

Waltonville Village Code

CHAPTER 11

EMPLOYEE REGULATIONS

ARTICLE I - DRUG FREE WORK FORCE POLICY

11-1-1 DRUGS TO BE TESTED FOR. When drug and alcohol screening is required under the provisions of this Policy, a urinalysis test will be given to detect the presence of the following drug groups:

- (A) Alcohol (ethyl)
- (B) Amphetamines (e.g., speed)
- (C) Barbiturates (e.g., Amobarbital, Butabarbital, Phenobarbital, Secobarbital)
- (D) Cocaine
- (E) Methaqualone (e.g., Quaalude)
- (F) Opiates (e.g., Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
- (G) Phencyclidine (PCP)
- (H) THC (Marijuana)

11-1-2 JOB APPLICANT TESTING; GENERAL STANDARD. Applicants for the following classes will be required to undergo a drug and alcohol test upon an offer of employment and prior to their final appointment:

- (A) Safety-sensitive position;
- (B) Positions associated with confidential matter;
- (C) Positions in which drugs or treatment may be administered; and
- (D) Positions which require vehicular operation.

11-1-3 CURRENT EMPLOYEE TESTING; GENERAL STANDARD. The Village may require a current Village employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:

- (A) a pattern of abnormal or erratic behavior;
- (B) information provided by a reliable and credible source;
- (C) a work-related accident;
- (D) direct observation of drug or alcohol use; or

(E) presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).

Supervisors are required to detail in writing the specific facts, symptoms, or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head and Mayor's office.

11-1-4 SUPERVISOR TRAINING. The Village shall endeavor to enlist supervisory personnel in a program of training in identifying drug and alcohol use among employees. Such training will be directed towards helping supervisors recognize the conduct and behavior that give rise to a reasonable suspicion of drug or alcohol use.

11-1-5 PRIOR NOTICE OF TESTING POLICY. The Village shall provide written notice of its drug and alcohol testing policy to all employees and job applicants. The notice shall contain the following information:

- (A) the need for drug and alcohol testing;
- (B) the circumstances under which testing may be required;
- (C) the procedure for confirming an initial positive drug test result;
- (D) the consequences of a confirmed positive test result;
- (E) the consequences of refusing to undergo a drug and alcohol test;
- (F) the right to explain a positive test result and the appeal procedures available; and
- (G) the availability of drug abuse counseling and referral services.

11-1-6 CONSENT. Before a drug and alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test, the method of obtaining a specimen, and permitting release of test results to those Village officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the Village's drug testing policy and to indicate current or recent use of prescription or over-the-counter medication.

The consent form shall also set forth the following information:

- (A) the procedure for confirming an initial positive test result;
- (B) the consequences of a confirmed positive test result;
- (C) the right to explain a confirmed positive test result and the appeal procedures available; and
- (D) the consequences of refusing to undergo a drug and alcohol test.

11-1-7 REFUSAL TO CONSENT; APPLICANTS. A job applicant who refuses to consent to a drug and alcohol test will be denied employment with the Village.

11-1-8 REFUSAL TO CONSENT; EMPLOYEES. An employee who refuses to consent to a drug and alcohol test when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action.

11-1-9 CONFIRMATION OF TEST RESULTS. An employee or job applicant whose drug test yields a positive result shall be given a second test using a gas chromatograph/mass spectrometry (GC/MS) test. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test.

If the second test confirms the positive test result, the employee or applicant shall be notified of the results in writing by the appropriate department head or designee. The letter of notification shall identify the particular substance found and its concentration level.

An employee or applicant whose second test confirms the original positive test result may, at the employee's or applicant's own expense, have a third test conducted on the same sample at a laboratory selected by the Village.

11-1-10 THE RIGHT TO A HEARING. If an employee's positive test result has been confirmed, the employee is entitled to a hearing before any disciplinary action may be taken by the Village. The employee must make a written request for a hearing to the appropriate department head or designee within **five (5) days** of receipt by the employee of the confirmation test results. Employees may be represented by legal counsel, present evidence and witnesses on their behalf, and confront and cross-examine the evidence and witnesses used against them. The hearing officer shall be a designee of the Mayor.

No adverse personnel action may be taken against an employee based on a confirmed positive drug test result unless the hearing officer finds by a preponderance of the evidence that:

- (A) the employee's supervisor had reasonable suspicion to believe that the employee was under the influence of drugs or alcohol while on the job; and
- (B) the employee's drug test results are accurate.

Within **ten (10) days** following the close of the hearing, the hearing officer shall issue a written decision and a brief summary of the facts and evidence supporting that decision.

