



City of Niagara Falls

Sexual Harassment Prevention Training

S9-23-2 | September 2023

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Report Highlights

City of Niagara Falls

Audit Objective

Determine whether City of Niagara Falls (City) employees and elected officials completed annual sexual harassment prevention training (SHP Training).

Key Findings

SHP Training was not provided to all employees and elected officials. Of the 65 total individuals we tested (59 selected employees and all six elected officials), 14 employees or 24 percent of employees tested, and five elected officials did not complete the annual SHP Training.

Additionally, the Fire Department cancelled the annual SHP Training for all 131 of its uniformed personnel, including six of the 14 employees in our testing that did not complete the annual SHP Training.

Key Recommendation

Ensure all employees are provided, and complete, annual SHP Training and encourage elected officials to complete the training.

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

Background

The City is located in Niagara County and is governed by a City Council (Council) composed of five elected members.

The Mayor, along with the City Administrator, and various department heads, is responsible for the day-to-day management of the City.

The Director of Human Resources (Director) is responsible for providing and ensuring completion of annual SHP Training for most City employees and all elected officials, with the assistance of the Associate Director of Human Resources (Associate Director).

The Superintendent of Police is responsible for providing and ensuring completion of SHP Training for police officers with the assistance of a training officer. The Fire Chief is responsible for providing and ensuring completion of SHP Training for uniformed Fire Department personnel.

Quick Facts

2021

Total Employees & Elected Officials	648
Total Tested ^a	65
SHP Training Method	Online modules and in-person

a) See Appendix C 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.

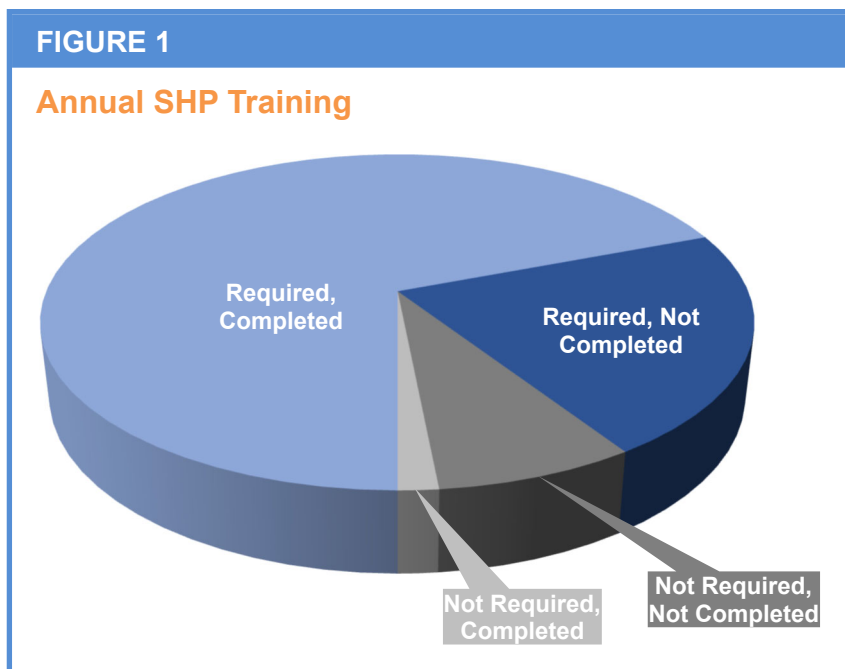
Furthermore, the annual training period may be based on any date the employer chooses, including, but not limited to, the calendar year or anniversary of each employee's start date. The guidance also recommends that new employees should receive the annual training as soon as possible after being hired.

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 Were Provided SHP Training

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

We tested 65 individuals (59 selected employees and all six elected officials) to determine whether they completed the annual SHP Training. Fourteen employees (24 percent of the employees sampled), and five elected officials did not complete the training (Figure 1).



The other 45 employees and one elected official (71 percent of individuals tested) completed the 2021 SHP Training.

All 19 of the individuals from our sample who did not complete the City SHP Training were not provided the training by City officials, including the City's five elected Council members and 14 employees. These 14 employees included:

- Six Fire Department employees,
- Three Police Department employees,
- One Civil Service Commissioner,
- One Human Resources assistant, and
- One employee each from the Law Department, Library and Mayor's Office.

The Associate Director disseminated an interactive, online module SHP Training to employees with a City email address. In addition, an in-person group training was provided to laborers in the Department of Public Works. The Director told us all newly hired City employees, including Police Department employees, were trained in-person during their orientation. The Police Department's training officer disseminated a separate interactive, online training module for police officers, and the Fire Chief scheduled an in-person training for the Fire Department's uniformed personnel.

