

Local Law No. 2 of 2022, entitled:

“ Local Law Establishing Sexual Harassment Policy”

BE IT ENACTED BY, the Town Board of the Town of Clinton as follows:

1. Section 1500.3.1 of the Town of Clinton Employee Handbook entitled “Sexual Harassment” is hereby deleted and removed in its entirety.
2. A new Chapter is hereby added to the Town Code which shall read as follows:

Chapter 85. Sexual Harassment Policy.

§ 85-1 Title.

This Chapter shall be known as the Town of Clinton “Sexual Harassment Policy” and shall be referred to in this Chapter as the “Policy”.

§ 85-2 Introduction.

- A. The Town of Clinton (hereinafter the “Town”) is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All Town employees, as described in § 85-3(A), are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of the Town’s commitment to a discrimination-free work environment.
- B. All Town employees have a legal right to a workplace free from sexual harassment and can enforce this right by filing a complaint internally with the Town pursuant to this Policy. Town employees can also file a complaint with a government agency or in court under federal, state or other local anti-discrimination law.

§ 85-3 Policy.

- A. Covered Persons: This Policy applies to all Town employees, applicants for employment with the Town, interns, whether paid or unpaid, contractors, subcontractors, vendors, consultants, volunteers, members of Town committees and boards and persons conducting business, regardless of immigration status, with the Town. In this Policy, the term “employees” refers to this collective group.
- B. Discipline: Sexual harassment will not be tolerated. Any employee who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary penalties (e.g., counseling, suspension, termination).
- C. Retaliation Prohibition: No employee shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. The Town will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of the Town who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary

action, up to and including termination. All employees who believe they have been subject to such retaliation should inform the Town Supervisor. All employees who believe they have been a target of such retaliation may also seek relief in other available forums.

- D. Sexual harassment is offensive, is a violation of this Policy, is unlawful, and may subject the Town to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.
- E. Investigation: The Town will conduct a prompt and thorough investigation that ensures due process for all parties whenever the Town Supervisor receives a complaint about sexual harassment. The Town will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment. *See* § 85-6. Any employee who believes that another employee is engaging in sexual harassment may file a complaint.
- F. Training: All employees shall complete sexual harassment prevention training provided by the Town on an annual basis pursuant to Section 201-g of the New York State Labor Law.
- G. All employees are encouraged to report any harassment or behaviors that violate this Policy. Any employee who believes that another employee is engaging in sexual harassment may file a complaint within a reasonable period of time after the event, not to exceed 180 days. The Town will provide all employees a complaint form for employees to report harassment and file complaints (hereinafter the "Complaint Form"). *See* Appendix A - Complaint Form.
- H. Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, to the Town Supervisor.
- I. This Policy will be provided to all employees and posted on the Town's bulletin board located in Town Hall. Newly hired employees shall be provided with this Policy upon commencing their employment.

§85-4 Sexual Harassment Defined.

- A. Sexual harassment is a form of discrimination and is unlawful under federal and state law as well as this Policy. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.
- B. Definition: "Sexual harassment" is any unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:
 - a. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;

- b. Such conduct is made either explicitly or implicitly a term or condition of employment; or
 - c. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.
- C. Conduct that could constitute sexual harassment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by an employee which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.
- D. Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment.
- E. Sexual conduct that the Town considers unacceptable, and which may constitute sexual harassment includes, but is not limited to, the following:
- a. Physical acts of a sexual nature, such as:
 - ii. Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
 - iii. Rape, sexual battery, molestation or attempts to commit these assaults.
 - b. Unwanted sexual advances or propositions, such as:
 - iv. Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
 - v. Subtle or obvious pressure for unwelcome sexual activities.
 - c. Sexual or discriminatory displays or publications anywhere in the workplace, including displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
 - d. Sexual harassment also includes hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - i. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - ii. Sabotaging an individual's work;
 - iii. Bullying, yelling, name-calling.

F. Sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute sexual harassment under this Policy, even if they occur away from the workplace premises, on personal devices or during non-work hours.

§85-5 Retaliation Defined.

