Sample Sexual Harassment Policy for Local Government Employers

[Note: This sample policy was distributed as part of the materials used in IMLA's first Personnel Audio Seminar, held on July 21, 2009.]

Introduction. As with policies, ordinances, and regulations generally, "one size fits all" does not apply to sexual harassment policies. Therefore this "sample" is neither a model nor a true sample, but instead seeks to create a policy template while emphasizing some of the major components that must be included in any effective policy. The primary purposes of the policy seek both prevention and remedy. An important additional aspect of the policy is to provide a defense against sexual harassment claims by serving to demonstrate that the employer made reasonable effort to prevent harassment and to have an effective reporting and remedial process in place. A policy is but one tool in the risk management kit, which also must include effective training (of employees and supervisors, investigators and decision-makers) and effective management practices. Some employers may prefer to use a generic anti-harassment policy regarding all forms of protected classifications. This sample is limited to sexual harassment/gender discrimination, as it contains provisions designed specifically to deal with this topic.

This sample may be viewed as being somewhat "wordy" (though it can be noted that one prominent law school's policy contains twenty-nine pages). Any shortening of the policy should be accompanied by training that then "fills in the gaps." Another alternative is to create an additional shorter document that serves to highlight the policy with appropriate references back to the full policy.

The policy should have as its goals: (1) making it clear the employer will not tolerate sexual harassment; (2) providing guidance to employees in recognizing harassment; (3) establishing an effective and workable complaint procedure; (4) triggering response/investigation in response to all complaints; (5) requiring disciplinary action/discharge of harassers; and (6) protecting complainants and those participating in investigations against retaliation.

Sample Sexual Harassment Policy

- **A. Purpose Statement**
- **B. Definition and Examples of Prohibited Conduct**
- **C. Policy Statement: Prohibition of Sexual Harassment - Employee Obligations**
- **D. Complaint Procedures**
- **E. Resolution and Consequences**
- **F. Non-Retaliation**

A. Purpose Statement.

[Employer] prohibits sexual harassment in the workplace. In addition to being illegal, sexual harassment:

1. Is demeaning to all persons who are involved;
2. May result in increased turnover, absenteeism, and low morale so as to adversely affect the workplace; and
3. May result in liability and/or legal expenses for Employer and affected individuals.

Since violation of this policy results in serious adverse consequences, all employees must read, understand and comply with this policy. This policy advises employees of their rights and responsibilities in achieving the goal of a workplace where all employees are free from intimidation, humiliation, and insults, and from being subjected to offensive and unwelcome physical or verbal abuse or actions, direct or insinuated, which are based on a person's gender, whether of the same or opposite sex.

This policy is intended to provide affected individuals with an efficient, effective and timely internal mechanism for reporting and resolving complaints without fear of retaliation or retribution.

This policy will be supplemented by training and education programs and materials which are deemed to be components of this policy.

B. Definition and Examples.

(1) *Legal Standard*. Sexual Harassment is illegal.

(a) Discrimination under State and Federal Law. It constitutes a prohibited form of discrimination on the basis of sex or gender under Federal Law, Title VII of the Civil Rights Act [42 U.S.C. § 2000e-2(a)(1)], and under [State law, here list state law citation].

[(b) Add reference to more express or other state law provisions, if applicable.]

(c) Sexual Assault. In addition, any conduct which is prohibited as an offense of sexual assault of any kind under the [State] Criminal Code may be deemed prohibited sexual harassment under this policy.

(2) *Examples of Prohibited Conduct/Actions.* Prohibited Sexual Harassment includes, but is not limited to, the following types of conduct and actions:

(a) Derogatory comments, insults, suggestive remarks or jokes involving sexual activity or a person's gender;

(b) Display of photographs, drawings or cartoons, or use of computers and/or the internet, which would offend a reasonable person;

(c) Conduct that a reasonable person would view as having the purpose or effect of degrading or creating an intimidating, hostile or offensive work environment;

(d) Subtle or direct pressure for sexual activity whether or not accompanied by implied or overt threats concerning an individual's employment status;

(e) Inappropriate physical contact, such as patting or pinching;

(f) Intentional brushing against another person's body;

(g) Stating or implying that an individual's job performance is attributable to that person's gender;

(h) Giving of unsolicited or inappropriate gifts of a personal and private nature;

(i) Sexual assault of any kind.

Employees must understand that sexual harassment often involves perception. What may be intended as innocent or harmless conduct may be perceived as inappropriate sexual based conduct. Since one person cannot control another's perception, it is always a better choice to avoid conduct that could be perceived as being inappropriately sexual in nature.

C. Prohibition of Sexual Harassment – Employee Obligations.

(1) Policy.

(a) Every employee has the right to a workplace free from sexual harassment. Sexual harassment is a form of prohibited, unlawful discrimination. It is prohibited by both State and Federal Law.

(b) Every employee has the responsibility to refrain from any conduct which constitutes sexual harassment and to protect other employees from sexual harassment.

(c) Employer has a "zero-tolerance" policy in furtherance of the intent to provide all persons with a workplace and environment free of sexual harassment.

(2) Employee Obligations.

(a) Employees have the obligation to comply with this policy and avoid any conduct which constitutes sexual harassment. Employees have a moral, ethical and legal responsibility to report instances of sexual harassment. Sexual harassment potentially exposes Employer to liability, and we all share the obligation to assist in reducing our exposure to liability.

(b) Employees have the obligation to fully cooperate in any investigation of sexual harassment, including the obligation to provide truthful and complete evidence and testimony in any investigation or proceeding.

(c) Employees have the obligation to refrain from making any bad faith or known false complaints of sexual harassment.

(d) Employees have the obligation to avoid retaliation or retribution against any person who files a complaint, or who participates or provides evidence or testimony in any investigation or proceeding under this policy.

D. Complaint Procedures.

(1) Filing Procedure

(a) By the Subject of Harassment. Any employee who believes he or she has been the subject of sexual harassment must report the incident. The report should be made to the employee's supervisor. If the employee wishes, the report may be submitted to an alternate individual [e.g., department head or human resources department, preferably identified by name, and ensuring that reports may be made to individuals of both genders]. The filing of a report will facilitate the handling of the complaint, but the paramount concern is to provide a means whereby a complaint may be filed without fear of retaliation or adverse consequences, while assuring that the rights of all parties are protected.

The report should be made no later than 3 days after the incident whenever possible. Failure to timely file a report may adversely affect other employees and may hinder the ability to respond effectively to the complaint.

(b) By an Observer. A report also may be filed in the same manner by a person who observes sexual harassment in the workplace, but who is not the subject of the harassment.

(c) By the Perpetrator. An individual who believes that he or she has engaged in sexual harassment may self-report in the same manner. Self-reporting will not negate the consequences or policies set forth herein, but will be considered as a factor in resolution of the matter.

(*2) Filing Obligation.* While a person may be hesitant to file a complaint, Employer cannot respond to and remedy harassment unless it is made aware of the conduct. In addition, the failure to promptly file a complaint may adversely affect an individual's right of recourse and may result in harassment of others. Therefore, employees must utilize this reporting mechanism when required to do so by this policy. Every effort will be made to protect the reporting individual, and a person who mistakenly files a complaint will face no adverse consequences unless it is determined that the complaint was filed knowing that it was false and unfounded. Although filing an internal complaint is encouraged, an individual may not wish to do so and may, instead, wish to contact the [appropriate state agency] or the federal Equal Opportunity Commission directly. However, such action will not permit Employer to address the complaint, and Employer retains all rights under law if an individual chooses not to utilize this internal complaint mechanism.

(*3) Handling and Investigation of Complaint.*

(a) Preliminary Handling and Investigation.

1. The person receiving the complaint shall discuss it informally with the complainant and, unless resolved at that time to the satisfaction of the complainant, shall

report the complaint to [the Human Relations Coordinator (HRC) or other designated individual]. Upon receipt of a complaint, the HRC shall commence a formal investigation and may conduct the investigation or assign it to an investigator. This preliminary investigation may include discussion with the complainant and other individuals who may possess relevant information.

2. Confidentiality of a complaint will be maintained to the extent possible during this preliminary investigation; however, there can be no assurance of complete confidentiality. The investigator shall remind all involved individuals that the complaint shall not be discussed with others and that retaliation is prohibited.

