

**SUBJECT: Unlawful Discrimination and Harassment**

**SCOPE:** All Monroe County employees, applicants for employment, interns, volunteers, contractors and persons conducting business with Monroe County regardless of immigration status.

**PURPOSE:** Monroe County is committed to maintaining a workplace where unlawful discrimination and harassment are prohibited and complaints are promptly remedied.

**POLICY:** In support of Monroe County's commitment to equal employment opportunity and to protecting those in the workplace from acts of unlawful discrimination or harassment, the following policy statements are set forth:

- It is the policy of Monroe County to provide equal employment opportunities for minorities, women, persons with disabilities and protected class veterans and to prohibit discrimination in employment on the basis of race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, creed, veteran status, military status, status as a victim of domestic violence, gender identity, criminal history, genetic predisposition or carrier status, or retaliation with respect to hiring, compensation, terms, conditions or privileges of employment.
- Discrimination or harassment (including hostile work environment harassment) based on sex or on a protected class is illegal under State and Federal laws and will not be tolerated.
- Monroe County prohibits retaliation against anyone who complains of unlawful discrimination or harassment, including those who participate in any investigation under this policy or any proceeding involving a claim based on a protected class.
- Preventing harassment is everyone's responsibility. Employees are encouraged to report any harassment or behaviors that may violate this policy. Managers and supervisors are required to report any complaints that they receive or harassment that they observe to the Equal Employment Manager (EEO Manager).
- Monroe County will conduct a prompt, thorough investigation of all complaints that provides due process for all parties. All employees are required to cooperate with any internal investigation.

- Violation of this policy may result in remedial and/or disciplinary action (e.g., counseling, suspension, termination). Supervisors may be subject to discipline for failing to report suspected harassment or otherwise allowing harassment to continue.
- Harassers may also be individually subject to liability under New York State law. Any employee who has been subject to a final judgment of personal liability for intentional wrong doing related to a claim of sexual harassment, shall reimburse Monroe County if it makes a payment to a plaintiff for an adjudicated award based on a claim of sexual harassment resulting in a judgment, for his or her proportionate share of such judgment. Such employee shall personally reimburse Monroe County within 90 days.

#### DEFINITIONS:

Discrimination: Discrimination involves an adverse action or decision or harassing treatment of a person or class of persons because of a legally protected status or because of a perceived or actual affiliation/association with other individuals in a protected class, even if the individual is not the intended target of the harassment. Discrimination under this policy does not include unfair or inappropriate behavior that is not based on a protected class.

Protected Class/Status: Protected class/status is defined by Federal Law and the New York Human Rights Law to include race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, creed, military status, status as a victim of domestic violence, gender identity, criminal history, genetic predisposition or carrier status, or status as a complainant or witness in any investigation conducted pursuant to this policy (retaliation).

Harassment: Verbal, written, or physical conduct may be considered unlawful harassment if it is (1) based on a protected class; (2) unwelcome; and (3) rises above the level of what a reasonable victim of harassment and/or discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.

Findings of hostile work environment harassment under this policy will be based on the totality of the facts and circumstances.

Offensive conduct based on a protected class can include, but is not limited to, words, signs, offensive jokes, pranks, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, unwanted verbal, physical advances or physical contact, stalking, and interference with work performance.

Unlawful harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Conversations, calls, texts, emails, and social media usage by employees can constitute unlawful harassment even if they occur away from the workplace premises, on personal devices or during non-work hours.

Sexual Harassment: Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. It includes unwelcome conduct, such as sexual advances, requests for sexual favors, sex stereotyping or other verbal, written or physical conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment;
- (b) Submission to, or rejection of, such conduct by an individual is used as the basis for decisions effecting a person's employment;  
or
- (c) Such conduct has the purpose or effect of interfering with a person's work performance by creating an intimidating, hostile or offensive working environment.

Types of Sexual Harassment:

- (a) **Quid pro quo**: (i.e., something for something) is when a supervisor conveys to an employee that he or she will base an employment decision (e.g., whether to hire, promote, or fire that employee) on the employee's satisfaction of a sexual demand.
- (b) **Hostile Work Environment**: is when conduct based on sex (which includes sexual conduct, gender, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender) rises above the level of what a reasonable victim of sexual harassment and/or sex discrimination would consider petty slights or trivial inconveniences, and negatively alters the conditions of the complainant's employment and/or creates an abusive working environment.

Examples of Sexual Harassment:

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- (a) Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Sexual assault, sexual battery, molestation, or attempts to commit these assaults.
- (b) Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- (c) Sexually oriented gestures, noises, remarks, or jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- (d) Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- (e) Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- (f) Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity or the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job.;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

Employee: For purposes of this policy, employees include all individuals working for or in a space controlled by Monroe County. This includes, but is not limited to, employees, public officers, interns, volunteers, independent contractors, and employees of contractors and vendors.

