

**TOWN OF COBLESKILL  
POLICY AGAINST DISCRIMINATION AND HARASSMENT**

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## **SECTION 1: PURPOSE**

Town of Cobleskill believes in the dignity of the individual and recognizes the rights of all people to equal employment opportunities in the workplace. In this regard, the Town of Cobleskill, (hereinafter “Municipality”), is committed to a policy of protecting and safeguarding the rights and opportunities of all people to seek, obtain and hold employment without being subject to harassment or discrimination in the workplace. It is our Municipality’s policy to provide an employment environment free from harassment and discrimination based on race, color, gender, religion, religious creed, sex, familial or marital status, age, national origin or ancestry, physical or mental disability, genetic information/predisposition or carrier status, military or veteran status, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender, pregnancy (including childbirth and related medical conditions, and including medical conditions related to lactation), citizenship, domestic violence victim status or any other characteristic protected by applicable federal, state or local law.

**A. Scope of Policy** This Policy applies to all Municipality employees and all personnel in a contractual or other business relationship with the Municipality including, for example, applicants, temporary or leased employees, interns (whether paid or unpaid), independent contractors, vendors, consultants, volunteers or visitors. In the remainder of this Policy, the term “employees” refers to this collective group. This Policy applies with equal force on Municipality property as well as Municipality-sponsored events, programs, and activities that take place off Municipality premises.

**B. Policy Objectives** By adopting and publishing this Policy, it is the intention of the Municipality’s governing body to:

- (1) Notify employees about the types of conduct that constitute harassment and discrimination prohibited by this Policy;
- (2) Inform employees about the complaint procedures established by the Municipality that enable any employee who believes they are the victim of harassment or discrimination to submit a complaint which will be investigated by the Municipality;
- (3) Clearly advise all supervisory staff, managers, and employees that harassment and discrimination is strictly prohibited; and
- (4) Notify all employees that the Municipality has appointed Compliance Officers who are specifically designated to receive complaints and ensure compliance with this Policy.

NOTE: The names and office location of each Compliance Officer designated to receive and investigate complaints are listed below in Section 11 of this Policy. Any change in the designated Compliance Officers shall be distributed in writing to all current employees and shall be posted.

## **SECTION 2: DEFINITIONS**

### **“Prohibited Discrimination of Employees”**

Prohibited discrimination of employees can take the form of any adverse employment action against an employee, by either a Municipality employee or official or a third party engaged in activities sponsored by the Municipality which is based upon the employee’s protected characteristic. Prohibited discrimination of employees also includes harassment based on a protected characteristic even where there is no tangible impact upon the employee’s employment opportunities and/or employment benefits. The phrase “prohibited discrimination” as used in this Policy includes all forms of prohibited discrimination and harassment based on a protected characteristic, including “Sexual Harassment” as defined below.

### **“Harassment”**

Harassment is strictly prohibited and includes, but is not limited to, conduct that is unwelcome and has the purpose or effect of unreasonably interfering with a person’s work performance, or creating an intimidating, hostile or offensive working environment. Such harassment of employees is prohibited by this Policy if it is based on a protected characteristic or directed at an individual because of a protected characteristic. In this regard, individuals subject to this Policy should be mindful that conduct or behavior that is acceptable, amusing or inoffensive to some individuals may be viewed as unwelcome, abusive or offensive to others.

### **“Sexual Harassment”**

Sexual harassment is strictly prohibited. It is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. 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.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
- (2) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual (e.g., promotion, transfer, demotion, termination); or
- (3) Such gender-based conduct has the purpose or effect of unreasonably interfering with an individual’s work performance, or of creating an intimidating, hostile or offensive working environment, even if the reporting individual is not the intended target of the sexual harassment.

The foregoing includes offensive comments, jokes, innuendos or other statements of a sexual or gender-based nature as well as favoritism between a supervisor and subordinate based on an intimate/sexual relationship or desire for the same.

### **Who can be the target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

### **Where can sexual harassment occur?**

Unlawful 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 unlawful workplace harassment even if they occur away from the workplace premises, on personal devices or during non-work hours.

### **“Prohibited Behavior and Examples of Harassment, including Sexual Harassment”**

Specific forms of behavior the Municipality considers harassment or sexual harassment are set forth below. Every conceivable example cannot be delineated herein, and thus the descriptions below should not be interpreted in any way as being all-inclusive.

