

**COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK**

GENERAL ORDER MULTI-BUREAU	DATE OF ISSUE AUGUST 10, 2020	EFFECTIVE DATE AUGUST 10, 2020	NO. 069-20
SUBJECT: GENERAL ORDER Employee Discrimination, Sexual Harassment and Workplace Violence Policy		DISTRIBUTION All Personnel	AMENDS
REFERENCE: NYSLEAP 14.7, NYS LABOR LAW SECTION 27-8, Relevant Federal and State Laws Prohibiting Harassment in New York including Title VII of the Civil Rights Act of 1964 (Title VII); Americans with Disabilities Act (ADA); Age Discrimination in Employment Act (ADEA); Genetic Information Non-discrimination Act (GINA); New York Human Rights Law [Executive Law Article 15] ; New York Public Officers Law 17-a; New York Labor Law 201-g. Revised: October 9, 2019).			RESCINDS 069-14

Purpose: To develop specific, clear, and concise policies regarding the definition of sexual harassment, employee discrimination and other prohibited behaviors and to define a process for initiating and resolving complaints of harassment and discrimination.

Policy: It is the policy of the Monroe County Sheriff's Office (MCSO) to provide a work environment free from any type of discrimination, including gender discrimination and all forms of sexual intimidation or exploitation in accordance with all applicable laws.

***Definitions:** Discrimination – involves an adverse action or decision or harassing treatment of a person or class of persons because of a legally protected status or because of a perceived or actual affiliation/association with other individuals in a protected class, even if the individual is not the intended target of the harassment. Discrimination under this policy does not include unfair or inappropriate behavior that is not based on a protected class.

* Protected Class/Status - defined by Federal Law and the New York Human Rights Law to include race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, creed, military status, status as a victim of domestic violence, or status as a complainant or witness in any investigation conducted pursuant to this policy.

* Harassment – Verbal, written, or physical conduct may be considered unlawful harassment if it is:

1. Based on a protected class;
2. Unwelcome; and
3. Rises above the level of what a reasonable victim of harassment and/or discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.

Findings of hostile work environment harassment under this policy will be based on the totality of the facts and circumstances.

Offensive conduct based on a protected class can include, but is not limited to: Words, signs, offensive jokes, pranks, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, unwanted verbal, physical advances or physical contact, stalking, interference with work performance.

* Unlawful 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. Conversations, calls, texts, emails, and social media usage by employees can constitute unlawful harassment even if they occur away from the workplace premises, on personal devices or during non-work hours.

* 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. It includes unwelcome conduct, such as sexual advances, requests for sexual favors, sex stereotyping or other verbal, written or physical conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

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

* Type of Sexual Harassment:

- a. Sexual Harassment 'Quid pro Quo' — Where employment decisions or expectations are based on an employee's willingness to grant or deny sexual favors, sexual advances or other verbal and or physical conduct of a sexual nature.
- b. Hostile Environment – When conduct based on sex (which includes sexual conduct, gender, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender) rises above the level of what a reasonable victim of sexual harassment and/or sex discrimination would consider petty slights or trivial inconveniences, and negatively alters the conditions of the complainant's employment and/or creates an abusive working environment. Hostile Environment can also be created when any form of discrimination occurs.

* Examples of Sexual Harassment: The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- a. Physical acts of a sexual nature, such as: Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body, sexual assault, sexual battery, molestation, or attempts to commit these assaults.
- b. Unwanted sexual advances or propositions, such as: Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments, subtle or obvious pressure for unwelcome sexual activities.
- c. Sexually oriented gestures, noises, remarks, or jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- d. Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

- e. Sexual or discriminatory displays or publications anywhere in the workplace, such as: Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- f. Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity or the status of being transgender, such as: Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job, sabotaging an individual's work, bullying, yelling, name-calling.

* Employee: For purposes of this policy, employees include all individuals working for or in a space controlled by MCSO. This includes, but is not limited to, employees, public officers, interns, volunteers, independent contractors, and employees of contractors and vendors.

* Retaliation: Retaliation is adverse action taken against an employee because the individual has in good faith:

- 1. Personally complained of perceived discrimination or harassment based on a protected class;
- 2. Testified, assisted or participated in an investigation, proceeding, hearing or legal action involving a claim of discrimination or harassment based on a protected class.

Adverse action need not be job-related (e.g., threats of physical violence outside of work hours, or exclusion from social functions) or occur in the workplace to constitute unlawful retaliation. Even if the alleged harassment does not turn out to rise to the level of a violation of the law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Note: Hostile Environment can also be created when any form of discrimination occurs.

