



Monroe County Unlawful Discrimination and Harassment Policy

SUBJECT: Unlawful Discrimination and Harassment

SCOPE: All Monroe County employees, applicants for employment, interns, volunteers, contractors and persons conducting business with Monroe County regardless of immigration status.

PURPOSE: Monroe County is committed to maintaining a workplace where unlawful discrimination and harassment are prohibited and complaints are remedied promptly. This policy will support County employees' understanding of their right to a workplace free from harassment. Employees will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after taking action. The policy will also explain the investigation process into any claims of harassment or discrimination.

POLICY: In support of Monroe County's commitment to equal employment opportunity and to protecting those in the workplace from acts of unlawful discrimination or harassment, the following policy statements are set forth:

It is the policy of Monroe County to provide equal employment opportunities for minorities, women, persons with disabilities and protected class veterans and to prohibit discrimination in employment based on race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, creed, veteran status, military status, status as a victim of domestic violence, gender identity or expression, criminal history, genetic predisposition or carrier status, familial status, marital status, or retaliation regarding hiring, compensation, terms, conditions or privileges of employment.

Discrimination or harassment (including hostile work environment harassment) based on sex or on a protected class is illegal under state and federal laws and will not be tolerated.

Monroe County prohibits retaliation against anyone who complains of unlawful discrimination or harassment, including those who take part in any investigation under this policy or any proceeding involving a claim based on a protected class.

Preventing harassment is everyone's responsibility. Employees are encouraged to report any harassment or behaviors that may violate this policy. Managers and supervisors are required to report any complaints that they receive or harassment that they observe to the Equal Employment Manager (EEO Manager).

Monroe County will conduct a prompt, thorough investigation of all complaints that provides due process for all parties. All employees are required to cooperate with any internal investigation.

Violation of this policy may result in remedial and/or disciplinary action (e.g., counseling, suspension, termination). Supervisors may be subject to discipline for failing to report suspected harassment or otherwise allowing harassment to continue.

Harassers may also be individually subject to liability under New York State law. Any employee, who has been subject to a final judgment of personal liability for intentional wrongdoing related to a claim



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of sexual harassment, shall reimburse Monroe County if it makes a payment to a plaintiff for an adjudicated award based on a claim of sexual harassment resulting in a judgment, for his or her proportionate share of such judgment. Such employee shall personally reimburse Monroe County within 90 days of a final judgement.

DEFINITIONS:

Protected Class/Status: Protected class/status is defined by Federal Law and the New York Human Rights Law to include race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, creed, military status, status as a victim of domestic violence, gender identity, criminal history, genetic predisposition or carrier status, or status as a complainant or witness in any investigation conducted under this policy (retaliation).

Discrimination: Discrimination involves an adverse action or decision or harassing treatment of a person or class of persons because of a legally protected status or because of a perceived or actual affiliation/association with other individuals in a protected class, even if the individual is not the intended target of the harassment.

Harassment: Verbal, written, or physical conduct may be considered unlawful harassment if it is (1) based on a protected class; (2) unwelcome; and (3) rises above the level of what a reasonable victim of harassment and/or discrimination with the same protected characteristic would consider petty slights or trivial inconveniences.

Employee: For purposes of this policy, employees include all individuals working for or in a space controlled by Monroe County. This includes, but is not limited to, employees, public officers, interns, volunteers, independent contractors, and employees of contractors and vendors.

DISCRIMINATION:

Discrimination involves an adverse action or decision or harassing treatment of a person or class of persons because of a legally protected status or because of a perceived or actual affiliation/association with other individuals in a protected class, even if the individual is not the intended target of the harassment. Discrimination under this policy does not include unfair or inappropriate behavior that is not based on a protected class.

Discrimination of any kind, including sexual harassment, is a violation of our policies, is unlawful, and may subject Monroe County to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and employers or supervisors who fail to report or act on harassment may be liable for aiding and abetting such behavior. Employees at every level, who engage in harassment or discrimination, including managers and supervisors who engage in harassment or discrimination or who allow such behavior to continue, will be penalized for such misconduct.

