

Revised - New York State Sexual Harassment Training

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The voice of business and employers in New York State.



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What's New?

- <https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training>

This model policy is a template that can be used by employers to meet the New York State Labor Law requirements for a sexual harassment prevention policy. Employers are encouraged to tailor this policy to their individual needs, though as the minimum standard, no section in this policy should be omitted. The list of examples provided in this model policy is not meant to be exhaustive.

- Can distribute via email
- Impact over intent

Revised Model Policy

- Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- Provide examples of prohibited conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws
- Include a complaint form
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially
- Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue
- Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful



Revised Training Template

- Be interactive
- Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- 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 victims of sexual harassment
- Include information concerning employees' rights of redress and all available forums for adjudicating complaints
- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors



It's Against The Law!

- Harassment is a form of Discrimination
- Title VII of the Civil Rights Act of 1964
- New York State Law
 - Age, race (including traits historically associated with race, including but not limited to, hair texture and protective hairstyles), creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, marital status, arrest record, status as a victim of domestic violence, familial status, gender/gender expression, reproductive health decisions, immigration status or citizenship, or any other factor prohibited by law
 - Politics/Outside legal activities
 - Most on a basis other than sex

It's Against The Law!

- Important Court Decisions
 - Meritor Savings Bank v. Vinson (1986)
 - Quid Pro Quo
 - Hostile Work Environment
 - Burlington Industries v. Ellerth (1998)
 - Affirmative Defense

It's Wrong!

- Impact On Victims
 - Psychological Consequences – *Depression, anxiety, guilt, fear, substance abuse, etc.*
 - Physical Consequences – *Sleep disturbance, fatigue, headaches, weight loss/gain, etc.*
 - Work Related Consequences – *Decreased job performance, decreased satisfaction, increased absenteeism, etc.*
 - Reluctance To Complain – *only 8-15% complain*

Goals for Today's Training

Sexual harassment & discrimination are unacceptable

- Today's training will:
 - Help you better understand what is considered sexual harassment & discrimination
 - Show you how to report sexual harassment & discrimination
 - Show you external reporting options

What is Sexual Harassment?

- Is a form of gender discrimination and is unlawful
- Includes harassment or discrimination on the basis of sex, gender, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.
- Is not limited to sexual contact, touching or expressions of a sexually suggestive nature
- Is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment.

What is Gender Identity?

Understanding gender diversity is essential to recognizing sexual harassment & gender discrimination.

- Though there are many gender identities, the three most common ways people identify are:
 - Cisgender: a person whose gender identity aligns with the sex they were assigned at birth.
 - Transgender: a person whose gender identity is different than the sex they were assigned at birth.
 - Non-Binary: a person who does not identify exclusively as a man or a woman. Some may identify as transgender, but not all do



What Can Harassment or Discrimination Look Like?

Any unwelcome conduct, either of a sexual nature or which is directed at an individual because of that individual's gender identity when:

- The purpose or effect of the behavior interferes with an individual's work performance or creates a hostile work environment;
- Employment depends on accepting the unwelcome behavior; or
- Employment decisions are based on an individual's acceptance or rejection of the behavior

When Does Behavior Escalate to Harassment or Discrimination?

Under New York State law, harassment does not need to be “severe or pervasive” to be unlawful.

- Any harassing conduct can be unlawful if it rises above “petty slights or trivial inconveniences.”
- Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered harassing or discriminatory behavior.

Intent does not affect whether behavior is harassment.

Quid Pro Quo Sexual Harassment

Occurs when a person in authority trades, or tries to trade, job benefits for sexual favors.

