



Town of Amherst

Sexual Harassment Prevention Training

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Report Highlights

Town of Amherst

Audit Objective

Determine whether Town of Amherst (Town) employees and elected officials completed annual sexual harassment prevention training (SHP Training).

Key Findings

SHP Training was provided to employees and elected officials. However, of the 100 total individuals we tested (91 selected employees and all nine elected officials), 67 employees or 74 percent of employees tested and eight elected officials did not complete the annual SHP Training.

Key Recommendation

Town officials should monitor the completion of annual SHP Training by all employees and elected officials.

Town officials generally agreed with our recommendation and indicated they planned to initiate corrective action.

Background

The Town, located in Erie County, is governed by an elected five-member Town Board (Board) composed of four Council members and the Town Supervisor (Supervisor).

The Supervisor is responsible, along with other administrative staff, for the day-to-day management of the Town.

The Director of Human Resources (Director) is responsible for providing and ensuring completion of annual SHP Training.

Quick Facts

2021	
Total Employees & Elected Officials	1,006
Total Tested ^a	100
SHP Training Method	Online modules and in-person
a) See Appendix B for information on our sampling methodology.	

Audit Period

January 1, 2021 – December 31, 2021

Sexual Harassment Prevention Training

Sexual harassment is a form of workplace discrimination, and may include harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment is unlawful when, among other things, it subjects an individual to inferior terms, conditions or privileges of employment.

Employees have a legal right to a workplace free from sexual harassment and are required to work in a manner that prevents sexual harassment. All employers and officials should be committed to maintaining such a workplace.

How Should Officials Help Prevent Sexual Harassment?

New York State (NYS) Labor Law Section 201-g requires employees to be provided with SHP Training on an annual basis. This obligation includes local government employees. While the law does not expressly require training for local elected officials, they should be encouraged to complete SHP Training as well.¹

NYS Department of Labor (DOL), in consultation with the NYS Division of Human Rights (DHR), has established a model for employers to use for this training.

Alternatively, employers may elect to develop their own training. Employers that do not use the model SHP Training program must ensure the SHP Training they use meets or exceeds the following minimum requirements. The SHP Training must:

- Be interactive,
- Include an explanation of sexual harassment consistent with guidance issued by DOL, in consultation with DHR,
- Include examples of conduct that would constitute unlawful sexual harassment,
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets of sexual harassment,
- Include information concerning employees' rights of redress and all available forums for adjudicating complaints, and
- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

Employees have a legal right to a workplace free from sexual harassment and are required to work in a manner that prevents sexual harassment.

¹ See, e.g., chapter 139 of the Laws of 2022 (what was deemed effective as of the effective date of section 1 of Ch. 160 L. 2019) amending the Executive Law to clarify that a city, town, village or other political subdivision shall be considered an employer of any employee or official, including any elected official, for purposes of the Human Rights Law.

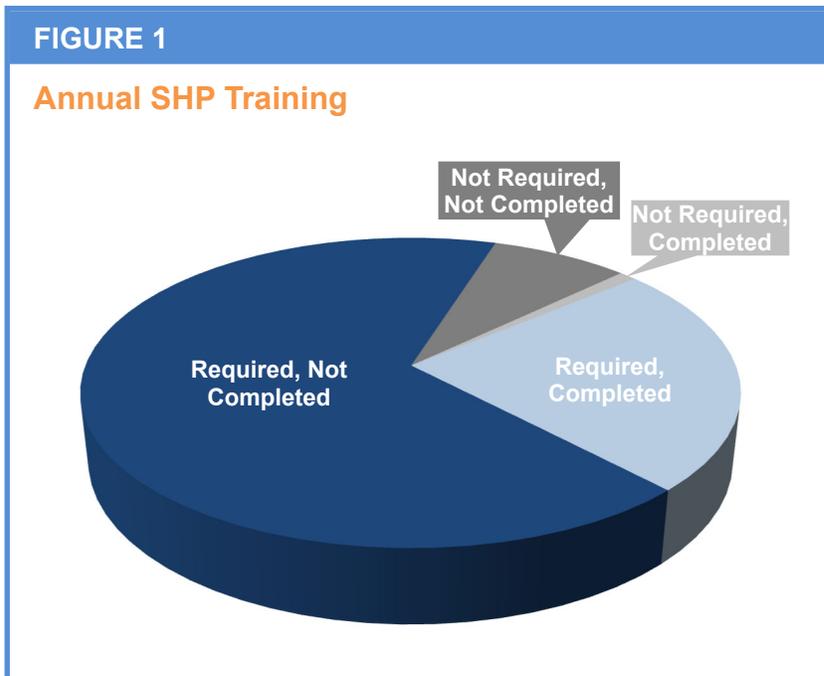
Furthermore, the annual training period may be based on any date the employer chooses, including, but not limited to, the calendar year or anniversary of each employee's start date. The guidance also recommends that new employees should receive the annual training as soon as possible after being hired.