(b) Preliminary Personnel Action, if required by Safety Considerations. After such preliminary inquiry as may be necessary, the HRC will determine if action is required to secure the personal safety of the complainant or other individuals. If warranted, the HRC may take such precautionary action as is appropriate, including separation of the parties, removal from the work place, or temporary suspension. Any adverse employment action shall be preceded by opportunity for hearing, except when necessary for the safety of any individual.

(c) Initial Determination of Action. As soon as practicable after receiving a complaint, the HRC shall determine if further formal inquiry is warranted.

(d) Initial Determination, Notice to Parties and Investigation. If the HRC decides not to proceed with further formal inquiry, the complainant shall be advised as to the reasons for the decision. If the HRC determines to proceed with further inquiry, both the complainant and the subject shall be advised and the HRC or investigator shall fully examine the complaint. The HRC or investigator shall speak with all persons who wish to be heard and may accept written comments, but no such comments may be anonymous. At such point in the proceedings as the HRC or investigator determines to be appropriate, the alleged perpetrator shall be permitted to address the complaint. Upon completing the investigation, the HRC or investigator shall prepare a written summary of the matter (to be submitted to the HRC if prepared by an investigator), with copies to the complainant and alleged perpetrator.

(e) Opportunity for Response to Investigation Report. Both the complainant and the alleged perpetrator may respond in writing within 3 business days to the investigation complaint. If the HRC then finds it appropriate, a formal hearing may be held under such procedures as the HRC deems to be fair and appropriate for the circumstances.

(4) Decision. The HRC shall issue a written decision as soon as practicable after receiving the investigation report and any responses or upon the conclusion of any

hearing. The decision shall include a summary of relevant findings of fact and the action(s) to be taken, if any.

(5) Internal Appeal. Any person adversely affected by the HRC's decision may file a written appeal therefrom to the [Chief Executive Officer/Governing Board]. Such appeal shall fully delineate all reasons for the appeal and must be delivered within 72 hours after issuance of the HRC's final decision. If no appeal is filed, the decision shall become final without further action. If an appeal is filed, the [Chief Executive Officer/Governing Board] shall take such action in response as is deemed proper and appropriate to the circumstances.

(6) Implementation. Once a decision is final:

(a) If harassment is found to have occurred:

1. A notation shall be placed in the perpetrator's personnel file which states the findings without personally identifying the complainant or others involved in the investigation.

2. Discipline appropriate to the nature of the harassment shall be imposed.

(b) If harassment is found not to have occurred, written notice to the parties shall be provided. An entry (without identification of the other party) shall be made in each party's personnel file noting that a harassment complaint was filed along with a notation that harassment was found not to have occurred.

3. If the investigation and determination are not conclusive as to whether harassment occurred, written notice to the parties shall be provided. An entry shall be made in each party's personnel file noting that a harassment complaint was filed along with a notation that the investigation was unable to determine if harassment occurred. Other parties and individuals involved in the investigation shall not be identified by name in such notations.

4. Separate records of the investigation shall be retained in confidential files maintained by the HRC which may be reviewed and considered by management in the event of similar matters pertaining to either party in the future.

E. Consequences.

(1) Since sexual harassment is absolutely prohibited, any employee engaging in sexual harassment will be deemed to be acting outside the scope of employment and, therefore, may not be indemnified or reimbursed for any costs, damages or other liability resulting from such conduct.

(2) Any employee who violates this policy or who fails to abide by obligations set forth in this policy is subject to disciplinary action. Such disciplinary action may be

imposed for perpetrating or assisting in sexual harassment, for knowing failure to report sexual harassment, for failing to cooperate in an investigation, for providing false or misleading statements or evidence in any investigation or proceeding, or for otherwise failing to comply with the expectations set forth in this policy.

F. Non-Retaliation. An essential component of this policy is that all employees are allowed to work without fear of retaliation under this policy. No employee, supervisor, or department head may take any action in any form against a person for filing a complaint or assisting in an investigation under this policy, even if such complaint is found unjustified. Any disciplinary action for bad faith, improper filing of a complaint under this policy shall be imposed solely by the HRC, subject to appeal as set forth in this policy. Any prohibited retaliation may be deemed to be a separate violation of this policy and may subject the perpetrator to additional discipline.