

Resolution No. 664-20

A Resolution Adopting a Revised Anti-Harassment Policy

WHEREAS, the Illinois General Assembly has recently enacted Public Act 101-0221, an Act concerning government, which signed into law August 9, 2019 and requires municipalities to adopt an ordinance or resolution amending their sexual harassment policy to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit; and

WHEREAS, pursuant to PA 101-0221, a policy has been drafted that complies with said Public Act and all prior policies prohibiting harassment, including sexual harassment, shall be superseded by the Anti-Harassment Policy adopted by this resolution.

Now, Therefore, be it resolved by the Mayor and Board of Trustees of the Village of Island Lake, Lake and McHenry Counties, Illinois, that the Anti-Harassment Policy, attached hereto and made a part hereof, is hereby adopted.


AYE: Trustees Chris Carlsen, Chuck Cermak, Harold England, Richard McLaughlin and Dan Powell

NAY: none

ABSENT: Trustee Will Ziegler

ABSTAIN: none

APPROVED:



Charles Amrich, Mayor

ATTEST:



Georgine Cooper, Village Clerk

PASSED: 2/27/2020

APPROVED: 2/28/2020

PUBLISHED: 2/28/2020

(SEAL)



ANTI-HARASSMENT POLICY

A. Introduction

The Village desires to have a professional working environment for its employees so that they may carry out their duties in productive and positive surroundings. Although conduct may not rise to the level of unlawful harassment from a legal perspective, the Village wants to protect its employees from abuse and to prevent conduct from becoming so severe or pervasive as to alter the conditions of an employee's employment, create an abusive, intimidating or hostile working environment, or result in a tangible employment action. Accordingly, the Village has adopted a "zero tolerance" policy against harassment. Harassment is unwarranted and unwanted verbal or nonverbal conduct that threatens, intimidates, annoys or insults another person where such conduct has the purpose or effect of creating an offensive, intimidating, degrading and/or hostile working environment and/or interferes with and/or adversely affects a person's performance.

The Village prohibits any form of unlawful harassment against its employees and applicants for employment based on actual or perceived factors such as sex (including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions), race, color, creed, religion, ancestry, national origin, age, mental or physical disability, marital status, order of protections status, military status, unfavorable discharge from military service, citizenship status, sexual orientation including gender-related identity whether or not traditionally associated with the person's designated sex at birth, or any other basis prohibited by applicable federal, state, or local fair employment laws or regulations.

B. Sexual Harassment

With respect to sexual harassment, the Village prohibits any unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct may have the purpose or effect of unreasonably interfering with an individual's work performance; or
4. such conduct may create an intimidating, hostile, or offensive working environment.

Examples of the types of conduct that would violate the Village's policy including the following:

- **Verbal:** sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- **Non-verbal:** suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.

- **Visual:** posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- **Physical:** touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- **Textual/Electronic:** “sexting” (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (email, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a “reasonable person.”

Both opposite sex and same sex harassment are prohibited under this policy.

C. Other Forms of Harassment

With respect to other forms of harassment, the Village prohibits slurs or other verbal or physical conduct relating to matters such as actual or perceived race, color, creed, religion, ancestry, national origin, age, mental or physical disability, marital status, order of protection status, pregnancy, military status, unfavorable discharge from military service, citizenship status, sexual orientation including gender-related identity whether or not traditionally associated with the person’s designated sex at birth, or any other basis prohibited by applicable federal, state, or local fair employment laws or regulations which:

1. may have the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
2. may have the purpose or effect of unreasonably interfering with an individual’s work performance; or
3. otherwise may adversely affect an individual’s employment opportunities.

D. Coverage of the Policy

1. The Village’s “zero-tolerance” policy with respect to harassment applies to conduct in or connected to the workplace, whether it is physical or verbal, and whether it is committed by Village officials, department heads, fellow employees or non-employees (such as customers, vendors, suppliers, or business invitees). The conduct prohibited by this policy is not only unacceptable in the workplace itself but also at any other work-related setting such as holiday parties, gatherings or other work-related social events, on business trips, and at conferences, seminars, educational gatherings, and other meetings. Each Village official and department head is responsible for creating an atmosphere free of harassment, whether it is sexual or another form of harassment. In addition, all employees are responsible for respecting the rights of their fellow employees and for cooperating in any investigation of alleged harassment.

2. Responsibilities:

Each employee is responsible for assisting in prevention of harassment through the following acts:

- Refraining from participation in, or encouragement of, actions that could be perceived as harassment;
- Reporting acts of harassment; and
- Encouraging any employee, who confides that he/she is being harassed, to report these acts of harassment.

Each supervisor shall be responsible for preventing acts of harassment. These responsibilities include:

- Monitoring the workplace environment on a daily basis for signs that harassment may be occurring.
- Counseling all employees on the types of behavior prohibited and the Village's procedures for reporting and resolving complaints of harassment.
- Stopping any observed acts that may be considered harassment and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision.
- Taking immediate action to limit the work contact between employees where there has been a complaint of harassment, pending investigation.

