



Cattaraugus County

Sexual Harassment Prevention Training

S9-23-06 | September 2023

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Report Highlights

Cattaraugus County

Audit Objective

Determine whether County of Cattaraugus (County) 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 150 total individuals we tested (125 selected employees and all 25 elected officials), 36 employees or 29 percent of employees tested, and 18 elected officials did not complete the annual SHP Training.

Key Recommendation

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

County officials generally agreed with our recommendation and have indicated they planned to initiate corrective action. Appendix B includes our comment on an issue that was raised in the County's response letter.

Background

The County, located in the Western New York region, is governed by an elected 17-member Board of Legislators (Legislature).

The appointed County Administrator is responsible for the overall administration of County government at the Legislature's direction.

The Personnel Officer is responsible for providing and ensuring completion of annual SHP Training. The former Personnel Officer left County employment on April 30, 2021. The Legislature appointed the County Administrator as Personnel Officer beginning May 1, 2021.

The Personnel and Safety Trainer (Trainer) assists the Personnel Officer in these duties.

Quick Facts

2021	
Total Employees & Elected Officials	1,531
Total Tested ^a	150
SHP Training Method	Online module and in-person

a) See Appendix C for information on our sampling methodology.

Audit Period

October 1, 2020 – September 30, 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 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

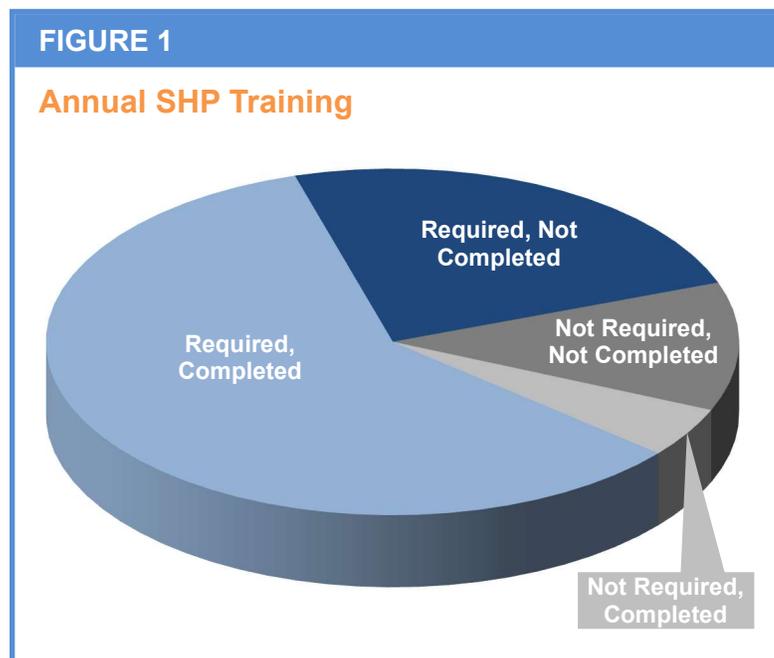
The County provided annual SHP Training that met the minimum requirements to employees and elected officials during the 2021 period and maintained records of who completed the training. Newly hired employees were required to complete the training within the first few days of hire.

We tested 150 individuals (125 selected employees and all 25 elected officials) to determine whether they completed the annual SHP Training. Thirty-six employees (29 percent of employees sampled) and 18 elected officials did not complete the training (Figure 1).

The other 89 employees and seven elected officials (64 percent of individuals tested) completed the 2021 SHP training.

The former Personnel Officer disseminated the SHP Training as an interactive, online training module for employees to complete individually. The former Personnel Officer emailed the initial SHP Training notification, dated October 9, 2020, to

County elected officials and employees and included instructions and a link to the County's multiple online trainings. The Trainer told us that employees were required to complete the SHP Training within one year and the online training module automatically sent email reminder alerts to employees as the training



deadline approached. The online training module tracked which employees took the SHP Training and the date completed after the employee uploaded their completion certificate to the training module.

For Public Works Department employees without computer access, the Trainer disseminated a separate in-person SHP Training to complete as a group. A sign-in sheet to document employee attendance was completed. All 18 Public Works Department employees we tested completed the required SHP Training.

The 18 elected officials who did not complete the County's SHP Training included 14 Legislators and four Coroners. The Legislative Chairman told us that he had received the reminder email alerts, and rather than taking the County's SHP Training, took the training provided by the school district where he worked. He also told us that the other Legislators may have taken the SHP Training at their respective places of outside employment, but there were no completion certificates on file at the County for these 14 Legislators.

