

**Ontario County**  
**Board of Supervisors**

**Canandaigua, New York 14424**

Supervisor David Baker offered the following resolution and moved its adoption:

**RESOLUTION NO. 312-2020**  
**ONTARIO COUNTY NON-DISCRIMINATION AND**  
**SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE POLICY**

WHEREAS, Ontario County wishes to promote a productive work environment, and to prohibit conduct that disrupts or interferes with another's work performance or creates an intimidating, offensive, or hostile work environment due to discrimination based on protected status or sexual harassment; and

WHEREAS, Pursuant to Resolution Numbers 874-2015 and 632-2018, this Board of Supervisors adopted the Ontario County Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy; and

WHEREAS, Effective August 11, 2020, New York State law is amended to extend the statute of limitations for filing a claim and update standards for a successful claim; and

WHEREAS, Upon review by the County Attorney and Human Resources, it was determined that modifications to the Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy were necessary to ensure compliance with the new state laws; and

WHEREAS, The Ways and Means Committee of the Ontario County Board of Supervisors has reviewed the Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy with incorporated modifications (the "Updated Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy") and recommends its adoption; now, therefore, be it

RESOLVED, That upon review and approval by the County Attorney as to form, that this Board does hereby approve the Updated Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy attached hereto and filed with the Clerk of the Board; and, be it further

RESOLVED, That the Updated Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy, filed herewith, is hereby adopted and shall be effective on the date of this adoption; and be it further

RESOLVED, That copies of this resolution and attached policy be sent by the Clerk of this Board to all County Department Heads.

STATE OF NEW YORK }  
County of Ontario }

*I do hereby certify that I have compared the preceding with the original thereof, on file in the Office of the Clerk of the Board of Supervisors at Canandaigua, New York, and that the same is a correct transcript therefrom and of the whole of said original; and that said original was duly adopted at a meeting of the Board of Supervisors of Ontario County held at Canandaigua, New York, on May 28, 2020.*

Given under my hand and official seal May 29, 2020.

*Kristin A. Mueller*  
Kristin A. Mueller, Clerk of the Board of Supervisors of Ontario County, NY



**Ontario County Policies and Procedures**  
**Non-Discrimination and Sexual Harassment Prevention in the Workplace**  
**Adopted May 28, 2020**

**Policy Statement** – It is the policy of Ontario County to promote a productive work environment and to prohibit conduct by any employee that disrupts or interferes with another’s work performance, or that creates an intimidating, offensive, or hostile work environment due to discrimination based on protected status or sexual harassment. In keeping with this goal, Ontario County is committed to educate employees in the recognition and prevention of workplace discrimination and sexual harassment. Any conduct that discriminates against, denigrates or shows hostility or aversion toward a person on the basis of gender, race, color, national origin, religion, disability, pregnancy, age, marital status, veteran status, military status, arrest or conviction record, genetic information, genetic predisposition or carrier status, sexual orientation, domestic violence victim status, or any other protected status is strictly prohibited. Such conduct may also violate the law. The County will not tolerate any form of discrimination or sexual harassment and will take all steps necessary to prevent and stop the occurrence of such conduct in the workplace. Further, improper conduct may violate the County’s policy, even if it does not rise to the level of illegal discrimination or harassment. The accompanying complaint procedure is intended to provide an effective mechanism for reporting, and resolving promptly, complaints of discrimination and sexual harassment, without any risk of retaliation against an employee who, in good faith, files such complaint.

**Applicability of Policy** – This policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with Ontario County, regardless of immigration status.

**Supervisory Responsibility** – Department heads and supervisory personnel are responsible for maintaining a work environment that is free from discrimination and sexual harassment. In order to assure compliance with this policy, department heads and supervisors are **required** to promptly report any complaint of discrimination or sexual harassment that they receive, or any discrimination or harassment that they observe, suspect, or become aware of, to the Director of Human Resources. Department heads and supervisors may be subject to disciplinary action, up to and including termination, for failing to report suspected discrimination or sexual harassment, or knowingly

permitting such conduct to continue in the workplace. Department heads and supervisors will also be subject to discipline for engaging in any retaliation against a person who makes a complaint of discrimination or sexual harassment, or who assists, participates, or testifies in any investigation or proceeding related to such complaint.