Offensive conduct based on a protected class can include, but is not limited to, words, signs, offensive jokes, pranks, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, unwanted verbal, physical advances or physical contact, stalking, and interference with work performance.



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SEXUAL HARASSMENT:

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes; gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. It includes unwelcome conduct, such as sexual advances, requests for sexual favors, sex stereotyping or other verbal, written or physical conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment; submission to, or rejection of, such conduct by an individual is used as the basis for decisions effecting a person's employment; or such conduct has the purpose or effect of interfering with a person's work performance by creating an intimidating, hostile or offensive working environment.

Types of Sexual Harassment:

Quid pro quo: (i.e., something for something) is when a supervisor conveys to an employee that he or she will base an employment decision (e.g., whether to hire, promote, or fire that employee) on the employee's satisfaction of a sexual demand.

Hostile Work Environment: is when conduct based on sex (which includes sexual conduct, gender, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender) rises above the level of what a reasonable victim of sexual-harassment and/or sex discrimination would consider petty slights or trivial inconveniences, and negatively alters the conditions of the complainant's employment and/or creates an abusive working environment.

Examples of Sexual Harassment:

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- a) Physical acts of a sexual nature, such as
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body; and



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- Sexual assault, sexual battery, molestation, or attempts to commit these assaults.
- b) Unwanted sexual advances or propositions, such as
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments; and
 - Subtle or obvious pressure for unwelcome sexual activities.
- c) Sexually oriented gestures, noises, remarks, or jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- d) Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- e) Sexual or discriminatory displays or publications anywhere in the workplace, such as
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- f.) Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity or the status of being transgender, such as
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job.;
 - Sabotaging an individual's work; and
 - Bullying, yelling, name-calling.

Findings of hostile work environment harassment under this policy will be based on the totality of the facts and circumstances.

Offensive conduct based on a protected class can include, but is not limited to, words, signs, offensive jokes, pranks, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, unwanted verbal, physical advances or physical contact, stalking, and interference with work performance.

Who can be a Target of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in this policy. **Harassers can be anyone in the workplace.** A supervisor, a supervisee, or a coworker can all be harassers. Anyone else in the workplace can also be harassers including an independent contractor, contract worker, vendor, client, customer, patient, constituent, or visitor.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.



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Individuals bring personal history with them to the workplace that might affect how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

Where Can Sexual Harassment Occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

Sexual harassment can occur when employees are working remotely from home as well. Any behaviors outlined above that leave an employee feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee or covered individual is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Supervisory Responsibilities

Supervisors and managers have a responsibility to prevent sexual harassment and discrimination. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to the Equal Employment Opportunity Manager. Managers and supervisors should not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must act.

Supervisors and managers can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. Supervisors and managers can also be disciplined for failing to report suspected sexual harassment or allowing sexual harassment to continue after they know about it.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

While supervisors and managers have a responsibility to report harassment and discrimination, supervisors and managers must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.



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Bystander Intervention

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is **required** to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

- A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
- A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
- A bystander can record or take notes on the harassment incident to benefit a future investigation;
- A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
- If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

Retaliation

Retaliation is adverse action taken against an employee because the individual has in good faith (1) personally complained of perceived discrimination or harassment based on a protected class; or (2) testified, assisted or participated in an investigation, proceeding, hearing or legal action involving a claim of discrimination or harassment based on a protected class. Adverse action need not be job-related (e.g., threats of physical violence outside of work hours, or exclusion from social functions) or occur in the workplace to constitute unlawful retaliation. Even if the alleged harassment does not turn out to rise to the level of a violation of the law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as “difficult” and excluding them from projects to avoid “drama”;
- Undermining an individual’s immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual’s desk to a less desirable office location.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:



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- Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
- Reported that another employee has been sexually harassed or discriminated against; or
- Encouraged a fellow employee to report harassment.

PROCEDURES:

Who to Contact: Any employee who has been subjected to hostile or abusive conduct, or witnesses a coworker being subjected to the same, is encouraged to inform the person(s) responsible that it is unwelcome and it must stop. If the conduct continues, or if the employee is uncomfortable confronting the responsible person(s) about the conduct, he or she should first utilize the departmental chain of command and report the matter to a supervisor. If the supervisor cannot or will not resolve the issue or if the complaint is against the supervisor, then the employee should contact the next level of supervision, up to and including the Department Head.

