

COMMITTEE OF THE WHOLE AGENDA
WEDNESDAY, JUNE 27, 2018
6:00 PM
BOARD ROOM, MUNICIPAL BUILDING, 210 COTTONWOOD AVENUE

Call to Order

Roll Call

Pledge of Allegiance – President Pfannerstill

1. Continue review of proposed revisions to the Village's Harassment Policy and discuss same with the Village Attorney. No action will be taken regarding any matter during this session.

2. Consideration of a motion to recess to closed session pursuant to State Statutes §19.85 (1)(c), considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility regarding the Village Administrator and to adjourn thereafter without reconvening into open session pursuant to §19.95(2). [ROLL CALL VOTE]

David E. Cox, Village Administrator

Notice: Please note that upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Darlene Igl, Village Clerk, at 262/367-2714. The Municipal Building is handicap accessible.

VILLAGE OF HARTLAND

SEXUAL AND OTHER ~~UNLAWFUL~~ HARASSMENT, DISCRIMINATION AND RETALIATION POLICY

PURPOSE

A fundamental policy of the Hartland Village Board of Trustees and the Village (collectively, the “Village”) of Hartland is that the work place is for performing high quality work and to serve the interests of the Village and the public. Employees and officeholders must provide a workplace free from tensions involving matters that do not relate to Village business and where employees and other persons as described herein behave courteously and professionally at all times. In particular, an atmosphere of tension created by conduct not related to work—including animosity caused by ethnic, racial, sexual, or religious remarks, unwelcome sexual advances, requests for sexual favors, or similar harassing or discriminating conduct—does not belong in the workplace.

The Village ~~Board~~ is committed to providing a professional work environment free from ~~unlawful~~ harassment, discrimination, or retaliation. This means that the Village will not tolerate any form of ~~unlawful~~ harassment, discrimination, or retaliation, including conduct as defined in this policy directed at an employee or applicant for employment because of his or her sex (including sexual orientation, gender identity, transgender status and pregnancy), race, color, national origin, age, ancestry, disability/handicap, religion, creed, genetic information or history, marital status, participation in the military reserve and veteran status, arrest and conviction record, or any other legally protected characteristic.

The purpose of this policy is to provide procedures for reporting, investigating and resolving complaints of ~~unlawful~~ harassment, discrimination and retaliation. The Village condemns and will not tolerate, condone or allow ~~unlawful~~ harassment, discrimination or retaliation by any employee, elected or appointed officeholder, or non-employees who conduct business with the Village. The Village considers harassment, discrimination and retaliation of others based on one’s protected status to be forms of serious misconduct worthy of discipline up to and including termination or removal and other prompt and appropriate remedial response designed to end the prohibited behavior. The Village will take direct and immediate action to prevent such behavior and to remedy confirmed instances of ~~unlawful~~ harassment, discrimination and retaliation. Repeated violations, even if perceived as minor, will also result in significant levels of response. To fulfill this policy, the Village wants employees, applicants for employment and others to report this behavior and to cooperate in the Village’s efforts to eradicate this behavior from the workplace.

This policy is specifically applicable to all employees, applicants and elected and appointed officeholders of the Village of Hartland and it governs the Village’s expectations involving ~~unlawful~~ harassment, discrimination or retaliation based on a protected status. While an employee may be dissatisfied with the decisions of supervisors regarding evaluations, compensation, discipline or other management decisions, such conduct that is unrelated to one’s protected status is not governed by this Policy. Employees are expected to raise those concerns directly to the employee’s supervisor.

Individuals protected under this policy include all employees, officials and applicants. Any unwelcome conduct that originates from a non-employee (e.g., elected officeholders, contractors or visitors) will be investigated in accordance with this policy ~~under the authority of the Village Board issued through this Policy that has been approved by the Board.~~

UNDERSTANDING—~~UNLAWFUL~~ HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION AND RETALIATION

Discrimination

Discrimination means treatment of a person in an illegal, unjust or prejudicial manner based on protected status under the law where no reasonable distinction can be found between those favored and those not favored.

