

Adopting the Cayuga County Policy: Non-Discrimination and Prohibited Harassment (Sexual, Racial, National Origin, and Other Forms of Prohibited Harassment) in Employment for County Employees and Designating the Human Resource Administrator as the "Sexual, Racial, National Origin and other forms of Prohibited Harassment Officer.

BY: Hon. Michael Didio, Chairman Government Operations

WHEREAS, the County Legislature has adopted numerous policies and procedures for conducting County business and others which are mandated by Federal and State governments; and

WHEREAS, the County has policies, Section 45, Sexual Harassment and Section 47 Sexual, Racial and National Origin Harassment both policies adopted on 5-25-10, Resolution No. 255-10; and

WHEREAS, the County wishes to combine those policies and adopt the Non-Discrimination and Prohibited Harassment) Sexual, Racial, National Origin and Other Forms of Prohibited Harassment) Policy; and

WHEREAS, the County's Non-Discrimination and Prohibited Harassment) Sexual, Racial, National Origin and Other Forms of Prohibited Harassment Officer will be the Human Resource Administrator; now, therefore be it

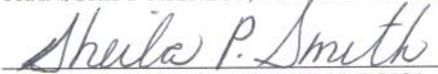
RESOLVED, the County Legislature does hereby adopt the attached Policy; and be it further

RESOLVED, that said Policy be numbered Section 46 in the County Policy Manual and distributed by the Clerk of the Legislature to all County Department Heads; and it is further

RESOLVED, that this resolution will take effect immediately upon adoption.

I HEREBY CERTIFY, THAT I HAVE COMPARED THE FOREGOING COPY OF A RESOLUTION DULY PASSED AND ADOPTED BY THE LEGISLATURE OF CAYUGA COUNTY AT A MEETING HELD ON THE 25th DAY OF AUGUST 2015 WITH THE ORIGINAL RESOLUTION, AND THAT THE SAME IS A TRUE AND CORRECT COPY AND TRANSCRIPT THEREOF, AND THE WHOLE THEREOF.

8-26-15 8:15AM


CLERK, CAYUGA COUNTY LEGISLATURE

CAYUGA COUNTY POLICY MANUAL

Section 46

Policy: Non-Discrimination and Prohibited Harassment (Sexual, Racial, National Origin, and Other Forms of Prohibited Harassment) in Employment

Officer: Human Resources Administrator

Effective Date: 8-25-15

Resolution No. 264-15

Supersedes Policy of: 9-21-1999 and 5-25-10 Resolution No. 255-10

Replaces Policy: Section 45 Sexual Harassment and Section 47 Sexual, Racial and National Origin Harassment (5-25-10 Resolution No. 255-10)

Objective: That all employees should be able to enjoy a work atmosphere free from all types of unlawful discrimination and harassment.

Policy:

It is the policy of Cayuga County to maintain an employment environment in which the dignity and worth of individuals is respected. Accordingly, the County does not tolerate unlawful discrimination or harassment based on gender, pregnancy, race, color, national origin, citizenship, ancestry, religion, creed, age, physical or mental disability, marital status, military or veteran status, domestic violence victim status, genetic predisposition or carrier status, sexual orientation, or any other basis protected by federal, state or local laws. Together, these personal characteristics are referred to in this policy as "Protected Characteristics."

Cayuga County is committed to preventing unlawful discrimination and harassment from occurring and to providing an avenue to promptly and effectively address complaints of discrimination and harassment. These standards of conduct apply to interactions with employees, elected or appointed officials, and others while conducting County business, even if the setting is informal or outside the traditional workplace.

Discrimination occurs if a person experiences an adverse employment action based on one or more of his/her Protected Characteristics. Examples of discrimination include job actions such as lower pay, a failure to promote, denial of a raise, or termination because of one or more protected characteristics. The County will not unlawfully discriminate in any area of employment, including compensation.

Prohibited harassment may include verbal or physical conduct, written or electronic communications, slurs, epithets, threats, derogatory comments, negative stereotyping, unwelcome jokes or gestures, and teasing based on any one of the Protected Characteristics listed above that has the purpose or effect of creating an intimidating, hostile, or offensive work environment.