Complaints can also be made directly to the County EEO Manager, at Voice / NY Relay: (585) 753-2407 or Email: EEO@monroecounty.gov. For complaints of discrimination or harassment based on a disability, contact the County ADA Compliance Officer at Voice/NY Relay: (585) 753-2406 or E-mail ADA@monroecounty.gov.

Training: Monroe County will provide annual training for all Monroe County employees.

Complaint Procedure:

Employees who believe that they have experienced or witnessed unlawful discrimination or harassment in the workplace are encouraged to bring forward a complaint in accordance with the Notice of Non Discrimination and Complaint Procedure. Reports may be made verbally or in writing using the Monroe County Discrimination Complaint Form available on the intranet and also attached to this policy. If a complaint is received verbally, the employee will be encouraged to complete the complaint form in writing. If he or she refuses, the Equal Employment Opportunity Unit will prepare a complaint form based on the verbal reporting.

Monroe County cannot prevent or remedy harassment unless it knows about it.

The Equal Employment Opportunity Unit will promptly and thoroughly investigate all allegations of discrimination or harassment, and if warranted, pursue either intervention measures and/or a formal fact finding process.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- a) If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- b) Request and review all relevant documents, including all electronic communications.
- c) Interview all parties involved, including any relevant witnesses.



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- d) If warranted, take interim actions while the investigation is in process, (e.g., instructing the respondent to refrain from communications with the complainant or temporarily relocate an employee).
- e) Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- f) Keep the written documentation and associated documents in a secure and confidential location.
- g) Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- h) Inform the individual who reported the harassment or discrimination of the right to file a complaint or charge externally as outlined below.

All persons involved, including complainants, witnesses and respondents will be accorded due process to protect their rights to a fair and impartial investigation. Investigations will commence immediately and be completed as soon as possible, and in most cases, a finding or findings will be rendered within sixty (60) days.

Monroe County will take immediate and appropriate corrective action when it determines that unlawful discrimination or harassment has occurred. Sexual harassment and other forms of harassment, discrimination, and retaliation are forms of employee misconduct and sanctions may be enforced against individuals found to have engaged in harassment or discrimination. Supervisory and managerial personnel who knowingly allow such behavior to continue or who otherwise fail to properly address harassment and discrimination will be subject to disciplinary action.

An informal resolution process may be appropriate in some cases, but the formal investigation can be initiated by the complainant at any time. The request for informal resolution and any proposed resolution will be communicated to the complainant and the respondent. If the resolution is acceptable to both the complainant and the respondent, then the matter will be closed.

All complaints are handled confidentially to the greatest extent possible.

All employees are encouraged to report discrimination, harassment or retaliation in accordance with these procedures. Prompt reporting of complaints is vital to the ability of Monroe County to resolve the matter.

Managers and supervisors have a special obligation not to engage in discrimination, harassment, or retaliation. All management and supervisory personnel have an affirmative duty and are required to promptly report any discrimination, harassment, retaliation or sexual assault that they observe, learn about from others, or reasonably suspect has occurred directly to the EEO Manager.

This policy may not be used to knowingly report false or malicious charges against another employee or group of employees or to encourage others to report a complaint in bad faith.



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Legal Protections and External Remedies

Aside from the internal process, employees may also choose to pursue legal remedies with the New York State Division of Human Rights (DHR) or the United States Equal Employment Opportunity Commission (EEOC). Individuals may use the confidential hotline to receive counsel and assistance or submit a complaint at 1-800-HARASS-3.

Complaints of sexual harassment filed with DHR may be submitted any time **within three years** of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

Appeals Process:

In the event that the complainant disagrees with the findings, he or she may submit a written appeal to the Director of the Department of Diversity, Equity and Inclusion. This appeal must be submitted in writing and within ten (10) days of being notified of the findings. A response to the appeal will be provided to the complainant within thirty (30) days after the Director receives the request for the appeal.