Retaliation

Retaliation means to discriminate, harass, take tangible employment action against an employee, or otherwise punish or take adverse action against an employee because the employee filed a charge of discrimination, because they complained to the Village about harassment or discrimination on the job, or because the employee participated in an employment harassment or discrimination proceeding (such as an investigation or lawsuit).

Prohibited Harassment, including Sexual Harassment.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of employment;
- Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or
- Such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive working environment.

Verbal sexual harassment includes, but is not limited to, sexual innuendos, degrading or suggestive comments, repeated pressure for dates, jokes of a sexual nature, unwelcome sexual flirtations, degrading words used to describe an individual, obscene or graphic descriptions of an individual's body, or threats that job, wages, assignments, promotions or working conditions could be affected if the individual does not agree to a suggested sexual relationship.

Non-verbal sexual harassment includes, but is not limited to, sexually suggestive or offensive sounds, whistling, catcalls, or obscene gestures, sexually suggestive or offensive objects or pictures, inappropriate usage of voicemail, e-mail, the internet or other such communications and actions as a means to express or obtain sexual material, comments and printed or written materials, including offensive cartoons. This includes any material which inappropriately raises the issues of sex or discrimination or when an employee is treated differently than other employees when they have refused an offer of sexual relations or participation in harassing behavior.

Physical sexual harassment includes, but is not limited to, unsolicited or unwelcome physical contact of a sexual nature, which may include touching, hugging, massages, kissing, pinching, patting or regularly brushing against the body of another person.

Other forms of ~~unlawful~~ harassment or discrimination include, but are not limited to, persistent and unwelcome conduct or actions or conduct that is objectively unreasonable or offensive and that could result in a hostile or intimidating working environment based on one or more protected statuses according to applicable law.

Harassment or other inappropriate behavior can range from extreme forms such as violence, threats, or physical touching to less obvious actions like ridiculing, teasing, or repeatedly bothering colleagues or subordinates or refusing to talk to them. For example, harassment or other inappropriate behavior may include the following types of conduct:

- Derogatory or insensitive jokes, pranks, or comments;
- Slurs or epithets;
- Unwelcome sexual advances or invitations;
- Non-verbal behavior such as staring, leering, or gestures;
- Ridiculing or demeaning comments;
- Innuendos or veiled threats;
- Intentionally excluding someone from normal workplace conversations and making someone feel unwelcome;
- Displaying or sharing offensive images such as posters, videos, photos, cartoons, screensavers, emails, or drawings that are derogatory or sexual;
- Offensive comments about appearance, or other personal or physical characteristics, such as sexually charged comments or comments on someone's physical disability;
- Unnecessary or unwanted bodily contact such as groping or massaging, blocking normal movement, or physically interfering with the work of another individual; or
- Threats or demands that a person submit to sexual requests as a condition of continued employment or to avoid some other loss and offers of employment-related benefits in return for sexual favors.

This list of examples is not exhaustive and there may be other behaviors that constitute unacceptable harassment under the policy.

Harassment can happen regardless of the individuals' gender, gender identity, or sexual orientation and can, for example, occur between same-sex individuals as well as between opposite-sex individuals and does not require that the harassing conduct be motivated by sexual desire. Likewise, these same principles hold true for harassment based on other protected statuses where the offending party possesses the same or similar protected status as the victim.

The excuses of the offending party, while important, are not necessarily forgiving or tolerable. For example, "I was joking" or "I didn't mean it that way" are not defenses to allegations of harassment or inappropriate behavior. Nor is being under the influence of alcohol or other substances an excuse for violating this policy.

This policy applies to conduct at work and at work-related social events, office parties, off-site work-related activities and other matters where the work environment is affected by such behavior. Employees and elected and appointed officeholders are expected to be particularly careful about what they say and do in these circumstances and when interacting with one another.

