

BOARD OF SELECTMEN
Sexual Harassment Policy of the Town of Wellfleet
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SEXUAL HARASSMENT POLICY OF THE TOWN OF WELLFLEET

As part of the Town of Wellfleet's continuing Affirmative Action Efforts, The Board of Selectmen hereby establishes the following revision for all town employees. This revision is in accordance with the Commonwealth of Massachusetts Commission against Discrimination's Policy 96-2 voted by the MCAD on October 25, 1996.

1. Introduction

It is the goal of the Town of Wellfleet to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. 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 similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Town of Wellfleet takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we 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 our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or pursue remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

Any employee who believes he or she has been the subject of sexual harassment of any kind should report the alleged sexual harassment immediately to his/her department head or supervisor, or to the Town Administrator or Administrative Assistant. An investigation of all complaints will be undertaken immediately under the direction of the Office of the Town Administrator. Any employee who has been found, following appropriate investigation, to have sexually harassed another employee shall be subject to appropriate sanctions depending on the circumstances, up to

and including termination.

II. Definition of Sexual Harassment

In Massachusetts, the legal definition for sexual harassment is this: Sexual harassment means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- (a) 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,
- (b) 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.

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.

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 an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Discussion of one's sexual activities.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

III. Nonwork Related Sexual Harassment

Purpose – This policy was developed to ensure the prompt reporting and investigation of non-employment related allegations of sexual abuse and molestation.

Scope – This policy applies to all Town of Wellfleet officials, employees (and/or independent contractors), and volunteers, as may be required by law.

Reporting of Child Abuse or Neglect

The Town acknowledges its responsibilities under G.L. c. 119, §51A, which requires certain Town officials, employees and/or volunteers to report to the state Department of Social Services any instance where the official, employee, and/or volunteer, in his or her professional capacity,

“shall have reason to believe that a child under the age of eighteen years is suffering physical or emotional injury resulting from abuse inflicted upon him which causes harm or substantial risk of harm to the child’s health or welfare including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth....”

Those officials, employees and/or volunteers who are required to make such reports under the law include teachers, educational administrators, social workers, guidance or family counselors, firefighters, police officers, and school attendance officers.

The Town encourages other officials, employees and/or volunteers who are not otherwise required to report suspected instances of child abuse or neglect under G.L. c. 119, §51A, to bring such suspected instances of child abuse or neglect to the attention of the Department of Social Services.

In accordance with G.L. c. 119, §51A, the Town will not discharge or otherwise discriminate or retaliate against any official, employee and/or volunteer who in good faith makes such a report, testifies or is about to testify in any proceeding involving child abuse or neglect.

For more information on how to report situations of possible child abuse or neglect in Massachusetts, visit the Department of Social Services website at www.mass.gov. The state’s Child-at-Risk Hotline is 1-(800)-792-5200. Although reports may be made anonymously, it is strongly suggested that any person covered by this policy making such a report maintain a personal written record of the report, including the date and time made. Please be reminded that a personal written record that is not shared with any other person and that is not maintained in a public file is generally exempt from disclosure under the Public Records law.

Reporting of Non-employment Sexually-Related Harassment

Sexual harassment of any third party by a Town official, employee and/or volunteer, to the extent that such official, employee and/or volunteer purports to be acting within the scope of his or her duties, is prohibited, to the extent such conduct violates applicable law.

Complaints – Any complaint of possible sexual abuse, molestation, or sexual harassment made by a minor against a Town official, employee and/or volunteer, or a fellow minor, which is received by any Town official, employee and/or volunteer, shall be investigated in the same manner as employment-related complaints of sexual harassment to the extent appropriate.

However, such investigation may be deferred or suspended in the event that the Department of Social Services, or other state, federal, or local agency (including local law enforcement) is investigating the same complaint.

CORI Checks – In furtherance of this policy, the Town acknowledges its responsibilities to conduct so-called “CORI checks” as required under G.L. c. 6, §167, et seq. and G.L. c. 71, §38R, where authorized by statute and/or the Criminal History Systems Board. Under the law, CORI checks are required for:

- Any current or prospective employee or volunteer of any camp for children (under the age of 18) operated by the Town (including the Elementary School)
- Any current or prospective employee or volunteer of the school department, who may have direct and unmonitored contact with children
- Other individuals who may have direct and unmonitored contact with children in the school setting, including individuals providing transportation to students, such as bus drivers and custodians
- Contractors and subcontractors commissioned to perform work on school grounds involving any direct and unmonitored contact with children
- Any current or prospective employee or volunteer of any municipal entity or organization primarily engaged in providing activities or programs to children. This requirement could apply to municipal recreation programs, athlete programs, library and other programs or activities that accept volunteers
- Any current or prospective employee or volunteer of any municipal entity that provides care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home or in a community based setting for any elderly person or disabled person or who will have any direct or indirect contact with such elderly or disabled persons or access to such persons' files

The legal requirements restated in this policy are contained herein for ease of reference, and this policy is not to be construed as expanding the Town’s legal obligations under the law with respect to the matters covered under this policy, or otherwise waiving any defenses the Town may have to claims involving sexual abuse, molestation, or non-employment related sexual harassment.

