



## ADMINISTRATIVE REGULATION

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Effective Date: November 12, 1991

Administrative Regulation: 1-19

Revision Date: December 6, 2023

Supersedes: February 13, 2023

Approved By: William H. Ashton II, Town Manager

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Subject: Workplace Harassment, Discrimination, Retaliation & Investigation Policy

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### I. Purpose

The Town of Herndon has an affirmative duty to provide employees with a work environment free from discrimination and harassment. Herndon's culture is one of zero tolerance for discrimination, harassment, and retaliation. Detailed in this policy is a safe reporting process that will be maintained and promoted, not only through this policy, but through action. All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take applicable measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Violations will be investigated thoroughly and promptly in accordance with the below stated investigation process. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension or termination of employment.

The policy (1) defines and provides examples of harassment; (2) prohibits the act of harassment and retaliation; and finally (3) provides procedures to follow when this policy has been violated.

### II. Prohibited Conduct

#### A. Discrimination

The Town of Herndon complies with applicable federal, state and local laws including Title VII of the Civil Rights Act 1964, The Age Discrimination Act of 1975, and the American with Disabilities Act of 1990 governing non-discrimination in employment in every location in which the company has facilities. It is a violation of this policy to discriminate in the provision of employment opportunities, benefits or privileges, to create discriminatory work conditions, or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, religion, sex, national origin, disability, marital status, veteran status, sexual orientation, genetic information or any other protected characteristic as outlined in Administrative Regulation 1-1, Equal Opportunity Employer.

#### B. Harassment

Harassment is prohibited by federal and state laws. Under this policy, harassment is verbal, non-verbal or physical conduct that degrades or shows hostility or aversion toward an individual because of his/her race, color, national origin, age, religion,

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disability status, or gender, sexual orientation or any other characteristic protected by law, and that;

1. has the purpose or effect of creating an intimidating, hostile or offensive work environment;
2. has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. otherwise adversely affects an individual's employment opportunities.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding a person's nationality, origin, race, color, religion, gender, sexual orientation, age, body, disability, or appearance, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display, or discussion of any written or graphic materials that ridicules, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital or protected status.

The Town of Herndon will take appropriate and immediate action in response to complaints or knowledge of violations of this policy.

### C. Sexual Harassment

Sexual harassment in any form is prohibited and will not be tolerated. Within the town government, a supervisor or any employee who is in the process of conducting town business who engages in sexual harassment will be subject to disciplinary action, up to and including termination.

Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. Unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature constitute sexual harassment 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 a basis for employment decisions affecting such individual;

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3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment does not include occasional compliments of a socially acceptable nature or consensual personal and social relationships without a discriminatory employment effect. It refers to behavior which is not welcome, and which is personally intimidating.

Two types of sexual harassment:

1. "Quid pro quo": submission to harassment is used as the basis for employment decisions. Employee benefits such as raises, promotions and better working hours are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory capacity (with the authority to grant such benefits) can engage in quid pro quo harassment. Examples: A manager telling an employee she/he will fire her/him if he/she does not have sex with her.
2. "Hostile work environment": the harassment creates an offensive and unpleasant working environment. A hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees, or customers. Hostile environment harassment consists of verbiage of a sexual nature, unwelcome sexual materials or even unwelcome physical contact as a regular part of the work environment. Examples: texts, e-mails, cartoons or posters of a sexual nature; vulgar or lewd comments or jokes; or unwanted touching or fondling.

### D. Hostile Work Environment

Hostile work environment is not limited to scenarios involving sexual harassment. Harassment becomes violative when 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Mistreatment of fellow employees, supervisor or subordinate is prohibited in the town and will be addressed accordingly.

### E. Third Party Harassment

All individuals of the town including employees, applicants, vendors and contractors are forbidden from harassing other employees, applicants, vendors or contractors.

## III. Procedure

Any employee who feels that he or she has been the subject of discrimination or harassment has an obligation to notify his or her supervisor or the Director of Human Resources. The complainant shall provide information including a detailed account of the

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incidents complained of, witnesses (if any), dates, and other relevant information. All employees are required to be truthful, accurate, and cooperative during the Town's investigation of the incident.

