

## Durham Police Department

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### **Policy #26.1.1.1**

#### **SUBJECT: Standards of Conduct, Workplace Harassment and Discrimination**

NOTE: This written directive is for the internal governance of the Durham Police Department, and as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

### **Purpose**

The purpose of this directive is to establish policy governing workplace harassment, discrimination and workplace violence, along with procedures for reporting such incidents.

### **Policy**

It is the policy of the Durham Police Department to provide a workplace free of employee harassment, discrimination and workplace violence. No employee shall be subjected to harassment, discrimination and workplace violence of any kind. Harassment, discrimination and workplace violence directed at any employee by any department member, visitors or guests of the agency is strictly prohibited.

### **Application of Prohibition**

The Durham Police Department policy prohibiting harassment, discrimination, threats and acts of violence applies to all persons involved in the Department's operations, including but not limited to Department personnel, contract, temporary, or volunteer workers and any other person on Town property.

### **Definitions**

- **Workplace Discrimination:** the unfair or unequal treatment of a person or persons in the workplace based upon their belonging to a protected class, such as race, sex, national/ethnic origin, religion, age, gender, pregnancy, disability, medical condition disability, medical condition, or sexual orientation<sup>1</sup>.

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<sup>1</sup> NH RSA 354-A:2

- **Workplace Violence: "Threats or acts of violence"** includes conduct against person or property that is sufficiently severe, offensive, or intimidating to alter the employment conditions at the Durham Police Department, or to create a hostile, abusive, or intimidating work environment for one or more department employees.

Examples include but are not limited to:

1. All threats or acts of violence occurring on Town of Durham property, regardless of the relationship between the Town and the parties involved in the incident.
  2. All threats or acts of violence not occurring on Town property but involving someone that is acting in the capacity of a representative of the Town.
  3. All threats or acts of violence not occurring on Town property involving an employee of the Town if the threats or acts of violence affect the legitimate interests of the Town.
  4. Any threats or acts of violence resulting in the conviction of an employee or agent of the department, or of an individual performing services on behalf of the department on a contract, temporary, or volunteer basis, under the criminal code of the State of New Hampshire relating to threats or acts of violence that adversely affect the legitimate interests and goals of the Town of Durham or the Durham Police Department.
- **Sexual Harassment:** The deliberate or repeated sexual behavior by one department member to another that is unwanted, unwelcome or uninvited by the recipient.

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  3. 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<sup>2</sup>.
- It is important to note that conduct construed as harassment is determined by *the perception of the recipient*. The *impact of the conduct is more important than the intent* of the conduct<sup>3</sup>.

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<sup>2</sup> [http://doj.nh.gov/victim/sexual\\_harassment\\_policy.html](http://doj.nh.gov/victim/sexual_harassment_policy.html)

<sup>3</sup> "Preventing Workplace Violence & Discrimination" presentation by Wynette DeGroot, NHGLC @ NHPSTC for NNEPAC

- The U.S. Equal Employment Opportunity Commission (EEOC) defines harassment (generally) as:

Verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, national origin, religion, gender, age, disability, sexual orientation, and/or marital status.

## **Types of Harassment:**

### **Type 1 - Quid Pro Quo –**

Harassment consisting of unwelcome advances, requests for favors, other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. (Quid Pro Quo *usually* flows from supervisor to subordinate - the supervisor states: "if you do \_\_\_ for me I will do \_\_\_ for you." It is often under duress that the employee makes the decision to comply with the request.)<sup>4</sup>

### **Type 2 – Hostile Work Environment –**

One that both a reasonable person would find hostile or abusive and one that a particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.

(Examples of hostile work environment include but are not limited to: displays of graffiti, sexual, racial or religious insults or jokes; abusive treatment of an employee; and/or displays of pornographic or other offensive materials) Harris v. Forklift Systems, plaintiff does not necessarily have to show psychological harm to prove hostile environment<sup>5</sup>.

### **Type 3 – Third Party.**

For third party harassment to occur, two or more people that are consenting to conduct that is occurring in front of a third person may be offending the third person, thus creating an environment of harassment<sup>6</sup>.

