

# Sexual Harassment Policy for the Office of the State Comptroller

## Introduction

The Office of the State Comptroller (OSC) is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace sex discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of OSC's commitment to a discrimination-free work environment.

OSC is further committed to preventing sexual harassment and to taking appropriate action with respect to all employees, paid or unpaid interns, or non-employees<sup>1</sup> working in the workplace who engage in such harassing conduct, as well as supervisory and managerial personnel who knowingly allow such conduct to continue. OSC is further committed to providing fair and effective procedures for the prompt resolution of sexual harassment complaints.

Accordingly, the following policy and procedures for maintaining and enforcing a workplace free from sexual harassment, and for preventing and taking appropriate action with respect to individuals who engage in such harassing conduct, apply.

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment, and employees can enforce this right by filing a complaint internally with the Division of Diversity Management (DDM) or with a government agency or in court under federal or State antidiscrimination laws.

## Policy:

1. OSC's Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, and non-employees providing services in the workplace (covered persons), regardless of immigration status.
2. Sexual harassment is offensive, is a violation of our policies, is unlawful, and subjects OSC to potential liability for harm to victims of sexual harassment. Harassers may also be individually subject to liability. Covered persons who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be subject to remedial and/or disciplinary action up to and including termination.
3. Retaliation Prohibition: No covered person shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the person, in good faith, reports an incident of sexual

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<sup>1</sup> A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Any employee of OSC who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. Any covered person working in the workplace who believes they have been subject to such retaliation should inform DDM. Any covered person who believes they have been a victim of such retaliation may also choose to pursue legal remedies in other available forums, as explained below in the section on Legal Protections.

4. All complaints will be evaluated by DDM to determine whether the alleged behavior could arguably constitute sexual harassment or retaliation. If DDM determines that the alleged behavior could arguably constitute sexual, harassment or retaliation, DDM shall promptly forward the matter to the Division of Legal Services (DLS). DLS will assign an investigator who will conduct a prompt, thorough and confidential investigation that ensures due process for all parties. Effective corrective action will be taken whenever sexual harassment or retaliation is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.
5. All covered persons are strongly encouraged to report any sexual harassment or retaliation. A copy of OSC's complaint form is attached to this Policy.
6. Supervisors must promptly report instances of alleged sexual harassment that come to their attention. If a supervisor observes an incident of such conduct, the supervisor should intervene and prevent it from continuing, and must promptly report the incident and the steps taken to prevent the conduct from continuing to DDM. Both the supervisor and DDM must maintain a record of such report. If a supervisor otherwise learns of an allegation of such conduct, the supervisor **MUST NOT** investigate it, but rather must promptly report the information to DDM.
7. Intentionally filing false and malicious complaints of discrimination, harassment or retaliation (as opposed to complaints which, even if erroneous, are made in good faith) shall result in appropriate disciplinary action.
8. This Policy is to be posted prominently in all work locations and provided to employees upon hiring.

### **What Is "Sexual Harassment"?**

Sexual harassment is a form of sex discrimination and is unlawful under federal and state law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

### **Examples of sexual harassment**

The following describes some of the types of acts of sexual harassment that are strictly prohibited:

- Physical assaults of a sexual nature, such as:
  - Touching, pinching, patting, grabbing, brushing against another employee's body or poking another employees' body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sexual stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as: displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Sexually motivated stalking.

- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity or the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

### **Who can be a target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

### **Where can sexual harassment occur?**

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or not during work hours.

## **Retaliation**

Unlawful retaliation can be any action that would discourage a person from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation.

Such retaliation is unlawful under federal and state law. State law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under State or any other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that a covered person has been sexually harassed; or encouraged a covered person to report sexual harassment.

## **Reporting Sexual Harassment**

**Preventing sexual harassment is everyone's responsibility.** OSC cannot prevent or remedy sexual harassment unless it knows about it. A covered person who believes that he or she has been a victim of sexual *harassment* or retaliation is strongly encouraged to report any harassing acts or practices to DDM. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to DDM immediately.

Reports of sexual harassment may be made verbally or in writing. OSC's complaint form is attached to this Policy, and all covered persons are strongly encouraged to use this complaint form. Covered persons who are reporting sexual harassment on behalf of another should use the complaint form and note that it is being filed on behalf of another covered person.