If you feel you have been a victim of discrimination, harassment, or retaliation:

1. Make it clear to the harasser that you find such conduct offensive and unwelcome.
2. If you are uncomfortable confronting the person involved, report to your supervisor, chain of command, or human resources.
3. If the conduct does not stop, report it to the Director of Human Resources.
4. Keep a written log of all incidents, as well as the date and time, and any witnesses to the event.

All employees will address in a timely manner any act of discrimination, harassment or retaliation of which they become aware, calling attention to the Town's policy regarding such behavior, or, if in supervisory role, applying appropriate disciplinary action. If the behavior does not stop, all employees shall report in a timely manner any act of discrimination, harassment, and retaliation of which they become aware, to human resources.

If the complaint requires an investigation of the three numbered topics below, an investigation will be conducted in accordance with this policy.

The following complaints will trigger an investigation.

1. Discrimination (Employee experienced an adverse action (termination, demotion, etc.) because of membership in a protected category (e.g., race, gender, disability)).
2. Harassment (Employee experienced negative treatment because of membership in a protected category (e.g., race, gender, disability)).
3. Retaliation (Employee experienced an adverse action (termination, demotion, etc.) because they engaged in protected activity (complained about, opposed, or refused to engage in a possible violation of law or policy)).

### Investigation Protocol

Human Resources or Town Manager will designate an investigator who must not be involved in or impacted by the investigation. A Department Head or Deputy Department Head will investigate the allegation(s). The Department head may request recusal which shall be considered by Director of HR, Legal Counsel, or the Town Manager and if approved, a substitute investigator will be appointed. If a Department Head is the subject of the investigation, another investigator will be designated.

An outside investigator may be engaged upon town manager or counsel approval.



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An investigation will be conducted using the Investigations Protocol; Attachment A.

An investigation will be conducted and concluded within 30 calendar days of receipt of complaint, unless circumstances develop that necessitate additional time to ensure a thorough and complete investigation.

All employees involved in an investigation, to include the subject of the investigation, witnesses, and staff, are required to cooperate, and shall not discuss the investigation with others unless authorized by the investigator.

Employees who work at the Herndon Police Department have a separate investigation process as approved by the town manager.

If a complaint is reported to the Human Resources Director against the Town Manager, the investigation will be referred to the Town Attorney. If a complaint is reported against the Town Attorney, the investigation will be referred to the Town Manager.

Upon conclusion of the investigation, notice of conclusion will be given.

#### IV. Retaliation

Any acts of retaliation by supervisors and/or co-workers against an employee making a harassment or discrimination complaint is contrary to the Town's policy of equal employment opportunity and will not be tolerated. Claims of retaliation should be made and dealt with in the same manner as stated above.

#### V. Disciplinary Action

After an investigation, the Town of Herndon will determine if a violation has occurred. If so, person(s) who violated the policy will be subject to appropriate disciplinary action up to and including termination of employment.

#### VI. Counseling and Confidentiality

Employees who are unsure as to whether they have been the victim of harassment are encouraged to contact the Town's Director of Human Resources for consultation.

Discussions for the purpose of obtaining general information or advice from responsible administrators or managers at the office will remain confidential as far as possible in order to resolve the situation. Confidence cannot always be maintained if corrective or disciplinary action is necessary. Moreover, the town may be legally obligated to take action once the staff is informed of the incident.

The Employee Assistance Program (EAP) also provides confidential counseling services to Town of Herndon employees. Those wishing to discuss an incident of possible discrimination,



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harassment, or retaliation, are encouraged to contact the EAP. The role of the EAP in such cases will be limited to personal counseling and treatment for the employee who is an EAP client. Contacting the EAP will not qualify as notification to The Town of Herndon of a potential harassment or discrimination issue.

A handwritten signature in black ink, appearing to read "William H. Ashton II", is written over a horizontal line.

William H. Ashton II  
Town Manager