Reference:

Relevant Federal and State Laws Prohibiting Harassment in New York include Title VII of the Civil Rights Act of 1964 (Title VII); Americans with Disabilities Act (ADA); Age Discrimination in Employment Act (ADEA); Genetic Information Non-discrimination Act (GINA); New York Human Rights Law; New York Public Officers Law 17-a; New York Labor Law 201-g.

Revised: 1/29/2024



Equal Employment Opportunity Unit Discrimination & Harassment Complaint Form

Today's date _____

Your name _____

Your home telephone number _____

Your home address _____

1. If you are a County employee.

Your Department _____

Your hire date with the County _____

Your current job title _____

Date you began work in this job title _____

Your work location _____

Your work telephone number _____

The name and phone number of your immediate supervisor _____

Have you requested assistance from your Union regarding your complaint () yes () no

2. If you are a County customer.

The name of the County service or program involved _____

The name of the County department responsible for this service _____

The name of the County employee who has been your contact _____

3. Please indicate the basis on which you feel you have been subject to discrimination or harassment.

() Race () Color () Religion () Sex () National Origin () Age () Disability

() Sexual Orientation () Marital Status () Creed () Military Status () Domestic

() Violence Victim Status () Sexual Identity () Gender Identity () Criminal History

() Genetic Predisposition or Carrier Status () Retaliation () Other_



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4. Indicate the actions that were taken toward you that you believe have a discriminatory basis, and which you want to include in this complaint (check only those that apply).

Discharged

- Fired
- Laid off
- Forced to quit/retire/take leave
- Resigned

Denied

- Employment
- Promotion
- Transfer
- Leave Time
- Accommodation

Treated Differently

- Harassed
- Paid less
- Demoted
- Hostile Environment
- Discipline

Other _____

5. Time frame of alleged discrimination: (As close as you can remember.

The earliest date is: _____ The most recent date is: _____

6. Identify by name, department and job title the individual(s) who you believe have engaged in discrimination and/or harassment against you (If known).

7. Specify the dates, place, and the nature of the conduct allegedly committed against you by each individual identified above.

8. Identify all employees or others who witnessed and/or who have any knowledge of the conduct in question. Describe what was witnessed by whom and/or the nature of their knowledge.

9. Provide quotations of statements that were said to you or about you that support your complaint. Please be as accurate as possible based on your memory, and provide dates and witnesses (if any) for each.



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10. Is there any physical evidence including (but not limited to) documents, text messages, emails or photographs supporting your complaint? If yes, please describe.

11. Have you missed any work time because of this alleged conduct against you? If yes, give dates and approximate time lost.

12. Have you previously confronted or discussed any aspect of the conduct in your complaint with one or more of the individuals who are responsible for that conduct? () Yes () No. If yes, please provide the details of these communications below.

13. Have you previously complained about this and/or related acts to a County supervisor or other County official? () Yes () No If yes, please identify the person(s) to whom you complained, the date(s) and place, and please provide the individual's response.

14. What is your requested remedy regarding this complaint.



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NOTE:

In order to conduct a fact-finding investigation of your complaint, it will be necessary to interview you, the person(s) alleged to have committed the conduct/actions in question, and any witnesses with knowledge of the allegations or defenses. The Equal Employment Opportunity Unit will notify all persons involved in the fact-finding investigation that this process is confidential to the greatest extent possible unauthorized disclosure of information concerning the fact-finding investigation could result in disciplinary action up to and including discharge. Confidentiality is required in order to protect witnesses, prevent evidence from being destroyed and to prevent a cover up.

Acknowledgement of Complainant

I affirm under penalty of perjury that all the information provided is true and correct. False information could result in dismissal of my complaint and disciplinary action up to and including termination.

I will cooperate fully in the fact-finding investigation of any complaint and to provide whatever evidence the Equal Employment Opportunity Unit deems relevant to my complaint.

By: _____ Date: _____

Signature of complainant

Printed name of complainant

Please mail or deliver this completed document to:

Equal Employment Opportunity Unit
City Place
50 West Main Street, 7th Floor
Rochester, NY 14614
Email EEO@monroecounty.gov

For Staff Use only

Received by EEO Unit

Staff Signature: _____ Date: _____

Name Printed