(a) Sexual Harassment Definition

Sexual harassment warrants further definition. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when:

- (1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or advancement;
- (2) submission to or rejection of such conduct is used as basis for decisions affecting employment or professional advancement of an individual; or
- (3) such conduct has the purpose or effect of unreasonably interfering with the employee's ability to work or has the purpose or effect of creating an intimidating, hostile or offensive work environment.

Examples of sexual harassment can include, but are not limited to, the following:

- Offering employment benefits in exchange for sexual favors
- Threatening reprisals if sexual favors are not provided
- Leering, staring, stalking
- Suggestive or sexually explicit gestures, pictures, jokes or emails
- Sexist remarks and behavior, not necessarily designed to elicit sexual cooperation, but which degrade or insult based on sexism
- Unwelcome physical conduct, such as pinching, hugging, or brushing a person

(b) Other Forms of Prohibited Harassment Defined

Harassment based on any Protected Characteristic is prohibited. While it is not possible to list all conceivable behaviors which might be considered harassing, the following are examples of prohibited behavior:

- Ethnic, racial, religious or other teasing or slurs, or jokes or comments that demean a person on the basis of race, color, religion, national origin, sexual orientation, age or disability
- Mimicking or mocking another's race, color, religion, ethnicity, national origin, sexual orientation, age or disability
- Racially or religiously offensive pictures, symbols, cartoons, or graffiti

(c) Complaint Process

Anyone who has a concern about potential unlawful discrimination or harassment should promptly report that concern to their Department Head, the Human Resources Administrator. Reports of potential discrimination or harassment involving Department Heads, the Human Resources Administrator, the County Attorney, or a Member of the Legislature may be made to the Chair of the Legislature or the County Administrator. Complaints of potential discrimination or harassment involving the County Administrator may be made to the Chair; complaints of potential discrimination or harassment involving the Chair may be made to the County Administrator. Even if an employee is unsure whether a certain behavior constitutes discrimination and/or harassment prohibited by this policy, employees are encouraged to report the situation so that it may be investigated, evaluated and, if necessary, addressed. The County as an employer expects that individuals who make reports pursuant to this policy do so truthfully and in good faith. The County will not tolerate retaliation, intimidation, or any other adverse treatment of a person because he or she made a complaint of discrimination or harassment in good faith.

Upon receipt of a complaint, the County, acting through appropriate individuals, will take appropriate steps to investigate the situation. This may include interviews of appropriate individuals (e.g., the person complaining, the accused, possible witnesses, etc.). The complaint protocol to be followed is described in the Human Resources Manual. These matters can be extremely sensitive and the County, as an employer, is committed to maintaining confidentiality to the greatest extent possible; however, information may need to be disclosed as reasonably necessary to investigate a complaint, to institute appropriate remedial action, and as required by law.

Cayuga County will take swift and appropriate corrective action when it determines that unlawful discrimination or harassment has occurred. Disciplinary action, up to and including termination of employment, may be taken where appropriate, and discipline may not necessarily be administered progressively.

Please note that while this policy sets forth the County's goal of promoting a workplace that is free of unlawful discrimination and harassment, the policy is not designed or intended to limit the County's authority to discipline or take remedial action for workplace conduct which it deems unprofessional, inconsistent with County standards, or otherwise inadvisable behavior, regardless of whether that conduct satisfies the legal definition of unlawful discrimination or harassment.

(d) Retaliation Prohibited

Cayuga County strictly prohibits and will not tolerate retaliation against anyone who in good faith makes a complaint of discrimination or harassment or who participates in an investigation of a complaint of discrimination or harassment. Individuals who become aware of anyone engaging in retaliation prohibited by this policy should immediately report the matter to their supervisor or the head of their department, any member of the Human Resource Administrator or his/her Deputy. Any person who engages in retaliatory conduct prohibited by this policy may be subject to appropriate corrective action, including appropriate disciplinary action, up to and including termination of employment.

Note: Policy shall be reviewed periodically by the Human Resource Administrator, (Non-Discrimination and Prohibited Harassment (Sexual, Racial, National Origin, and Other Forms of Prohibited Harassment) in Employment. Any revisions approved by the Legislature shall be distributed to departments.