## **Specific Examples of Prohibited Sexual Harassment**

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<sup>4</sup> <http://www.dhhs.state.nc.us/humanresources/harassment/definitions.doc>

<sup>5</sup> <http://www.dhhs.state.nc.us/humanresources/harassment/definitions.doc>

<sup>6</sup> NHLGC presentation, "Preventing Workplace Harassment & Discrimination" by Wynette DeGroot, 2/12/10 @NHPSTC for NNEPAC.

- Less formally, the types of conduct prohibited by this policy cover a wide range of inappropriate behaviors including, but not limited to, the actual coercion of sexual relations, unwelcome comments, jokes, innuendoes, sexually suggestive materials, and other unwelcome sexually oriented actions.
- While it is not possible to list all of the types of conduct that might violate this policy, the following are some examples:
  1. Unwelcome sexual advances, whether they involve physical touching or not;
  2. Sexual epithets, jokes, vulgarity;
  3. Written or oral references to sexual conduct;
  4. Gossip regarding an individual's sex life;
  5. Comments regarding an individual's body;
  6. Comments about an individual's sexual activity, deficiencies, or prowess;
  7. Displaying sexually suggestive objects, pictures, cartoons, electronic images;
  8. Retention of sexually suggestive objects, magazines, pictures, cartoons, electronic images in locker rooms, bathrooms, or any other workplace (including vehicles);
  9. Leering, staring, whistling, grabbing, pinching;
  10. Sexual flirtation;
  11. Brushing against someone's body;
  12. Sexual gestures;
  13. Suggestive or insulting comments;
  14. Inquiries into one's sexual experiences; and,
  15. Discussion of one's sexual activities.

### **Specific Examples of Prohibited Harassment**

- Examples of prohibited conduct include, but are not limited to:
  1. Written or spoken derogatory terms about sex, race, color, national origin, religion, age, military or veteran status, physical or mental disability, marital status, pregnancy, or sexual orientation;
  2. Slurs and epithets;
  3. Unwelcome jokes;
  4. Insults;
  5. Threats of physical violence or harm to a person's property;
  6. Display or circulation of materials, items, or images that are degrading or disparaging to individuals or groups based on the characteristics listed above;
  7. Any other unwelcome conduct or comments directed at a person or group because of a protected characteristic (i.e. sex, age, race, etc.)

## **Workplace Violence – Specific Examples of Prohibited Conduct**

- Specific examples of conduct that may be considered a threat or act of violence prohibited under this policy include, but are not limited to:
  1. Striking an individual in any manner for other than an approved training tool.
  2. Threatening to harm an individual or his/her family, friends, associates, or their property, except as part of an approved lesson plan.
  3. The intentional destruction or threat of destruction of property owned, operated, or controlled by the Durham Police Department or the Town, for other than an approved purpose.
  4. Making harassing or threatening phone calls, letters or other forms of written or electronic communication under NH RSA 644:4.
  5. Intimidating or attempting to coerce an employee to do wrongful acts that affect the interest of the Department or the Town.
  6. Stalking as defined in NH RSA 633:3-a.
  7. Making a suggestion or otherwise intimating that an act to injure persons or property is "appropriate", without regard to the location where such suggestion or intimation occurred.
  8. Unauthorized possession or inappropriate use of firearms, weapons, or any other dangerous device on Town property.

## **Applicable Laws**

- The following is a list of laws or acts from which this policy is derived:
  1. Title VII of the Civil Rights Act of 1964
  2. Civil Rights Act Amended in 1991
  3. Americans with Disabilities Act of 1990 and Amended in 2009
  4. Genetic Information Nondiscrimination Act of 2009
  5. Age Discrimination in Employment Act
  6. Equal Pay – NH RSA 275:37
  7. NH RSA 354-A:6 – Discrimination
  8. NH RSA 354-A:7, Vi – Pregnancy Discrimination

## **Procedures**

- The Durham Police Department recognizes that any allegation of harassment or discrimination requires a determination of facts in each case, and further recognizes that any such investigation should be conducted confidentially until the allegation is properly reviewed. The following procedures shall be adhered to in all circumstances that an employee feels that they are victims of harassment, workplace violence or discrimination:

