## New York: Sexual Harassment

**EXPLAIN THIS TO ME**

Effective October 9, 2018, every employer in New York State is required to adopt a sexual harassment policy and complaint form. The New York State Department of Labor and the New York State Division of Human Rights have issued a model policy and complaint form for employers’ use and guidance. This policy incorporates the required standards from the model policy, and the required complaint form is included as a separate section in the Employee Handbook Builder. Employers in New York should include this policy and complaint form in their employee handbooks. We do not recommend making modifications to the policy or complaint form since they were drafted to maximize an employer's legal protection.

To be in compliance, an employer’s sexual harassment policy must meet or exceed the following minimum standards:

* prohibit sexual harassment consistent with guidance issued by the New York 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; and
* 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.

Employers must provide every employee with their policy in writing. The policy may be provided electronically if employees are able to print a copy for their own records.

**Optional Poster**: The New York Department of Labor and Division of Human Rights also provide an optional poster, which employers may post to inform employees that sexual harassment is against the law and where the employer’s policy and complaint form may be found.

**Training**: The New York sexual harassment prevention law, found in NY Labor Code section 201-g, also requires employers to provide all employees with interactive sexual harassment prevention training. The New York Department of Labor and Division of Human Rights have issued model training materials employers may use. If an employer does not use the model training provided, it must ensure that the training they use meets or exceeds the minimum standards addressed in the model training. Training for all employees must be completed by October 9, 2019, and new employees must be trained as soon as possible after hire.

**Acknowledgment**: Employers are not required to have employees sign a receipt acknowledging that they received the sexual harassment policy, but such a receipt is advised by the New York State Department of Labor and the New York State Division of Human Rights. The Employee Handbook Builder provides a Receipt of Sexual Harassment Policy that employers may use.

**Resources**: The model sexual harassment policy and guidance provided by the New York State Department of Labor and the New York State Division of Human Rights, including frequently asked questions, model training materials, sample complaint form, and sample workplace poster are available online at <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

**POLICY TEXT**

## New York: Sexual Harassment

##company name## is committed to a workplace free of sexual harassment and retaliation. ##company\_name## does not tolerate and prohibits sexual harassment of or against job applicants, contractors, interns, volunteers, or employees by another employee, supervisor, vendor, customer or any third party. ##company\_name## also prohibits retaliation as defined below.

Sexual harassment and retaliation are unacceptable in the workplace and in any work-related settings such as business trips and ##Company##-sponsored social functions, regardless of whether the conduct is engaged in by a supervisor, co-worker, client, customer, vendor or other third party. In addition to being a violation of this policy, sexual harassment and retaliation are unlawful. For example, sexual harassment and retaliation against an individual because the individual filed a complaint of sexual harassment or because an individual aided, assisted or testified in an investigation or proceeding involving a complaint of sexual harassment are unlawful.

**Definition of Sexual Harassment**

Sexual harassment includes harassment on the basis of sex or gender (including pregnancy, childbirth and related medical conditions), gender identity or gender expression (including transgender status) and/or sexual orientation. Sexual harassment includes unwelcome conduct which is either of a sexual nature or which is directed at an individual because of that individuals’ sex or gender (including pregnancy, childbirth and related medical conditions), gender identity or gender expression (including transgender status) and/or sexual orientation when:

* submission to that conduct or those advances or requests is made either explicitly or implicitly a term or condition of an individual's employment; or
* submission to or rejection of the conduct or advances or requests by an individual is used as the basis for employment decisions affecting the individual; or
* the conduct or advances or requests have the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment can be verbal (including slurs, jokes, insults, epithets, gestures or teasing), visual (including offensive posters, symbols, cartoons, drawings, computer displays, text messages, social media posts or emails) or physical conduct (including physically threatening another) that denigrates or shows hostility or aversion towards an individual on the basis of sex or gender (including pregnancy, childbirth and related medical conditions), gender identity or gender expression (including transgender status) and/or sexual orientation. Such conduct violates this policy, even if it is not unlawful.

Because it is difficult to define unlawful sexual harassment, employees are expected to behave at all times in a manner consistent with the intended purpose of this policy.