A. Definition: Retaliation is any action that could discourage a worker from coming forward to make or support a sexual harassment claim. The adverse action need not be job-related or occur in the workplace to constitute retaliation.

B. Retaliation is unlawful under federal and state law as well as this Policy. The New York State Human Rights Law and this Policy protects any individual who has engaged in “protected activity” as described in §85-5 (C).

C. Protected activity occurs when a person has:

- a. Made a complaint of sexual harassment, either internally with the Town pursuant to this Policy or with any anti-discrimination agency;
- b. Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- c. Opposed sexual harassment by making an oral or informal complaint to the Town Supervisor, or by simply informing a supervisor or manager of harassment;
- d. Reported that another employee has been sexually harassed; or
- e. Encouraged a fellow employee to report harassment.

D. Even if the alleged harassment does not turn out to rise to the level of a violation of this Policy or state or federal law, the individual who reported the alleged harassment is protected from retaliation if the person had a good faith belief that the conduct constituted sexual harassment.

E. This provision is not intended to protect persons making intentionally false charges of harassment and shall not be construed in such a manner. A person who intentionally makes false charges or sexual harassment may be subject to disciplinary proceedings.

§ 85-6 Reporting, Investigating and Adjudicating Sexual Harassment.

A. Reporting. Reports of sexual harassment may be made orally or in writing to the Town Supervisor or to an employee’s immediate manager or supervisor. A copy of the Complaint Form that shall be used for the submission of written complaints, annexed hereto as Appendix A, is available in the office of the Town Supervisor and the office of the Town Clerk. All employees are encouraged to use this Complaint Form. Employees who are reporting sexual harassment on behalf of other employees must use the Complaint Form and note that it is on another employee’s behalf.

B. Supervisory Responsibilities.

1. All department supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the Town Supervisor utilizing the Complaint Form.
2. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

C. Investigation.

1. All complaints or information about sexual harassment will be investigated by the Town Supervisor, or a person designated by the Town Supervisor in the event that the Town Supervisor is unable to discharge that duty, whether that information was reported in oral or written form. The Town Supervisor may not designate the Town Clerk or a member of the Town Board to conduct an investigation pursuant to this section. Investigations will be conducted in a timely manner.
2. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed within 30 days or a reasonable time thereafter. The investigation shall be kept confidential to the extent possible.
3. Process: Investigations into allegations of sexual harassment shall be conducted as follows:
 - a. Upon receipt of complaint, the Town Supervisor or an individual designated by the Town Supervisor, will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the alleged harasser to refrain from communications with the individual who reported the complaint), as appropriate. If the complaint is oral, the Town Supervisor or the manager or supervisor receiving the complaint must encourage the individual to complete the Complaint Form in writing. If he or she refuses, the Town Supervisor or the manager or supervisor receiving the complaint will prepare a Complaint Form based on the oral reporting.
 - b. The Town Supervisor or the individual designated by the Town Supervisor shall obtain and preserve any evidence relevant to the allegations including documents, emails, phone record, text messages and interview all parties and relevant witnesses.
 - c. At the conclusion of the investigation the Town Supervisor or the individual designated by the Town Supervisor shall create a written investigative report detailing the following:
 - i. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - ii. A list of names of those interviewed, along with a detailed summary of their statements;
 - iii. A timeline of events;
 - iv. A summary of prior relevant incidents, reported or unreported; and

- v. The final resolution of the complaint, together with any corrective action(s).
- d. The investigative report shall be filed with the Town Clerk and be kept in a confidential location. The Town Clerk shall serve a copy of both the complaint and the investigative report upon the accused employee, the individual who reported the complaint and all persons the Town Clerk deems necessary parties within 15 days of filing the investigative report or a reasonable time thereafter. The individual who reported the complaint shall also be informed of their right to file a complaint or charge externally as outlined in §85-8.

D. Adjudication.

1. All complaints of sexual harassment shall be adjudicated by a Town Justice, or a hearing officer designated by a Town Justice in the event that no Town Justice is able to discharge that duty. The hearing officer shall not be the Town Supervisor, the Town Clerk or a member of the Town Board.
2. Upon receipt of the completed investigative report, the Town Justice or the individual designated by the Town Justice shall conduct an administrative hearing at which the investigative report shall be presented and considered. The Town Supervisor or the Town Supervisor's designee, who may include the Town Attorney or the Attorney to the Town, shall present the investigative report and otherwise prosecute the allegations of sexual harassment in the administrative hearing. Hearings shall be conducted before a court reporter empowered to take testimony under oath. The court reporter shall require all witnesses to provide testimony under oath and shall prepare a verbatim transcription/recording of the proceedings which shall serve as the official record of the hearing.
3. The accused employee shall be notified in writing at least 15 days before the hearing of the complaint and the underlying allegations. The accused employee may request one postponement of the hearing upon receipt of the notice in order to obtain legal counsel, however, the delay occasioned by such request shall not exceed 30 days from the date of receipt of the notice by the accused employee. The accused employee may waive his or her right to a hearing upon written notice to the Town Justice or hearing officer.
4. The accused employee shall be entitled to attend the hearing and testify in his or her own behalf and shall be entitled to confront and cross-examine the individual who filed the complaint and all other witnesses against him or her. In the event that the accused employee fails to answer the complaint and/or appear at the hearing, the Town Justice or hearing officer may enter a default judgment, and the hearing shall proceed on the evidence in support of the complaint. Such default judgment may be set aside only for good cause shown upon equitable terms and conditions. In the event that the individual who reported the complaint elects not to attend the administrative hearing and upon objection from the accused to that individual's absence, the complaint shall be dismissed and the accused deemed innocent of the allegations.
5. The accused employee shall be entitled to call witness in his or her behalf and to introduce evidence which bears upon the issue presented by the complaint and investigative report.

6. The Town Justice or hearing officer shall make findings concerning the innocence or guilt of the employee accused of the offense of sexual harassment within 20 days of the conclusion of the hearing or a reasonable time thereafter. The Town Justice shall then file the final determination with the Town Clerk within 10 days of rendering the final determination or a reasonable time thereafter.
7. A finding of guilt must be supported by a preponderance of substantial, credible evidence that:
 - a. The facts alleged by the individual who reported the complaint are true; and
 - b. Those facts constitute sexual harassment within the meaning of this Policy; and
 - c. The accused is the person who committed the act(s) of sexual harassment.
8. The Town Clerk shall serve the final determination along with a notice that an appeal may be requested pursuant to this section on the accused employee within 10 days of the final determination being filed with the Town Clerk or a reasonable time thereafter. Any employee aggrieved by the final determination of the Town Justice or hearing officer shall be entitled to an appeal before the Town Board, which shall review the record of the hearing for material mistakes of law or fact. The aggrieved employee must request said appeal in writing to the Town Board within 10 days of the date the aggrieved employee is served with the final determination and notice under this section. If an appeal is requested, the Town Board shall schedule an appeal hearing within 30 days of receipt of the request or a reasonable time thereafter and the Town Clerk shall give the aggrieved employee and other interested parties at least 10 days' notice of the appeal hearing.

E. **Withdrawal of Complaint.** At any time during the investigation and/or adjudication process, the individual who reported the complaint may withdraw the complaint by so notifying all parties involved in the process in writing, including the investigator and hearing officer. In the event the complaint is withdrawn the sexual harassment charges against the accused employee shall be dismissed.

§85-7 Penalties.

A. If an employee is found guilty of committing sexual harassment in violation of this Policy such finding shall be grounds for the imposition of penalties against the guilty employee. The Town Board, excluding the Town Supervisor if the Town Supervisor rather than his designee has conducted the investigation, prepared the investigative report or prosecuted the sexual harassment case, shall then issue one or more of the following penalties:

1. Written reprimand to be included in the guilty employees' personnel file;
2. Remedial measures such being ordered to complete training and/or awareness programs;
3. Demotion in the guilty employee's grade and title;
4. Suspension without pay for a minimum of one day to a maximum of two months;
5. Termination of employment.