CAYUGA COUNTY HUMAN RESOURCES POLICY
Policy HR-1

Subject: Process for Sexual Harassment resolution

Effective Date: 8/25/15

Policy Title: Sexual Harassment Protocol

Objective: To provide a procedure to assure a workplace free of inappropriate and disrespectful conduct and communication of a sexual nature.

Policy:

Sexual harassment infringes on an employee's right to a comfortable work environment and is a form of misconduct that undermines that integrity of the employment relationship. The Human Resources department provides the process which will investigate and resolve these matters.

The Equal Employment Opportunity Commission has declared that harassment on the basis of sex is a violation of Title VII of the Civil Rights Act of 1964, and has published guidelines on sexual harassment in employment. Those guidelines state that unwelcome sexual advances and other verbal or physical conduct of a sexual nature are unlawful.

Employees cannot be forced or pressured to submit to sexual harassment as a basis for any employment decisions or required to endure any conduct, which creates an intimidating, hostile, or offensive work environment. It is important to realize that sexual harassment is not limited to physical touching, but may include unwelcome sexual propositions or flirtations, and the display of sexually offensive materials or objects.

Charges of sexual harassment will be thoroughly investigated. If a determination is made that sexual harassment has occurred, appropriate steps will be taken to remedy the situation for the complainant. Some courts have ruled that an investigation is required even where the complainant has stated it is unnecessary.

The County understands that these matters can be extremely sensitive and will do whatever it can to keep employee complaints and communications, such as interviews and statements, in strict *confidence*. The County will not tolerate retaliation against any

employee who complains of sexual harassment or who provides information in connection with any such complaint.

Sexual Harassment Policy and Investigation Procedure

The County regards sexual harassment as a very serious matter and prohibits such harassment in the workplace by any person in any form. Anyone who violates this policy may be subject to disciplinary action, including discharge, if necessary.

Definitions:

Sexual harassment is illegal under local, state and federal civil rights laws and it is against County policy for any employee to subject any other employee to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- ❑ Such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- ❑ Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- ❑ Such conduct has the purpose or effect of interfering with an individual's work performance or creating a hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Sexual harassment is unlawful and hurts other employees. Sexually oriented acts or sex-based conduct has no legitimate business purpose; accordingly the employee who engages in such conduct will bear full responsibility for such unlawful conduct.

Filing a Complaint:

Any employee who believes that he or she has been or continues to be the object of sexual harassment should report the alleged harassment to their supervisor or the County's Human Resources Administrator or may use the County's grievance procedure.

Any supervisor who receives a complaint of sexual harassment or who otherwise becomes aware of sexual harassment of any employee must immediately report such knowledge to the County's Human Resources Administrator even if the complainant is undecided about filing a complaint.

The County of Cayuga will not tolerate unlawful retaliation against an employee for filing a complaint of sexual harassment or otherwise participating in an investigation. Retaliation includes any discipline, change in working conditions, refusal to cooperate with, hazing, shunning, or other harassment of an employee because that employee has resisted or complained about sexual harassment or discrimination.

Procedures for Investigation of Complaints:

1. All complaints will be investigated in a timely and confidential manner. Except as required by law, the County will not release information regarding a complaint to anyone except those individuals involved in the investigation, and then, only on a need-to-know basis. Where it is necessary to release information regarding the subject matter of the investigation, the County is committed to trying its best to protect the identity of the individual filing the complaint, the alleged target of the harassment, and the alleged harasser to the extent allowed by statute.
2. Investigations of a complaint will normally involve interviews with the individual filing the complaint, the alleged target of the harassment, the alleged harasser, any named witnesses and any other employees who the Human Resources Administrator investigating the complaint has reason to believe may have knowledge of the harassment. The employee who made the complaint of harassment and the alleged target of the harassment will not be compelled to participate in any meeting with the alleged harasser. The Human Resources Administrator shall have the discretion to seek legal counsel if appropriate.
3. The Human Resources Administrator shall take contemporaneous notes regarding each of the interviews and a written summary of the interviews will be prepared. In addition to the preparation of contemporaneous notes or as an alternative record, the investigator shall have the discretion to have a stenographic or audio record made of the interviews. If any kind of electronic record is made, it shall be preserved for at least one year from the close of the matter.
4. As soon as is reasonably possible after completing investigation of a complaint of sexual harassment, the Human Resources Administrator shall prepare a written record for county records outlining: the information collected during