Each supervisor has the responsibility to assist any employee, who comes to that individual with a complaint of harassment, in documenting and filing a complaint in accordance with this policy.

Failure to take action to stop known harassment will result in disciplinary action up to and including termination of employment.

E. Reporting and Investigating Alleged Harassment

While the Village encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, the Village also recognizes that power and status disparities between an alleged harasser and a target may make such a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, or even when such communication between the individuals has occurred, the following steps should be taken to report a harassment complaint:

1. Reporting of the Incident: All Village employees and officials are urged to report any suspected harassment by another employee or official to the Mayor, except where the Mayor is the individual accused of harassment. In that case, the complaint should be reported to a member of the Village Board of Trustees. If the victim prefers to report the suspected harassment to someone of the opposite sex from that of the Mayor, the complaint can be reported to a member of the Village Board of Trustees. The report may be made initially either orally or in writing, but reports made orally must be reduced to writing before an investigation can be initiated and a resolution achieved.
2. Investigation of the Complaint: When a complaint has been reduced to writing, the Mayor, or member of the Board of Trustees receiving the complaint, will initiate an investigation

of the suspected harassment. The investigation will include an interview with the individual(s) who made the initial report, the person(s) toward whom the suspected harassment was directed, and the individual(s) accused of the harassment. Any other person who may have information regarding the alleged harassment may also be interviewed.

3. Preparation of a Written Report: The person responsible for investigating the complaint shall prepare a written report. The report shall include a finding that harassment occurred, harassment did not occur, or there is inconclusive evidence as to whether harassment occurred. A copy of the report will be given to the individual(s) who made the initial report, the person(s) to whom the suspected harassment was directed, and the individual(s) accused of the harassment.

Where a hostile work environment has been found to exist, the Village will take all reasonable steps to eliminate the conduct creating such an environment.

4. Keeping of Records and the Confidentiality of Such Records: Employees or other persons who report incidents of harassment are encouraged to keep written notes in order to accurately record the offensive conduct. Every effort shall be made to keep all matters related to the investigation and various reports confidential. In the event of a lawsuit, however, the Village advises that those records maintained by the Village and any records maintained by the complainant may not be considered privileged from disclosure.

F. Harassment Allegations by Elected Officials Against Other Elected Officials

Alleged harassment by one elected official against another can be reported to the Village President. If the Village President is the person reporting the harassment or is implicated by the allegation, the report can be made to any other Trustee. If a complaint is made against an elected official of the Village by another elected official of the Village under this Section, the matter must be referred to the Village's legal counsel. The allegations of the complaint will be thoroughly investigated through an independent review, which may include referring the matter to a qualified, independent attorney or consultant to review and investigate the allegations. Further, reasonable remedial measures will be taken as determine by the other Trustees who are not the complainant or the official who is the subject of the complaint.

G. Time Frame for Reporting Harassment

The Village encourages prompt reporting of complaints so that rapid response and appropriate action may be taken. Thus, all complaints should be reported within six months of the alleged harassment.

H. No Retaliation

No Village official or employee shall take any retaliatory action against any Village employee due to a Village employee's:

1. Disclosure or threatened disclosure of any violation of this policy,
2. The provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
3. Assistance or participation in a proceeding to enforce the provisions of this policy.

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any Village employee that is taken in retaliation for a Village employee's involvement in protected activity pursuant to this policy.

No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

1. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any Village officer or employee that the Village employee reasonably believes is in violation of a law, rule, or regulation,
2. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any Village officer or employee, or
3. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.

Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.

An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

I. Disciplinary Action

If any Village employee engages in conduct that violates this policy, or other conduct that the Village believes is unprofessional, that employee will be subject to discipline up to and including termination of employment. In addition to any and all other discipline that may be applicable

pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to a fine of up to \$5,000 per offense.

J. Consequences for Knowingly Making a False Report of Sexual Harassment Pursuant to 5 ILCS 430/70-5

A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. **A false report of sexual harassment is not defined as a report made in good faith but which cannot be proven.** Rather, a false complaint of sexual harassment is defined as an intentionally made false or frivolous report or bad faith allegation. Given the seriousness of the consequences for the accused, any person who intentionally makes a false report alleging sexual harassment shall be subject to discipline up to and including termination of employment.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

K. External Procedures

The Village hopes that any incident of harassment can be resolved through the internal procedures outlined above. Employees of the Village, however, have the right to file formal harassment charges including charges of retaliation with the Illinois Department of Human Rights (the "IDHR") and/or with the Equal Employment Opportunity Commission (the "EEOC"). A charge with the IDHR must be filed within 300 days of the harassing incident. A charge with the EEOC must be filed within 300 days of the incident. It is unlawful for an employer to retaliate against an employee for filing a charge of harassment with the IDHR or the EEOC.

The IDHR may be conducted as follows:

Chicago: (312) 814-6200
Springfield: (217) 785-5100

Chicago TDD: (312) 263-1579
Springfield TDD: (217) 785-5125

The EEOC may be conducted as follows:

Chicago: (312) 353-2713
F: Chicago: (800) 669-4000

Chicago TDD: (312) 353-2421
Chicago TDD: (800) 669-6820