

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. OF 2015**

**A LOCAL LAW AMENDING CHAPTER 23 OF THE TOWN CODE  
ENTITLED “GOVERNMENTAL DEPARTMENTS”**

**BE IT ENACTED** by the Town Board of the Town of North Hempstead, as follows:

**Section 1. Legislative Intent.**

The Board finds that it is in the best interest of the Town of North Hempstead to make amendments to Chapter 23 entitled “Governmental Departments” in order to prohibit discrimination, harassment or retaliation based on gender identity.

**Section 2.**

Chapter 23, Article XVII of the Town Code is hereby amended as follows:

§ 23-17.1 Legislative findings; purpose.

A. The Town Board of the Town of North Hempstead recognizes that discrimination, harassment or retaliation in the workplace based on actual or perceived differences, including those based on age, race, creed, religion, color, sex, national origin, disability, marital status, ancestry, citizenship, pregnancy, sexual orientation, **gender** or veteran status, is obnoxious and harmful to its victims, creates an offensive working condition and is a violation of law.

B. The Town Board of the Town of North Hempstead hereby finds and declares that prejudice, intolerance, bigotry and discrimination, and disorder occasioned thereby, threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state.

C. The purpose of this article is to protect every employee's right to be free from discrimination, harassment or retaliation in the workplace. Every Town employee is entitled to a working environment free from discrimination, harassment or retaliation, and all Town personnel and persons with whom the Town conducts business are hereby advised that discrimination, harassment or retaliation will not be tolerated within the workplace.

§ 23-17.2 Prohibited practices; persons covered.

A. It shall be an unlawful discriminatory practice to refuse to hire or employ or to bar or to discharge from employment, or refuse to do business with, any person or to discriminate against any person in compensation or in terms, conditions or privileges of employment or the conduct of business because of the actual or perceived age, race, creed, religion, color, sex, national origin, disability, marital status, ancestry, citizenship, pregnancy, sexual orientation, **gender** or veteran status of any person.

B. This article applies to employees of the Town of North Hempstead and the Town of North Hempstead Solid Waste Management Authority and all persons and entities with which the Town conducts business, e.g., outside vendors, consultants, members of the public, contractors.

§ 23-17.3 Harassment.

A. The practices prohibited in § 23-17.2 above include harassment on the basis of an individual's actual or perceived membership in one of the identified protected classes.

B. Sexual harassment.

(1) Sexual harassment is a category of conduct prohibited by the Town Code. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or visual, verbal or physical conduct of a sexual nature when:

(a) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(b) Submission to, or rejection of, such conduct is used as the basis for employment decisions affecting such individuals; or

(c) Such conduct has the purpose or effect of interfering unreasonably with the individual's work performance or creating an intimidating, hostile or offensive work environment that is, or would be, offensive to a person of reasonable sensitivity and sensibilities.

(2) This definition includes many forms of offensive behavior. It makes no difference if the harassment is "just joking" or "teasing" or "playful." The following is a partial list of examples of sexually harassing conduct:

(a) Unwanted sexual advances;

(b) Offering employment benefits in exchange for sexual favors;

(c) Making or threatening reprisals after a negative response to sexual advances;

(d) Visual conduct such as leering; making sexual gestures; or displaying sexually suggestive or degrading objects, pictures, cartoons, posters, or computer or television broadcasts;

(e) Verbal conduct such as making or using derogatory comments; sexual propositions, sexually explicit jokes or jokes concerning gender-specific traits; sexually explicit comments about an individual's body or clothing; comments about an individual's sexual desirability; sexually degrading words to describe an individual; suggestive or obscene letters, notes or invitations; or playing radio or television broadcasts in the workplace that contain sexually suggestive or degrading conversation; or

(f) Physical conduct such as touching, petting, pinching, impeding or blocking movements, or assault.

(3) It **shall be** [is] unlawful [~~for males~~] to sexually harass **any person, regardless of sex or gender** [~~females or other males and for females to sexually harass males or other females~~].

Sexual harassment on the job is unlawful, whether it involves co-worker harassment, harassment by a supervisor or member of management, or harassment by persons doing business with or for the Town.

C. Other forms of harassment. Prohibited harassment on the basis of other protected class status includes behavior similar to sexual harassment. It makes no difference if the harassment is "just joking" or "teasing" or "playful." Following is a partial list of examples of harassing conduct:

(1) Visual conduct based on membership in a protected class, such as derogatory posters, photographs, cartoons, drawings, gestures, or computer or television broadcasts;

(2) Verbal conduct based on membership in a protected class, such as racial, ethnic or religious jokes, or derogatory comments, slurs, innuendoes, epithets or threats (including those uttered over radio or television broadcasts); or

(3) Physical conduct such as touching, blocking movements or assault because of membership in a protected class.

#### § 23-17.4 Disability defined.

A. The term "disability" means any physical, medical, mental or psychological impairment, or a history or record of such impairment.

B. The term "physical, medical, mental or psychological impairment" means:

(1) An impairment of any system of the body, including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or

(2) A mental or psychological impairment.

C. In the case of alcoholism, drug addiction or other substance abuse, the term "disability" shall only apply to a person who is recovering or has recovered and currently is free of such abuse, and shall not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

#### **§ 23-17.5 Gender defined.**

**The term "gender" shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned at birth.**

#### § 23-17.[5]6 Aiding and abetting prohibited.

It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

§ 23-17.[~~6~~]7 Retaliation prohibited.

