

<b>Dutchess County Manual of Policies and Procedures</b>	<b>Discrimination and Harassment</b>
<b>Applies to: CSEA, DSA, DCSEA, PBA, Mgt/Conf</b>	<b>Policy xx.03</b>
<b>Effective/Revised Date: 9/21/20</b>	<b>Page 1 of 5</b>

### **Policy Statement:**

Dutchess County has a strong commitment to providing a working atmosphere conducive to maintaining the dignity of all its workers. Acts of discrimination, harassment, or retaliation undermine the integrity of the employment relationship, are detrimental to a positive working environment, and significantly and adversely affect the working life of those who are subjected to such behavior. This policy applies to all applicants, employees, interns and volunteers of the County and prohibits discrimination, harassment and retaliation whether engaged in by: (a) fellow employees, (b) a supervisor or manager or (c) someone not directly connected to the County who an employee or intern engages with in the course of their employment with the County (e.g. an outside vendor, consultant, client or citizen.) This policy also prohibits harassment (including sexual harassment) of non-employees (e.g. an outside vendor, contractor, consultant, or their employees, client or citizen) while that individual is in any County workplace.

### **References:**

1. Civil Rights Act of 1991, as amended
2. Equal Pay Act of 1963, as amended
3. Rehabilitation Act of 1973, Section 504, as amended
4. New York State Executive Law, Article 15 as amended
5. Americans with Disabilities Act of 1990, as amended
6. Title VII of the Civil Rights Act of 1964, as amended
7. Age Discrimination in Employment Act of 1967, as amended
8. Pregnancy Discrimination Act of 1979, as amended
9. Title II of the Genetic Information Non-discrimination Act of 2008

This list is not intended to be exhaustive.

This policy entirely supersedes the former Sexual Harassment Policy, (Section I, Policy 2, Page 01 last revised 11/01/1993).

### **Definitions:**

1. Discrimination is when an employer, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex (including pregnancy and including gender identity or expression or transgender status) disability, predisposing genetic characteristic, familial status, marital status, status as a victim of domestic violence , or any other class protected by law, refuses to hire or employ that person, bars that person from employment, discharges that person from employment, or discriminates against that person in compensation or with respect to the terms, conditions and privileges of employment.
2. EEO/EEOC stands for Equal Employment Opportunity or Equal Employment Opportunity Commission.
3. Harassment is a form of employment discrimination. It is defined as unwelcome conduct (any verbal or physical conduct that is offensive to or shows a hostility or aversion toward an individual) that is based upon race, color, religion, sex (including pregnancy, gender identity or transgender status), national origin, age (18 or older), disability, sexual orientation, marital status, familial status, military status, domestic violence victim status, or genetic information, or genetic predisposition, or any other class protected by law. Harassment is unlawful and it is expressly prohibited by this policy. Harassment includes, but is not limited to, epithets, slurs or negative

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stereotyping, threatening, intimidating or hostile acts, denigrating jokes, and displays or circulation in the workplace (including via email) of written or graphic material that denigrates or shows hostility or aversion toward an individual or group based on an individual's protected class which:

- A. has the purpose or effect of creating a hostile work environment (i.e., that the conduct subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more protected category), or
  - B. has the purpose or effect of unreasonably interfering with an individual's work performance, or
  - C. otherwise adversely affects an individual's employment opportunities.
4. Retaliation is when an employer fires, demotes, harasses, or otherwise "retaliates" against an individual because he/she filed a charge of discrimination, because he/she complained to his/her employer about discrimination on the job, because he/she participated in a discrimination proceeding (such as an investigation or lawsuit), or because he/she otherwise opposed discrimination.
5. Sexual Harassment, a specific type of prohibited harassment, is defined as unwelcome sexual advances, requests for sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:
- A. Submission to the conduct is either an explicit or implicit term or condition of an individual's employment (i.e. sexual harassment has essentially become a term and condition of your employment); or
  - B. Submission to or rejection of the conduct is used as a basis for an employment decision that affects the person who rejected or submitted to the conduct (i.e. Your acceptance of sexual harassment, or your refusal to submit to it, results in a consequence for you in your employment); or
  - C. The conduct has the purpose or effect of unreasonably interfering with an affected person's work performance, or creates an intimidating, hostile or offensive work environment (Sexual harassment has created a hostile work environment for you).

Examples of specific behaviors that may be considered sexual harassment include, but are not limited to:

- i. Spoken or written words related to an employee's sex
- ii. Any sexual advance that is unwelcome
- iii. Sexually oriented comments
- iv. Showing or displaying pornographic or sexually explicit objects or pictures in the workplace
- v. Offensive touching, patting or pinching
- vi. Requests for sexual acts or favors
- vii. Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct
- viii. Threats, demands or suggestions that an employee's work status is contingent upon her/his toleration of or acquiescence to sexual advances
- ix. Subtle pressure for sexual activities
- x. Leering at a person

### **Standards:**

1. This policy applies to all applicants, employees, interns and volunteers of the County and prohibits discrimination, harassment (including sexual harassment) and retaliation whether engaged in by:
  - A. fellow employees

