



FITCHBURG HOUSING AUTHORITY

Department of Human Resources



Policy Name:	Anti-Harassment (including Sexual Harassment) Policy	Policy Number:	HR-2021-003-A
FHA Board Approval Date:	April 28, 2021	Effective Date:	May 17, 2021
New		✓ Amends	
Amends and/or Rescinds Policy adopted January 15, 1997			
Related Documents/Policies:	1. Personnel Policy 2. Anti-Fraternization & Conflict of Interest Policy 3. State Conflict of Interest		

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I. PREAMBLE

In 1996, the Massachusetts General Court passed an act relative to sexual harassment, education and training in the workplace. This law amended Chapter 151B and requires all employers to promote a workplace free of sexual harassment and requires employers to adopt a written policy against sexual and other forms of harassment that contains at a minimum six (6) key areas to reduce, educate, and investigate incidents of sexual harassment and other forms of harassment. The FHA's Anti-Harassment policy meets and at times exceeds all of the key objectives of Massachusetts law.

II. GENERAL

A. It is the goal of the Fitchburg Housing Authority (FHA) to promote a workplace that is free from harassment of any type, including but not limited to bullying and harassment of a discriminatory or sexual nature. The FHA will not tolerate harassing conduct that affects employment conditions, that interferes with an individual's performance or that creates an intimidating, hostile or offensive work environment.

B. Harassment of employees occurring in the workplace or in other work-related settings, is unlawful and will not be tolerated by the FHA. Further, any retaliation against an individual who has made a complaint about harassment or retaliation against individuals for cooperating with an investigation of a harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from any type of harassment and retaliation, the FHA is committed to following the procedures set forth in this policy and the Personnel Policy in the event of allegations of inappropriate conduct.

C. Because the FHA takes allegations of harassment seriously, we will respond promptly to complaints of harassment. Where it is determined that such inappropriate conduct has occurred, the FHA will act promptly to eliminate the conduct and impose such corrective action as necessary, including disciplinary action where appropriate.

D. While this policy sets forth our goals of promoting a workplace that is free of harassment, the policy is not designed or intended to limit the FHA's authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment.

III. COVERED PERSONS UNDER FHA'S ANTI-HARASSMENT POLICY

A. The FHA's Anti-Harassment Policy covers all types of employees including full and part-time, temporary, volunteers and interns. This policy covers employer-employee actions as well as employee-vendor relations including contractors.

B. The FHA will investigate all claims of harassment if one of the parties (accuser or accused) is an employee of the FHA.

IV. **DEFINITIONS**

The following definitions will be used:

A. Harassment is defined as unwelcome conduct, whether verbal or physical, that is designed to threaten, intimidate or coerce an individual in the workplace. Harassment based on unlawful discrimination occurs when the conduct is based on a characteristic protected by law such as gender, race, color, national origin, ancestry, religion, age, disability, genetics, military status, sexual orientation, gender identity or participation in discrimination complaint related activities (retaliation). The definition of harassment includes but is not limited to the following:

- i. Display or circulation of written materials or pictures that are degrading to a person or group as described above;
- ii. Verbal abuse, slurs, derogatory comments or insults (including profanity) about, directed at or made in the presence of an individual or group as described above.

B. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- i. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
- ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- iii. 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;
- iv. Direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable performance reviews, salary increases, promotions, increased benefits or continued employment constitutes sexual harassment.

While the legal definition of sexual harassment is broad, other sexually oriented conduct, in addition to the aforementioned examples, whether it is intended or not, that is unwelcome and has the effect of creating a work environment that is hostile, offensive, intimidating or humiliating to male or female workers may also constitute sexual harassment.

V. EXAMPLES OF SEXUAL HARASSMENT

A. While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- i. Unwelcome sexual advances – whether they involve physical touching or not;
- ii. Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body; comment about an individual's sexual activity, deficiencies or prowess;
- iii. Displaying sexually suggestive objects, pictures, cartoons;
- iv. Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- v. Inquiries into one's sexual experiences;
- vi. Discussion of one's sexual activities.

B. Sexual harassment can occur in a variety of circumstances, including but not limited to:

- vii. The harasser can be the victim's supervisor, a supervisor in another department, division or area, an agent of the employer, co-worker or someone who is not an employee of the employer, such as a client or customer;
- viii. The victim does not have to be the person harassed but can be anyone affected by the offensive conduct;
- ix. Unlawful harassment may occur without economic injury to, or discharge of, the victim.