**Retaliation:** Retaliation is adverse action taken against an employee because the individual has in good faith (1) personally complained of perceived discrimination or harassment based on a protected class; (2) testified, assisted or participated in an investigation, proceeding, hearing or legal action involving a claim of discrimination or harassment based on a protected class. Adverse action need not be job-related (e.g., threats of physical violence outside of work hours, or exclusion from social functions) or occur in the workplace to constitute unlawful retaliation. Even if the alleged harassment does not turn out to rise to the level of a violation of the law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

#### PROCEDURES:

**Who to Contact:** Any employee who has been subjected to hostile or abusive conduct, or witnesses a coworker being subjected to the same, is encouraged to inform the person(s) responsible that it is unwelcome and it must stop. If the conduct continues, or if the employee is uncomfortable confronting the responsible person(s) about the conduct, he or she should first utilize the departmental chain of command and report the matter to a supervisor.

- If the supervisor cannot or will not resolve the issue or if the complaint is against the supervisor, then the employee should contact the next level of supervision, up to and including the Department Head.
- Complaints can also be made directly to the County EEO Manager at Voice / NY Relay: (585) 753-2407 or Email: EEO@monroecounty.gov.
- For complaints of discrimination or harassment based on a disability, contact the County ADA Compliance Officer at Voice/ NY Relay: (585) 753-2406 or E-mail ADA@monroecounty.gov.

**Training:** Monroe County will provide annual training for all Monroe County employees.

**Complaint Procedure:** Employees who believe that they have experienced or witnessed unlawful discrimination or harassment in the workplace are encouraged to bring forward a complaint in accordance with the Notice of Non Discrimination and Complaint Procedure. Reports may be made verbally or in writing using the Monroe County Discrimination Complaint Form available on the intranet. If a complaint is received verbally, the employee will be encouraged to complete the

complaint form in writing. If he or she refuses, the Equal Employment Opportunity Unit will prepare a complaint form based on the verbal reporting.

Monroe County cannot prevent or remedy harassment unless it knows about it.

The Equal Employment Opportunity Unit will promptly and thoroughly investigate all allegations of discrimination or harassment, and if warranted, pursue either intervention measures and/or a formal fact finding process.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- (a) If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- (b) Request and review all relevant documents, including all electronic communications.
- (c) Interview all parties involved, including any relevant witnesses.
- (d) If warranted, take interim actions while the investigation is in process, (e.g., instructing the respondent to refrain from communications with the complainant or temporarily relocate an employee).
- (e) Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - A list of all documents reviewed, along with a detailed summary of relevant documents;
  - A list of names of those interviewed, along with a detailed summary of their statements;
  - A timeline of events;
  - A summary of prior relevant incidents, reported or unreported; and
  - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- (f) Keep the written documentation and associated documents in a secure and confidential location.
- (g) Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- (h) Inform the individual who reported of the right to file a complaint or charge externally as outlined below.

All persons involved, including complainants, witnesses and alleged harassers will be accorded due process to protect their rights to a fair and impartial investigation. Investigations will commence immediately

and be completed as soon as possible, and in most cases, a finding or findings will be rendered within sixty (60) days.

Monroe County will take immediate and appropriate corrective action when it determines that unlawful discrimination or harassment has occurred. Sexual harassment and other forms of harassment, discrimination, and retaliation are forms of employee misconduct and sanctions may be enforced against individuals found to have engaged in harassment or discrimination. Supervisory and managerial personnel who knowingly allow such behavior to continue or who otherwise fail to properly address harassment and discrimination will be subject to disciplinary action.

An informal resolution process may be appropriate in some cases, but the formal investigation can be initiated by the complainant at any time. The request for informal resolution and any proposed resolution will be communicated to the complainant and the respondent. If the resolution is acceptable to both the complainant and the respondent, then the matter will be closed.

All complaints are handled confidentially to the extent possible.

All employees are encouraged to report discrimination, harassment or retaliation in accordance with these procedures. Prompt reporting of complaints is vital to the ability of Monroe County to resolve the matter.

Managers and supervisors have a special obligation not to engage in discrimination, harassment, or retaliation. All management and supervisory personnel have an affirmative duty and are required to promptly report any discrimination, harassment, retaliation or sexual assault that they observe, learn about from others, or reasonably suspect has occurred directly to the EEO Manager.

This policy may not be used to knowingly report false or malicious charges against another employee or group of employees or to encourage others to report a complaint in bad faith.

Aside from the internal process, employees may also choose to pursue legal remedies with the New York State Division of Human Rights (DHR) or the United States Equal Employment Opportunity Commission (EEOC). Individuals may use the confidential hotline to receive counsel and assistance or submit a complaint at 1-800-HARASS-3.

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

**Appeals Process:** In the event that the complainant disagrees with the findings, he or she may submit a written appeal to the Director of Diversity, Equity, & Inclusion. This appeal must be submitted in writing and within ten (10) days of being notified of the findings. A response to the appeal will be provided to the complainant within thirty (30) days after the Director receives the request for the appeal.

REFERENCE: Relevant Federal and State Laws Prohibiting Harassment in New York including Title VII of the Civil Rights Act of 1964 (Title VII); Americans with Disabilities Act (ADA); Age Discrimination in Employment Act (ADEA); Genetic Information Non-discrimination Act (GINA); New York Human Rights Law; New York Public Officers Law 17-a; New York Labor Law 201-g.

Revised: 01/2023