Examples include:

- Better working conditions in exchange for a sexual relationship
- Retaliating for refusing to engage in a sexual relationship
- Using pressure to force a sexual relationship

Examples

- Unwanted sexual advances or requests for sexual favors;
- Sexual jokes and innuendo;
- Verbal abuse of a sexual nature;
- Commentary about an individual's body, sexual prowess or sexual deficiencies;
- Leering, catcalls or touching – Backrubs; Blocking
- Insulting or obscene comments or gestures;
- Display or circulation in the workplace of sexually suggestive objects or pictures (including through e-mail);
- Use of Profanity
- Sex-based harassment that is, harassment not involving sexual activity or language (e.g., male manager yells only at female employees and not males) may also constitute discrimination if it is severe or pervasive and directed at employees because of their sex.
- Use of demeaning terms..."Sweetie," "Honey"



Sex Stereotyping is Gender Discrimination

- Harassing a person because that person does not conform to gender stereotypes is sexual harassment.
- Harassment because someone is performing a job that is usually or was previously performed mostly by persons of a different sex is sex discrimination.

Which of the Following are Examples of Sex Stereotyping?

Amy is a steelworker with 25 years of experience. Her supervisor, Gus, always assigns a male coworker to partner with Amy on any project she is assigned. Similar projects he assigns to Amy's male coworkers to accomplish solo. When Amy confronts Gus, he explains that he just wants her to be safe as she is the only woman in a tough job.

Frank is an administrative assistant at a popular production company. He applies for an internal promotion to serve as administrative assistant to the company's Executive Director, which will involve greeting several high-level guests when they come to meet the director. Frank is gender fluid, and he wears makeup and dresses on occasion. Though more qualified than other candidates, Frank does not receive the promotion. The Executive Director explains that while he supports Frank's "lifestyle," many of his guests are "more traditional" and would "not be comfortable" with Frank as their first point of contact.

A finance firm hosts regular quarterly luncheons for their most important clients. At every luncheon, the CEO Peter directs all his questions regarding the logistics of the luncheon to Susan, the Vice President Peter works with, and only woman in a leadership position at the firm, despite the fact that Ronald, the organizer of the lunches, is also in the room.

George is the primary caregiver for his young son as he works from home for a tech company while his wife goes into the office. George's toddler has been known to interrupt video meetings, but George's output is impeccable. Still, George is often left out of meetings because his boss does not want to deal with "Mr. Mom."

- CORRECT ANSWER: All of the Above!



Who can be the Target of Sexual Harassment?

- Sexual harassment can occur between any individuals, regardless of their sex or gender.
- The law protects employees, paid or unpaid interns, and additional covered individuals including (but not limited to) independent contractors, vendors, temporary workers, consultants, or anyone providing services in the workplace.

Who Can Be the Perpetrator of Harassment?

Anyone in the workplace can be the perpetrator of sexual harassment or discrimination.

- This includes:
 - A coworker
 - A supervisor or manager
 - Any third-party (non-employee, intern, vendor, customer, etc.)

Where Can Workplace Sexual Harassment Occur?

- Whenever and wherever employees are fulfilling their work responsibilities, including:
- Employer-sponsored events
- Conferences
- Office parties
- Off-site or during non-work hours
- Online
- Working Remotely

Which of the scenarios below are a reason an employee might file a harassment or discrimination claim?

- A patient harasses his at-home caregiver.
- A customer asks a waitress to remove her mask so he can decide how much to tip.
- An employee frequently comments with discriminatory language on a coworker's social media posts.
- An employee gets handsy with his colleague at a hotel bar during a conference.
- A copy repair person tells jokes that are degrading toward women while fixing the copier.
- Cleaners employed by the building an organization rents space in discuss their sexual prowess loudly.
- A hotel guest gropes a housekeeper as she walks by.

CORRECT ANSWER: All scenarios described above should be reported



Bystander Intervention

- Interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior.
- Ask a third-party to help intervene in the harassment.
- Record or take notes on the harassment incident to benefit a future investigation.
- 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.
- Confront the harassers and name the behavior as inappropriate only when you feel safe.

Retaliation

Any employee engaged in “protected activity” is protected by law from being retaliated against.

Protected activities include:

- Making a complaint about harassment or suspected harassment
- Providing information during an investigation
- Testifying in connection with complaint

What is Retaliation?

Any action to alter an employee's terms and conditions of employment because that individual engaged in protected activities is retaliation.