Examples of conduct that violates this policy include:

* + - unwelcome sexual advances, comments, gestures, flirtations, leering, whistling, touching, kissing, pinching, assault, blocking normal movement;
		- requests for sexual favors or demands for sexual favors in exchange for favorable treatment;
		- sexual jokes or comments about a person’s body, sexuality or sexual experience;
		- propositions or suggestive or insulting comments of a sexual nature;
		- derogatory, obscene or vulgar cartoons, posters, pictures, and drawings;
		- sexually-explicit emails or voicemails;
		- conversation about one’s own or someone else’s sex life;
		- conduct, comments, or hostile actions consistently targeted at only one gender or because of the person’s gender or gender identity or expression, even if the content is not sexual.

**Definition of Retaliation**

Retaliation means adverse conduct taken because an individual reported an actual or perceived violation of this policy, opposed practices prohibited by this policy or participated in the reporting and investigation process described below. “Adverse conduct” includes but is not limited to:

* any action that would discourage an employee from reporting sexual harassment or retaliation;
* shunning and avoiding an individual who reports sexual harassment or retaliation;
* express or implied threats or intimidation intended to prevent an individual from reporting sexual harassment or retaliation; and
* denying employment benefits because an applicant or employee reported or encouraged another employee to report sexual harassment or retaliation or participated in the reporting and investigation process described below.

**Reporting Procedures**

If an employee believes someone has violated this policy, the employee should promptly bring the matter to the immediate attention of \_\_\_\_\_\_\_\_\_\_\_\_\_ at the following address [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and phone number [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] or\_\_\_\_\_\_\_\_\_\_\_\_\_ at the following address [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and phone number [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

If the person toward whom the complaint is directed is one of the individuals indicated above, the employee should contact any higher-level manager in his or her reporting hierarchy.

Written complaints can be submitted internally using the form provided in this ##Handbook##.

If the employee makes a complaint under this policy and has not received a satisfactory response within five (5) business days, the employee should contact \_\_\_\_\_\_\_\_\_\_\_\_\_ immediately at the following address [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and phone number [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

Every supervisor who learns of any employee’s concern about conduct in violation of this policy, whether in a formal complaint or informally, or who otherwise is aware of conduct in violation of this policy, must immediately report the issues raised or conduct to \_\_\_\_\_\_\_\_\_\_\_\_\_.

**Investigation Procedures**

Upon receiving a complaint, the ##Company## will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this policy to ensure due process for all parties. To the extent possible, the ##Company## will endeavor to keep the reporting individual’s concerns confidential. However, complete confidentiality may not be possible in all circumstances. All individuals are required to cooperate in all investigations conducted pursuant to this policy.

During the investigation, the ##Company## generally will interview the complainant and the accused, conduct further interviews as necessary and review any relevant documents or other information. Upon completion of the investigation, the ##Company## will determine whether this policy has been violated based upon its reasonable evaluation of the information gathered during the investigation. The ##Company## will inform the complainant and the accused of the results of the investigation.

The ##Company## will take corrective measures against any person who it finds to have engaged in conduct in violation of this policy, if the ##Company## determines such measures are necessary. These measures may include, but are not limited to, counseling, suspension or immediate termination. Anyone, regardless of position or title, whom the ##Company## determines has engaged in conduct that violates this policy will be subject to discipline, up to and including termination. This includes individuals engaging in sexual harassment or retaliation, as well as supervisors who fail to report violations of this policy, or knowingly allow prohibited conduct to continue. Individuals who engage in conduct that rises to the level of a violation of law can be held personally liable for such conduct.

**Legal Protections and External Remedies**

Aside from the internal complaint process at the ##Company##, individuals may choose to pursue external legal remedies with the following governmental entities.

**State Human Rights Law (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one (1) year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three (3) years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the ##Company## does not extend the time to file with DHR or in court. The one (1) year or three (3) years is counted from date of the most recent incident of harassment.

An attorney is not needed to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate complaints and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring the employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney’s fees and civil fines.

DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458; (718) 741-8400; [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](https://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

**Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An individual alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

**Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, those who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

**Contact the Local Police Department**

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.

Remember, ##company\_name## cannot remedy claimed sexual harassment or retaliation unless individuals bring these claims to the attention of management. Please report any conduct which violates this policy.