The foregoing list is only meant to be illustrative and is not exhaustive. Further, all employees should take note that, as stated above, retaliation against an individual who has complained about sexual harassment and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the FHA.

C. The FHA's Anti-Harassment policy is gender neutral meaning it covers harassment between different genders as well as same sex/gender harassment.

VI. COMPLAINT & INVESTIGATIVE PROCEDURE

- A. (i) If an employee believes that they have been subjected to harassment, bullying, sexual harassment, retaliation or similarly abusive verbal or physical conduct which interferes with work performance or creates an intimidating, hostile or offensive work environment, the employee has the right and is encouraged to file a complaint. (ii) The complaint may be made in writing or verbally and should be filed with one of the FHA's Anti-Harassment Officers promptly following any incident of alleged harassment.

The following three (3) positions will also be identified as the Anti-Harassment Officers (AHO) who will be responsible for taking initial complaints of harassment and possibly investigate any harassment claims: Director of Finance & Human Resources, Deputy Director and/or Executive Director.

The FHA will ensure that there is at least one female, and one male assigned as AHOs. If it is determined that there is a conflict between the Harassment Officers and the person filing a complaint or the accused, then the FHA may appoint another employee to take the complaint and investigate or appoint someone from outside of the FHA as a Special Harassment Officer.

- B. If an employee cannot file a complaint comfortably because the alleged harasser is involved with the complaint procedure, the initial complaint should be made to their supervisor and the FHA will use an outside investigator to process the complaint.
- C. (i) When a complaint is received, the allegation will be promptly and thoroughly investigated in a fair and expeditious manner with the process beginning within two (2) business days or less. (ii) The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. (iii) The investigation will normally include a private interview with the person filing the complaint and with any witnesses. (iv) The FHA will also interview the person alleged to have committed the harassment. (v) When the investigation is completed, the person investigating the claim will prepare a written report documenting their findings. This report must include the allegations, the parties interviewed, the steps taken to investigate the matter, when the investigation began and when it was completed and what were the investigators conclusions which must be linked up with information found. (vi) To the extent deemed appropriate, both the person filing the complaint and the person alleged to have committed the conduct of the results of said investigation will be informed of the investigation's conclusions.
- D. The FHA reserves the right to temporarily transfer employees during the investigation period or place employees on paid administrative leave if it is deemed appropriate.
- E. The Office of the Executive Director will adopt Harassment Investigation Forms to aid in the process of investigation harassment claims.
- F. If the FHA deems it necessary, law enforcement officials may be contacted along with other relevant public agencies based upon the claims made or what is found during the harassment investigation.

- G. The person filing a harassment claim will **NOT** be required to first file a complaint with law enforcement, Massachusetts Commission against Discrimination (MCAD), or the United States Equal Employment Opportunity Commission (EEOC).
- H. The FHA is **prohibited** from instructing anyone that files a harassment complaint that they **CANNOT** file a complaint with law enforcement, MCAD or the EEOC.
- I. The FHA is **prohibited** from instructing any employee of the FHA to not cooperate with MCAD or EEOC during an official investigation.
- J. The AHO may, during the investigation process, need to inquire about non-workplace conduct as it relates to the accusation(s) made. This will be permissible if there is a legitimate nexus to such information and the harassment claims made.

VII. STANDARDS TO DETERMINE IF HARASSMENT OCCURRED

- A. Only conduct known to the person accusing another of harassment is relevant to establishing if such person experienced a hostile work environment, but such information may still be relevant to establish motives or other connected reasons.
- B. The FHA will apply both objective and subjective tests to determine whether a claim of hostile work environment existed.
- C. To satisfy the objective standard the conduct complained of **MUST** be sufficiently severe or pervasive to interfere unreasonably with the work performance of a reasonable person. The factors to consider include the severity, frequency, and threatening nature of the alleged harassment based upon the totality of the circumstances. In some cases, one incident will be sufficient.
- D. To satisfy the subjective standards, the complaining party **MUST** actually be offended by the conduct at issue. However, the complainant's participation in the alleged offensive conduct does **NOT** necessarily show that the conduct was welcome.
- E. The complaining party also does **NOT** have to show that the harassment prevented the employee from performing their job duties to make a harassment claim.

VIII. FRIVOLOUS CLAIMS

The FHA takes all claims of harassment serious. If, however, during the investigation it is found that the accusations were made out of bad faith, or the accuser has deliberately made false claims then such person may face disciplinary action.