SHP Training can be provided in different ways depending on the needs of the local government or school district, including in person, via webinar, an online interactive training module, or on another individual basis with a mechanism for feedback by the employee.

Not All Employees and Elected Officials Completed SHP Training

The Town provided annual SHP Training that met the minimum requirements to employees and elected officials during the 2021 period and maintained records of who completed the training. Newly hired employees were required to complete the training during orientation. However, the training was not completed by all employees and elected officials.

We tested 100 individuals (91 selected employees and all nine elected officials) to determine whether they completed the annual SHP Training. Sixty-seven employees (74 percent of employees sampled) and eight elected officials did not complete the training (Figure 1).



The other 24 selected employees and one elected official (25 percent of individuals tested) completed the 2021 annual SHP Training.

The Director notified the Supervisor, Board and Department heads on November 24, 2020 via email of the mandated SHP Training to be completed for the 2021 training period. In the notification, the Director provided a link to the interactive, online SHP Training module on the Town's website, as well as a separate link to the Town's intranet for access to attachments that included the Town's policy against sexual harassment, a complaint form, and a training evaluation form. The Director told us the completed employee training evaluation forms were collected at the Department level and submitted by the Department heads to Human Resources for filing, not used for monitoring training completion. The Director's email indicated training could be disseminated, upon Departmental request, on USB flash drives, DVDs, or in an arranged small-group session for those employees who could not access the online module. However, the Director's email also indicated that the small-group option, due to COVID-19 safety reasons, should be avoided if possible.

Although the Director provided a link to the SHP Training to all Town Departments, the Police Department and Youth and Recreation Department each provided a separate SHP Training different from the Town's training, both of which met minimum requirements. The Police Department created its own training material and provided in-person training, while the Youth and Recreation Department required their employees to complete an online training module.

The Director told us he had assigned the completion of training to each Department head for their respective employees, but he did not provide oversight or follow up to ensure all Town employees completed the SHP Training.

The eight elected officials who did not complete training included the Supervisor, three Board members, two Town Justices, the Highway Superintendent and the Town Clerk. The Supervisor told us he took the SHP Training at the university where he worked, but did not submit any training completion paperwork to the Town. None of the three Board members or the two Justices responded to our efforts to contact them.

The Town Clerk provided us training completion paperwork dated December 2020 for the 2021 period, however, she did not have support for 2020 so we do not know whether these documents represent the 2020 or 2021 training period.

Most of the 67 employees sampled who did not complete SHP Training were in the Engineering Department, Highway Department, Youth and Recreation Department and Town Comptroller's Office. Specifically:

- 16 Engineering Department employees,
- 13 Highway Department employees,
- Eight Youth and Recreation Department, employees, and
- Four Town Comptroller's Office employees.

The Town Engineer told us he did not have any evidence of SHP Training completed in 2021 for his employees and could not recall whether the training was provided in 2021. He added that the individual in the Engineering Department who was responsible for SHP Training retired in 2020 and the position was still unfilled.

