD or with the EEOC.
4. Some courts have found that a complainant's unreasonable failure to follow a department's complaint or grievance procedure may limit his/her ability to recover certain kinds of damages.

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<sup>1</sup> M.G.L. c. 151B, §3A(2)

<sup>2</sup> M.G.L. c. 151B, §3A(2)