

TOWN OF BERKLEY
EQUAL EMPLOYMENT OPPORTUNITY, RETAILIATION, DISCRIMINATION, AND
SEXUAL HARASSMENT POLICY

I. PURPOSE

This Policy describes the Town's prohibition of unlawful discrimination, retaliation and harassment in the workplace, in order to ensure compliance with all applicable federal laws and state statutes and regulations.

II. APPLICATION

The Policy applies to all employees of the Town of Berkley, excluding those employees under the supervision and control of the School Committee. Employees whose employment is governed by a collective bargaining agreement are subject only to those provisions of this Policy not specifically regulated by law or agreement.

III. POLICY

It is the Policy of the Town to promote a professional and productive workplace in which all employees are treated with dignity and respect. Employees are expected to act in a positive manner and contribute to a productive work environment that is free from harassing or disruptive activity. Discrimination, including harassment, whether based upon race, color, gender, gender identity, national origin, religion, ancestry, age, sexual orientation, disability, maternity leave, genetic information, active military status, or other bases prohibited under state or federal antidiscrimination statutes, will not be tolerated. Retaliation against employees who complain of such conduct or other employment practices will not be tolerated. To achieve the goal of providing a workplace free from discrimination and retaliation, the Town will implement the procedure described below to address any potential inappropriate conduct.

A. Coverage

This Policy applies to all employment practices and employment programs sponsored by the Town. This Policy shall apply, but not be limited to, the areas of:

- Recruitment
- Selection
- Compensation and benefits
- Professional development and training
- Reasonable accommodation for disabilities or religious practices
- Promotion
- Transfer
- Termination
- Layoff, and
- Other terms and conditions of employment

This Policy may apply to discrimination (including harassment) and retaliation that occurs between co-workers that takes place outside the workplace (including, but not limited to, online

conduct or conduct utilizing the internet or other electronic media). When the conduct complained of occurs outside the workplace, the Town may consider the following and other factors in assessing whether the conduct constitutes conduct in violation of this Policy:

- Whether the event at which the conduct occurred is linked to the workplace in any way, such as at a Town-sponsored function;
- The severity of the alleged outside-of-work conduct;
- The work relationship of the complainant and alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and complainant come into contact with one another on the job;
- Whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainant's work environment.

Because the Town takes allegations of unlawful discrimination, retaliation and harassment seriously, officials will respond promptly to complaints and, where it is determined that such inappropriate conduct has occurred, will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this Policy sets forth the Town's goals of promoting a workplace that is free of discrimination, retaliation and harassment, **the Policy is not designed or intended to limit the Town's authority to discipline or take remedial action for workplace conduct which is deemed unacceptable, regardless of whether that conduct satisfies the legal definitions of discrimination or harassment.**

B. Examples of Prohibited Discriminatory Behavior

It is not possible to list all the circumstances that may constitute discrimination in violation of this Policy. Discrimination may take many forms, including both verbal and nonverbal behaviors. Prohibited behavior includes, but is not limited to, the following behaviors connected to someone's membership in one or more groups protected by law as noted in the first paragraph above: slurs or other derogatory comments; sharing demeaning pictures, cartoons, or jokes; demeaning gestures, and; any conduct constituting sexual harassment as defined below; any conduct constituting retaliation as defined below.

Definitions of Sexual Harassment

Sexual Harassment – That conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, which may constitute sexual harassment when:

1. Submission to such conduct is made 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 affected such individual; or
3. 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.

Hostile Work Environment – A form of sexual harassment, where pervasive and sexually hostile working conditions unreasonably interfere with an employee's ability to do his or her job.

Quid Pro Quo – Another form of sexual harassment, where tangible job benefits are offered or withheld in exchange for sexual favors.

Note: While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances, whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on a individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, or cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually-oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment. This can include conduct that is aimed at a person's sexual orientation or gender identity.

a. Retaliation

Any retaliation against an individual who has formally or informally complained about employment practices they reasonably believe to be unlawful, discrimination, harassment, or has cooperated with an investigation of discrimination complaint, is prohibited.

Retaliation can be overt or subtle. Retaliation may include, but is not limited to, treating a complainant or witness differently, more harshly or in a hostile manner; physical interference with movement such as blocking a path; derogatory comments or action which would tend to have a chilling effect on other complainants; sudden investigations of the complainant's private life, or; sudden strict enforcement of work rules. Retaliation in an form is prohibited.

IV. PROCEDURES

C. Complaints of Prohibited Conduct

If an employee believes that he or she has been subjected to prohibited conduct, is it the Town's policy to provide the employee with the right to file an internal complaint. This may be done orally or in writing.

An employee may file a complaint by contacting the Town Administrator. Alternatively, an employee may file his or her complaint with the Town Treasurer. These persons will remain available to discuss any concerns employees may have to provide information about the Town's Policy and the complaint process.

D. Investigation

When a complaint is received, the Town will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The Town's investigation will include a private interview with the person filing that complaint and with any witnesses. This Town will also interview the person alleged to have engaged in prohibited conduct. When the investigation has concluded, the Town will, to the extent appropriate inform the person filing the complaint and the person alleged to have engaged in prohibited conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, the Town will act promptly to eliminate the offending conduct, and where appropriate, impose disciplinary action.

E. Confidentiality

Given the sensitive nature of complaints of discrimination and/or harassment, all parties and witnesses in a complaint, as well as department heads, supervisors, etc. who are aware of a complaint or investigation thereof, are strongly encouraged to maintain this information as confidential, so as not to negatively impact an investigation. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances.

All employees are reminded of the provisions of G.L. c. 268A, § 23(c)(2), which prohibit a municipal employee or official from improperly disclosing information that is protected from disclosure under the public records law, and acquired by an employee or official in the course of official duties. Section 23 also prohibits a municipal employee or official from using such information to further the employee's/ official's personal interest. Violations of Section 23 may lead to disciplinary action, up to including termination.

V. SANCTIONS

If it is determined that prohibited conduct has been committed by an employee, the Town will take such action as is appropriate under the circumstances. Such actions may include: counseling, informal or formal reprimands, written or verbal warnings, suspension, reduction in pay, reduction in duties, transfers, and other formal sanctions, including termination from employment.

VI. REASONABLE ACCOMMODATION

The Town will not discriminate against people with disabilities in any employment practices or in terms, conditions or privileges of employment, including, but not limited to: application, testing, hiring, assignment, evaluation, disciplinary action, training, promotion, medical examination, layoff/recall, termination, compensation, leaves of benefits. The Town will make reasonable accommodation to the known physical or mental limitations of qualified applicant or employee with a disability, unless such action would cause an undue hardship to the operations of the Town.

Employees seeking reasonable accommodations may submit their request in writing to:

Town of Berkley
Town Administrator
1 North Main St
Berkley, MA 02779
508-824-6794

VII. EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

The Town will not discriminate in its employment practices, on the basis of race, color, gender, gender identity, national origin, religion, creed, ancestry, age, sexual orientation, disability, maternity leave, genetic information, active military status, or another basis prohibited under state or federal anti-discrimination statutes. This shall include such areas as recruitment, selection, compensation and benefits, professional development and training, reasonable accommodation for disabilities or religious practices, promotion, transfer, termination, layoff, and other terms and conditions of employment.

*Approved March 22, 2017 by the BOS