

Ordinance 2018-840

**AN ORDINANCE ESTABLISHING RULES
FOR REPORTING AND ADMINISTRATION OF
HARASSMENT CLAIMS.**

WHEREAS, the Illinois General Assembly has recently enacted Public Act 100-0554, which requires each governmental unit to adopt an Ordinance or Resolution establishing a policy to prohibit sexual harassment; and

WHEREAS, the City of Momence desires to adopt a general policy for the reporting and administration of harassment claims; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOMENCE, KANKAKEE COUNTY, ILLINOIS, as follows:

SECTION 1. The City adopts the following Anti-Harassment, Sexual Harassment and Retaliation Policy:

Anti-Harassment, Sexual Harassment and Retaliation Policy

A. Statement of Policy – The City (hereinafter referred to as “the City”) is committed to maintaining a work environment that encourages and fosters appropriate conduct among employees and respect for individual values and sensibilities. In keeping with this commitment, the City will not tolerate harassment of City employees by anyone, including any supervisor, co-worker, vendor, member of the public, contractor, or other regular visitor of the City.

B. Non-sexual Harassment – Harassment consists of unwelcome conduct, whether verbal, physical, or visual, that is based upon a person’s race, color, religion, sex, national origin, citizenship status, ancestry, age, marital status, sexual orientation, mental or physical disability, arrest record, military or veteran status, unfavorable discharge from military service, genetic information or any other characteristic or status protected by law. The City will not tolerate harassing conduct that affects tangible job benefits, interferes unreasonably with an individual’s work performance, or that creates an intimidating, hostile or offensive working environment.

The conduct forbidden by this policy specifically includes, but is not limited to: (a) epithets, slurs, negative stereotypes or intimidating acts that are based on a person’s protected status; and (b) written or graphic material circulated within or posted within the workplace that shows hostility toward a person because of protected status.

C. Complaint Process – Keep in mind that an employee may complain about harassment if the employee is subjected to consensual behavior between two or more other employees. All City employees are responsible to help assure that the City avoids harassment. While the City encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, the City also recognizes that power and status disparities between an alleged harasser and a target may make such a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, or even when such communication has occurred, the following steps should be taken to report a harassment complaint.

1. An employee (the “Complainant”) who either observes or believes herself/himself to be the object of harassment should deal with the incident(s) as directly and firmly as possible by clearly communicating her/his position to the Complainant’s supervisor. If reporting to the Complainant’s supervisor should prove uncomfortable for any reason, or if the offender is the Complainant’s supervisor, the Complainant should directly contact any supervisor in the City. It is not necessary for 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. All such documentation, once prepared, shall be immediately transmitted to the supervisor.

No one making a complaint will be retaliated against for making the complaint, even though it may ultimately not be substantiated. In addition, any witness will be protected from retaliation.

2. Investigation of Complaint - The Mayor or his/her designee will promptly initiate an investigation of the suspected harassment.
3. Confidentiality - Every effort shall be made to keep all matters related to the investigation and various reports confidential to the extent practicable.
4. Time Frame for Reporting Complaint - The City encourages a prompt report of complaints so that rapid response and appropriate action may be taken. However, due to the sensitivity of these problems and because of the emotional toll such misconduct may have on the individual, harassment complaints should be reported within thirty (30) days after the complained-of conduct. Delayed reporting of complaints will not in and of itself preclude the City from taking remedial action.
5. Protection Against Retaliation - The City will not in any way retaliate against an individual who makes a report of harassment, assists in filing a complaint, or participates in the investigation of a complaint, nor permit any officer or employee to do so. Retaliation is a serious violation of this policy and should be reported immediately. Any person found to have retaliated against another individual for reporting harassment will be subject to the same disciplinary action up to and including termination.

D. Corrective Action/Sanctions - Corrective action including discipline up to and including termination will be taken against any employee found to have engaged in harassment of any other employee. The extent of sanctions may depend in part upon the length and condition of employment of the particular employee and the nature of the offense. The City has the right to apply any sanction or combination of sanctions, up to and including termination.

Where harassment has been found to exist, the City will take all reasonable steps to eliminate the conduct.

E. 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 City 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.

F. 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:

- 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.
- 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, viewing pornographic material or websites.
- Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- 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."

G. 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:

- 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.
- 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.

- 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.

H. 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:

1. 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,
2. 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
3. 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.

I. 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 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.

J. 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 against any person who intentionally makes a false, frivolous or bad faith allegation.

SECTION 2. All Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 3. This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form if required by law.

APPROVED THIS 2nd day of January, 2018.

Mayor Charles Steele

PASSED THIS 2nd day of January, 2018.

Ayes: _____

Nays: _____

Absent: _____

ATTEST:

City Clerk

4847-8255-6505, v. 1