

25/09

EXECUTIVE ORDER NO. 3 of 2009

WHEREAS, the County of Westchester maintains a zero tolerance policy towards all forms of harassment or discrimination toward its employees by co-workers, supervisors, vendors, contractors or others having a relationship with the County and prohibits any conduct that creates an intimidating, hostile or offensive work environment or which is otherwise inappropriate or unprofessional; and

WHEREAS, to further illustrate the County of Westchester's commitment regarding anti-harassment and discrimination in the workplace, Executive Order 6-2002 entitled "Westchester County Anti-Harassment and Discrimination Policy" was signed, filed and has remained effective since June 2002; and

WHEREAS, said Executive Order prohibits discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other basis prohibited by law in the workplace; and

WHEREAS, by Executive Order No. 8 of 2005, the terms of Executive Order No. 6-2002 were continued and expanded to include and to protect members of the military and individuals predisposing genetic characteristics; and

WHEREAS, the Office of Equal Employment Opportunity/Affirmative Action has been moved from the Department of Human Resources to the Human Rights Commission, the Office of Equal Employment Opportunity/Affirmative Action has been restructured and there have been some slight modifications to the implementation responsibilities and the complaint procedures set forth in Executive Order No. 6 of 2002 as continued and expanded by Executive Order No. 8 of 2005, without any diminution to the County policy of maintaining zero tolerance towards all forms of harassment or discrimination toward its employees by coworkers, supervisors, vendors, contractors or others having a relationship with the County;

NOW THEREFORE, I, ANDREW J. SPANO, County Executive of the County of Westchester, in light of the aforementioned do hereby repeal Executive Order No. 6 of 2002 and direct that the following be substituted in its place:

RECEIVED

JUN 30 2009

TIMOTHY C. BONI
COUNTY CLERK
COUNTY OF WESTCHESTER

**Westchester County
Anti-Harassment and Discrimination Policy**

Article I. Statement of Policy

Westchester County maintains a zero tolerance policy towards all forms of harassment or discrimination toward its employees by co-workers, supervisors, vendors, contractors or others having a relationship with the County. The County prohibits any conduct that creates an intimidating, hostile or offensive work environment or which is otherwise inappropriate or unprofessional. Simply stated, Westchester County seeks to ensure that none of its employees is subjected to any form of harassment or discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, military status, predisposing genetic characteristics or any other basis prohibited by law.

Moreover, the County believes in the dignity of every individual and recognizes the rights of all people to equal opportunity and to a workplace free from all forms of harassment or discrimination. To that end, the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by coworkers, supervisors, vendors, contractors or others. The County encourages everyone to work together amicably and respectfully.

All employees will be expected to comply with this policy and to take appropriate action so that such conduct does not occur. In addition, each supervisor has a special duty to maintain a workplace free of all types of discrimination and harassment. This duty includes discussing this policy with subordinates, other employees and non-employees. Finally, the County expects that corrective action, as appropriate, will be taken promptly whenever discriminatory or harassing conduct is identified.

Article II. General Anti-Discrimination and Harassment Protections

Section 1. Prohibited Practices. Westchester County prohibits all forms of harassment and discrimination, including, but not limited to, the following areas:

- a. harassment, discrimination, or hostile environment on the basis of race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other characteristic protected by law;
- b. retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;

- c. employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other characteristic prohibited by law;
- d. denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, or any other basis prohibited by law;
- e. denying employment to a person because of an arrest or criminal accusation which terminated in favor of that person, or because of a conviction record, other than as permitted by the New York State law;
- f. failure to reasonably accommodate the disability of an otherwise qualified employee or prospective employee, unless doing so would impose an undue hardship on the County;
- g. failure to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship on the County.

Section 2. No Retaliation. Retaliation against an employee who makes a good faith complaint of harassment or discrimination or who provides information or participates in the complaint or investigative process is strictly prohibited and shall be subject to appropriate corrective or disciplinary measures. Retaliation includes such prohibited acts as intimidation, coercion, threats, reprisals and adverse job actions taken because a complaint was made or because he or she participated in an investigatory process.

Pending resolution of a complaint and within twelve (12) months thereafter, the Department Head must first review personnel action against an employee accused of misconduct or an employee who makes such a complaint.

Any employee who believes that he or she has been retaliated against for filing a discrimination complaint or otherwise participating in the investigation or resolution of a complaint, should follow the harassment and discrimination complaint procedures as set forth in this Policy. Supervisors are required to assist employees to utilize that procedure.

Section 3. Other Employee Rights. Nothing in this policy or procedure shall be construed as in any way limiting any employee's right to use any collective bargaining agreement procedure, to file a complaint with the New York State Division of Human Rights, the U.S. Equal Employment Opportunity Commission, or any other fair employment practices agency, or to take any legal action which the employee may deem advisable.

Article III. Sexual Harassment

Section 1. Generally. Sexual harassment is a form of employment discrimination based upon gender, which is prohibited by federal, state and County law. Sexual harassment can occur between individuals of different sexes or of the same sex. It may be overt or subtle sexually-related conduct that is not welcome, is personally offensive, interferes with an individual's work performance and effectiveness, or creates an intimidating, hostile or offensive work environment.

Section 2. Definition of Sexual Harassment. The County prohibits all forms of harassing conduct. For example, prohibited sexual harassment consists of unwelcome advances and other unwelcome physical, verbal and nonverbal conduct of a sexual nature, including conduct 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 individual;
- c) 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; or
- d) in third party situations, an individual is offended by the sexual interaction, conduct or communications between others.

Section 3. Forms of Sexual Harassment. Forms of sexual harassment may include, but are not limited to, the following:

- a) Verbal: Abusive verbal language related to an employee's sex, including sexual innuendos, sexual advances, demands for sexual favors, slurs, suggestive or derogatory or insulting comments or sounds, lewd whistling or other noises, jokes of a sexual nature, sexual propositions, threats, sexually-oriented comments about an employee's body, continuing to express sexual or social interest after being informed directly that the interest is unwelcome, or any similar conduct that interferes with an employee's work performance, creates an intimidating, hostile or offensive working environment, or that is otherwise unwelcome.
- b) Visual: Abusive written language, such as sexually suggestive or obscene letters, e-mails, notes, invitations; circulating or displaying pornographic or sexually explicit objects, pictures, cartoons, posters, magazines or graphic commentaries, including by computer; leering or staring at another's body; obscene gestures.
- c) Physical: Physical contact and gestures, including petting, pinching, coerced sexual interactions, assault, brushing up against a person's body, impeding or blocking movement, or any other inappropriate physical conduct. Like other forms of conduct, unwanted touching can also be sexual harassment, depending on the context.
- d)

Article IV. Harassment and Discrimination Complaint Procedure

A. General guidelines. Westchester County has a zero tolerance policy and prohibits all forms of harassment, discrimination, or other hostile work environment on the basis of race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or other characteristics protected by law.

The County encourages all employees to report any behavior or conduct that they believe is harassing, discriminatory, unprofessional or inappropriate in the workplace, regardless of who engages in that conduct. If an employee believes that he or she has been harassed or discriminated against, or has observed such misconduct, the employee should follow the steps set forth below under the section entitled **"B. Procedures"**.

B. Procedures.

Section 1. Reporting of a Complaint

1. Obligations of Employee. Since Westchester County has a zero tolerance policy against all forms of harassment or discrimination, employees are expected to report incidents of harassment or other discrimination, whether affecting them or anyone else, as soon as possible after their occurrence.

Anyone who feels that he or she has been subjected to harassment, discrimination or other conduct which violates this policy or who has observed such conduct should immediately report the conduct to their supervisor, their Department Head, the EEO Compliance Officer assigned to their Department, or the Office of Equal Employment Opportunity/Affirmative Action (hereafter "Office of EEO/AA"). It is the employee's choice as to where to report. If the employee's supervisor or Department Head is believed to be involved in the harassment or discrimination or does not appear helpful in addressing the complaint, the employee immediately should make a report directly and promptly to the Office of EEO/AA. *At any time, any employee who would like guidance as to how to proceed in filing a complaint or requires assistance at any time may contact the Office of EEO/AA.*

After business hours or on weekends, you may call the Office of EEO/AA at (914) 995-2141. The voice-mail is checked throughout the evening and weekends.

2. Obligations of Supervisor. If a complainant reports allegedly harassing or discriminatory behavior to a supervisor, or if a supervisor independently observes such behavior, the supervisor shall promptly report this information to the Office of EEO/AA, which shall assign an investigator, as described below. If the initial report by the complainant was verbal, the supervisor also must document the complaint in writing and provide that document to the Office of EEO/AA. As set forth below, the Office of EEO/AA will ensure that actions are taken to address the situation and to comply with this policy.

Section 2. Time Frame. A complaint regarding discrimination or

harassment should be submitted as soon as possible after an alleged act of discrimination or harassment takes place. An employee's failure to promptly report harassment or discrimination may delay the investigation, make it more difficult to gather information necessary to investigate the report, and impede the County's ability to take prompt corrective action.

Section 3. Complaint and Investigative Process

1. Investigator. Once an employee has filed either a verbal or written complaint with the appropriate supervisor, Department Head, EEO Compliance Officer or the Office of EEO/AA, an investigator will be assigned by the Office of EEO/AA and notification of the assigned investigator will be sent to the Department Head, complainant, and alleged discriminator/harasser(s). Upon receipt of said notification, Department Heads should accommodate the provision of release time for investigators, complainants, alleged discriminator/harassers and relevant witnesses, as determined by the Office of EEO/AA.