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this article applies to retaliate or discriminate in any manner against any person because such person has opposed any practice forbidden under this article, filed a complaint, testified or assisted in any proceeding under this article, or assisted in an investigation commenced pursuant to § 23-17.[~~7~~]8 of this article. The retaliation or discrimination complained of under this section need not result in an ultimate action with respect to employment or the conduct of business; however, the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

§ 23-17.[~~7~~]8 Grievance procedure.

A. Complaints.

(1) Complaints of unlawful discrimination, harassment or retaliation may be directed to the appropriate department head or in writing to the Town Attorney or his/her designee. Complainants are encouraged to consult initially with their respective department heads to attempt informal resolution, but failure to do so will in no way limit the right to utilize the Town grievance procedure initially or thereafter if resolution cannot be accomplished through the department head. Complaints made initially to the department head which are not informally resolved to the satisfaction of the complainant shall be referred to the Town Attorney. Complaints shall be made within one year after occurrence of the alleged prohibited conduct.

(2) All complaints of unlawful discrimination, harassment or retaliation and information and proceedings relating thereto shall be kept in strict confidence except as otherwise specified herein.

(3) Nothing herein shall limit a complainant's right to pursue any other legal remedy available to him or her.

B. Investigation.

(1) The Town Attorney shall, in a timely manner, conduct an investigation of the complaint, interviewing appropriate persons, examining relevant records and consulting with and utilizing any appropriate Town staff.

(2) If the Town Attorney deems it appropriate, the parties to the complaint may be brought together to attempt an informal resolution of the complaint in a manner satisfactory to both parties.

(3) Both the complainant and the person against whom the complaint is made shall be permitted to have counsel or other representatives present at any interview or other proceedings.

C. Town Attorney's recommendation.

(1) Upon conclusion of the investigation and within 90 days after the complaint is brought, the Town Attorney shall make a written recommendation to the Supervisor, which shall be one of the following:

- (a) A recommendation of a finding that no prohibited conduct has occurred;
  - (b) A recommendation that material facts in dispute be resolved by conducting a formal hearing;  
or
  - (c) A recommendation of a finding that no facts are in dispute and that prohibited conduct has occurred.
- (2) Copies of the counsel's written recommendation shall be mailed to the complainant and the party against whom the complaint was made.

#### D. Action by Supervisor

- (1) The Supervisor may, but need not, adopt the Town Attorney's recommendation. The Supervisor may adopt the Town Attorney's recommendation of a finding that prohibited conduct has occurred and proceed under Subsection G of this section. The Supervisor may adopt the Town Attorney's recommendation of finding of no cause and issue a written determination dismissing the complaint.
- (2) The Supervisor shall also be free to pursue mediation or alternative dispute resolution, including requiring informal appearances by the parties or witnesses.

E. Hearing. Upon adoption of the Town Attorney's recommendation to conduct a formal hearing or upon written request of a party accompanied by a showing of material facts in dispute, the Supervisor or his/her designee shall conduct a formal hearing. Such hearing shall provide a fair opportunity for parties and witnesses to be heard, shall be conducted so as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. At the conclusion of such hearing, the Supervisor or his/her designee shall issue a written statement of findings of fact and conclusions of law, including a determination as to whether or not prohibited conduct has occurred.

F. Record. The record maintained with respect to each complaint of discrimination, harassment or retaliation shall contain the written complaint; any written statement produced during the investigation; the recommendation of the Town Attorney; if a formal hearing is conducted, a record thereof in a form determined by the Supervisor; the Supervisor's statement of findings of fact and conclusion of law; and the Supervisor's written determination. Such record shall be available to either party or the designee thereof.

G. Discipline sanction. Conduct which is found to violate this article shall be deemed a serious violation of Town policy and shall be the basis for disciplinary action as set forth herein. The disciplinary action shall be in accordance with a graduated schedule of penalties and disciplinary actions to be assessed and instituted by the Supervisor in accordance with the severity and/or repetitiveness of any finding and determination of discrimination, harassment or retaliation and shall include one or more of the following:

- (1) Verbal reprimand to be noted in the offender's personnel file.
- (2) Written reprimand to be included in the offender's personnel file.

- (3) Transfer as a result of a satisfactory informal resolution procedure or as a sanction prior to the completion of a Subsection 75 Civil Service Law hearing or a formal hearing.
- (4) Demotion in grade and title.
- (5) Suspension without pay for a period not exceeding two months.
- (6) Fine not to exceed \$100 to be deducted from the salary or wages of such employee.
- (7) Dismissal of the offender.

H. Should the procedures set forth herein be inconsistent with the disciplinary procedures under a collective bargaining agreement in effect for the Town, then any additional requirements provided for covered employees in such collective bargaining agreement must also be satisfied.

§ 23-17.[8]9 Adoption and dissemination of policy.

The Town Board, by resolution, shall adopt a policy to be provided to Town employees in order to ensure that all employees are informed of the Town's Anti-Discrimination Law, to assist employees who complain of prohibited conduct and to maintain in each office a working environment free from discrimination, harassment and retaliation.

§ 23-17. [9]10 Severability.

If any clause, sentence, paragraph, section, word or part of this article is adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this article but shall be confined in its operation to the clause, sentence, paragraph, section, word or part of this article directly involved in the controversy in which judgment is rendered.

**Section 3.**

This Local Law shall take effect immediately upon filing with the Secretary of State.