

Discriminatory Harassment

314.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation (Labor Law § 201-g). Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

314.2 POLICY

The Mechanicville Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation. The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits, and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights and privileges it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

314.3 DEFINITIONS

Definitions related to this policy include:

314.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and other classification or status protected by law (Executive Law § 296).

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes; stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

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314.3.2 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated (Executive Law § 296; Labor Law § 201-g).

314.3.3 DISCRIMINATORY HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment (Executive Law § 296; Labor Law § 201-g). It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly as a term or condition of employment, position, or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment also includes any other act or conduct deemed sexual harassment under the state sexual harassment policy (Labor Law § 201-g).

314.3.4 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission and the New York State Department of Labor, Division of Equal Opportunity Development guidelines.
- (b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

314.3.5 UNLAWFUL DISCRIMINATORY PRACTICES AGAINST NON-EMPLOYEES

Unlawful discriminatory practices against non-employees in the workplace or while on-duty (including contractors and persons conducting business with the department) are prohibited (Executive Law § 296-d).

314.4 RESPONSIBILITIES

This policy applies to all department members, who shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

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Members are encouraged to promptly report any discriminatory, retaliatory, or harassing conduct, or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief of Police, the Commissioner of Accounts, or the Mayor.

Any member who believes, in good faith, that he/she has been discriminated against, harassed, or subjected to retaliation, or who has observed harassment, discrimination, or retaliation, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with a resolution as stated below.

314.4.1 COMPLAINTS OF SEXUAL HARASSMENT

Members making a complaint of sexual harassment should be encouraged to use the state's standard complaint form. If a member making a complaint chooses not to use the form, supervisors or managers should document the complaint on the state's standard complaint form with the information provided by the complainant.

314.4.2 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Commissioner of Accounts or the Mayor for further information, direction or clarification.

314.4.3 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include but are not limited to (Labor Law § 201-g):

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment, or retaliation.
- (c) Ensuring that their subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief of Police or Commissioner of Accounts in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment, or retaliation no later than the next business day.

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314.4.4 SUPERVISOR'S ROLE

Supervisors and managers shall be aware of the following:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members, or issuing discipline, in a manner that is consistent with established procedures.

314.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

314.5.1 SUPERVISORY RESOLUTION

Members who believe they are experiencing discrimination, harassment or retaliation should be encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

314.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the supervisory resolution process, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include but is not limited to details of the specific incident, frequency and dates of occurrences, and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, or harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the Chief of Police, Commissioner of Accounts, or the Mayor.

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314.5.3 INVESTIGATING COMPLAINTS OF SEXUAL HARASSMENT

All complaints of or information indicating sexual harassment, including those by or against non-employees, should be thoroughly investigated pursuant to the requirements of the State Sexual Harassment Policy for All Employers in New York State (Labor Law § 201-g).

314.5.4 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated, or retaliated against are entitled to bring complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

Complaints at the state level may be filed with the New York State Division of Human Rights (DHR) or the New York State Supreme Court pursuant to the requirements of Executive Law, art. 15 § 290 et. seq. Complaints at the federal level may be filed with the Equal Employment Opportunity Commission (EEOC) pursuant to the requirements of Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et. seq. More information regarding filing complaints under state and federal law can be found at the websites for DHR and the EEOC.

314.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on the appropriate forms and in a manner designated by the Chief of Police. The outcome of all reports shall be:

- (a) Approved by the Chief of Police, the Mayor or the Commissioner of Accounts, depending on the ranks of the involved parties.
- (b) Maintained in accordance with the established records retention schedule.

314.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

314.7 POSTING OF POLICY

This policy and the standard complaint form should be available in all work locations (Labor Law § 201-g).

314.8 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation (Labor Law § 201-g). The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of, and understands its contents, and agrees to abide by its provisions during his/her term with the Department.

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All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

314.8.1 SEXUAL HARASSMENT PREVENTION TRAINING

All members should also participate annually in sexual harassment prevention training. The Chief of Police should develop this training consistent with the sexual harassment prevention training program established by the Department of Labor and the Division of Human Rights (Labor Law § 201-g).

Each member should receive an additional written copy of this policy at each annual sexual harassment prevention training as well as information presented at the training in writing. The policy and information should be provided in English and in any primary language identified by each member (Labor Law § 201-g).