

CHAPTER 7 - POLICY PROHIBITING SEXUAL HARASSMENT

I. PROHIBITION ON SEXUAL HARASSMENT

It has always been and remains the policy of the Village of Stickney that all our employees should be able to enjoy a work environment that is free from all forms of discrimination, including sexual harassment. It is unlawful to harass a person because of that person's sex. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is a policy of the Village of Stickney to prohibit harassment of any person by any Village official, agent, employee or agencies or office based on sex or gender. All Village officials, agents, employees and agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

II. DEFINITION OF SEXUAL HARASSMENT

This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, 775 ILCS 5/2-101(E), as amended, which currently defines sexual harassment as:

Any unwelcome sexual advances or requests for sexual favors or any 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 or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Conduct that may constitute sexual harassment includes:

- Verbal: sexual innuendos, suggestive comments, insults, humor and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates or statements about other employees, even outside of their presence, of a sexual nature.
- Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs instant messages and social network websites like Facebook and Twitter).

Revised and approved on January 7, 2020

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts normally assess sexual harassment by a standard of what would offend a “reasonable person.”

III. PROCEDURE FOR REPORTING AN ALLEGATION OF SEXUAL HARASSMENT

An employee who either observes sexual harassment or believes herself/himself to be the object of sexual harassment should deal with the incident(s) directly and firmly as possible by clearly communicating her/his position to the offending employee, and her/his immediate supervisor. It is not necessary for sexual harassment to be directed at the person making the report.

Any employee may report conduct which is believed to be sexual harassment, including the following:

- **Electronic/Direct Communication.** If there is sexual harassing behavior in the work place, the harassed employee should directly and clearly express her/his objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
- **Contact with Supervisory Personnel.** At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor of the person making the report, a department head, a director of human resources, an ethics officer, the Village manager or administrator, or the chief executive officer of the Village.

The employee experiencing what he or she believes to be sexual harassment must not assume that the employer is aware of the conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, the Village will not be presumed to have knowledge of the harassment.

- **Resolution Outside the Village.** The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the Village. However, all Village employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR or EEOC complaint must be filed within 300 days of the alleged incidents(s) unless it is a continuing offense.

Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the place), including, but not limited to, written records such as letters, notes, memos and telephone messages.

All allegations including anonymous reports will be accepted and investigated regardless of how the matter comes to the attention of the Village. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant’s willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

IV. PROHIBITION OF RETALIATION FOR REPORTING SEXUAL HARASSMENT ALLEGATIONS

No Village official, agent, employee, agency or office shall take any retaliatory action against any Village employee due to a Village employee's:

1. Disclosure or threatened disclosure of any violation of this policy;
2. The provision of information related to or testimony before any public body investigating, hearing or inquiry into any violation of this policy; or
3. Assistance or participation in a proceeding to enforce the provisions of this policy.

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in terms or conditions of employment of any Village employee that is taken in retaliation for a Village employee's involvement in protected activity pursuant to this policy.

No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness to the alleged conduct will be protected from retaliation.

Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

1. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation;
2. Provides information to or testifies before any public body investigating, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency or other State employee; or
3. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.

Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, and administrative hearing or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or Federal law, rule or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses a violation of a State or Federal law, rule, or regulation (740 ILCS 174/15(b)).

According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person or for two or more people to conspire to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes there to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding or hearing under the Illinois Human Rights Act.

Revised and approved on January 7, 2020

An employee who believes they have been retaliated against after filing a complaint with IDHR or EEOC, may file a retaliation charge, due within 300 days (IDHR or EEOC) of the alleged retaliation.

V. CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT

In addition to any and all other discipline that may be applicable pursuant to Village policies, employment agreements, procedures, employee handbooks, and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to applicable discipline or discharge by the Village and any applicable fines and penalties established pursuant to local ordinance, State law or Federal law. Each violation may constitute a separate offense. Any discipline imposed by the Village shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal Agency.

VI. CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT

A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable Village policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

VII. REPORTING AND INDEPENDENT REVIEW OF AN ALLEGATION OF SEXUAL HARASSMENT FOR ELECTED OFFICIALS

An elected official who either observes another elected official engage in sexual harassment or believes themselves to be the object of sexual harassment by another elected official may report such conduct for independent review to the Village Attorney. If the Village Attorney believes a conflict exists which prevents her or him from conducting an independent review, the Village Attorney must notify the Village of such conflict. Upon receiving notification of the conflict, the Board of Trustees shall authorize the engagement of outside legal counsel to conduct review.

The Village Attorney or outside legal counsel shall conduct an independent review of the allegations and provide any findings to the corporate authorities of the Village. Any documents, communications or other records created pursuant to the review shall remain confidential, subject to attorney-client privilege and will not be disclosed unless such disclosure is authorized by resolution with Mayor or as otherwise required by applicable local, state or federal law.

Such records shall also be presumed as exempt from disclosure under the Freedom of Information Act to the extent it is applicable.

Revised and approved on January 7, 2020