- **Verbal:** Abusive verbal language including jokes, comments, teasing or threats related to an employee’s protected characteristic, sexual activity and/or body parts whether or not said in that person’s presence including, but not limited to: sexual innuendos; slurs; suggestive, derogatory, or insulting comments or sounds; whistling; jokes; propositions; threats; comments on a person’s appearance that make the person feel uncomfortable because of his or her protected characteristic; sex stereotyping, continuing to ask someone for dates or to meet after work after the person has made it clear that he or she does not want to go; comments about an employee’s anatomy or protected characteristic that are unwelcome, unreasonably interfere with an employee’s work performance, or create an intimidating, hostile or offensive work environment; or unwelcome advances or demands based on someone’s protected characteristic.
- **Nonverbal:** Abusive written language showing or displaying pornographic or sexually explicit objects or pictures; graphic commentaries based on a protected characteristic; derogatory cartoons or caricatures; luring or obscene gestures; staring at a person’s body in a sexually suggestive manner; gestures or motions based on a protected characteristic; sending material through the Municipality e-mail system or other electronic communication devices (e.g. voice mail) or using the Municipality’s mail, computers or cell phones to view material that is demeaning or derogatory based on one’s protected characteristic.
- **Physical:** Unwelcome physical conduct, including but not limited to hitting, pushing, shoving, slapping, petting, pinching, grabbing, holding, hugging, kissing, tickling, massaging, displaying private body parts, coerced sexual intercourse, rape or assault or

attempts to commit these assaults, persistent brushing up against a person's body, unnecessary touching and flashing or other unwelcome physical conduct.

- **Other:** Hostile actions taken against an individual because of an individual's sex, sexual orientation, gender identity and the status of being transgender or because of any other protected characteristic, such as: interfering with, destroying or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job; sabotaging an individual's work; bullying; yelling; or name-calling.

Any employee who feels discriminated against or harassed should report that conduct so that any violation of this Policy can be corrected promptly. Any harassing conduct, even if a single incident, can be addressed under this Policy.

### **SECTION 3: POLICY**

The Municipality prohibits harassment and discrimination based on any characteristic protected by applicable law and will not tolerate any form of unlawful discrimination or harassment. The Municipality will take all steps necessary to prevent and stop the occurrence of unlawful discrimination and/or harassment, including sexual harassment, in the workplace.

All employees, including but not limited to, Municipality officials and supervisory personnel, are responsible for ensuring a work environment free from prohibited harassment and discrimination. All employees will be held responsible and accountable for avoiding or eliminating inappropriate conduct that may give rise to a claim of harassment or discrimination. Employees are encouraged to report violations to a supervisor, manager, or one of the Compliance Officers listed in *Section 11* of this Policy in accordance with the Complaint Procedure set forth in this Policy. Officials, managers and supervisors must take immediate and appropriate corrective action when suspected instances of prohibited harassment and/or discrimination come to their attention to assure compliance with this Policy as well as report the suspected misconduct to the Municipality's designated Compliance Officers. Furthermore, if any employee believes that any member of management has violated this policy or has not properly responded to and/or handled a report or concerns about discrimination or harassment, the employee should immediately contact one of the Municipality's designated Compliance Officers.

Each employee is assured pursuant to *Section 6* of this Policy, that retaliation against an individual who makes a complaint or report under this Policy is absolutely prohibited and constitutes, in and of itself, a violation of this Policy. Employees who engage in retaliation against any employee for making a good faith complaint of harassment or discrimination, or for opposing in good faith any practices forbidden by applicable anti-discrimination laws or otherwise participating in any manner in an internal workplace investigation or an external investigation, proceeding or hearing conducted by any federal or state agency charged with enforcing employment discrimination laws, shall be subject to discipline, up to and including termination of employment. Any employee who believes he/she has been retaliated against in violation of this policy should report violations to one of the Compliance Officers listed in *Section 11* of this Policy in accordance with the Complaint Procedure set forth in this Policy.

Any questions regarding the scope or application of this Policy should be directed to one of the Compliance Officers listed in *Section 11* of this Policy.

#### **SECTION 4: POLICY ENFORCEMENT**

##### **A. Complaint Procedure for Employees**

###### **1. Notification Procedure**

Prompt reporting of complaints or concerns is encouraged so that timely and constructive action can be taken before relationships become strained. Reporting of all perceived incidents of prohibited discrimination and/or harassment is encouraged and essential, regardless of the offender's identity or position. An employee or other individual who feels aggrieved because of harassment or discrimination shall contact his or her supervisor or a Compliance Officer listed in *Section 11* of this Policy, or another administrator. Likewise, anyone who witnesses or becomes aware of instances of harassment or discrimination should report such behavior to his or her supervisor or a Compliance Officer listed in *Section 11* of this Policy, or another administrator.