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- B. a supervisor or manager
  - C. someone not directly connected to the County who an employee or intern engages with in the course of their employment with the County (e.g. an outside vendor, consultant, client or citizen.)
2. This policy also prohibits harassment (including sexual harassment) of non-employees (e.g. an outside vendor, contractor, consultant, or their employees, client or citizen) by any of the above while that non-employee individual is in any County workplace.
  3. Retaliation or any act of discrimination, harassment (including sexual harassment) based on: race, color, creed, religion, national origin, sex, age, disability, sexual orientation, military status, marital status, familial status, domestic violence victim status, predisposing genetic characteristic or genetic information, or any other class protected by law is prohibited and constitutes a violation Federal and/or State law, as well as a violation of this policy.
  4. Dutchess County considers any type of harassment (including sexual harassment), discrimination, or retaliation to be a particularly destructive form of employee misconduct. The County shall investigate any alleged act of discrimination, harassment, or retaliation, and if the conduct is substantiated as harassment/discrimination/retaliation, appropriate corrective action will be taken. If, upon investigation it is determined that a County employee has engaged in harassment/discrimination/retaliation offenders will be subject to disciplinary sanctions as appropriate under the circumstances, as will any supervisor or manager who, having been made aware of such conduct, knowingly allows such acts to continue.
  5. Retaliation against an employee who has in good faith, complained about discrimination or harassment, filed a charge of discrimination or harassment, or participated in an employment discrimination/harassment investigation or lawsuit is illegal and will result in disciplinary action as appropriate under the circumstances. Employees who intentionally file false complaints may be subject to disciplinary action.
  6. Confidentiality will be maintained to the greatest extent possible throughout the investigatory process. In addition, any employee who participates in the investigation may do so without fear of retaliation.
  7. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips or meetings, off-site work or business-related social events.
  8. Nothing in this policy should be construed as in any way limiting an employee's right to utilize the grievance procedure, or to file a complaint with the New York State Division of Human Rights, the Federal Equal Employment Opportunities Commission, or to take any legal action which he/she deems advisable.
  9. The County will conduct training on the issues of discrimination and harassment. All County employees shall attend the mandatory in-service training workshop, or any follow-up or refresher course, on discrimination and harassment.
  10. The County shall promulgate and publish this policy as follows: A copy of this policy shall be given to each new employee at the time of hire; a copy of this policy shall be published on the County intranet and a hard copy will be made available at the Dutchess County Department of Human Resources.

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**Disclosure**

The terms of any settlement or other resolution regarding harassment are subject to disclosure UNLESS the Complainant seeks confidentiality. This request for confidentiality may be revoked within a certain time period in accordance with State law.

**Reimbursement to County**

If a court awards a money judgment against an employee in connection with a claim of sexual harassment, where an employee is found personally liable for intentional wrongdoing, then the employee shall reimburse the County for any money the County paid to the complainant on behalf of the employee. Payment to the County shall be comprised of the employee’s proportionate share of the money judgment. (i.e. Money judgment is \$100,000, County pays \$100,000 to complainant, and employee is found 50% liable, then employee shall reimburse County \$50,000.). The employee must reimburse the County within ninety (90) days from payment by the County to the complainant. A failure on the part of the employee to reimburse the County shall result in a sum being withheld directly from the employee’s paycheck or through enforcement of a money judgment in court.

**Procedures:**

1. Dutchess County employees who feel they have been subjected to harassment (including sexual harassment), retaliation or discrimination should address complaints to their Department Head or the Dutchess County Human Rights/EEO Officer using the written complaint form, which is available on the Dutchess County Intranet, or the Human Rights/EEO Office.
2. All managerial and supervisory personnel who receive complaints of discrimination/harassment/retaliation or who become aware of potential instances of discrimination/harassment/retaliation within the work environment under their supervision are responsible for immediately forwarding such complaints to the Department Head or Dutchess County Human Rights/EEO Officer. Failure to comply with this responsibility will result in disciplinary action as appropriate under the circumstances.
3. All Department Heads shall have responsibility for ensuring that the work environment under their supervision is free from discrimination, harassment (including sexual harassment), and retaliation. All Department Heads who receive complaints or become aware of potential instances of discrimination or harassment or retaliation within the work environment under their supervision are responsible for immediately forwarding those complaints to the Dutchess County Human Rights /EEO Officer or Commissioner of Human Resources. Failure to comply with this responsibility will result in disciplinary action as appropriate under the circumstances.
4. The Dutchess County Human Rights/EEO Officer shall lead an investigation, with the consultation of the County Attorney (**or his/her designee**), on all allegations or complaints of discrimination or harassment or retaliation. The particular facts of the allegation will be examined individually with a review of the nature of the behavior and the context in which the incidents occurred. The complainant will be given written notice that an investigation has been conducted and whether the complaint has been substantiated or unsubstantiated.
5. Upon completion of the investigation, the Dutchess County Human Rights/EEO Officer (**or his/her designee**) will compile a report on the incident of alleged discrimination, harassment, or retaliation, and will distribute the report to the Commissioner of Human Resources and the County Attorney, and the Department Head if

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appropriate or necessary. Included in the report will be an assessment of the legitimacy of the complaint and a recommendation on a course of action. A determination of the appropriate course of action will be made by the Dutchess County Human Rights/EEO Officer (**or his/her designee**). If it is determined that disciplinary action is warranted, disciplinary action shall be taken in accordance with the provisions of applicable collective bargaining agreements and/or State law.

6. Where an employee is entitled to the protections of Civil Service Law Section 75, the Taylor Law, or a collective bargaining agreement, and who at the time of questioning, or during the course of an investigation, appears to be a potential subject of disciplinary action, such employee shall have a right to representation by his or her certified or recognized employee organization, pursuant to Civil Service Law, the Taylor Law, or the applicable collective bargaining agreement. Employees who are not entitled to the protections of Civil Service Law Section 75, or the Taylor Law, or a collective bargaining agreement, and who at the time of questioning or during the course of an investigation appear to be a potential subject of disciplinary action, shall have a right to representation of his/her choice at his/her expense.
7. Complaints of discrimination, harassment (including sexual harassment) and retaliation will be investigated as promptly as possible and resolved within a reasonable time after receipt of the complaint.