

TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY

SEXUAL HARRASSMENT POLICY

(adopted March 18, 2021; Amended Policy Adopted 7-20-2023)

1. Statement of Purpose and Scope

The Town of Clarence, Erie County, Industrial Development Agency (the “CIDA”) is committed to maintaining a work environment free of unlawful discrimination and harassment, and therefore, has zero tolerance for workplace sexual harassment.

Sexual harassment consists of any unwelcome conduct, whether verbal, visual or physical, that is based upon a person’s gender. Such conduct is unlawful and prohibited whenever it affects tangible job benefits, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive working environment.

Sexual harassment undermines the integrity of the employment relationship. All employees have the right to work in an environment free from unsolicited and unwelcome sexual overtures. The CIDA will not tolerate any form of gender-based or sex-based discrimination, including any kind of sexual harassment against any employee or applicant for employment. Such discrimination violates federal and state law, and the CIDA’s Sexual Harassment Policy.

2. Definition

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, and physical conduct of a sexual nature whenever:

- a. Submission to the conduct is made either in explicit or implicit condition of employment;
- b. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the harassed employee; or
- c. Harassing conduct unreasonably interferes with an employee’s work performance or creates an intimidating, hostile, or offensive working environment.

3. Examples of Conduct Constituting Sexual Harassment

Sexual harassment can involve an almost infinite variety of conduct. Such examples include but are not limited to the following:

- a. Unwelcome physical contact with sexual overtones;
- b. Sexually offensive comments such as slurs, jokes, epithets, and innuendo;
- c. Inappropriate, repeated, or unwelcome sexual flirtations, advances, or propositions;

- d. Inappropriate or suggestive comments about another person's physical appearance, characteristics or dress;
- e. Exchanging or offering to exchange any kind of employment benefit for a sexual concession, e.g., promising a promotion or raise in exchange for sexual favors; or
- f. Withdrawing or threatening the withdrawal of any kind of employment benefit for refusing to grant a sexual favor.

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Unlawful sexual 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. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or not during work hours.

4. Applicability of Policy

The prohibition against sexual harassment applies to everyone – elected officials, managers, supervisors, salaried and hourly workers, temporary employees, paid and unpaid interns, contractors, volunteers, vendors and visitors. The CIDA will not tolerate sexual harassment of any kind by anyone or directed at anyone.

5. Reporting Sexual Harassment

Any employee or individual who believes that he or she has been sexually harassed should report the incident to the Chairperson, a Board member, or CIDA Counsel. Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Complaints of sexual harassment will be investigated thoroughly and quickly. Upon receipt of a complaint, the Chairperson and CIDA Attorney will conduct an immediate review of the allegations, and take any interim actions, as appropriate. If documents, emails or phone records are relevant to the allegations, the CIDA Attorney will take steps to obtain and preserve them. The CIDA Attorney will request and review all relevant documents, including all electronic communications. The CIDA Attorney will interview all parties involved, including any relevant witnesses. The CIDA Attorney will document the steps taken in the investigation and the information learned. The CIDA Attorney will consider other relevant information such as any

prior similar events whether reported or unreported. Based on the information learned in the investigation, the CIDA Attorney will determine whether any inappropriate conduct occurred and, whenever appropriate, disciplinary action will be taken against the harassing party, up to and including termination. The CIDA will also take appropriate action to deter further sexual harassment. You will be advised of the results of the investigation and of any action taken, if appropriate.

The Chairperson, a Board member, or CIDA Counsel must report any incident of sexual harassment they may observe, even if they are not the target or victim of such harassment. Such reports will be handled in the same fashion as complaints by victims of sexual harassment.

6. Confidentiality

Any allegation of sexual harassment brought to the attention of the CIDA Chairperson, a Board member, or CIDA Counsel will be promptly investigated. Confidentiality will be maintained throughout the investigatory process, to the extent practicable under the circumstances.

7. Discipline for Engaging in Sexual Harassment

Any employee or individual found to have engaged in misconduct constituting sexual harassment will be subject to appropriate discipline, up to and including termination. Additional action may include: referral to counseling, withholding of a promotion, reassignment, and temporary suspension without pay or financial penalties.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, the Chairperson and Board Members will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

This policy is designed to protect all employees and individuals from sexual harassment in any way associated with the workplace or work environment, regardless of the identity or status of the harasser. Although the CIDA's ability to discipline a non-employee harasser may be limited by the degree of control, if any, that it has over the alleged harasser, any employee who believes that they have been subjected to sexual harassment should file a complaint and be assured that appropriate action will be taken.

8. Protection Against Retaliation

The CIDA will not in any way retaliate against any employee or individual who makes a complaint of sexual harassment or against any participant in the investigation, nor will it permit the Chairperson, a Board member, CIDA Counselor employee to do so. Retaliation is a serious violation of this sexual harassment policy and should be reported immediately in the same method that sexual harassment is to be reported. Any employee found to have retaliated against another employee for reporting sexual harassment will be subject to the same disciplinary action described above.

Further, any employee who makes an intentionally false complaint also will be subject to the same disciplinary action as described above.

9. Legal Protections and External Remedies

Sexual harassment is not only prohibited by the CIDA, but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the CIDA, employees or individuals may also choose to pursue legal remedies with the following governmental entities.

New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR. DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

You can contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

United States Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at www.eeoc.gov or via email at info@eeoc.gov

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or Town in which they live to find out if such a law exists.

Contact the Local Police Department

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