###### **2. Making a Complaint**

Complaints are accepted orally and in writing. All employees are encouraged to use the Municipality's "Complaint of Alleged Discrimination" form. A copy of this form is attached to this Policy. Additional complaint forms can be obtained from a Compliance Officer, with no questions asked, or from the Municipality's website. Because an accurate record of the allegedly objectionable behavior is necessary to resolve a complaint of prohibited discrimination or harassment, the Municipality encourages employees to place complaints in writing, even if originally made orally. If an employee has any questions or difficulty filling out the complaint form, she/he can obtain assistance from any one of the Compliance Officers or the supervisor to which he/she complained. All complaints should include: the name of the complaining party, the name of the alleged offender(s), date(s) of the incident(s), description of the incident(s), names of witnesses to the incident(s) and the signature of the complaining party.

Once the complaining party has completed and dated a complaint, with or without the assistance of one of the Municipality's Compliance Officers or a supervisor, the written complaint, or oral complaint as the case may be, should be promptly submitted to the Town Clerk's office in a sealed envelope clearly marked "Compliance Officer" on the front of the envelope.

Complainants are expected to cooperate with the Municipality's investigation procedures by providing all relevant information relating to the complaint, as are other supervisory and non-supervisory employees having relevant or related knowledge or information.

**3. Supervisory Responsibilities**

All supervisors and managers who receive a complaint or information about suspected harassment or discrimination, observe what may be harassing behavior, or have any reason to suspect that harassment is occurring, are required to report such suspected harassment or discrimination to one of the Municipality's Compliance Officers.

In addition to being subject to discipline if they engaged in harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected harassment or otherwise knowingly allowing harassment to continue.

Supervisors and managers will also be subjected to discipline for engaging in any retaliation.

**B. Time for Reporting a Complaint**

Prompt reporting of all complaints is strongly encouraged. All employees should be aware that appropriate resolution of complaints and effective remedial action oftentimes is possible only when complaints are promptly filed.

**C. Confidentiality and Privacy**

The Municipality shall keep complaints as confidential as is consistent with a thorough investigation, applicable collective bargaining agreements, and other laws and regulations regarding employees. To the extent complaints made under this Policy implicate criminal conduct, the Municipality may be required by law to contact and cooperate with the appropriate law enforcement authorities.

**D. Acknowledgment of Complaint**

Upon receipt of an oral or written complaint, the Compliance Officer should endeavor to contact promptly the complainant to confirm that the complaint has been received. If the complainant does not receive such confirmation promptly, she/he is encouraged to contact a Compliance Officer or his/her supervisor or the supervisor to whom the complaint was made to ensure its receipt. The purpose of this acknowledgment procedure is to ensure that all complaints are received by authorized individuals, carefully processed and promptly investigated.

**SECTION 5: INVESTIGATION PROCEDURES**

**A. Timing of Investigations**

The Municipality will promptly investigate all allegations of discrimination and harassment prohibited by this Policy. The Municipality will also attempt to



complete investigations under this Policy promptly. The length of the investigation will depend upon the complexity and particular circumstances of each complaint.

**B. Method of Investigation**

Investigations will provide all parties due process, and reach reasonable conclusions based on the evidence collected. Investigations will be conducted by Municipality Compliance Officers, Municipality's legal counsel, and/or other impartial persons designated by the Municipality. The primary purposes of all investigations under this Policy will be to determine:

- Did the conduct complained of occur;
- Did the conduct complained of violate this Policy; and
- What remedial measures or preventative steps, if any, shall be taken.

Investigations will necessarily vary from case to case and may typically include the following: fact-finding interviews, including of the accuser and the accused; document request, review and preservation; depositions; and observations or other reasonable methods. Municipality investigators should pursue reasonable steps to investigate each complaint in a thorough and comprehensive manner. Any notes, memoranda, or other records created by Municipality employee or agent conducting an investigation under this Policy shall be deemed confidential and privileged to the extent allowed by law.

Investigators will typically create a written documentation of the investigation (such as a letter, memo or email), which contains the following:

- A list of all documents reviewed, along with a detailed summary of relevant documents;
- A list of names of those interviewed, along with a detailed summary of their statements;
- A timeline of events;
- A summary of prior relevant incidents, reported or unreported; and
- The basis for the decision and final resolution of the complaint, together with any remedial actions.

**C. Notification to Complaining Party and the Accused Party**

The results of the investigation shall be communicated in writing to both the person filing the complaint and the accused party.

**D. Remedial Measures**

This Policy is intended to prevent all forms of unlawful discrimination and harassment and put an end to any prohibited discrimination that is found to have occurred. While disciplinary action may be appropriate in certain instances, punitive measures are not the exclusive means for responding to prohibited



discrimination or harassment. During the pendency of any investigation being conducted pursuant to this Policy, remedial measures may be taken if appropriate and necessary.