IV. Reporting and Investigation of a Complaint

Any employee who believes he or she has been the subject of sexual harassment should report the alleged *sexual* harassment immediately to his/her department head or supervisor, and/or to the Town Administrator or Administrative Assistant. This may be done in writing or orally.

An investigation of all complaints will be undertaken immediately under the direction of the Office of the Town Administrator 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 investigation will include a private interview with the person filing the complaint and with witnesses.

We will also interview the person(s) alleged to have committed sexual harassment. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person(s) alleged to have committed the conduct, of the results of that investigation.

V. Disciplinary Action

If it is determined that inappropriate conduct has been committed by one or more of our employees, we will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

VI. Local (Wellfleet) Remedies

In addition to reporting inappropriate conduct to your Department Head, you may contact the Assistant Town Administrator/Personnel Director or the Administrative Assistant at Town Hall, 300 Main Street, Wellfleet, MA 02667, or by telephone at (508) 349-0300. Additionally, you may report occurrences of this nature directly to the Town Administrator if that is more comfortable or more appropriate in cases where the offending party is a Department Head.

VII. State and Federal Remedies

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both the government agencies set forth below. Using our (Wellfleet's) complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim (EEOC - 180 days; MCAD - 6 months).

State and Federal Remedies: Addresses & Phone #'s:

The United State Equal Opportunity Commission ("EEOC")
1 Congress Street - 10th Floor
Boston, MA 02114
Telephone: 1 - (617) - 565-3200

The Massachusetts Commission Against Discrimination ("MCAD")
1 Ashburton Place - Room 601
Boston, MA 02108
Telephone: 1 - (617) - 727-3990

Important Notes:

1. If any employee believes he or she is the subject of sexual harassment, the individual must immediately contact his or her department head or immediate supervisor, or the Town Administrator or Administrative Assistant and must consult and follow the Town's Sexual Harassment complaint Procedure Guidelines.
2. The procedures outlined above will also apply to the alleged sexual harassment by non-employees, and of non-employees, provided the incident(s) occur within the workplace and within the jurisdiction of the harassment complaint procedures.

SEXUAL HARASSMENT COMPLAINT PROCEDURE GUIDELINES TOWN OF WELLFLEET

Any employee who believes that he/she has been the subject of sexual harassment must report the alleged incident immediately in accordance with the following procedure. All information will be held in confidence to the extent practicable under the circumstances.

Step 1: The individual alleging sexual harassment will report the incident immediately to his/her department head or supervisor, or to the Town Administrator, as they deem appropriate. Any individual made aware of the said accusations must immediately direct the matter to the Town Administrator who shall inform the Board of Selectmen. An investigation will be undertaken, under the direction of the Office of the Town Administrator. The matter will be discussed separately with the complainant and the alleged offender, informally, in an attempt to mediate and resolve the matter. If warranted, immediate action will be taken to separate the affected individuals from further contact in the working environment, to the extent possible.

Step 2: If the matter cannot be resolved informally, the individual alleging sexual harassment will be informed that in order to pursue the complaint further, he/she should complete a form specifically outlining the nature of the complaint, or, if the person making the complaint so desires, request verbally that the complaint be further pursued. The completion of a written complaint form is preferred but is strictly optional. If the matter is to be pursued further, Town Counsel shall be notified.

Step 3: Within 48 hours after receiving the request to further investigate the complaint, the alleged offender will meet with the Town Administrator or his/her designee and be informed of:

1. The charge(s) being made
2. Town Policy regarding sexual harassment*
3. The seriousness of the charge

The alleged offender will be provided with a copy of the complaint, if submitted, and given the opportunity to refute the allegation by responding in writing on the complaint form or verbally, whichever is desired.

*(Note): All employees will receive a copy of the Wellfleet Sexual Harassment and Workplace Violence Policy as part of their employment/hiring procedure and annually.

Step 4: The Town Administrator or his/her designee shall investigate the allegations. This investigation may include, but is not limited to:

- Interviews with alleged offender and complainant
- Interviews with Supervisor
- Interviews with witnesses
- Review of any documents or alleged evidence on file.

Within two (2) weeks of the receipt or complaint, or as soon as reasonably possible, the investigator will report the findings and recommendations to the Town Administrator who, in turn, will inform the Board of Selectmen. The Town Administrator will determine the action to be taken based on the facts on a case-by-case basis with whatever consultation may be required. If after appropriate investigation the allegations are shown to be false, the Town Administrator will determine the type and severity of disciplinary action.

Step 5: Upon receipt of the Town Administrator's determination either party may appeal the decision to the Board of Selectmen within 30 days. This appeal must outline the reasons why the individual feels the decision is erroneous. The Board of Selectmen will determine the final outcome through a review of the record. However, any action directed by the Town Administrator shall be implemented upon his/her determination and such action may be reviewed on appeal.

Any retaliatory action by an employee against any other employee as a result of an individual seeking redress under this procedure is prohibited and shall be regarded as a separate and distinct cause for complaint under this procedure, and as a basis for disciplinary action against the offending employee.

*

The previously stated procedure is to serve as a guideline for investigating and addressing harassment complaints. The investigation and determination need not follow the steps outlined above. Deviations are allowed to fit the individual facts in each case.