

Discrimination and Harassment Prevention

Objective:	To provide and maintain a work environment which is free from unlawful discrimination, harassment, and other conduct considered unacceptable by Tompkins County as described herein. This applies to all applicants, employees, interns (paid or unpaid), volunteers, members of any administrative board, commission, or agency of that government, contractors, and other non-employees conducting business with Tompkins County.	Policy/Procedure Number:	02-43
		Effective Date:	May 7, 2019
		Responsible Department:	Human Resources
		Modified Date (s):	December 2019
Reference: (All applicable federal, state, and local laws)	Civil Rights Act of 1964, Title VII; Americans with Disabilities Act of 1990; Civil Rights Act of 1991, Section 102-103; Federal Rehabilitation Act of 1973, Section 501 and 505; Genetic Information Nondiscrimination Act of 2008; Code of Federal Regulations, Title 29, Section 1600-1691; NYS Human Rights Law, Section 291, 296-297, S.6577; Age Discrimination in Employment Act of 1967	Resolution No.:	2019-100; 2019-295
		Next Scheduled Review:	December 2024

Legislative Policy Statement:

It is the policy of Tompkins County to provide and maintain a work environment which is free from unlawful discrimination based on sex (with or without sexual conduct, and including gender identity, gender expression or transgender status), race, color, religion, national origin, age, disability, genetic information or predisposing genetic characteristic, marital status, familial status, military status, domestic violence victim status, and any other class protected by law. Harassment based on these protected characteristics, regardless of whether such harassment would be considered severe or pervasive, (collectively referred to as “discriminatory harassment”) is a form of unlawful discrimination and is prohibited in each and every work environment and each and every situation which directly impacts the work environment. Other workplace harassment and unacceptable conduct includes but is not limited to bullying, teasing, belittling, and embarrassing, is also prohibited.

General Information:

This Policy does not preclude the filing of discrimination, discriminatory harassment or retaliation complaints with the New York State Division of Human Rights (DHR), the Federal Equal Employment Opportunity Commission (EEOC), or the pursuing of any other remedies as permitted by law.

Tompkins County will take appropriate steps to prevent and correct unlawful harassment, discrimination, and retaliation as defined by Federal, State and Local law (as applicable.)

Sexual harassment is covered separately under the *Sexual Harassment Prevention Policy (02-42)*. Refer to the Tompkins County’s Sexual Harassment Prevention Policy, available at the Human Resources Department or on the Tompkins County website.

I. Definitions:

Discrimination - Any adverse employment action (termination, failure to hire, demotion, failure to promote, etc.) taken on the basis of sex (with or without sexual conduct, and including gender identity, gender expression or transgender status), race, color, religion, national origin, age, disability, genetic information or predisposing genetic characteristic, marital status, familial status, military status, domestic violence victim status, and any other class protected by law.

Discriminatory Harassment - Verbal or physical conduct that is offensive to or shows hostility or aversion toward an individual because of a protected class or characteristic, and that: (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (ii) has the purpose or effect of

unreasonably interfering with an individual's work performance; (iii) subjects an individual to inferior terms, conditions, or privileges of employment; or (iv) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace (including through e-mail) of written or graphic material that denigrates or shows hostility or aversion toward an individual or group based on an individual's protected class.

Employee - All persons filling positions of any rank within County government, including elected or appointed officials, paid staff, and members of any administrative board, commission, or agency of that government, interns, whether paid or unpaid, and volunteers.

Non-Employee - Includes applicants for employment and as defined by law, contractors, vendors and consultants or those who are employees of the contractor, vendor or consultant doing business with Tompkins County.

Retaliation - Any adverse action taken by an individual or employer against an employee or former employee because they exercised their rights under anti-discrimination laws, spoke out or made a complaint against discrimination or harassment, assisted in the investigation of such a complaint, or assisted someone in exercising their rights.

Other Unacceptable Conduct - Any unwanted conduct towards another individual that may not rise to the level of discriminatory harassment in violation of the law, but nonetheless creates a degree of hostility or intimidation that adversely affects the work environment. Teasing, ridicule, bullying, and other conduct intended to annoy, personally attack, belittle or embarrass another individual is inappropriate and also unacceptable in the workplace.

Workplace - Workplace also refers to any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events.

II. Policy:

- A.** Discrimination, discriminatory harassment, and other unacceptable conduct under this policy are prohibited and are considered a form of misconduct. This type of misconduct is a serious offense which will not be tolerated.
- B.** Allegations of such conduct will be investigated thoroughly and, if substantiated, will be met with appropriate corrective and/or disciplinary action commensurate with the seriousness of the offense(s), and in accordance with the parameters of applicable collective bargaining agreements, Federal, and/or State law.
- C.** Retaliation against any individual making a discrimination or harassment complaint or assisting in the investigation of such a complaint is prohibited by law and a serious violation under this policy. Any individual found to have engaged in retaliation as defined in this policy may be subject to disciplinary action up to and including termination, and/or other corrective or remedial action as necessary and permitted by an applicable collective bargaining agreements, Federal, and/or State law.

III. Procedure:

A. Reporting Procedures and Responsibilities

1. Reporting

- a. Tompkins County encourages the use of its complaint and reporting procedures by employees or non-employees who believe they have been subject to inappropriate conduct by another employee or non-employee or have observed such conduct, even if such conduct may not be harassment or discrimination per se. Tompkins County endeavors to create an environment in which employees and non-employees may feel free to raise concerns and are confident that those concerns will be addressed.
- b. Preventing harassment is everyone's responsibility. If an employee or non-employee who witnesses or is subjected to a situation which they believe constitutes discrimination or discriminatory harassment in violation of this policy, Tompkins County recommends that the person confront the harasser directly and advise the harasser that their behavior is not welcomed and will not be tolerated.

Although encouraged, note that neither this policy nor State or Federal law requires that an individual tell an alleged harasser to stop their actions. Failure to do so does not preclude the individual from filing a complaint of discrimination and/or harassment.

- c. When possible, individuals should keep written records of any actions which may constitute discrimination or discriminatory harassment, including time, date, location, names of others involved, witnesses (if any), and who said or did what to whom.
- d. If an employee or non-employee is subjected to a situation which they believe constitutes discrimination, discriminatory harassment, or other unacceptable conduct they should report the situation as set forth below.
 - Immediately notify their Department Head and/or Supervisor, then file a complaint with the Commissioner of Human Resources; or
 - In the event that the circumstances of the situation make it inappropriate to report the incident to the individual's Department Head and/or Supervisor, the incident should still be reported directly to the Commissioner of Human Resources. **In the event that the Commissioner of Human Resources is the subject of the complaint, complaints are to be made to the County Administrator.**
- e. Complaints may be made verbally or in writing to the individual's Department Head and/or Supervisor or the Commissioner of Human Resources. **If made verbally, the complaint must be reduced to writing by the individual to whom it was reported.** The written report must be given to the Commissioner of Human Resources.

A form for submission of a written complaint is attached to this policy, and all employees and non-employees conducting business in the

workplace are encouraged to use this complaint form. Individuals who are reporting discrimination or harassment of other employees or non-employees should use the complaint form and note that it is submitted as a result of the treatment of another person.

- f. Any employee or non-employee who believes they have been subjected to retaliation should report this conduct in accordance with the same reporting procedures as are outlined above. These complaints of retaliation will be investigated in accordance with the same procedures utilized and described below. Individuals also may file complaints of retaliation with the Federal or State enforcement agencies (EEOC or New York State Division of Human Rights.)

2. *Employee Responsibilities*

- a. All employees are responsible for refraining from discrimination, harassment, retaliation, or other unacceptable conduct in the workplace.
- b. Anyone who witnesses discrimination, harassment, retaliation, or other unacceptable conduct may notify the person responsible that their behavior is inappropriate, and in any and all events, should notify the Commissioner of Human Resources or County Administrator.

3. *Supervisor Responsibilities*

- a. All managerial and supervisory personnel of Tompkins County shall be responsible for enforcing this policy and shall have particular responsibility for ensuring that the work environment under their supervision is free from discrimination, discriminatory harassment, other unlawful harassment, other unacceptable conduct, and retaliation. Failure of a manager or supervisor to comply with this responsibility may result in disciplinary action.
- b. All managerial and supervisory personnel who receive complaints of, observe directly, or otherwise become aware of discrimination, discriminatory harassment, other unlawful harassment, other unacceptable conduct, or retaliation is occurring, will be responsible for immediately forwarding such complaints, in writing, to the Commissioner of Human Resources and/or County Administrator.
- c. Supervisors and managers will be subject to discipline (or other remedial or appropriate action) for failing to report discrimination, discriminatory harassment, other unlawful harassment, other unacceptable conduct, or otherwise knowingly allowing the harassment to continue. Supervisors and managers will also be subjected to discipline (or other remedial or appropriate action) if found to have engaged in discrimination, discriminatory harassment, other unlawful harassment, other unacceptable conduct, or retaliation.

4. *Employer Responsibilities*

- a. Tompkins County will conduct periodic training on the issues surrounding discrimination, discriminatory harassment, other unlawful harassment and retaliation, its effects and its appearances, and the role and responsibility of employees and managerial/supervisory

personnel in preventing incidents of discrimination and harassment.

- b. Tompkins County will make this policy available to all employees and ensure that it is distributed to new employees upon hire.
- c. Tompkins County will also make this policy available to County employees in English and in the employee's primary language.

B. Investigation and Response Procedures

1. Investigation

- a. To the extent possible consistent with the enforcement of this policy including due process requirements, the County shall attempt to accommodate requests for confidentiality received from complainants as to the source of the reported violation of this policy.
- b. All discrimination and discriminatory harassment complaints will be investigated.
- c. Any employee or non-employee may be required to cooperate as needed in an investigation of suspected discriminatory harassment. As further set forth herein, Tompkins County will not tolerate retaliation against those who file complaints, support another's complaint, or participate in the investigation of a complaint.
- d. The nature and extent of an investigation may vary on a case by case basis dependent upon the circumstances and extent of the allegations. Generally, investigations should be conducted in accordance with the following steps:
 - Upon receipt of complaint, the Commissioner of Human Resources or their designee will conduct an immediate review of the allegations, and take interim actions, as appropriate. If the complaint is oral, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form or other write up of the complaint based on the oral reporting;
 - If documents, emails or phone records are relevant to the allegations, take steps to obtain and preserve them;
 - Request and review all relevant documents, including all electronic communications;
 - Interview all parties involved, including any relevant witnesses;
 - Create (at a minimum) written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;

- A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - Recommendation(s) for the final resolution of the complaint, together with any recommendations for corrective or remedial actions to be taken.
- Keep the written documentation and associated documents in the employee's records.

2. *Response*

- a. Once the investigation is completed, the Commissioner of Human Resources or their designee will make a final determination as to whether the policy has been violated.
- b. The Commissioner of Human Resources or their designee shall promptly notify the complainant of the final determination, and also inform the complainant of their right to file a complaint or charge with the DHR or EEOC, or in an appropriate court.
- c. If a complaint of discriminatory harassment, other harassment, or retaliation is determined to be founded against a County employee, Tompkins County will take disciplinary and/or corrective action, up to and including termination, in accordance with law and/or an applicable collective bargaining agreement. The Commissioner of Human Resources or their designee will be responsible for overseeing the implementing of any corrective or remedial actions deemed necessary.
- d. If disciplinary charges are filed against an employee on the grounds that Tompkins County has determined the employee is guilty of discrimination, discriminatory harassment or retaliation, the accused employee may exercise his/her rights through the disciplinary procedure provided for in their collective bargaining agreement, Federal and/or state law, if applicable.

3. *False Reports*

Reporting of a false complaint is a serious act. In the event it is found that an individual bringing the complaint has knowingly made false allegations, Tompkins County may take appropriate remedial action and/or disciplinary action in accordance with the provisions of applicable collective bargaining agreements, Federal, and/or State law.



Tompkins County Department of Human Resources

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Inclusion through Diversity

TOMPKINS COUNTY DISCRIMINATION AND HARASSMENT PREVENTION COMPLAINT FORM

(Submit to Commissioner of Human Resources or County Administrator)

This form may be used to file a complaint of discrimination or discriminatory harassment which is a form of discrimination prohibited by Federal law, the New York State Human Rights Law, and Tompkins County Policy. This form is also to be used to file a charge of other unacceptable conduct or retaliation.

Filing this complaint form with Tompkins County in no way deprives you of the right to file a complaint with the U.S. Equal Employment Opportunity Commission, New York State Division of Human Rights, and/or the Federal or State courts.

(PLEASE PRINT OR TYPE)

1. Name _____
Phone Number _____
Residence _____
Mailing Address (if different from residence) _____
City _____ State _____ Zip Code _____

2. Department _____ Employee # _____

2. Have you filed this charge with a Federal, State, or local government agency?
YES/NO: _____ When _____ Where _____
(Month/Day/Year)

Have you instituted a suit or court action on this charge?
YES/NO: _____ When _____ Where _____
(Month/Day/Year)

(AN AFFIRMATIVE REPLY TO THIS QUESTION WILL IN NO WAY STOP A REVIEW OF YOUR COMPLAINT)

4. Alleged discrimination or discriminatory harassment occurred on or about:
Month: _____ Day: _____ Year: _____ Time: _____
Is this alleged discrimination or discriminatory harassment continuing? YES _____ NO _____
Are you personally the subject of the alleged discrimination or harassment? YES _____ NO _____
If not, please state the name of the person(s) who are the subject of the alleged harassment:

Describe the alleged act of discrimination or discriminatory harassment. **Use additional sheets if necessary.**

5. Indicate the name(s) of the alleged harasser(s):

6. State the name(s) of any potential witness(es):

I swear or affirm that I have read the above related facts and that the statements are true and correct to the best of my knowledge, information and belief.

Date: _____

_____ (Signature)

-INFORMATION PROVIDED HEREIN WILL BE CONFIDENTIALLY MAINTAINED TO THE EXTENT CONSISTENT WITH A THOROUGH INVESTIGATION, APPLICABLE COLLECTIVE BARGAINING AGREEMENTS, AND OTHER LAWS AND REGULATIONS REGARDING EMPLOYEES AND THE WORKPLACE SETTING -