The Highway Superintendent told us it was an oversight that he did not complete the training and that the Department went to great lengths to minimize group interactions due to the COVID-19 pandemic, and, because his employees did not have access to computers to complete the training individually, the Highway Department employees were not provided SHP Training.

According to the Director of the Youth and Recreation Department, five employees (three new hires and two others) were overlooked when the trainings were provided. Two employees were employed at a school district and said they completed SHP Training there. However, the employees did not provide, and the Youth and Recreation Department did not request from them, their certificates of completion. The other employee had transferred from another Town Department during the year and the Director of Youth and Recreation told us she did not realize the employee had not taken the training.

The Town Comptroller told us it was an oversight that he and his staff did not complete the SHP Training. The remaining 26 employees sampled who did not complete SHP Training were spread across twelve various Town Departments and offices.

A lack of SHP Training is an ongoing risk to the Town's ability to provide employees and other individuals in the workplace with an environment free from sexual harassment. Furthermore, the implications of sexual harassment in the workplace can have a far-reaching impact, from the Town's finances to employee productivity, and to a safe work environment. Therefore, it is important that all employees and other individuals in the workplace complete the Town's annual SHP Training.

What Do We Recommend?

Town officials:

1. Should monitor the completion of annual SHP Training by all employees and elected officials and develop administrative procedures to help ensure all employees and elected officials complete the annual SHP Training.

Appendix A: Response From Town Officials



ROBERT P. McCARTHY, ESQ.
Director of Human Resources

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Town of Amherst Written Response to OSC Draft Audit Report

The Town of Amherst submits the following as a response to the Office of the State Comptroller's (OSC) draft audit report addressing Sexual Harassment Prevention Training (SHP Training) for all Amherst Town employees.

In its draft report, the OSC noted that the Town's annual SHP Training met the "minimum requirements" for meeting the State's training standards, an observation with which the Town, of course, concurs. The Town believes it bears noting, however, that in light of the fact the Town already had in place for several years a more stringent policy against sexual harassment and modified its policy by directly incorporating elements prescribed by the New York State (NYS) model policy, the Town is in fact exceeding the minimum requirements set forth by NYS. Additionally, the Town specifically adopted and utilizes the NYS model training program. Earlier this year, the State began advancing a process to update and improve both its model SHP Policy and model SHP Training for implementation at some future point in 2023. The Town has been monitoring these updates, and will again revise standing policy and training to fully implement all State recommendations immediately upon formal adoption in order to continue meeting and exceeding minimum requirements for compliance.

In the course of its audit, the OSC reported a finding that in 2021, the year the audit focused on, the Town was not able to successfully complete training for all of its elected officials and employees. Reluctantly, the Town must agree with this finding. When New York State Labor Law §201-g was adopted requiring annual SHP Training for all employees in 2018, the Town immediately adopted a practice of training all of its employees in large groups in one central location at various times to ensure full compliance. Exceptions were made in some cases where it could be demonstrated that an efficient means of delivering the training could be accomplished with successful established procedures already in place. For example, the Amherst Police Department already engaged in established credible SHP Training as part of its accreditation process.

Using this procedure, the Town successfully trained all of its employees in an efficient manner, and was able to document that the required training had been completed by each employee through collection and retention of sign-up sheets and completed training evaluation forms, which satisfied the interactive component requirement for all State mandated SHP Training. For all new employees, the SHP Training and evaluation was conducted as part of the initial hiring orientation process, ensuring that all newly hired employees received the training within 30 days of their employment starting date as required by law.

Unfortunately, the advent of the COVID-19 Pandemic significantly affected the Town's ability to carry out training in the foregoing manner. Like many New York State employers during the Pandemic, the Town faced many extreme challenges when many Town employees were forced to quarantine, work remotely or remain away from work to care for COVID infected children and family members. Others were simply directed by Executive Orders from former NYS Governor Cuomo not to report to work at all for a lengthy period of time.