RESPONSIBILITIES

Responsibilities of All Employees and Officeholders

Each employee and officeholder is responsible for assisting in the prevention of ~~unlawful~~ harassment, discrimination and retaliation by the following acts:

- Refraining from conduct prohibited by this policy as defined above, including the participation in or encouragement of actions that could be perceived as harassment, discrimination or retaliation based on a protected status;
- Behaving courteously and professionally toward others;
- Reading this policy and fully understanding and complying with its requirements;
- Immediately and thoroughly reporting acts of harassment, discrimination or retaliation or other prohibited conduct through the reporting procedure identified in this policy; and
- Encouraging any person who confides that he or she is being harassed, retaliated or discriminated against to report these acts and reporting these acts if they are observed or not reported.

Employees and officeholders are expected to cooperate fully in any investigation, whether or not they are directly involved in the incident. They shall not take any action that would discourage another person from reporting prohibited conduct or cooperating in an investigation of alleged prohibited conduct.

Responsibilities of Supervisors

Each supervisor shall be responsible for preventing prohibited activities as defined above by complying with the above-referenced responsibilities and by:

- Monitoring the work environment for signs of harassment, discrimination, retaliation and other prohibited conduct;
- Informing employees of the types of prohibited behavior and the procedures for reporting and resolving complaints of harassment, discrimination and retaliation;
- Stopping any observed behavior that may be prohibited conduct and taking appropriate steps to intervene and report behavior, whether or not the involved employees are within his or her line of supervision; and
- Taking immediate action to prevent retaliation toward the complaining party or witnesses and to eliminate a hostile work environment where there has been a complaint of harassment, discrimination or retaliation pending the investigation.

Each supervisor has the responsibility to assist any employee who comes to that supervisor with a complaint of harassment, discrimination or retaliation by documenting and ~~filing a reporting the~~ complaint in accordance with this policy. Failure to carry out these responsibilities may be grounds for discipline.

PROCEDURES

- A. Any employee experiencing or observing harassment, discrimination or retaliation is encouraged, but not required, to inform the person that his or her actions are unwelcome and offensive and that the person should stop such behavior. This initial contact can be either verbal or in writing. The employee should document all incidents in order to provide the fullest basis for investigation if needed.
- B. Any employee who believes that he or she is being harassed, discriminated or retaliated against or who witnesses such conduct is expected to report the incident as soon as possible to any of the following persons so that preventative measures may be considered and taken to end any prohibited harassment, discrimination or retaliation and so that appropriate investigative and corrective actions may be initiated:
1. Village Administrator;
 2. Village Finance Director;
 3. Village Chief of Police;
 4. Village Board President or Village Administrator, if such conduct is engaged in by an elected or appointed officeholder of the Village; and
 5. Village Board President or Chief of Police, if such conduct is engaged in by the Village Administrator.

A supervisor who receives this information from a subordinate must report the information to the Village Administrator, ~~Village Finance Director, or the Chief of Police or if the allegations involve the Village Administrator, to the Village Board President. , .~~

- C. ~~The Village~~Upon receiving a report of a complaint under this policy, the Village Administrator, or the Village Board President if required as noted above, will determine the appropriate course of action to promptly address the complaint, ~~including any~~which may include but is not limited to, conciliation, immediate remediation of the behavior. ~~The Village may initiate its or investigation or have the victim and the accused engage in conciliatory efforts to resolve of~~ the matter ~~if acceptable to the victim.~~ The conciliation process is not appropriate for all situations and will not resolve all issues. The conciliation process may be initiated before or after the employee has filed an internal complaint. The conciliation process is voluntary and seeks to resolve problems by allowing the affected parties to present their issues and then assisting them in arriving at effective, reasonable solutions agreeable to all. When solutions have been identified, management will follow up to ensure that the implementation has been carried out and is effective.
- D. The Village Board in conjunction with the Administrator, may initiate an investigation and designate an investigator, including a third party investigator, for

any matter involving allegations against a Board member, the Board President, ~~the Administrator~~, or an appointed officeholder who is also not an employee. The Village Board, in conjunction with the Board President, may initiate an investigation of a complaint made under this policy against the Village Administrator, Chief of Police, or the Board. The Village Administrator, may initiate an investigation and designate an investigator in other circumstances.