IX. REMEDIAL & DISCIPLINARY ACTIONS

A. If it is determined that inappropriate conduct has occurred, the FHA will take immediate action to stop the offending conduct and, where appropriate, impose disciplinary action against the offending employee per this policy and the FHA Personnel Policy. Contingent upon the severity of the inappropriate conduct, such action may include:

- counseling and/or additional training
- demotion
- transfer
- verbal or written warning,
- suspension; or
- termination of employment.

B. All disciplinary proceedings will use the prescribed format found in other FHA's personnel policies and procedures as well as those in collective bargaining agreements if the person accused of harassment is a covered union employee.

X. MANDATORY REPORTING OF HARASSMENT

A. Managers are required to promptly report any knowledge or awareness of an instance of harassment to one of the Harassment Officers. A manager who witnesses or otherwise has direct knowledge regarding an occurrence of harassment and fails to report such knowledge may be subject to disciplinary action, up to and including termination, particularly if the manager has engaged in a pattern of overlooking harassment or retaliation.

B. For purposes of this policy Managers are defined as Assistant Foreman, Foreman, Assistant Directors, Directors, Director of Finance & Human Resources, Deputy Director and the Executive Director of the FHA.

XI. MANDATORY TRAINING & NOTIFICATION OF ANTI-HARASSMENT POLICY

- A. As a condition of employment, the FHA will provide anti-harassment training to new employees within one (1) year of employment and every two (2) years thereafter for all employees.
- B. Additional training for managers and supervisors that describes the specific responsibilities of managers and supervisors in harassment incidents will occur within a year of the commencement of managerial or supervisory duties.
- C. On an annual basis ALL employees will receive a written copy of the FHA's Anti-Harassment policy.

XII. DOCUMENTATION & FILING PROTOCOLS

- A. The Director of Finance and Human Resources shall maintain a separate secured filing system which will contain all harassment complaints. The file will contain all of the documents concerning such complaints.
- B. Employee training concerning harassment will both be maintained in their personnel employment files as well as in the FHA's central training and education file system.

XIII. INDIVIDUAL LIABILITY

To the fullest extent under the law, if the FHA incurs liability due to an employee's harassment of anyone covered under this policy, the FHA may seek compensation from such employee current or former.

XIV. STATE & FEDERAL REMEDIES

In addition to the above, if an employee believes that s/he has been subjected to unlawful harassment or discrimination or retaliation, the employee may file a formal complaint with either or both of the government agencies set forth below. Utilizing the FHA's complaint process neither prohibits an employee from filing a complaint with these agencies nor does the employee's decision not to utilize the FHA's complaint process prohibit the employee from filing a complaint with either of the agencies listed below. Any claims filed with these agencies must be done within a set period of time (EEOC – 30 days; MCAD – 300 days).

United States Equal Employment Opportunity Commission (EEOC)



John F. Kennedy Federal Building
475 Government Center

Boston, MA 02203

Phone: 800.669.4000

Massachusetts Commission Against Discrimination (MCAD)

Boston Headquarters
One Ashburton Place, Suite 601
Boston, MA 02108

Phone: 617.994.6000



Worcester Office
484 Main Street, Room 320
Worcester, MA 01608

Phone: 508.453.9630

XV. FHA BOARD APPROVAL MOTION

Motion to Approve Anti-Harassment Policy

WHEREAS, The FHA understands that person-to-person relationships can be complex, dynamic and at times complicated. However, the Authority and its employees have a duty to not engage in relationships which could jeopardize the functions of the agency and question the motives of the employee in question; and

WHEREAS, if such relationships exist, it is the duty of the employee to properly disclose any real or potential conflict so the FHA can take steps to ensure that the impacted parties or the public do not question the fairness of any administrative and/or maintenance actions; and

WHEREAS, disclosure of potential conflicts, and avoiding making decisions that impact those with whom the employee has had a relationship with, are paramount to avoid accusations of unfairness, favoritism and/or harassment; and

WHEREAS, the FHA has a duty to educate its employees about harassment, and to investigate allegations of harassment to ensure a safe and productive work environment.

THEREFORE, BE IT RESOLVED, that the FHA Board of Commissioners adopts the updated-revised Anti-Harassment Policy.

FHA Board Members Present: 4 (3 needed for quorum) FHA Members Absent 1

Votes for Approval 4 Votes Denying Motion 0 Abstentions: 0

Quorum (Three Members): yes (Yes / No)

Signatures of Fitchburg Housing Authority Members Approving this Motion:


Linda Byrne FHA Chair

28 April 2021
Date


Douglas M. Bushman
FHA Executive Director & Board Secretary



28 APR. 1 2021
Date

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