One of the Coroners told us he did not recall receiving the initial SHP Training notification but completed the SHP Training at his outside employment. However, there was no completion certificate on file with the County. Another Coroner told us he recalled taking the SHP Training in person at the County. Although the Trainer told us she recalled this Coroner taking the SHP Training, there was no completion certificate on file at the County and said the certificate was likely not uploaded correctly to the training module. Another Coroner told us that he completed the SHP Training and uploaded the certificate into the training module, and assumes there must have been a technical issue for why the training records do not indicate that he completed the training. The last Coroner told us it must have been an oversight that he did not complete the annual SHP Training.

The 36 employees sampled who did not complete SHP training were spread among 13 different County Departments and offices. The County Administrator and Trainer both told us that because the County was transitioning to a new online training module and was busy with the transfer of employee information into the new module, there was not a focus on monitoring the completion of SHP Training towards the end of the training period. The County Administrator also said that in the later part of 2021, the County had prioritized its response to the COVID-19 pandemic, including administering vaccinations and instituting quarantine protocols.

A lack of SHP Training is an ongoing risk to the County'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 County'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 County's annual SHP Training.

What Do We Recommend?

County officials:

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

Appendix A: Response From County Officials



Cattaraugus County
John R. Searles, County Administrator

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To whom it may concern,

Thank you for this opportunity to respond on behalf of Cattaraugus County to your recent report of examination.

Cattaraugus County does not tolerate sexual harassment and the county fully endorses and supports efforts to provide the sexual harassment training mandated by New York State.

As we have repeatedly mentioned during our interactions with staff of the New York State Comptroller's Office, I have several comments I would like to make about this report.

First, the timeline covered by this report was probably one of the worst timeframes I can think of for doing this type of examination. In 2021, Cattaraugus County was still heavily in the midst of its response to COVID19. The infection rates for this disease, by county, were rolling in nature with western New York counties on the Pennsylvania border experiencing high rates of infection much later than that of other parts of the State. During the period you selected for this audit, locally, we were still scrambling for vaccine, tests, dealing with high levels hospitalizations, and responding to the associated local needs. This was an all-out effort on the part of the county to address the pandemic needs of our population. I, for one, applaud this effort, but do fully acknowledge this once in a century event, took absolute priority. Despite repeated conversations with Comptroller's Office staff regarding the timeline for this audit, the year 2021 was the timeframe chosen for this examination.

Second, in 2021, the Cattaraugus County Legislature chose not to reappoint the then current Human Resources director mid-year. This was the person responsible for the roll out of this training. When an appointment to this position was made later in the year, training responsibility shifted to another department in the County. Some continuity may have been lost in this transition.

Third, mid-year 2021, Cattaraugus County shifted from one online training platform to another more effective platform. In this transition, we experienced both false positive and false negative results. In some instances a key item used in this audit, a printed certificate of completion, was not retained by those who did indeed

do the training, contributing, we believe, to an undercount of those receiving training.

Finally, Cattaraugus County entered into this audit with the belief that a random sample of employees would be included in the sample used. Dutifully, we provided your staff with lists of current and past employees. In reality, most, but not all, elected officials were targeted in this audit, followed by a smaller sample of non-elected employees. Effectively, this audit targeted most of our elected employees. We were told that this was the same methodology used elsewhere. This message was not communicated and understood prior to the audit and now, effectively, it appears as if the audit was more about training participation among some elected officials rather than activities countywide. This of course is particularly troublesome locally when the majority party locally is not party in majority in Albany.

I have to commend the staff doing the audit on the part of the State. They were very thorough and always professional. In the future, being largely out of Covid19 Pandemic, with a new departmental focus and new software, I believe we will be able to achieve better results in this arena.

Respectfully,

(John Robert Searles
County Administrator
County of Cattaraugus, NY

See Note 1 Page 8

Appendix B: OSC Comment on the County's Response

Note 1

Our sampling methodology was discussed with the County Administrator, and the Assistant County Attorney who was heavily involved in the audit process and throughout our testing. All 25 elected officials at the County during the audit period were included in our sample; we did not target any specific officials. Elected officials represented 17 percent of the total 150 individuals sampled.

Appendix C: 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 County 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 County 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 County policies to gain an understanding of their sexual harassment prevention policy and training.
- We reviewed the County Legislature's 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 County to determine whether the training met minimum required State law.
- We determined the total number of employees and elected officials employed at the County during our audit period by obtaining and reviewing an employee listing and reviewing the County Board of Election's election results.
- Of the 1,531 total County employees and elected officials, a sample of 10 percent (or 150) was selected. Using the County's employee listing, all 25 elected officials were selected as part of the sample total, the remaining 125 employees were selected to include both supervisory and nonsupervisory titled employees. We used our professional judgment to select 63 supervisory employees and 62 nonsupervisory employees. Eleven of the 125 employees selected were new hires, including two supervisory and nine nonsupervisory titles.

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 Legislature 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 Legislature to make the CAP available for public review in the County Clerk's office.

Appendix D: 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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