

LEGAL NOTICE

PLEASE TAKE NOTICE that the Town Board of the Town of Warwick will hold a public hearing to consider a Proposed Introductory Local Law No.11 of 2018 entitled "A Local Law amending Chapter 29 "Personnel Policies" of the Code of the Town of Warwick in relation to replacing Article I in its entirety. Said public hearing to be held on October 11, 2018 at 7:00 pm at the Town Hall, 132 Kings Highway, Warwick, NY or as soon thereafter as the matter may be heard.

All interested persons will be given the opportunity to be heard.

DATED: October 3, 2018

BY ORDER OF THE TOWN
BOARD OF THE TOWN OF WARWICK
Eileen M. Astorino
Town Clerk

TOWN OF WARWICK
INTRODUCTORY LOCAL LAW
AMENDING THE CODE OF THE TOWN OF WARWICK

A Local Law amending Chapter 29 of the Code of the Town of Warwick in relation to replacing Article I in its entirety, as more fully set forth below:

Be it enacted by the Town Board of the Town of Warwick, Orange County, New York, as follows:

Section 1 –TOWN CODE AMENDED:

The Town of Warwick Town Code is hereby amended by replacing Chapter 29, Article I in its entirety with what follows:

Article I
Sexual Harassment

Section 29-1. Introduction

Town of Warwick is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. *Town of Warwick* has a zero-tolerance policy for any form of sexual harassment, and all employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of *Town of Warwick's* commitment to a discrimination-free work environment.

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment, and employees can enforce this right by filing a complaint internally with Town of Warwick, or with a government agency or in court under federal, state or local antidiscrimination laws.

Section 29-2. Policy

- A. The *Town of Warwick's* policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with *Town of Warwick*.
- B. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.
- C. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment 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 of Warwick* has a zero-tolerance policy for such retaliation against anyone who, in good faith complains or provides information about suspected sexual harassment. Any employee of the *Town of Warwick* who retaliates against

anyone involved in a sexual harassment investigation will be subject to disciplinary action, up to and including termination. Any employee, paid or unpaid intern, or non-employee¹ working in the workplace who believes they have been subject to such retaliation should inform a supervisor, manager, or *the Town Supervisor*. Any employee, paid or unpaid intern or non-employee who believes they have been a victim of such retaliation may also seek compensation in other available forums, as explained below in the section on Legal Protections.

- D. Sexual harassment is offensive, is a violation of our policies, is unlawful, and subjects the *Town of Warwick* to liability for harm to victims of sexual harassment. Harassers may also be

A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be penalized for such misconduct.

- E. The *Town of Warwick* will conduct a prompt, thorough and confidential investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. 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.
- F. All employees are encouraged to report any harassment or behaviors that violate this policy. *Town of Warwick* will provide all employees a complaint form for employees to report harassment and file complaints.
- G. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe to *the Town Supervisor*.
- H. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be posted prominently in all work locations and be provided to employees upon hiring.

Section 29-3. Sexual harassment Defined:

Sexual harassment 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, 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:

- 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 complaining individual is not the intended target of the sexual harassment;

- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment may consist of 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. A sexually harassing hostile work environment may also consist of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

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. This is also called "quid pro quo" harassment.

The Town of Warwick encourages any employee who feels harassed to file a complaint so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

A. Examples of Sexual Harassment

Sexual conduct that the Town of Warwick considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

- Physical assaults of a sexual nature, such as:
 - Touching, pinching, patting, grabbing, brushing against another employee's body or poking another employees' body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - 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.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, 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, name-calling.

B. Who can be a 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. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

C. 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 or not during work hours.

Section 29-4. Retaliation is Unlawful

Unlawful retaliation can be any action that would keep a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- A. Filed a complaint of sexual harassment, either internally 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 a verbal or informal complaint to management or by simply informing a supervisor or manager of harassment;
- D. Complained that another employee has been sexually harassed; or
- E. Encouraged a fellow employee to report harassment.

Section 29-5. Reporting Sexual Harassment

Preventing sexual harassment is everyone's responsibility. *Town of Warwick* cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Town Supervisor. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or *Town Supervisor*.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is available in every department office, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

A. Supervisory Responsibilities

All 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*.

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.

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

B. Complaint And Investigation of Sexual Harassment

All complaints or information about suspected sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible. The Town of Warwick may hire an outside investigator to investigate a complaint.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, and should be completed within 30 days. If additional time is needed to complete the investigation, the investigator will provide all parties with notice of the need for additional time. The investigation will be confidential to the extent possible. All persons involved, including complainants, witnesses and alleged perpetrators will be accorded due process to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Employees who participate in any investigation will not be retaliated against.

Investigations will be done in accordance with the following steps:

1. Upon receipt of complaint, *the Town Supervisor* will conduct an immediate review of the allegations, and take any interim actions, as appropriate. If complaint is oral, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the oral reporting.
2. If documents, emails or phone records are relevant to the allegations, take

steps to obtain and preserve them.

3. Request and review all relevant documents, including all electronic communications.
4. Interview all parties involved, including any relevant witnesses;
5. When reviewing cases involving non-employees, the investigator shall consider the extent of the Town's control and any other legal responsibility the Town may have with respect to the conduct of the accused.
6. Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - a. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - b. A list of names of those interviewed, along with a detailed summary of their statements;
 - c. A timeline of events;
 - d. A summary of prior relevant incidents, reported or unreported; and
 - e. The final resolution of the complaint, together with any corrective actionsaction(s).
7. Keep the written documentation and associated documents in the employer's records.
8. Promptly notify the individual who complained and the individual(s) who responded of the final determination and implement any corrective actions identified in the written document.
9. Inform the individual who complained of their right to file a complaint or charge externally as outlined below.

Section 29-6. Legal protections and External Remedies

Sexual harassment is not only prohibited by *Town of Warwick* but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at *Town of Warwick*, employees may also choose to pursue legal remedies with the following governmental entities at any time.

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

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to 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 DHR or in New York State Supreme Court.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, www.dhr.ny.gov

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.

B. United States Equal Employment Opportunity Commission (EEOC)

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.).

If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination" with the EEOC. The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820(TTY)), visiting their website at www.eeoc.gov or via email at info@eeoc.gov

If an individual filed an administrative complaint with OHR, OHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

C. 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.

D. Contact the Local Police Department

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

Section 29-7. Policy Dissemination.

All departments and boards of the Town shall widely distribute this policy statement by providing a copy to each employee and by including it in all employee orientation procedures.

Section 2. – This Local Law will take effect upon the filing of same with the New York State Secretary of State.