I. General Guidelines

- * A. Discrimination or harassment (including hostile work environment harassment) based on sex or on a protected class is illegal under State and Federal laws and will not be tolerated.
- B. MCSO prohibits retaliation against anyone who complains of unlawful discrimination or harassment, including those who participate in any investigation under this policy or any proceeding involving a claim based on a protected class.
- C. MCSO will conduct a prompt, thorough investigation of all complaints that provides due process for all parties. All employees are required to cooperate with any internal investigation.
- * D. Violation of this policy may result in remedial and/or disciplinary action (e.g., counseling, suspension, termination). Supervisors may be subject to discipline for failing to report suspected harassment or otherwise allowing harassment to continue.
- E. All employees of the Office of the Sheriff have a responsibility to help maintain a work environment that is free from discrimination, sexual harassment or other unwelcome behavior directed at fellow employees.

- F. Each employee of this agency is responsible for assisting in the prevention of harassment through the following acts:
1. Refraining from participation in, or encouragement of, actions that could be perceived as harassment;
 2. Reporting acts of harassment to a supervisor;
 3. Encouraging any employee who confides that he or she is being harassed or discriminated against to report these acts to a supervisor.
- * G. All complaints under this order will be handled confidentially to the extent possible. Confidentiality is required in order to protect witnesses, prevent evidence from being destroyed, and to prevent a cover-up.
- * H. The Commanding Officer of the Internal Affairs Unit (IA) will be designated as the point of contact for all complaints contemplated under this order.
- * I. Legal Counsel to the Sheriff will be the designated representative to the Monroe County attorney for matters pertaining to this order. Upon commencement and completion of an investigation, Sheriff's Legal Counsel will brief the Monroe County attorney on the IA findings.
- * J. An informal resolution process may be appropriate in some cases, but the formal investigation can be initiated by the complainant at any time. The request for informal resolution and any proposed resolution will be communicated to the complainant and the respondent. If the resolution is acceptable to both the complainant and the respondent, then the matter will be closed.
- * K. Harassers may also be individually subject to liability under New York State law. Any employee who has been subject to a final judgment of personal liability for intentional wrong doing related to a claim of sexual harassment, shall reimburse MCSO and/or Monroe County if it makes a payment to a plaintiff for an adjudicated award based on a claim of sexual harassment resulting in a judgment, for his or her proportionate share of such judgment. Such employee shall personally reimburse MCSO and/or Monroe County within 90 days. [NY Public Officer Law § 17-a].

II. Procedures

- A. Complaints will be promptly and thoroughly investigated and appropriate action, including disciplinary measures will be taken when warranted.
1. When discrimination, harassment, intimidation and/or retaliation of an employee occurs, the employee will immediately report to his/her supervisor, the IA or any other supervisor the employee feels will address the complaint in a fair and equitable manner.
 2. The employee may be requested to submit a MB-178B Discrimination Harassment Complaint Form documenting the details of the harassment, the intimidation or retaliation. The MB-178B Discrimination Harassment Complaint Form will include specific factual information concerning words or actions directed towards the employee.
 3. On receipt of a complaint the Undersheriff will be notified and will direct the appropriate personnel to conduct an investigation into the allegation.

4. Any employee who is found to have engaged in behavior that constitutes discrimination, harassment or intimidation of another employee will be subject to discipline in accordance with departmental procedures, where appropriate, or otherwise established by law (see **MBGO-013 OHSA**).
5. The employee and alleged offender of the discrimination, harassment, intimidating or retaliatory behavior will be notified in writing of all departmental findings regarding the incident.
6. If the employee does not wish to pursue the matter through the internal channels, the employee may seek assistance from the County Manager of Affirmative Action.

Note: IA will be advised and will conduct the investigation.

III. Supervisor's Responsibility

- A. Each supervisor shall be responsible for preventing prohibited activities that would constitute employee discrimination, retaliation or sexual harassment. Responsibilities include but limited to:
 1. Monitoring the unit work environment on a daily basis for signs that harassment may be occurring;
 2. Counseling all employees on the types of behavior prohibited, and the agency procedures for reporting and resolving complaints of harassment;
 3. Stopping any action that may be considered harassment, and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision;
 4. Taking immediate action to prevent retaliation towards the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment pending investigation. If a situation requires separation of the parties, care should be taken to avoid actions that appear to punish the complainant.
- B. Each supervisor has the responsibility to assist any employee of this agency who comes to that supervisor with a complaint of harassment in documenting and filing a complaint.

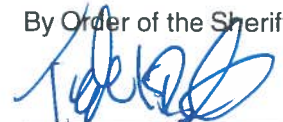
IV. Training

MCSO will provide annual training for all MCSO employees, to include but not limited to roll call training, training bulletins, training videos and in-service training.

V. Appeals Process

In the event that the complainant disagrees with the findings, he or she may submit a written appeal to the Undersheriff. This appeal must be submitted in writing and within ten (10) days of being notified of the findings. A response to the appeal will be provided to the complainant within thirty (30) days after the Undersheriff receives the request for the appeal.

By Order of the Sheriff,



Todd K. Baxter