Any individual who is found to have engaged in prohibited discrimination or harassment or conduct which may be prohibited by this Policy may receive education, training, counseling, warnings, discipline, or other measures designed to prevent future violations of this Policy. Disciplinary action may include: warnings, suspension, or discharge from employment or such disciplinary action as may be permitted by applicable collective bargaining agreements and law. Any third party found to have engaged in discrimination or harassment of an employee may be barred from Municipality property.

## **SECTION 6: PROHIBITION AGAINST RETALIATION AND ABUSE OF THE POLICY**

Unlawful retaliation can be any action that could discourage an employee from coming forward to make a complaint or support a discrimination or harassment claim. Adverse action need not be job-related or occur in the workplace to constitute retaliation (e.g., threats of physical violence outside of work hours).

Retaliation against anyone for making a good faith complaint of harassment or discrimination, for opposing in good faith any practices forbidden by applicable anti-discrimination laws or for filing a good faith complaint with, or otherwise participating in any manner in an internal workplace investigation or an external investigation, proceeding or hearing conducted by any federal or state agency charged with enforcing employment discrimination laws is strictly prohibited by this Policy and by law.

Even if the alleged harassment or discrimination does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if he/she had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment or discrimination.

Complaints of retaliation should be brought directly to a Compliance Officer. Such complaints will be promptly investigated. If retaliation is found, the person retaliating will be subject to corrective action up to and including termination from employment, or in the case of a non-employee, an appropriate remedy up to and including termination of the business relationship.

## **SECTION 7: APPEALS**

Any complainant or accused party who wishes to appeal the conclusion which the Municipality reached in investigating a complaint filed under this Policy, may do so within ten (10) calendar days of receipt of the appealing party's notification of the investigation outcome. Untimely submissions shall not receive consideration. Such appeal must be made in writing to the Municipality's governing body. The appealing party shall be entitled to present evidence in

writing as to why the conclusion was flawed, improper, or otherwise not supported by the evidence. The Municipality's consideration and review of any such appeal shall be conducted confidentially in executive session. Following a review of that evidence, as well as the information obtained in the investigation process and conclusions derived therefrom, the Municipality's governing body, or its designee, shall render a decision. That decision shall be final. The appealing party shall be notified of the decision in writing.

Nothing set forth in the Appeal Process above shall be construed to, in any way, confer upon either the complainant(s) or the person(s) accused of violating this Policy any right to appeal the Municipality's determination as to appropriate disciplinary and/or corrective action to be taken on meritorious complaints. In this regard, the Municipality at all times retains sole discretion to determine the appropriate disciplinary and/or corrective action to be taken with regard to a meritorious complaint.

### **SECTION 8: RECORD KEEPING**

The Municipality shall maintain a written record of all complaints of discrimination and/or harassment for a period of at least three years. The Municipality shall also document the steps taken with regard to investigations, as well as conclusions reached and remedial action taken, if any. The Municipality shall also maintain these documents for, at a minimum, three years.

The Municipality's records regarding alleged discrimination and harassment shall be maintained separate and apart from personnel records in a secure and confidential location.

### **SECTION 9: LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

Discrimination and harassment based on protected characteristics, including sexual harassment, are not only prohibited by the Municipality but are also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the Municipality, employees may also choose to pursue legal remedies with the governmental entities referenced in the following laws. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

#### **State Human Rights Law (HRL)**

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 harassment based on other protected characteristics set forth in this Policy, 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 Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** 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 harassment, including sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the Municipality does not extend your time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual or other illegal harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual or other illegal harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees (in sex discrimination and sexual harassment cases only) and civil fines.

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](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://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.

### **Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (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.). An individual can file a complaint with the EEOC anytime within 300 days from the discrimination or harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, employers must have at least 15 employees to come within the jurisdiction of the EEOC.

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](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

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.

### **Local Protections**

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. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

### **Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact your local police department.

### **SECTION 10: QUESTIONS**

Any questions by employees of the Municipality about this Policy or potential harassment or discrimination should be brought to the attention of one of the Municipality’s Compliance Officers. The names, addresses, and telephone numbers of the Municipality’s Compliance Officers are listed in *Section 11* of this Policy.

### **SECTION 11: COMPLIANCE OFFICERS**

**SEE SCHEDULE A**

### **SECTION 12: EFFECTIVE DATE AND POLICY DISSEMINATION**

The effective date of this Policy shall be January 1, 2019. The Municipality Town Clerk shall ensure that this Policy is adequately disseminated and made available to all employees of the Municipality. In addition, copies of this Policy and Complaint Form shall be maintained in the office of each Compliance Officer as well as the Municipality’s Policy Book that is available at the Town Clerk’s Office.

Upon the effective date of this Policy, the provisions of this Policy shall supersede and replace the following prior Municipality policies and regulations regarding employee discrimination and harassment: