

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. __ OF 2018**

**A LOCAL LAW AMENDING CHAPTER 23 OF THE TOWN CODE
ENTITLED “GOVERNMENTAL DEPARTMENTS”**

BE IT ENACTED by the Town Board of the Town of North Hempstead as follows:

Section 1. Legislative Intent

The Town Board finds that the Town is committed to maintaining a workplace free from workplace discrimination. Accordingly, the Town Board finds it in the best interests of the Town’s residents and employees to amend its anti-discrimination provisions contained in Chapter 23 of the Town Code to comply with updated guidelines from the State of New York.

Section 2.

Article XVII of Chapter 23 of the Town Code shall be amended to read as follows:

§ 23-17 Title.

This article shall be known as the "Anti-Discrimination Law of the Town of North Hempstead."

§ 23-17.1 Legislative findings; purpose.

- A. The Town Board of the Town of North Hempstead recognizes that discrimination, harassment or retaliation in the workplace based on actual or perceived differences, including those based on age, race, creed, religion, color, sex, national origin, disability, marital status, ancestry, citizenship, pregnancy, sexual orientation, gender or veteran status (each classification constituting a “protected class”), is ~~[obnoxious and harmful to its victims, creates an offensive working condition and is a violation of law]~~ **offensive, unlawful, and a violation of Town policies.**

- B. The Town Board of the Town of North Hempstead hereby finds and declares that **harassment**, prejudice, intolerance, bigotry, ~~[and]~~ discrimination, and disorder occasioned thereby, threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state.

- C. The purpose of this article is to protect every employee's right to be free from discrimination, harassment or retaliation in the workplace. Every Town employee is entitled to a working environment free from discrimination, harassment or retaliation, and all Town personnel and persons with whom the Town conducts business are hereby advised that discrimination, harassment or retaliation will not be tolerated within the workplace.

§ 23-17.2 Prohibited practices; persons covered.

- A. It shall be an unlawful discriminatory practice to refuse to hire or employ or to bar or to discharge from employment, or refuse to do business with, any person(s) or to **harass or discriminate** against any person(s) in compensation or in terms, conditions or privileges of employment or the conduct of business because of the actual or perceived age, race, creed, religion, color, sex, national origin, disability, marital status, ancestry, citizenship, pregnancy, sexual orientation, gender or veteran status of any person.
- B. This article applies to employees of the Town of North Hempstead and the Town of North Hempstead Solid Waste Management Authority, **applicants for employment, interns (paid and unpaid)**, and all persons and entities with which the Town conducts business, e.g., outside vendors, **contractors**, consultants, **and** members of the public [; contractors].

§ 23-17.3 Harassment.

- A. The practices prohibited in § 23-17.2 above include harassment on the basis of an individual's actual or perceived membership in one of the identified protected classes.
- B. Sexual harassment.
 - (1) Sexual harassment is a **form of sex discrimination and is unlawful under federal, state and 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.**[category of conduct prohibited by the Town Code].
 - (2) Sexual harassment [is defined] **includes** [as] **unwelcome conduct which is either of a sexual nature or which is directed to an individual because of his/her sex when:** [sexual advances, requests for sexual favors, or visual, verbal or physical conduct of a sexual nature when]:
 - (a) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - (b) Submission to, or rejection of, such conduct is used as the basis for employment decisions affecting such individuals; or
 - (c) Such conduct has the purpose or effect of interfering unreasonably with the individual's work performance or creating an intimidating, hostile or offensive work environment [that is, or would be, offensive to a person of reasonable sensitivity and sensibilities] **even if the reporting individual is not the intended target of the sexual harassment.**
 - ~~[(2)](3)[This definition includes many forms of offensive behavior. It makes no difference if the harassment is "just joking" or "teasing" or "playful."]~~ **Forms of**

sexual harassment that can create a hostile work environment include, but are 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.

- (4)** The following is a partial list of examples of sexually harassing conduct:
- (a) Unwanted sexual advances **or propositions including requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, promotion or other job benefits or detriments and subtle or obvious pressure for unwanted sexual activities;**
 - (b) ~~[Offering employment benefits in exchange for sexual favors]~~**sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which creates a hostile work environment;**
 - (c) ~~[Making or threatening reprisals after a negative response to sexual advances]~~**sex stereotyping which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's idea or perceptions about how individuals of a particular sex should act or look;**
 - (d) ~~[Visual conduct such as leering; making sexual gestures; or displaying sexually suggestive or degrading objects, pictures, cartoons, posters, or computer or television broadcasts]~~**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 displays on workplace computers, cell phones or other electronic devices and sharing these displays while in the workplace;**
 - (e) ~~[Verbal conduct such as making or using derogatory comments; sexual propositions, sexually explicit jokes or jokes concerning gender-specific traits; sexually explicit comments about an individual's body or clothing; comments about an individual's sexual desirability; sexually degrading words to describe an individual; suggestive or obscene letters, notes or invitations; or playing radio or television broadcasts in the workplace that contain sexually suggestive or degrading conversation]~~**hostile actions taken against an individual because of his/her sex, sexual orientation, gender identity or transgender status, including: interfering with, destroying or damaging a person's workstation, tools, equipment, or otherwise interfering with the person's ability to perform the job; sabotaging a person's work; and bullying, yelling or name-calling; or**

- (f) Physical conduct such as touching, petting, pinching, **patting, kissing, hugging, grabbing, brushing against another person's body,** impeding or blocking movements, **poking another person's body, rape, sexual battery, molestation or any such attempts to commit such** ~~[or]~~ assaults.

~~[(3)]~~**(5)**~~[It shall be unlawful to sexually harass any person, regardless of sex or gender.]~~
Sexual harassment on the job is unlawful, whether it involves co-worker harassment, harassment by a supervisor or member of management, or harassment by persons doing business with or for the Town.

C. Other forms of harassment. ~~[Prohibited]~~ ~~[h]~~**H**arassment on the basis of ~~[other]~~ **a** protected class **other than sex**^[status] **is unlawful under federal, state and local law. Prohibited conduct** includes behavior similar to **that outlined under § 23-17.3(B) of this article for** sexual harassment. ~~[It makes no difference if the harassment is "just joking" or "teasing" or "playful."]~~**The** ~~[F]~~**f**ollowing is a partial list of examples of harassing conduct:

- (1) ~~[Visual conduct based on membership in a protected class, such as derogatory posters, photographs, cartoons, drawings, gestures, or computer or television broadcasts]~~ **Discriminatory displays or publications based on membership in a protected class, anywhere in the workplace including displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are racially, ethnically or religiously demeaning. This includes displays on workplace computers, cell phones or other electronic devices and sharing these displays while in the workplace;**
- (2) ~~[Verbal conduct based on]~~ **Gestures, noises, remarks, jokes or comments based on a person's** membership in a protected class, such as racial, ethnic or religious jokes, or derogatory comments, slurs, innuendoes, epithets or threats (including those uttered over radio or television broadcasts); or
- (3) Physical conduct such as touching, **impeding,** blocking movements or **battery, assault or attempts to commit such** assaults because of membership in a protected class.
- (4) **Hostile actions taken against an individual because of his/her protected class, including: interfering with, destroying or damaging a person's workstation, tools, equipment, or otherwise interfering with the person's ability to perform the job; sabotaging a person's work; and bullying, yelling or name-calling.**

§ 23-17.4 Disability defined.

A. The term "disability" means any physical, medical, mental or psychological impairment, or a history or record of such impairment.

- B. The term "physical, medical, mental or psychological impairment" means:
- (1) An impairment of any system of the body, including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or
 - (2) A mental or psychological impairment.
- C. In the case of alcoholism, drug addiction or other substance abuse, the term "disability" shall only apply to a person who is recovering or has recovered and currently is free of such abuse, and shall not include an individual who is currently engaging in the illegal use of drugs; **or currently working under the influence of alcohol**, when the covered entity acts on the basis of such use.

§ 23-17.5 Gender defined.

The term "gender" shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned at birth.

§ 23-17.6 Aiding and abetting prohibited.

It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

§ 23-17.7 Retaliation prohibited.