Examples include (but are not limited to):

- Sudden changes in work schedule or work location
- Reduced hours or the assignment to less desirable shifts
- Publicly releasing an employee's personnel files

What is Not Retaliation?

- A negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity.
- Employees are still subject to job requirements, but managers should be sensitive to discrimination's impact when assessing job performance.

A Supervisor's Responsibility

Supervisors and managers are held to a higher standard of behavior.

Supervisors and Managers are:

- Required to report any harassment reported to them or which they observe.
- Responsible for any harassment or discrimination they should have known about.
- Expected to model appropriate behavior.

Mandatory Reporting

Supervisors must report any harassment that they observe or know of, even if no one is objecting to it.

- Harassment must be promptly reported to the employer.
- Supervisors and managers will be subject to discipline for failing to report suspected sexual harassment.
- Supervisors and managers will also be subject to discipline for engaging in retaliation.

What Should I Do If I Am Harassed?

- If you experience or witness harassment or discrimination you are encouraged to report it internally.
- Behavior does not need to violate the law to violate our policy.
- Complaints may be made verbally, through email, or by complaint form.
- All complaints will be treated equally regardless of how they are reported.

What Should I Do If I Witness Sexual Harassment?

- Anyone who witnesses or becomes aware of potential instances of sexual harassment should report it to a supervisor, manager, or designee.
- It is unlawful for an employer to retaliate against you for reporting suspected sexual harassment or assisting in any investigation.

What Should I Do If I Am Harassed?

We will provide you with a complaint form to report harassment and file complaints. Submit it to:

Contact Name/Title

Address

Phone/Email

- You may also make reports verbally.



Investigation and Corrective Action

- Anyone who engages in sexual harassment, discrimination, or retaliation will be disciplined.
- An investigation of any complaint will be commenced promptly and completed as soon as possible.
- The investigation will be kept confidential to the extent possible.
- It is illegal to retaliate against any employee for their participation in an investigation.

Investigation Process

- We will conduct a prompt review of the allegations and take any interim actions.
- Relevant documents, emails, or phone records will be requested, preserved, and obtained.
- Interviews will be conducted.
- The individual(s) who complained and the individual(s) accused of sexual harassment are notified of final determination and that appropriate administrative action has been taken.

Additional Remedies

NYS Division of Human Rights (DHR)

A complaint alleging violation of the Human Rights Law may be filed either with DHR or in NYS Supreme Court.

- Complaints may be filed with DHR any time within three years of the alleged sexual harassment.
- You do not need to have an attorney to file.
- More information: www.DHR.ny.gov or call 1-800-HARASS-3



Additional Remedies - United States Equal Employment Opportunity Commission (EEOC)

An individual can file a complaint with the EEOC anytime within 300 days from the alleged sexual harassment.

- You do not need to have an attorney to file.
- A complaint must be filed with the EEOC before you can file in federal court.
- More information: www.EEOC.gov.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination.

- Contact your county, city, or town to find out if laws exist.

Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement, or coerced sex acts.

- Those wishing to pursue criminal charges should contact their local police.

Summary

Discrimination is intersectional and often multiple identities impact our perceptions in the workplace and the treatment of coworkers.

- Any harassment or discrimination based on a protected characteristic is prohibited in the workplace and may lead to disciplinary action against the perpetrator.
- Age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity or expression, familial status, predisposing genetic characteristics, and criminal history.
- Much of the information presented in this training applies to all types of workplace harassment based on protected characteristics.



Important Resources

For additional information, visit:

- www.ny.gov/programs/combating-sexual-harassment-workplace

For anyone needing additional support, The New York State Domestic and Sexual Violence Hotline can be reached at:

- Phone: 800-942-6906 or Text: 844-997-2121



Next Webinar

End of Session Update

We'll review the end of the 2023 Legislative session and discuss the status of Human Resources and Labor bills passed by the NYS Legislature and how they will impact your business

Thursday, June 15, 2023

11:00 am. – 12:00 pm

SHRM Certification pending



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