For the five elected Council members, the Director told us she did not provide it to them. Although the Fire Chief scheduled the Fire Department's in-person training, he said it was canceled due to concerns related to the COVID-19 pandemic. As a result, none of the Fire Department's 131 uniformed fire personnel, including the six from our sample, completed SHP Training in 2021. The Director told us she was unaware the Fire Department training had been canceled and there is no City-wide monitoring to ensure all City employees completed SHP Training.

The three Police Department employees that did not complete the training included two civilian employees and one newly hired police officer. The Department's training officer told us the civilian employees should have been provided the City-wide online training other City employees received, and that the police officer was hired after the Department's 2021 SHP Training for police officers had been assigned, and should have completed the training during orientation. The Director told us she did not realize that the civilian employees should have taken the City-wide training and not the Police Department's training. According to the Associate Director, the in-person SHP Training material was discussed with the newly hired officer during orientation, but could not provide support of the completed training.

The Director told us that because the Civil Service Commissioner did not have a City email address and the Human Resources assistant had retired in December 2020 (returning in 2021 to train her replacement) they were not assigned the online module training for employees. The Director could not provide an explanation why the three other employees from the Law Department, Library and Mayor's Office were not assigned the training in 2021.

...[T]here is no City-wide monitoring to ensure all City employees completed SHP Training.

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

What Do We Recommend?

City officials:

1. Must provide annual SHP Training to all employees.
2. Should encourage elected officials to complete annual SHP Training.
3. 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 City Officials



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

March 31, 2023

Unit Name: City of Niagara Falls
Audit Report Title: City of Niagara Falls Sexual Harassment Prevention Training
Audit Report Number: S9-23-2

Please accept the following as both the response and corrective action plan (CAP) by the City of Niagara Falls, NY.

We acknowledge the number of employees which the report highlights as not having completed Sexual Harassment Prevention training.

As to the five (5) elected officials (Council Members), their lack of even a part-time staff and infrequent contact, generally, is not an excuse of the incompleteness but rather as a practical impediment to direct communication consistent with the City Charter. In order to address this matter, the City proposes the CAP of centralization of all Sexual Harassment Prevention training through the City Human Resources office. This centralization will provide better tracking capability to direct completion.

Relative to the public safety members (police and fire), that did not complete. The City explained that as to one of the police personnel, he/she was not on staff (hired later) at the time of the initial training, subsequently when the full report was run, the officer had not completed the online training but had received in person training, nevertheless it was not noted on the full report. Historically these public safety departments (police and fire) conducted and maintained independent records for training, including SHP. Moving forward, all department records of compliance will be centralized through the Human Resources Office of the City.

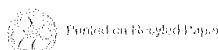
The City of Niagara Falls has received notification from Civil Service Commissioner, Lora Allen that she indeed completed Sexual Harassment Prevention training through her employer, Niagara County. A copy of her completion is attached for your viewing.

See
Note 1
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The other separately listed City employees that were in non-compliance resulted from the decentralized nature of establishing compliance. As reflected throughout this response/ CAP narrative, the City recognizes and believes that the centralization of Sexual Harassment Preventative training and other workplace training in the City Human Resources office, together with broader instruction to Executive Staff that they are to internally monitor compliance, will result in improvement in this regard.

Respectfully,

Anthony Restaino
City Administrator



Appendix B: OSC Comment on the City's Response

Note 1

Although City officials attached the Civil Service Commissioner's completion certificate from another employer to their response, they did not know whether the Commissioner had completed SHP Training at the time of our audit, nor had they requested proof of training until our inquiry.

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 City 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 City 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 City policies to gain an understanding of their sexual harassment prevention policy and training.
- We reviewed the City's Council 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 City to determine whether the training met minimum required State law.
- We determined the total number of employees and elected officials employed at the City during our audit period by obtaining and reviewing an employee listing and reviewing the County Board of Election's election results.
- Of the 648 total City employees and elected officials, a sample of 10 percent (or 65) was selected. Using the City's employee listing, all 6 elected officials were selected as part of the sample total, the remaining 59 employees were selected to include both supervisory and nonsupervisory titled employees. We used our professional judgment to select 29 supervisory employees and 30 nonsupervisory employees. Seven of the 59 employees selected were new hires, including five supervisory and two 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 Council 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 Council to make the CAP available for public review in the City 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

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