Unless the complainant, the alleged harasser, and the Office of EEO/AA agree, the investigator will not be from the same Department as the complainant or the accused employee. If the allegation of harassment or discrimination is made by or about an employee in the Office of EEO/AA, the allegation will be investigated by an official to be designated by the County Executive or his designee.

2. Investigation. The investigator will conduct a prompt, thorough and fair investigation. This investigation may include interviewing the parties involved and any relevant and necessary witnesses, as well as reviewing any appropriate records. The particular facts of the allegation will be examined individually, with a review of the nature of the behavior and the context in which the incident(s) occurred. Employees who have been accused of harassment or discrimination will be afforded the opportunity to offer and present information in their defense. Additionally, an employee accused of misconduct may have a union representative present while he or she is questioned regarding the allegations of the complaint, if it is likely to lead to disciplinary action.

3. Confidentiality. The County will make every effort to keep such complaints confidential to the extent deemed reasonably practicable. However, a full investigation may be impossible without disclosing certain information to the person allegedly engaging in prohibited behavior, or to potential witnesses. Additionally, all records, with the exception of the Complaint, Resolution of Complaint Form, Complaint Withdrawal Form and determinations by the Office of EEO/AA and appeal determinations the Office of EEO/AA, generally will be confidential. Disclosure thereof will be made only if authorized by the Office of the County Attorney. A party opposing disclosure may be given an opportunity to provide the County, in writing, with an explanation of why he or she opposes disclosure of any information contained in an investigative file.

4. Investigation Report. Upon completion of the investigation, the investigator will prepare and submit to the Office of EEO/AA a written confidential summary of the complaint, including the response and the facts of the investigation. The investigator will endeavor to complete the investigation and to submit the report within seven (7) working days, but this time may be extended by the Office of EEO/AA, as may be required by the particular circumstances of each situation.

Section 4. Final Fact-Finding Determination of EEO/AA Office. The Office of EEO/AA after reviewing the report, promptly will issue a final written fact-finding determination. If there is cause to believe that the County's policy against harassment and discrimination has been violated and that disciplinary or corrective action should be taken, depending on the nature and severity of the conduct, the Office of EEO/AA in the final fact-finding determination, shall, if appropriate, recommend appropriate disciplinary or corrective action.

The final fact-finding determination promptly shall be forwarded to the Head of the Department where the employee accused of misconduct is employed, to the complainant and to the alleged harasser/discriminator(s).

Section 5. Corrective or Disciplinary Action. Any employee who is found to have committed an act of harassment or discrimination may be subject to corrective or disciplinary action as provided by County procedures, up to and including termination.

In the event that the final fact-finding determination issued by the Office of EEO/AA includes a recommendation that disciplinary or other corrective action be taken, then the Head of the Department shall independently determine if it is appropriate to initiate a disciplinary proceeding or take other corrective action, pursuant to Civil Service Law § 75 and applicable collective bargaining agreements. If the Department Head determines that it is not appropriate to initiate a disciplinary proceeding or take other corrective action, the Department Head may contact the Office of EEO/AA to discuss the fact-finding determination.

Section 6. Appeals. After a fact-finding determination has been made pursuant to the sections set forth above, the complaining employee or the person who has been found to have engaged in the harassing or discriminatory behavior may appeal the decision. To ensure that the Office of EEO/AA is apprised fully of the basis for the appeal, the person appealing should submit a detailed written memo. Such appeal must be submitted within seven (7) working days of the issuance of the final fact-finding determination. The designated Hearing Officer shall make such additional investigation as is reasonably necessary, and within seven (7) working days after such further investigation promptly issue a written appeal recommendation. The Executive Director of the Human Rights Commission shall review such recommendation and make a final determination. A copy of the appeal determination shall be provided to the Department, the complainant and the employee accused of misconduct.

Section 7. Monitoring. After corrective action has been taken, the Office of EEO/AA will monitor the conduct of the employee accused of harassment or discrimination or the department in which the alleged harassment or discrimination occurred, for approximately ninety (90) days to ensure compliance with the proposed recommendation, to prevent subsequent acts of harassment, discrimination or misconduct, and to prevent retaliation. (The employee who reported the harassment or discrimination can request a longer period of oversight.)

Section 8. False Complaints.

An employee who in bad faith makes a false complaint or statement, whether during an investigation or otherwise, is subject to disciplinary action.

EFFECTIVE DATE

This Executive Order shall supersede all previous orders. It shall be effective immediately, shall be disseminated to all employees, and shall remain in full force and effect until otherwise superseded or revoked.



Andrew J. Spano
County Executive

Dated: ~~May~~ June 30, 2009
White Plains, New York