- ◆ Any employee who believes that they have been or are being harassed, discriminated against, is the victim of workplace violence or believes that they are being retaliated against for reporting any prohibited acts in good faith under this policy, or any witness to prohibited acts shall report the incident to their supervisor, Division Commander, or the Chief of Police immediately after the incident.
- ◆ If the allegation includes a superior officer in the Chain of Command of the employee, the employee may circumvent the Chain of Command without prior authorization, to include making a direct report to the Town Administrator.
- ◆ The Chief of Police shall assign a superior officer not involved in the allegation to investigate and report their findings to the Chief of Police. Or, when the Chief of Police is the accused, the Town Administrator will make an appropriate investigative assignment, to include the possibility of an outside source investigator. This section does not limit the Chief of Police from requesting an outside source investigation for any complaint of harassment, discrimination or workplace violence.
- ◆ The Chief of Police or Town Administrator shall review the results of the investigation and shall notify the reporting employee of the findings and of the corrective action, if any, to be taken by the Department with regard to the offending employee.
- ◆ Any corrective or disciplinary action taken shall be consistent with the Discipline directive of this manual, and applicable contractual agreements, as well as the Town Personnel Plan.

### **Retaliation**

- Retaliation is unlawful and prohibited. Therefore, in no case shall an employee making a complaint or participating in an investigation in good faith be subject to adverse employment action. Furthermore, such employees shall not be made subject to a hostile, intimidating, offensive or punitive work environment by any other employee. If it is determined that the report was deliberately false, not based on fact, or made with malicious intent, appropriate disciplinary actions will be taken.

### **Supervisory Responsibility**

- Supervisors are responsible for monitoring employee conduct to ensure that harassment, workplace violence and discrimination are not allowed in the work place.
- Supervisors are responsible for reporting all incidents of harassment, workplace violence, discrimination, retaliation against employees or witnesses making reports of policy violations in good faith or allegations thereof to a Division Commander or the Chief of Police immediately.

- Supervisors are responsible for taking immediate action to limit contact between the affected employees of a complaint involving harassment, workplace violence or discrimination.
  - In no instance shall a supervisor order an alleged victim of harassment, workplace violence, or discrimination home or place them on administrative leave as a measure to limit contact between the complainant and alleged actor. This drastic action may only be taken if the alleged victim makes the specific request to be allowed to go home and the supervisor believes that the circumstances are such that such action would be prudent and in the best interest of the alleged victim while ensuring that the needs of the community are met.
- The Chief of Police or Town Administrator is responsible for taking immediate disciplinary action for sustained complaints of harassment, workplace violence and discrimination up to or including termination.
- If the Durham Town Administrator is the suspect of alleged harassment, workplace violence, or discrimination, the Chief of Police may opt to report the allegations to the State of New Hampshire Attorney General, Office of Public Integrity.

### **Whistle Blowers Protection Act<sup>7</sup>**

- Prohibits employers from discharging, threatening, retaliating against or otherwise discriminating against an employee who:
  1. In good faith reports verbally or in writing what the employee has reasonable cause to believe is a violation of any state or federal law;
  2. In good faith participates in any investigations, hearings or inquiries concerning the alleged violations;
  3. Refuses to follow an employer's order to violate any state or federal law.

### **Additional Information**

- Please also refer to the following for additional information about harassment, workplace violence and discrimination:

NH RSA 354-A (180 days to file)

New Hampshire Commission for Human Rights  
2 Chenell Drive  
Concord, New Hampshire 03301

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<sup>7</sup> [http://www.labor.state.nh.us/worker\\_whistleblowers.asp](http://www.labor.state.nh.us/worker_whistleblowers.asp)

603-271-2767

Title VII of Civil Rights Act of 1964 (300 days to file)

US Equal Opportunity Commission  
1 Congress Street, 10<sup>th</sup> Floor  
Boston, Massachusetts 02114  
617-565-3200

### **Training**

- An electronic copy of this directive and the Standards of Conduct shall be provided to all Department Members at their time of initial employment.
- All members of the Durham Police Department shall receive Roll Call Training on this policy at least annually.