

Discriminatory Harassment

1013.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

1013.2 POLICY

The Toms River Fire Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation. The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits, and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights and privileges it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

Violation of this policy shall be grounds for disciplinary action up to and including termination from the department.

1013.3 DEFINITIONS

Definitions related to this policy include:

1013.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law (N.J.S.A. 10:5-12).

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments; making crude and offensive statements or remarks; making slurs or off-color jokes; stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters, or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements, or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

Toms River Fire Department

Policy Manual

Discriminatory Harassment

1013.3.2 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

1013.3.3 SEXUAL HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly as a term or condition of employment, position, or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

1013.3.4 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles, or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission and the New Jersey Division on Civil Rights guidelines.
- (b) Bona fide requests or demands by a supervisor that the member improve the member's work quality or output, that the member report to the job site on time, that the member comply with Toms River Fire Department rules or regulations, or any other appropriate work-related communication between supervisor and member.

1013.4 RESPONSIBILITIES

This policy applies to all department members, who shall follow the intent of these guidelines in a manner that reflects department policy, professional standards, and the best interest of the Toms River Fire Department and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory, or harassing conduct or known violations of this policy to the Board of Fire Commissioners. Any member who is not comfortable with reporting violations of this policy to the member's immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Administrator(s), or the Board of Fire Commissioners office.

Any member who believes, in good faith, that the member has been discriminated against, harassed, or subjected to retaliation, or who has observed harassment, discrimination, or retaliation, is encouraged to promptly report such conduct in accordance with the procedures set

Toms River Fire Department

Policy Manual

Discriminatory Harassment

forth in this policy. Members subjected to sexual harassment are encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. However, failure to do so does not preclude filing a complaint. Members subjected to sexual harassment that involves the Fire Chief, shall report the incident to the Board of Fire Commissioners.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall report to the Board of Fire Commissioners and/or Administrator(s) immediately so they can determine if there is merit to the allegation and proceed with a resolution as stated below.

1013.4.1 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment, or retaliation are encouraged to contact a supervisor, a manager, the Administrator, the Administrator, or the Administrator for further information, direction, or clarification.

1013.4.2 SUPERVISOR RESPONSIBILITIES

The responsibilities of supervisors and managers shall include but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment, or retaliation.
- (c) Ensuring that their subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Notifying the Administrator or the Board of Fire Commissioners in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment, or retaliation no later than the next business day.
- (f) Inform the member of their rights to file any harassment complaint.

1013.4.3 SUPERVISOR'S ROLE

Supervisors and managers shall be aware of the following:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional standards.
- (b) False or mistaken accusations of discrimination, harassment, or retaliation can have negative effects on the status of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members, or issuing discipline, in a manner that is consistent with established procedures.

Toms River Fire Department

Policy Manual

Discriminatory Harassment

1013.4.4 STATE NOTICE REQUIREMENTS

The Board of Fire Commissioners should coordinate the display and issuance of required posters and other notice requirements regarding discrimination as required by state law (N.J.A.C. 13:8-1.2).

1013.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Toms River Fire Department that all complaints of discrimination, retaliation, or harassment shall be fully documented, and promptly and thoroughly investigated. All persons interviewed shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all involved. Failure to comply with this confidentiality may result in disciplinary action.

The Board of Fire Commissioners may exercise discretion and flexibility to determine the degree of discipline administered, and shall proceed immediately to any of the corrective action disciplinary steps up to and including termination/dismissal, depending on the nature and severity of the violation/conduct.

All members have the right to file a complaint against any member they believe violated any by-law, rule, regulation, or operating guideline established by the fire companies or Board of Fire Commissioners. The member shall inform the Board of Fire Commissioners and/or the Administrator(s). Any violation that is determined to exist shall result in one of the following discipline procedures. Whenever a complaint is filed against a member, an investigation shall be conducted as soon as possible.

1013.5.1 SUPERVISOR RESOLUTION

Members who believe they are experiencing discrimination, harassment, or retaliation should be encouraged to inform the individual that the behavior is unwelcome, offensive, unprofessional, or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing the member's concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

1013.5.2 FORMAL INVESTIGATION

All complaints shall be resolved by a formal investigation process.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint, or for offering testimony or evidence in an investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include but is not limited to details of the specific incident, frequency and dates of occurrences, and names

Toms River Fire Department

Policy Manual

Discriminatory Harassment

of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed, or retaliated against because of their protected status are encouraged to follow the chain of command but may also file a complaint directly with the Administrator(s).

1013.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

1013.5.4 FALSE ACCUSATIONS AND INFORMATION

- (a) If any member knowingly makes a false accusation of sexual harassment or knowingly provides false information in the course of an investigation of a complaint, may result in disciplinary action up to and including termination from the department.
- (b) Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

1013.5 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on the appropriate forms and in a manner designated by the Administrator. The outcome of all reports shall be:

- (a) Approved by the Board of Fire Commissioners or designee.
- (b) Maintained in accordance with the established records retention schedule by the State of New Jersey.

1013.5.1 COMPLAINT PROCESS

- (a) All complaints received by a member shall be documented in writing, whether received in writing or verbally. All records and proceedings concerning the harassment complaint shall be maintained as confidential to the extent practicable and appropriate.
- (b) The complainant may report a harassment complaint to any Line or Executive Officer. Any complaint received by a Line or Executive Officer shall be immediately reported to the Board of Fire Commissioners and/or Administrator(s).
- (c) All investigations of harassment complaints shall be conducted in a way that respects, to the extent possible, the confidentiality and privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough, and impartial manner.
- (d) The results of the investigation shall be forwarded to the Board of Fire Commissioners to make a final decision as to whether a violation of the policy has been substantiated.

Toms River Fire Department

Policy Manual

Discriminatory Harassment

- (e) When harassment is found to have occurred, the department and Board of Fire Commissioners shall take prompt and appropriate remedial action to the harassment and deter its reoccurrence.

1013.5.2 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

1013.6 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that the member has been advised of this policy, is aware of and understands its contents, and agrees to abide by its provisions during the member's term with the Department.

All members shall receive annual training on the requirements of this policy in coordination with the Board of Fire Commissioners and the Toms River Fire Academy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents, and agree that they will continue to abide by its provisions.

Failure to complete annual training shall result in disciplinary action.