Further complicating matters, those Town employees that were able to report to work in person were restricted from physically meeting or working together in close proximity while isolation was required for a majority of months during years 2020 and 2021, greatly impeding the Town's ability to gather employees together even in small groups for training or other purposes. As a result, while the Town never lacked the desire or commitment to engage all of its employees in the required SHP Training, the ability to successfully carry out that mission was severely impacted by the physical limitations imposed by the Pandemic.

These unfortunate realities were reflected in the results uncovered during the OSC's audit. The Town attempted to pivot to other ways of delivering the SHP Training, for example, relying on the training being presented within the individual departments; and providing internet and intranet links to the training program, SHP Policy, complaint form and training evaluation form for employees who had computer access. However, as the results of the audit revealed, these measures were not entirely successful.

As part of the draft audit, the OSC acknowledged in the Appendix addressing "Audit Methodology and Standards," that professional judgement had to be relied on to arrive at a reasonable sample of Town employees to be examined in the audit, and that it was not the intent to project the results onto the entire population. With over 1000 employees subject to training for year 2021, the Town totally understands this approach. Ideally, we believe that the total number of Town employees trained in 2021 would actually exceed the percentages reflected in the audit report sample, but acknowledge the difficulty of the task at hand for the auditors, and accordingly do not wish to take issue with the reported results.

Based on its findings, the OSC's recommendation to the Town was that "Town officials should monitor the completion of annual SHP Training by all employees and elected officials, and develop administrative procedures to help ensure all elected officials and employees complete the annual SHP Training."

The Town fully understands and acknowledges its ultimate responsibility to fully train all of its employees pursuant to State requirements, and realizes the failure to do so may result in negative consequences for the Town and its employees. While we do believe mitigating circumstances negatively affected our ability to effectuate all required training in 2021, the Town realizes the requirement to provide SHP Training to all employees remains in effect regardless of exigent circumstances, and agrees with and accepts the audit's findings and recommendations.

The Town of Amherst remains entirely dedicated to implementing sound measures to ensure complete and thorough SHP Training compliance going forward. In fact, the Town has already begun the process of addressing future training, first, by planning to revert to some of the successful methods that proved reliable for delivering all required training in the pre-pandemic past, and second, by proactively developing and engaging in strategies to overcome any new challenges we may encounter in the future, such as potential repeated pandemics or other emergent circumstances. These and other proposed measures will be presented in greater detail in our upcoming corrective action plan (CAP) following release of the final audit report.

Submitted April 4, 2023, by:

Robert P. McCarthy, Esq.

Director of Human Resources

Town of Amherst

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following steps:

- We used our professional judgment to select the Town for audit based on geographic location across NYS applied to a list of counties, cities, towns, villages and school districts (excluding NYC), not currently in the OSC audit process at the time of selection.
- We interviewed Town officials to gain an understanding of the process for creating, disseminating and monitoring sexual harassment prevention training for employees and elected officials.
- We reviewed relevant State laws and guidance from NYS, as well as Town policies to gain an understanding of their sexual harassment prevention policy and training.
- We reviewed the Town Board meeting minutes for the 2021 calendar year to determine action taken related to sexual harassment prevention.
- We reviewed and assessed the sexual harassment prevention training materials provided by the Town to determine whether the training met minimum required State law.
- We determined the total number of employees and elected officials employed at the Town during our audit period by obtaining an employee listing and reviewing the County Board of Election's election results.
- Of the 1,006 total Town employees and elected officials, a sample of 10 percent (or 100) was selected. Using the Town's employee listing, all nine elected officials were selected as part of the sample total, the remaining 91 employees were selected to include both supervisory and nonsupervisory titled employees. We used our professional judgment to select 46 supervisory employees and 45 nonsupervisory employees. Six of the 91 employees selected were new hires, including one supervisory and five nonsupervisory title.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning

the value and/or size of the relevant population and the sample selected for examination.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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