Covered persons who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

### **Supervisory Responsibilities**

1. All supervisors and managers who receive a complaint or information about alleged sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to promptly report such suspected sexual harassment to DDM.
2. If a supervisor observes an incident of such conduct, the supervisor should intervene and prevent it from continuing, and must promptly report the incident and the steps taken to prevent the conduct from continuing to DDM. Both the supervisor and DDM must maintain a record of such report.
3. If a supervisor otherwise learns of an allegation of such conduct, the supervisor **MUST NOT** investigate it, but rather must promptly report the information to DDM.
4. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

## **Complaint And Investigation Of Sexual Harassment**

**All** complaints or information about suspected sexual harassment, whether that information is reported in verbal or written form, will be evaluated by DDM, and where appropriate, investigated by DLS. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

Upon receipt of a complaint, DDM will conduct an immediate review of the allegations, and in consultation with DLS and/or Labor Relations, take interim actions, where appropriate. If the complaint is verbal, DDM will encourage the individual to complete OSC's complaint form. If he or she refuses, DDM will prepare a complaint form based on the verbal reporting. All complaints will be evaluated by DDM to determine whether the alleged behavior could arguably constitute sexual harassment or retaliation. If DDM determines that the alleged behavior could arguably constitute sexual harassment or retaliation, DDM shall promptly forward the matter to DLS for investigation. Prior to commencement of the investigation, DDM will notify upper level management in the complainant's and the accused person's division(s) (Assistant Comptroller or Deputy Comptroller) of the investigation, unless doing so is counter-indicated due to the circumstances (e.g., upper level management is implicated in the complaint). The DLS assigned investigator will conduct a prompt, thorough and confidential investigation that ensures due process for all parties and completed as soon as possible.

If, however, DDM determines that the alleged behavior could not arguably constitute sexual harassment or retaliation, DDM shall explain the determination to the complainant and shall refer the complainant to the appropriate OSC unit (e.g., Labor Relations, Office of Human Resources, Inspector General, Employee Assistance, etc.).

All covered persons, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

**Confidentiality.** The confidentiality and privacy of those involved will be preserved to the extent possible, consistent with a full and fair investigation and appropriate remedial or disciplinary action. Anyone involved in this process, from intake through investigation (including supervisors, complaint recipients, witnesses, the subject of the complaint and the complainant), is required to maintain confidentiality and not disclose any information regarding the matter in order to protect the privacy of the concerned individuals as well as the effectiveness of the process. Failure to maintain confidentiality may be deemed to constitute insubordination and result in disciplinary action.

In conducting its investigation, the DLS investigator will:

- Take steps to obtain and preserve any documents, emails or phone records relevant to the allegations;
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Prepare a written report containing the following:
  - A list of all documents reviewed, along with a detailed summary of relevant documents;
  - A list of names of those interviewed, along with a detailed summary of their statements.
  - A timeline of events;
  - A summary of prior relevant incidents, reported or unreported, if any; and
  - The report shall contain a conclusion as to whether prohibited conduct occurred, and if so, shall include recommendations for remedial or disciplinary action.

- Provide file copy of the conclusion and recommendation part of the report to DDM.
- Retain the written documentation and associated documents in DLS' records.
- Promptly notify the individual who complained, the individual(s) accused and appropriate management of the final determination and forward recommendations for corrective action to OSC's Labor Relations and/or management to implement those corrective actions. OSC's Labor Relations will notify DDM of corrective action taken.

In addition, the DDM shall be responsible for ensuring that the recommended corrective action is implemented and update the information in DDM's complaint log.

- Inform the individual who complained of their right to file a complaint or charge externally as outlined below.

### **Legal Protections And External Remedies**

Sexual harassment is not only prohibited by OSC, but is also prohibited by State and federal law. Aside from the internal process described above, covered persons may also choose to pursue legal remedies with the following governmental entities **at any time**.

#### **New York State Division of Human Rights (DHR)**

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

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

Complaining internally to OSC does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of sexual harassment or retaliation.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment or retaliation has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment or retaliation is found after a hearing, DHR has the power to award relief, which varies, but may include requiring your OSC to take

action to stop the harassment, or redress the damage caused, including paying 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 [appropriate other contact info], [www.dhr.ny.gov](http://www.dhr.ny.gov)

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://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 sexual harassment or retaliation. 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 sexual harassment or retaliation 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 sexual harassment or retaliation is found to have occurred.

If an employee believes that he/she has been sexually harassed or retaliated against at work, he/she 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 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto: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.

### **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.