**Prohibited Activity** – In addition to the prohibited conduct specified in the above Policy Statement, the following is prohibited activity in the workplace. Employees shall not make offensive or derogatory comments based on gender, gender identity, sex, race, color, national origin, religion, disability, pregnancy, age, marital status, veteran status, military status, arrest or conviction record, genetic information, genetic predisposition or carrier status, sexual orientation, domestic violence victim status, or any other protected status either directly or indirectly to another person. Employees shall not produce offensive or inappropriate written materials or electronic communications (e.g. letters, e-mail, text messages, social media postings, or graffiti.) These are examples of harassment that are a prohibited form of discrimination under state and federal employment law and also considered misconduct subject to disciplinary action by the County. These examples are not intended to be a comprehensive list and do not limit the County’s ability to take disciplinary action in other instances for inappropriate conduct.

**Definition of Sexual Harassment** – This policy places special attention on the prohibition of sexual harassment in the workplace. Sexual harassment is a form of sex discrimination and is unlawful under federal and state 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. Sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Such conduct is made, either explicitly or implicitly, a term of condition of an individual’s employment; OR
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions, such as promotion, transfer, or termination, affecting such individual; OR
- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment refers to behavior that is not welcome, that is personally and objectively offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes with an employee's work performance and/or effectiveness or creates an intimidating, hostile or offensive working environment. Exposure to such conduct that serves to alter the terms and conditions of employment is prohibited by this policy and state and federal law.

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. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

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 may, in certain circumstances, constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

**Forms and Examples of Sexual Harassment** – Specific forms of behavior that Ontario County considers sexual harassment and which are prohibited include, but are not limited to, the following:

- “Quid pro quo” threats or promises by a supervisor in an attempt to trade job benefits for sexual favors (e.g. loss of job or promise of job, promotion, or other employment benefit).
- Verbal harassment of a sexual nature related to an employee's gender, including sexual innuendoes, slurs, suggestive, derogatory, insulting or lewd comments or sounds, whistling, jokes of a sexual nature, sexual propositions and/or threats.
- Sexually oriented comments, sexually explicit derogatory statements, or sexually disparaging remarks that are unwelcome and offensive or objectionable to the recipient, which interfere with

an employee's work performance or create an intimidating, hostile, or offensive working environment.

- Any sexual advance that is unwelcome or any demand for sexual favors.
- Sexually suggestive written, recorded or electronically transmitted material, showing or displaying pornographic or sexually explicit or demeaning objects or pictures, graphic commentaries, leering or obscene gestures in the workplace. This includes pictures, posters, calendars, or promotional material displayed on work stations, work computers, or cell phones displayed at work.
- Hostile actions taken against an individual because of that individual's protected status, such as interfering or destroying a person's workstation, tools, equipment, or otherwise interfering with their ability to perform the job, or bullying, yelling, or derogatory/offensive name-calling.
- Unwanted physical contact of any kind which is sexual in nature, including touching, grabbing, hugging, fondling, jostling, petting, pinching, coerced sexual intercourse or sexual relations, assault or intentional brushing up against a person's body.

**Reporting of Discrimination and Sexual Harassment** – Ontario County cannot prevent or remedy discrimination or sexual harassment unless it knows about it. Employees or other individuals covered by this policy who believe they have been subject to discrimination or sexual harassment or who witnessed or became aware of such conduct, are encouraged to report such incidents to their department head as soon as possible after their occurrence. Reports may be made verbally, however, employees are strongly encouraged to submit a written complaint using the attached Discrimination and Sexual Harassment Complaint Form (hereinafter "Complaint Form").

If the employee's department head is believed to be involved in the incident, or if the employee is not comfortable in addressing the matter with the department head, the report should be made directly to the Director of Human Resources. If the employee does not feel comfortable addressing the matter with the department head or Director of Human Resources, the report can be made to the County

Administrator. Employees who believe they have been discriminated against or harassed and would like to obtain guidance on the process of filing a complaint, should contact their immediate supervisor, their department head, the Director of Human Resources, or the County Administrator. Employees who work during off-hours are encouraged to contact their supervisor, their department head, the Director of Human Resources, or the County Administrator at home if these individuals do not work during the employee's shift.

Employees or individuals covered by this policy who believe they have been a victim of discrimination or sexual harassment may also seek assistance in other available forums, as explained below in the section on "Legal Protections".

**Discrimination and Sexual Harassment Complaint Form** – To ensure that all discrimination and harassment complaints are managed appropriately, effectively and in accordance with the County's policy, discrimination and sexual harassment complaints will be recorded in writing by using the County sanctioned Complaint Form. These forms can be obtained from the Department of Human Resources or accessed on the County's website. While initial complaints may be made verbally, the department head or supervisor receiving a verbal complaint should encourage the employee to complete the written Complaint Form. If the employee refuses, a Complaint Form should be completed by the department head or supervisor based on, and accurately reflecting, the verbal report.