11-1-11 MANDATORY EAP REFERRAL. Upon the first confirmed determination that an employee is under the influence of drugs or alcohol, the Village shall refer the employee to an Employee Assistance Program for assessment, counseling, and rehabilitation. Participation in an EAP is voluntary and no disciplinary action may be taken against an employee for failure to begin or complete an EAP program. Disciplinary action based on a violation of the Village's drug and alcohol policy is not automatically suspended by an employee's participation in an EAP and may be imposed when warranted.

11-1-12 CONFIDENTIALITY OF TEST RESULTS. All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

11-1-13 PRIVACY IN DRUG TESTING. Urine samples shall be provided in a private restroom stall or similar enclosure. The designee of the Village shall be authorized, and applicants and employees agree to allow viewing while providing the sample. All efforts will be made by the Village to reduce any embarrassment on part of designee, applicant, or employee. As an alternative unsupervised specimen may be obtained at the testing facility. Employees and applicants will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode shall be colored with blue dye to protect against dilution of test samples.

11-1-14 LABORATORY TESTING REQUIREMENTS. All drug and alcohol testing of employees and applicants shall be conducted at medical facilities or laboratories selected by the Village. To be considered as a testing site, a medical facility or labor must submit in writing a description of the procedures that will be used to maintain test samples. Factors to be considered by the Village in selecting a testing facility include:

- (A) testing procedures which ensure privacy to employees and applicants consistent with the prevention of tampering;
- (B) methods of analysis which insure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
- (C) chain-of-custody procedures which insure property identification, labeling, and handling of test samples; and
- (D) retention and storage procedures which insure reliable results on confirmatory tests of original samples.

ARTICLE II – EQUAL EMPLOYMENT POLICY

11-2-1 ADOPTION OF CODES. The Village hereby declares to uphold, defend, enforce, and advocate for all laws related to Equal Employment Opportunity including, but not limited to, the following:

(A) **Title VI of the Civil Rights Act of 1964** which prohibits discrimination in the participation in or benefits of programs or activities receiving federal financial assistance on the basis of race, color, or national origin.

(B) **Title VII of the Civil Rights Act of 1964** which prohibits discrimination because of race, color, religion, sex or national origin in all employment practices including hiring, firing, promotions, compensation, and other terms, privileges and conditions of employment.

(C) **Title IX of the Education Amendments of 1972** which prohibits discrimination in federally assisted education programs.

(D) **The Equal Pay Act of 1963** which covers all employees who are covered by the Fair Labor Standards Act. The Act forbids pay differentials on the basis of sex.

(E) **The Age Discrimination Act of 1967** which prohibits discrimination because of age against anyone between the ages of **forty (40)** and **sixty-five (65)**.

(F) **Federal Executive Order 11246** which requires every contract with federal financial assistance to contain a clause against discrimination because of race, color, religion, sex, or national origin.

(G) **Section 504 of the Rehabilitation Act of 1973 and DOL Implementing Regulations at 29 CFR 32** which prohibits any discrimination based on disability.

(H) **Section 167 of JTPA and the U.S. DOL Regulations at 29 CFR Parts 31 and 32** which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the basis of race, color, or national origin, under any program or activity receiving Federal financial assistance from the Department of Labor.

(I) **Chapter 68, Article I, Section 17-19 of the Illinois Constitution** which prohibits discrimination based on race, color, creed, national ancestry, disability, and sex in the hiring and promotion practices of any employer.

(J) **The Americans with Disabilities Act of 1990** which prohibits any discrimination against qualified individuals with disabilities on the basis of their disability.

11-2-2 NON-DISCRIMINATORY PRACTICES. The Village will assure non-discriminatory employment practices in recruitment advertising, employment, placement, layoff or termination, promotion, demotion or transfer, rate of pay or other forms of compensation and use of facilities.

11-2-3 CONTRACTING WITH NON-COMPLAINTS. The Village will not contract with other agencies, banks, businesses, vendors, etc., who practice or establish a pattern of discrimination based on sex, color, race, religion, age, national origin, political affiliation or belief.

(A) The Village will incorporate into any contract for construction work, or modification thereof, subject to the relevant rules, regulations, and orders of the Secretary of Labor or of any prior authority that remain in effect, which is paid for in whole or in part with the aid of such financial assistance, the following "Equal Opportunity Clause":

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability or national origin. The contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, national origin or disability. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisement for employees places by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.
- (3) In the event of the contractor's noncompliance with the Equal Opportunity Clause or with any of the said rules, regulations, and orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts.
- (4) The contractor will include the provisions of this Equal Opportunity clause in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary of Labor so that such provisions will be binding upon each such subcontractor or vendor.