the investigation; the conclusions of the Administrator drawn with the county officers charged with the responsibility of carrying out remedial action and in a position to determine what disciplinary actions should be taken, if any. Normally, this would be the Department Head, the Chairman of the Legislature, the Chairman of the Oversight Committee and the Chairman of Ways & Means. Copies of the report shall not be made to preserve confidentiality unless required by an appeal officer.

5. (a) The Human Resources Administrator shall prepare two separate letters, one addressed to the complainant (and the target of the harassment if it is a different person) and one addressed to the alleged harasser both containing a determination simply stating whether the complaint is founded or unfounded without extraneous information nor, if possible, names other than that of the addressee.
(b) The individual making the complaint, the alleged target of the harassment, and the alleged harasser shall be informed orally in general terms of the information collected during the investigation, and any remedial actions to be taken. If discipline is to be carried out in addition to remedial steps, the complainant and the target of the harassment (if a different person) may be told that discipline will be involved but whether they are told the exact nature of the discipline is in the county's discretion. The said three persons receiving the oral summary do not have the right to read the report nor are they to receive copies of the written report to preserve confidentiality. These comments will be considered to determine if any additional investigation is necessary or if the recommended remedial action should be modified in any manner.
6. The Human Resources Administrator in confidential sexual harassment complaint files shall maintain all documents created in compliance with paragraphs 3-5 above. Such files shall be maintained in a manner designed to protect the confidentiality of the information contained therein. The county will keep all such records confidential subject to disclosure as required by law.
7. The alleged harasser's simple denial of the charges against him or her will not be sufficient to conclude the investigation of the complaint. Instead, such denial will be carefully weighed in light of the complainant's statement and any evidence supporting that statement collected from other witnesses. Although corroborative evidence is desirable, it is recognized that additional witnesses are not always available. If, in such circumstances, it appears a reasonable person would conclude that more likely than not that the harassment occurred, the Human Resources Administrator may come to that conclusion. If, however, no such determination can be made, remedial action may nevertheless be deemed to be appropriate if the facts justify it. The decision of the Human Resources Administrator may be appealed to the Chairman of the County Legislature and, if still not satisfied, to the Government Operations Oversight Committee of the County Legislature or the NYS

Division of Human Rights Office of Sexual Harassment Issues 1-800-427-2773.

8. If it is determined that the alleged harasser has engaged in conduct constituting sexual harassment, remedial action shall be taken as soon as possible and the harasser may be subject to discipline, all designed to stop the harassment and prevent its recurrence. Depending on the severity of the harassment, such remedial action and/or discipline of the harasser may include change in schedule, transfer, suspension, fine, demotion and/or discharge. Sexual harassment by the complainant's supervisor shall be treated in the most serious manner.
9. **CONFIDENTIALITY:** Confidentiality is very important to any sexual harassment investigation. A county employee who obtains information concerning the matter in his/her county capacity and who gives the information to someone without a need to know may be subjected to appropriate discipline. Unless the facts of the case justify otherwise, generally the only persons to have knowledge of the investigation are persons involved in the investigation or the creating or implementing of remedial or disciplinary actions or other consequences resulting from it. Since the employer needs to know the facts to properly prevent the reoccurrence of the incident and to carry out the actions determined to be necessary, there are certain officers that will normally be considered to have a need to know if the investigation results in a need for remedial action. Those officers are: The Chairman of the Legislature; The Chairman of Ways & Means; The Chairman of the Oversight Committee; The Department Head; The Human Resources Administrator and any clerical persons assisting them such as a note taker making a record of witness statements; and the Civil Service Commissioners if any consequential matter is referred to them for any type of action; Union Representatives if a union member is involved and if their involvement has been requested; any legal counsel assisting him/her in the matter; and Supervisors of the individuals involved in the incident(s).