**Confidentiality** – All complaints of discrimination and sexual harassment will be promptly and thoroughly investigated in a manner that is as impartial and confidential as possible. To the extent possible, no information concerning a complaint will be released by the County to third parties or to anyone within the County employment who is not directly involved in the investigation or handling of the complaint unless otherwise required by law.

**Investigation of Complaint** – Any complaints received will be investigated promptly and thoroughly, and investigations will be completed as soon as possible. Upon receipt of a complaint, the County will determine the appropriate individual(s) to conduct the investigation, and will take any interim preventative actions, as appropriate. The investigation will normally include interviewing the parties involved and any named or apparent witnesses, as well as the collection and review of any relevant

documentation. All parties involved, including the complainant(s), witnesses, and those accused of alleged discrimination or sexual harassment, will be accorded due process as described herein, to protect their rights to a fair and impartial investigation. 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 incident(s) occurred. All employees are required to cooperate in an investigation, if so directed. The content and disposition of the investigation shall be recorded in a written report maintained in a secure and confidential file in the Department of Human Resources. The reporting employee and the individual about whom the complaint is made shall receive a prompt notification summarizing the determination of the investigation.

**Employee Response** – Any employee named in a complaint of discrimination or sexual harassment will be afforded a full and fair opportunity to offer and present information in response to the allegations in the complaint. Such information will be confidential to the extent possible.

**Employee Rights** – Nothing in this policy should be construed as in any way limiting employees' rights to use the grievance procedure contained in their collective bargaining agreement or to file a formal complaint with appropriate state or federal agencies responsible for administering anti-discrimination and sexual harassment laws, as described below in more detail in the "Legal Protections" section.

**Disciplinary Action** – Discriminatory conduct and sexual harassment are forms of employee misconduct. Any employee or official who is found to have violated this policy will be subject to disciplinary action, up to and including termination of employment, as provided by County operating procedures, applicable statutes including Public Officers Law and Civil Service Law, or the disciplinary procedures contained in a collective bargaining agreement. Any vendor, supplier, visitor, customer, or other non-employee who violates this policy will be subject to remedial action, to the extent that the County is empowered to take such action.

**Prohibition Against Retaliation** – Retaliation against any employee who, in good faith, brings a written or verbal complaint of discrimination or sexual harassment, or who assists, participates, or testifies in any investigation or proceeding related to such complaint, regardless of whether or not the

alleged harassment rises to the level of a violation of this policy or the law, is unlawful and strictly prohibited. The County will not tolerate or permit adverse treatment of employees because they report discrimination or sexual harassment or provide information related to such complaints. Any employee who participates in the procedure may do so without fear of retaliation. Violations of this prohibition may result in disciplinary action up to and including dismissal from employment.

**False Accusations** – An employee who knowingly makes a false accusation against another individual as to allegations of discrimination or sexual harassment as set forth in this policy will be subject to disciplinary action up to and including dismissal from employment in accordance with applicable disciplinary provisions, laws rules or regulations. Disciplinary action resulting from an employee’s intentional submission of a false complaint does not constitute retaliation under this policy.

**Legal Protections And External Remedies** – Discrimination and sexual harassment are not only prohibited by Ontario County but are also prohibited by state, federal, and, where applicable, local law. Aside from the Ontario County’s internal process, employees may also choose to pursue legal remedies with the following governmental entities:

**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 all employers in New York State with regard to discrimination and sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the HRL may be filed with either DHR or in New York State Supreme Court. Complaints with DHR may be filed at no cost. Until August 11, 2020, a complaint must be filed with the Division within one year of the discriminatory act. For harassment that occurs after that date, victims must file complaints within three years of sexual harassment and one year of other discriminatory acts. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination or sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to Ontario County does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR.



DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination or sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination or sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the discrimination or harassment, or redress the damage caused, including monetary damages, attorney's fees and civil fines.

DHR's contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458; (718) 741-8400; [www.dhr.ny.gov](http://www.dhr.ny.gov). Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint, to obtain a downloadable complaint form, or to obtain contact information for DHR's regional offices across New York State.

**The 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.*). An individual can file a complaint, at no cost, with the EEOC anytime within 300 days from the discrimination or harassment. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination or harassment is found to have occurred.

An employee alleging discrimination or harassment at work may file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed a complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

**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.

**Local Police Department** – If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. You may wish to contact the local police department.