- A.** ~~[It shall be an unlawful discriminatory practice for any person engaged in any activity to which this article applies to retaliate or discriminate in any manner against any person because such person has opposed any practice forbidden under this article, filed a complaint, testified or assisted in any proceeding under this article, or assisted in an investigation commenced pursuant to § 23-17.8 of this article. The retaliation or discrimination complained of under this section need not result in an ultimate action with respect to employment or the conduct of business; however, the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.]~~ **Retaliation of any kind against an individual who makes a good-faith report of unlawful harassment or discrimination or who participates truthfully in an investigation into a harassment or discrimination complaint is prohibited.**

B. Retaliation is unlawful under federal, state and local law against an individual who has engaged in protected activity.

C. Protected activity occurs when a person has:

- (1) filed a complaint of harassment or discrimination, either internally or with any-anti-discrimination agency;**
- (2) testified or assisted in a proceeding involving harassment or discrimination under New York State's Human Rights Law or another anti-discrimination law;**
- (3) opposed harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;**
- (4) complained that another employee has been harassed or been discriminated against; or**
- (5) encouraged a fellow employee to report harassment or discrimination.**

§ 23-17.8 Grievance procedure.

A. Complaints.

- (1) Complaints of unlawful discrimination, harassment or retaliation may be directed to the appropriate department head, or to the Commissioner of Human Resources or [~~in writing~~] to the Town Attorney or his/her designee. Complainants are encouraged, but not required, to consult initially with their [~~respective~~] department head(s) to attempt informal resolution. [~~but failure to do so will in no way limit the right to utilize the Town grievance procedure initially or thereafter if resolution cannot be accomplished through the department head.~~] Complaints made initially to the department head which are not informally resolved to the satisfaction of the complainant shall be referred to the Commissioner of Human Resources or the Town Attorney. Complaints shall be made within one year after occurrence of the alleged prohibited conduct.**
- (2) Anyone who witnesses or becomes aware of potential instances of harassment, discrimination and/or retaliation may report such behavior to the department head, or the Commissioner of Human Resources or the Town Attorney or his/her designee. Reports of harassment or discrimination may be made orally or in writing.**
- (3) Any supervisor or manager who receives a complaint or information about suspected discriminatory harassment, observes what may be discriminatory and/or harassing behavior or for any reason becomes aware of or suspects**

that discriminatory harassment is occurring or has occurred, shall report that suspected harassment to the department head, or the Commissioner of Human Resources or the Town Attorney or his/her designee. Failure to report suspected discriminatory harassment or otherwise knowingly allowing the continuation of discriminatory harassment may result in disciplinary action, subject to any statutory or contractual limitations.

- (4) All complaints of unlawful discrimination, harassment or retaliation and information and proceedings relating thereto shall be kept in strict confidence except as otherwise specified herein.
- (5) Nothing herein shall limit a complainant's right to pursue any other legal remedy available to him or her.

B. Investigation.

- (1) The Town Attorney shall, in a timely manner, conduct an investigation of the complaint, interviewing appropriate persons, examining relevant records and consulting with and utilizing any appropriate Town staff.
- (2) If the Town Attorney deems it appropriate, the parties to the complaint may be brought together to attempt an informal resolution of the complaint in a manner satisfactory to both parties.
- (3) Both the complainant and the person against whom the complaint is made shall be permitted to have counsel or other representatives present at any interview or other proceedings.
- (4) **Investigations shall be conducted by the Town Attorney or his/her designee in accordance with the following procedures:**
 - (a) **upon receipt of a complaint, an immediate review of the allegations will be conducted and any interim action will be taken, as appropriate.**
 - (b) **Obtain and review relevant documents, emails or phone records.**
 - (c) **Conduct interviews of the parties, including relevant witnesses.**
 - (d) **Prepare a written summary of the investigation that contains the following:**
 - (i) **A list of reviewed documents and their contents;**
 - (ii) **A list of interviewed parties and witnesses and detailed summary of their statements;**

- (iii) A timeline of events;**
- (iv) A summary of prior relevant incidents; and**
- (v) A recommendation in accordance with the procedure outlined under 23-17.8(C).**
- (e) Keep the written documentation and associated documents in the employer's records.**
- (f) Inform the complainant of their right to file a complaint or charge externally.**

