

VILLAGE OF MULBERRY GROVE, ILLINOIS

ORDINANCE NO. 636

**AN ORDINANCE AMENDING VILLAGE POLICY
PROHIBITING SEXUAL HARASSMENT**

ADOPTED BY THE BOARD OF TRUSTEES
OF THE VILLAGE OF MULBERRY GROVE, ILLINOIS
THIS 6TH DAY OF JANUARY, 2020

Published in pamphlet form by the authority of the Board of Trustees of the
Village of Mulberry Grove, Bond County, Illinois, this 6th day of January, 2020.

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STATE OF ILLINOIS
COUNTY OF BOND
VILLAGE OF MULBERRY GROVE

ORDINANCE NO. 636

AN ORDINANCE AMENDING VILLAGE POLICY
PROHIBITING SEXUAL HARASSMENT

WHEREAS, the Village of Mulberry Grove, Illinois ("Village") is a non-home rule unit of local government pursuant to Article VII, § 8 of the 1970 Illinois Constitution; and

WHEREAS, the Illinois General Assembly enacted Public Act 100-554 (the "Act"), effective November 16, 2017, as amended, which is a comprehensive revision of State statutes regulating policies prohibiting sexual harassment; and

WHEREAS, the Act requires that, no later than 60 days after the effective date of said amendatory Act of the Illinois General Assembly, November 16, 2017, as amended each governmental unit shall adopt an Ordinance establishing a policy to prohibit sexual harassment; and

WHEREAS, the Board of Trustees passed Ordinance No. 636 on January 2, 2018, establishing a Policy Prohibiting Sexual Harassment; and

WHEREAS, the Illinois General Assembly has amended the Act and the requirements of state statutes in regards to the Workplace Transparency Act; and

WHEREAS, the Board of Trustees has determined that it must amend the Village's Policy Prohibiting Sexual Harassment by passage of this Ordinance to comply with the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MULBERRY GROVE, ILLINOIS:

Section 1. The Policy Prohibiting Sexual Harassment attached hereto as Exhibit A is adopted as and for the policy of the Village, and all prior ordinances establishing a sexual harassment policy and/or policies are hereby repealed and revoked.

Section 2. This Ordinance shall be published in pamphlet form and posted as required by applicable law.

Section 3. This Ordinance shall be in full force and effect upon its passage, approval and publication as provided by applicable law.

Passed and adopted by the Board of Trustees of the Village of Mulberry Grove, Bond County, State of Illinois, on this 6th day of January, 2020, upon aye and nay vote as follows:

Aye 5 Nay 0 Absent 0

Approved:

Candice Widger
Candice Widger, Village President

Attest:

Ranea Closson
Ranea Closson, Village Clerk

STATE OF ILLINOIS)
)
COUNTY OF BOND)

CERTIFICATION

The undersigned does hereby certify that I am the duly qualified and acting Village Clerk of the Village of Mulberry Grove, Bond County, Illinois, and that as such officer, I am the keeper of the records and files of the Village of Mulberry Grove, Illinois.

I do further certify that the foregoing document is a true, correct and complete copy of Ordinance 136 as passed by the Board of Trustees of the Village of Mulberry Grove, Illinois at the Regular Village Board Meeting on January 6, 2020, said ordinance being entitled:

ORDINANCE NO. 4e310

AN ORDINANCE AMENDING VILLAGE POLICY PROHIBITING SEXUAL HARASSMENT

In witness whereof, I have hereunto affixed my official signature and the seal of the Village of Mulberry Grove, Bond County, Illinois, this 6th day of January, 2020.

Ranea Closson
Ranea Closson, Village Clerk
Village of Mulberry Grove, Illinois

(SEAL)



VILLAGE OF MULBERRY GROVE, ILLINOIS

POLICY PROHIBITING SEXUAL HARASSMENT

Effective January 6, 2020

A. PROHIBITION ON SEXUAL HARASSMENT. It is unlawful to harass a person because of that person's sex. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is a policy of the Village of Mulberry Grove to prohibit harassment of any person by any municipal official, municipal agent, municipal employee or municipal agency or office on the basis of sex or gender. All municipal officials, municipal agents, municipal employees and municipal agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

B. DEFINITION OF SEXUAL HARASSMENT. This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which currently defines sexual harassment as:

Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature 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 substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Conduct which may constitute sexual harassment includes:

- a. Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- b. Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.

- c. Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- d. Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- e. Textual/Electronic: “sexting” (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a “reasonable person.”

An example of the most subtle form of sexual harassment is the use of endearments. The use of terms such as “honey”, “darling”, and “sweetheart”, is objectionable to many women who believe that these undermine their authority and their ability to deal with men on an equal and professional level.

Another example is the use of a compliment that could potentially be interpreted as sexual in nature. Below are three statements that might be made about the appearance of a woman in the workplace:

- “That’s an attractive dress you have on.”
- “That’s an attractive dress, it really looks good on you.”
- “That’s an attractive dress. You really fill it out well.”

The first statement appears to be simply a compliment. The last is likely to be perceived as sexual harassment, depending on individual perceptions and values. To avoid the possibility of offending an employee, it is best to follow a course of conduct above reproach, or to err on the side of caution.

C. RESPONSIBILITY OF INDIVIDUAL EMPLOYEES. Each individual employee has the responsibility to refrain from sexual harassment in the workplace. An individual employee who sexually harasses a fellow worker is, of course, liable for his or her individual conduct. The harassing employee will be subject to disciplinary action up to and including discharge in accordance with the Authority’s policy or a bargaining agreement, as appropriate. An employee who either observes or believes herself/himself to be the object of sexual harassment is responsible for reporting the incident(s) to his/her supervisor or the Mayor.

D. RESPONSIBILITY OF SUPERVISORY PERSONNEL. Each supervisor is responsible for maintaining the workplace free of sexual harassment. This is accomplished by

promoting a professional environment and by dealing with sexual harassment as you would deal with other forms of employee misconduct. The courts have found that the organization as well as supervisors can be held liable for damages related to sexual harassment by a manager, supervisor, employee, or third party (an individual who is not an employee but does business with an organization, such as a contractor, customer, sales representative, or repair person).

Liability is either based on an organization's responsibility to maintain a certain level of order and discipline, or on the supervisor acting as an agent of the organization. As such, supervisors must act quickly and responsibly not only to minimize their own liability but also that of the agency.

Specifically, a supervisor must address an observed incident of sexual harassment or a complaint with seriousness, take prompt action to investigate it, report it and end it, implement appropriate disciplinary action, and observe strict confidentiality. This also applies to cases where an employee tells the supervisor about behavior considered sexual harassment but does not want to make a formal complaint. The agency's Equal Employment Opportunity (EEO) Officer will consult with supervisors on proper procedures to follow.

Supervisors must report any incidents or complaints of sexual harassment to the Village's EEO Officer, President or Clerk on the date of the alleged occurrence, or the very next business day. In addition, supervisors must ensure that no retaliation will result against an employee making a sexual harassment complaint.

E. TRAINING. The Village shall provide sexual harassment training to all employees on or before December 31, 2020, using either a program established by the Illinois Department of Human Rights, or any training program meeting the requirements and standards of the State of Illinois as to sexual harassment prevention.

F. PROCEDURE FOR REPORTING AN ALLEGATION OF SEXUAL HARASSMENT. An employee who either observes sexual harassment or believes herself/himself to be the object of sexual harassment should deal with the incident(s) as directly and firmly as possible by clearly communicating her/his position to the offending employee, and her/his immediate supervisor. It is not necessary for sexual harassment to be directed at the person making the report.

Any employee may report conduct which is believed to be sexual harassment, including the following:

1. Electronic/Direct Communication. If there is sexual harassing behavior in the workplace, the harassed employee should directly and clearly express her/his objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
2. Contact with Supervisory Personnel. At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor of the person making the report, a department

head, a director of human resources, an ethics officer, the city manager or administrator, or the chief executive officer of the municipality. The employee experiencing what he or she believes to be sexual harassment must not assume that the employer is aware of the conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, the municipality will not be presumed to have knowledge of the harassment.

3. Any alleged harassment by a corporate officer, trustee, or elected official against another corporate officer, trustee, or elected official can be reported to the board president. If the board president is the reporting person or is implicated by the allegation, the report can be made to any member of the board of trustees. Any report under this section must remain confidential and be immediately referred to the Village's legal counsel, who then must appoint a qualified independent attorney or consultant to review and investigate the allegations.
4. Resolution Outside Municipality. The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the municipality. However, all municipal employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR complaint must be filed within 180 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days.

Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the place), including, but not limited to, written records such as letters, notes, memos and telephone messages.

All allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the municipality. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant's willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

G. PROHIBITION ON RETALIATION FOR REPORTING SEXUAL HARASSMENT ALLEGATIONS. No municipal official, municipal agency, municipal employee or municipal agency or office shall take any retaliatory action against any municipal employee due to a municipal employee's:

1. Disclosure or threatened disclosure of any violation of this policy,

2. The provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
3. Assistance or participation in a proceeding to enforce the provisions of this policy.

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any municipal employee that is taken in retaliation for a municipal employee's involvement in protected activity pursuant to this policy.

No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

- a. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation,
- b. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency or other State employee, or
- c. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.

Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.

An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

H. CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT. In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to a fine of up to \$5,000.00 per offense, applicable discipline or discharge by the municipality and any applicable fines and penalties established pursuant to local ordinance, State law or Federal law. Each violation may constitute a separate offense. Any discipline imposed by the municipality shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.

I. CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT. A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000.00 against any person who intentionally makes a false, frivolous or bad faith allegation.