11-2-4 OUTREACH TO ALL. The Village assures that it will actively provide nondiscriminatory outreach, selection, and service to all individuals.

11-2-5 MINORITY HIRING. Efforts will be made to hire minority individuals for all job categories so that minority employment in all categories of the work force will represent a proportionate share of minority populations in the Village as well as surrounding areas.

11-2-6 ACCOMMODATIONS FOR DISABLED. The Village will provide accommodations to the best of its ability for employees with disabilities, contingent on budget and structural limitations.

11-2-7 COMPLIANCE BY EMPLOYEES. All Village employees are expected to adhere to the above policy and to work actively for its implementation both internally and in carrying out Village program activities.

11-2-8 DESIGNATED ENFORCERS. The Village designates the Mayor and the Village Board to carry out the EEO/AA plan.

ARTICLE III - SEXUAL HARASSMENT POLICY

11-3-1 PREAMBLE. The purpose of this policy is to (1) more clearly define sexual harassment, and (2) more clearly state the policy of the Village regarding such behavior. Sexual harassment is a violation of basic human rights fully recognized by the State of Illinois.

11-3-2 POLICY. It is the responsibility of each individual employee to refrain from sexual harassment, and it is the right of each individual employee to work in an environment free from sexual harassment. The Village will not tolerate sexual harassment in any form. Nor will it tolerate false or malicious accusations of sexual harassment. The Village will remain uncompromised in providing and preserving a professional atmosphere free from sexual harassment of any kind.

11-3-3 DEFINITIONS OF SEXUAL HARASSMENT. According to the Illinois Human Rights Act, sexual harassment is defined as:

Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature where:

- (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals;
- (C) 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.

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.

One such example is a case where a qualified individual is denied employment opportunities and benefits that are, instead, awarded to an individual who submits (voluntarily or under coercion) to sexual advances or sexual favors. Another example is where an individual must submit to unwelcome sexual conduct in order to receive an employment opportunity.

Other conduct commonly considered to be sexual harassment includes:

- **Verbal:** Sexual innuendoes, 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 their presence, of a sexual nature.
- **Non-verbal:** Suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- **Visual:** Posters, signs, pin-ups or slogans of a sexual nature.

- **Physical:** Touching, unwelcome hugging or kissing, pinching, brushing the body, coerced sexual intercourse, or actual assault.

Sexual harassment most frequently involves a man harassing a woman. However, it can also involve a woman harassing a man or harassment between members of the same gender.

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 trend in the courts is to assess sexual harassment by a standard of what would offend a "reasonable woman" or a "reasonable man", depending on the gender of the alleged victim.

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 the most likely to be perceived as sexual harassment, depending on the 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.

11-3-4 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 EEO Officer.

11-3-5 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 and 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 the proper procedures to follow.

Supervisors must report any incidents or complaints of sexual harassment to the Authority's EEO Officer 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.

11-3-6 PROCEDURES FOR FILING A COMPLAINT. An employee who either observes 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 both the supervisor and offending employee. It is not necessary for sexual harassment to be directed at the person making the complaint.

The following steps may also be taken: document or record each incident (what was said or done, the date, the time, and the place). Documentation can be strengthened by written records such as letters, notes, memos, and telephone messages.

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

The process for making a complaint about sexual harassment falls into several stages.

(A) **Direct Communication.** If there is sexually 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.

(B) **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 or the EEO Officer. If the harasser is the immediate supervisor, the problem should be reported to the next level of supervisor or the EEO Officer.

(C) **Formal Written Complaint.** An employee may also report incidents of sexual harassment directly to the EEO Officer. The EEO Officer will counsel the reporting employee and be available to assist with filing a formal complaint. The EEO Officer will fully investigate the complaint and advise the complainant and the alleged harasser of the results of the investigation.

(D) **Resolution Outside Village.** It is hoped that most sexual harassment complaints and incidents can be resolved within an agency. However, an employee has the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) about filing a formal complaint. An IDHR complaint shall be filed within **one hundred eighty (180) days** of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC shall be filed within **three hundred (300) days**.

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

An employee who has been physically harassed or threatened while on the job may also have grounds for criminal charges of assault and battery.

11-3-7 TRAINING. The EEO Officer is responsible for ensuring that supervisors and staff are trained and made aware of the full range of practices that might constitute sexual harassment.

11-3-8 FALSE AND FRIVOLOUS COMPLAINTS. False and frivolous charges refer to cases where the accuser is using a sexual harassment complaint to accomplish some end other than stopping sexual harassment. It does not refer to charges made in good faith which cannot be proven. Given the seriousness for the accused, a false and frivolous charge is a severe offense that can itself result in disciplinary action.

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