B. If an appeal is not requested pursuant to § 85-6(D)(8), the Town Board shall impose one or more of the above referenced penalties within 30 days after the accused employee's 10 day period to request an appeal has expired or a reasonable time thereafter. If an appeal is requested pursuant to § 85-6(D)(8), the Town Board shall impose one or more of the above referenced penalties within 30 days of the conclusion of the appeal hearing or a reasonable time thereafter.

C. In imposing a penalty, the Town Board shall consider individual facts of the case, the severity and nature of the conduct, and the employment record of the employee found guilty. In the event that enough members of the Town Board are unable to discharge this duty such that a quorum cannot be reached, the Town Board may designate a third-party entity to discharge that duty (such as an independent arbitrator). The Town Board shall file the penalty with the Town Clerk within 10 days of imposing the penalty.

D. The Town Clerk must serve the issued penalty on the guilty employee within 10 days of the Town Board issuing the penalty. The penalty shall become effective when it is served upon the employee who has been adjudicated guilty.

E. The Town Clerk shall promptly notify the individual who reported the complaint about the result of the proceedings provided in § 85-6 including penalties imposed under this section, if any.

§85-8 Legal Protections and External Remedies.

A. Sexual harassment is not only prohibited by the Town pursuant to this Policy but is also prohibited by state, federal, and, where applicable, local law.

B. Aside from the Town's internal process provided in this Policy, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, an employee may seek the legal advice of an attorney.

1. New York State Division of Human Rights (DHR)

f. The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the DHR or in New York State Supreme Court.

b. Complaints with DHR may be filed any time within one year (three years beginning Aug. 12, 2020) of the harassment. If an individual did not file at DHR, they can sue directly in state court under the

HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

- c. Complaining internally to the Town does not extend an individual's time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.
 - d. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit www.dhr.ny.gov.
 - e. Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.
2. The United States Equal Employment Opportunity Commission (EEOC)
- a. The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.).
 - b. An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.
 - c. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.
 - d. Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the Dutchess County Sheriff's Office.

3. The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of this Local Law, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase of this Local Law, which shall remain in full force and effect.
4. This Local Law is adopted pursuant to the New York State Constitution and Section 10 of the New York Municipal Home Rule Law, to advance and protect the health, safety, and welfare of the Town.
5. To the extent that any provision of this Local Law is inconsistent with Town Law §§ 263, 274-a, 274-b or any other provision of Article 16 of the Town Law, the provisions of this Local Law are expressly intended to and do hereby supersede any such inconsistent provisions under the Town's municipal home rule powers, pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3); §10(1)(ii)(a)(14) and §22 to supersede any inconsistent authority

Appendix A – Town of Clinton Sexual Harassment Complaint Form

Town of Clinton

Sexual Harassment Policy

Complaint Form

New York State Labor Law requires all employers to adopt a Sexual Harassment Policy that includes a complaint form for individuals to report alleged incidents of sexual harassment. This complaint form is adopted by the Town of Clinton pursuant to the Town of Clinton Local Law ___ of 2022 which is codified in the Town Code as Chapter 85.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Town Supervisor at 1215 Center Road, Rhinebeck, NY, 12572, or by email at townsupervisor@townofclinton.com. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting orally or in another manner, the Town Supervisor should complete this form, provide you with a copy and follow its Sexual Harassment Policy by investigating the claims as outlined in the Policy.

In addition to filing this complaint form, please take notice that you also have the right to file a complaint or charge externally with other governmental entities. These entities include the New York State Division of Human Rights, the United States Equal Employment Opportunity Commission as well as county, city and local governments. *See* Town Code §85-8.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method: Email Phone In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

Appendix A – Town of Clinton Sexual Harassment Complaint Form

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

5. Have you previously complained or provided information (oral or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____

Date: _____

Instructions for Employers

If you receive a complaint about alleged sexual harassment, follow the Sexual Harassment Policy located in Chapter 85 of the Town Code.

An investigation involves:

Appendix A – Town of Clinton Sexual Harassment Complaint Form

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.