C. Town Attorney's recommendation.

- (1) Upon conclusion of the investigation and within 90 days after the complaint is brought, the Town Attorney shall make a written recommendation to the Supervisor, which shall be one of the following:
 - (a) A recommendation of a finding that no prohibited conduct has occurred;
 - (b) A recommendation that material facts in dispute be resolved by conducting a formal hearing; or
 - (c) A recommendation of a finding that ~~[no facts are in dispute and that]~~ prohibited conduct has occurred.
- (2) Copies of the ~~[counsel's written]~~ **Town Attorney's** recommendation shall be mailed to the complainant and the party against whom the complaint was made.

D. Action by Supervisor.

- (1) The Supervisor may, but need not, adopt the Town Attorney's recommendation. ~~[The Supervisor may adopt the Town Attorney's recommendation of a finding that prohibited conduct has occurred and proceed under Subsection G of this section. The Supervisor may adopt the Town Attorney's recommendation of finding of no cause and issue a written determination dismissing the complaint.]~~
- (2) The Supervisor ~~[shall]~~ **may** also ~~[be free to]~~ pursue mediation or alternative dispute resolution, including requiring informal appearances by the parties or witnesses.

E. Hearing. Upon adoption of the Town Attorney's recommendation to conduct a formal hearing or upon written request of a party accompanied by a showing of material facts in dispute, the Supervisor or his/her designee shall conduct a formal hearing. Such hearing

shall provide [~~a fair~~] **an** opportunity for parties and witnesses to be heard, shall be conducted so as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. At the conclusion of such hearing, the Supervisor or his/her designee shall issue a written statement of findings of fact [~~and conclusions of law~~], including a determination as to whether or not prohibited conduct has occurred.

- F. Record. The record maintained with respect to each complaint of discrimination, harassment or retaliation shall contain the written complaint; **the Town Attorney's memo summarizing the investigation** [~~any written statement produced during the investigation~~]; the recommendation of the Town Attorney; if a formal hearing is conducted, a record thereof in a form determined by the Supervisor; the Supervisor's statement of findings of fact [~~and conclusion of law~~]; and the Supervisor's written determination. Such record shall be available to either party or the designee thereof.
- G. Discipline sanction. Conduct which is found to violate this article shall be deemed a serious violation of Town policy and shall be the basis for disciplinary action as set forth herein. The disciplinary action shall be in accordance with a graduated schedule of penalties and disciplinary actions to be assessed and instituted by the Supervisor in accordance with the severity and/or repetitiveness of any finding and determination of discrimination, harassment or retaliation and shall include one or more of the following:
- (1) Verbal reprimand to be noted in the offender's personnel file.
 - (2) Written reprimand to be included in the offender's personnel file.
 - (3) Transfer as a result of a satisfactory informal resolution procedure or as a sanction prior to the completion of a Subsection 75 Civil Service Law hearing or a formal hearing.
 - (4) Demotion in grade and title.
 - (5) Suspension without pay for a period not exceeding two months.
 - (6) Fine not to exceed \$100 to be deducted from the salary or wages of such employee.
 - (7) Dismissal of the offender.
- H. Should the procedures set forth herein be inconsistent with the disciplinary procedures under a collective bargaining agreement in effect for the Town, then [~~any additional requirements provided for~~] covered employees [~~in such~~] **will be disciplined consistent with the** collective bargaining agreement [~~must also be satisfied~~].

§ 23-17.9 Adoption and dissemination of policy.

The Town Board, by resolution, shall adopt a policy to be provided to Town employees in order to ensure that all employees are informed of the Town's Anti-Discrimination Law, to assist employees who complain of prohibited conduct and to maintain in each office a working environment free from discrimination, harassment and retaliation.

§ 23-17.10 Severability.

If any clause, sentence, paragraph, section, word or part of this article is adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this article but shall be confined in its operation to the clause, sentence, paragraph, section, word or part of this article directly involved in the controversy in which judgment is rendered.

Section 3.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this article or in its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

Section 4.

This local law shall take effect upon filing with the Secretary of State.