- E. If an investigation is conducted, then the investigator will meet with the victim and other persons having information and document the facts surrounding the incident complained of, including the specific conduct complained of, the persons performing or participating in the conduct, any witnesses to the incident, the dates on which the incidents occurred and other factual information. The investigator will immediately notify the Administrator or Board President, where applicable, if the complaint contains allegations that may rise to the level of criminal activity, such as battery, rape or threats. The investigator will maintain appropriate records of the investigation. Upon completion of the investigation, the investigator will inform the complainant of the outcome of the investigation and will present a reporting of the investigation and its results to the body or person that initiated the investigation. The confidentiality of the investigation will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.
- F. ~~The Village~~The Village through the Village Board, Village Administrator and/or employee's supervisor will take prompt and effective remedial action designed to end the prohibited behavior, which may include appropriate responsive and disciplinary action, up to and including termination or removal. Responsive action may include, for example, training, referral to counseling, or reassignment and disciplinary action may include, but is not limited to warning, reassignment, suspension, or termination or removal. If the Village does not employ the subject involved in the harassing or inappropriate conduct, then that individual will be informed of the Village's policy and appropriate remedial action will be taken.

Further, the Village will correct any adverse employment action an employee experienced due to conduct prohibited by this policy. In all cases, the Village Administrator and/or the employee's supervisor will make follow-up inquiries to make sure the harassment, discrimination or retaliation has stopped. If an employee is not satisfied with the results, or if further harassment or other unacceptable conduct occurs, then the employee should promptly follow the reporting process identified above.

The complainant or employees accused of harassment may file an appeal with the Village Administrator or the Village Board President if they disagree with the investigation or disposition.

- G. In the case of a complaint against an elected officeholder, the Village Board may take any action available to it designed to end the prohibited behavior up to and including removal of the officeholder as provided for under Wisconsin law.

Notwithstanding any action by the Village Board, other remedies under Wisconsin law may be available to electors of the Village as well.

RETALIATION

Retaliation against any employee for filing a harassment, discrimination or retaliation complaint, or for assisting, testifying or participating in the investigation of such a complaint, is prohibited by the Village and may be prohibited by state and federal law.

Retaliation is a form of misconduct. Any evidence of retaliation shall be considered a separate violation of this policy and shall be handled by the same complaint procedures established for harassment and discrimination complaints. Employees who are found to have retaliated against a complainant or witness will subject themselves to severe discipline which shall be separate from and in addition to, any discipline determined to be appropriate as a result of the Village's findings on the initial complaint. Because of the Village's commitment to prohibiting retaliatory behavior, employees and officeholders should expect that consequences for retaliation will be severe and likely resulting in discipline up to and including discharge or pursuit of removal.

This policy does not protect employees from being disciplined for filing frivolous or fraudulent complaints, or for untruthfulness, misleading behavior or lack of candor, nor does it protect them from personal sanctions stemming from defamation suits.

TRAINING

The Village will provide periodic and refresher training concerning the nature of harassment, discrimination and retaliation in the workplace and prohibitions on such actions defined in this policy. Any employee who has any questions or concerns about this policy should talk with his or her supervisor or the Village Finance Director, Chief of Police or Village Administrator.

OUTSIDE AGENCIES

Employees also have the ability to promptly report any violations of law, including assault, rape, battery or other harm to appropriate criminal law enforcement authorities. Employees may also report their harassment, discrimination or retaliation claims to both State and Federal Agencies. Those contacts are as follows: The Equal Rights Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 8928, Madison, WI 53708, Telephone: (608)266-6860; and the U.S. Equal Employment Opportunity Commission, 310 West Wisconsin Avenue, Suite 800, Milwaukee, WI 53203, Telephone: (414)297-1111.

~~fThis~~ Policy ~~to be~~ incorporated into the Village of Hartland Employee Handbook and ~~shall~~ ~~replacereplaces~~ the policy contained therein as of the date of approval by the Village Board.]

Approved by the Village Board: