
Discriminatory Harassment**

316.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation (G.L. c. 151B, § 3A). Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

316.2 POLICY

The Tewksbury Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation. The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits, and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights and privileges it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than commonwealth or federal law. Conduct that violates this policy may not violate commonwealth or federal law but still could subject a member to discipline.

316.3 DEFINITIONS

Definitions related to this policy include:

316.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes; stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

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316.3.2 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation is unlawful and will not be tolerated. It is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment.

316.3.3 SEXUAL HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated.

Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly as a term or condition of employment, position, or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.
- (d) Sexual harassment is not limited to prohibited conduct by a male towards a female or by a supervisor towards one of lower rank.
- (e) Men and women may be the victims of sexual harassment, and a woman as well as a man may be the harasser.
- (f) The harasser does not have to be the victim's supervisor. They may be an agent of the supervisor, a supervisory employee who does not supervise the victim, a non-supervisory employee (e.g., coworker), or, in some circumstances, even a non-employee.
- (g) The harasser may, but need not, be the same sex and have the same sexual orientation as the victim.
- (h) The victim does not have to be the person at whom the unwelcome sexual conduct is directed. They may also be someone who is affected by such conduct when it is directed toward another person. For example, the sexual harassment of one employee may create an intimidating, hostile, or offensive working environment for another coworker or interfere with the coworker's work performance. The belief that such interference has occurred must be objectively reasonable.
- (i) Sexual harassment does not depend on the victim having suffered an actual economic injury as a result of the harasser's conduct. For example, improper sexual advances which do not result in the loss of a promotion by the victim or the discharge of the victim may, nonetheless, constitute sexual harassment where they interfere with the

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victim's work or create a harmful or offensive work environment. The belief that such interference occurred must be objectively reasonable.

316.3.4 EXAMPLES OF SEXUAL HARASSMENT

While it is not possible to list all circumstances that may constitute sexual harassment, the following are some examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness.

- (a) Unwelcome sexual advances, whether they involve physical touching or not.
- (b) Sexual epithets, jokes, written or oral references to sexual conduct.
- (c) Gossip regarding one's sex life, comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess.
- (d) Displaying sexually suggestive objects, posters, pictures, or cartoons.
- (e) Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
- (f) Contact with any sexual part of a coworker's body (touching, patting, and pinching).
- (g) Touching any non-sexual part of the body after that person has verbally or otherwise indicated that such touching is unwarranted.
- (h) Inquiring into one's sexual experiences.
- (i) Discussions of one's sexual activities.
- (j) Engaging in reprisals as a result of an individual's refusal to engage in social or sexual behavior.
- (k) Language of a sexually offensive nature in another's presence even if not directed to said individual once it is known that (s)he objects.
- (l) Continuing to ask a person to socialize after work when that person has indicated, verbally or in writing, no interest in such activities.

316.3.5 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles, or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the Massachusetts Commission Against Discrimination (MCAD) guidelines.
- (b) Bona fide requests or demands by a supervisor that the member improve the member's work quality or output, that the member report to the job site on time, that the member comply with town or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

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316.4 RESPONSIBILITIES

This policy applies to all department members, who shall follow the intent of these guidelines in a manner that reflects department policy, professional standards, and the best interest of the Department and its mission.

Members shall promptly report any discriminatory, retaliatory, or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to the member's immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief of Police, the Director of Human Resources, or the Town Manager as follows:

Director of Human Resources: 1009 Main Street, Tewksbury, MA 01876 (978) 640-4488

Office of the Town Manager: 1009 Main Street, Tewksbury, MA 01876 (978) 640-4300

Any member who believes, in good faith, that the member has been discriminated against, harassed, or subjected to retaliation, or who has observed harassment, discrimination, or retaliation, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with a resolution as stated below.

316.4.1 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment, or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Director of Human Resources, or the Town Manager for further information, direction, or clarification.

316.4.2 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors and managers shall include but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment, or retaliation.
- (c) Ensuring that their subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.

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- (f) Notifying the Chief of Police or the Director of Human Resources in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment, or retaliation no later than the next business day.

316.4.3 SUPERVISOR'S ROLE

Supervisors and managers shall be aware of the following:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional standards.
- (b) False or mistaken accusations of discrimination, harassment, or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members, or issuing discipline in a manner that is consistent with established procedures.

316.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation, or harassment shall be fully documented and promptly and thoroughly investigated.

316.5.1 SUPERVISOR RESOLUTION

Members who believe they are experiencing discrimination, harassment, or retaliation should be encouraged to inform the individual that the behavior is unwelcome, offensive, unprofessional, or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing the member's concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

The supervisor who received the complaint may propose informal remedies. If the complainant agrees to pursue this approach, the supervisor will meet with the alleged harasser, relate the fact that a sexual harassment complaint has been reported, and propose a remedy. If the informal remedy is accepted by the alleged harasser, the situation shall be monitored closely by the supervisor to determine whether the work climate changes or whether there are further incidents. If the complainant reports that the situation has not been rectified or if the alleged harasser declines to agree to informal adjustment, the complainant will be encouraged to file a formal complaint. The Chief of Police shall be notified when a complaint is received and informal proceedings are instituted and the Chief of Police shall maintain records reflecting the substance of the informal remedy agreement.

316.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the supervisory resolution process, a formal investigation will be conducted.

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The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint, or for offering testimony or evidence in an investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include but is not limited to details of the specific incident, frequency and dates of occurrences, and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed, or retaliated against because of their protected status are encouraged to follow the chain of command but may also file a complaint directly with the Chief of Police, the Director of Human Resources, or the Town Manager.

316.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to the [United States EEOC](#), [MCAD](#), and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges (EEOC - 180 days; MCAD - 300 days). Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

- (a) **The United States Equal Employment Opportunity Commission ("EEOC"):** 15 New Sudbury Street - Room 475, Boston, MA 02203; Telephone: (800) 669-4000.
- (b) **The Massachusetts Commission Against Discrimination ("MCAD"):** 1 Ashburton Place - Room 601, Boston, MA 02108; Telephone: (617) 727-3990.

316.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on the appropriate forms and in a manner designated by the Chief of Police. The outcome of all reports shall be:

- (a) Approved by the Chief of Police, the Town Manager, or the Director of Human Resources, depending on the ranks of the involved parties.
- (b) Maintained in accordance with the established records retention schedule.

316.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

316.7 DISCIPLINARY ACTION

If it is determined that inappropriate conduct has been committed by an employee, the Town will take such action as is appropriate under the circumstances. Such action may range from

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counseling to termination of employment, and may include such other forms of disciplinary action as deemed appropriate under the circumstances.

316.8 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that the member has been advised of this policy, is aware of and understands its contents, and agrees to abide by its provisions during the member's term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

316.9 STATE POSTER

The Director of Human Resources should ensure that the poster made available by the MCAD regarding discrimination, harassment, and retaliation is displayed in a member common area (G.L. c. 151B, § 3A).