




# Sexual Harassment Prevention

Michael J. Sciotti, Esq.  
[msciotti@barclaydamon.com](mailto:msciotti@barclaydamon.com)  
Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
(315) 425-2774 (O)  
(315) 256-2314 (C)  
[www.barclaydamon.com](http://www.barclaydamon.com)



**THE LAW APPLIED**

Sexual Harassment Prevention

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Contact Information

Michael J. Sciotti, Esq.  
[msciotti@barclaydamon.com](mailto:msciotti@barclaydamon.com)  
Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
(315) 425-2774 (O)  
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[www.barclaydamon.com](http://www.barclaydamon.com)

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Agenda

- General Harassment Concepts
- New York State Key Sexual Harassment Implementation Dates
- New York State Mandatory Sexual Harassment Prevention Policy
- New York State Mandatory Sexual Harassment Prevention Training

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## Agenda

- Independent Contractor Sexual Harassment Liability
- What is Sexual Harassment?
- What is Retaliation?
- Claim Filing, Potential Damages & Remedies

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## Sexual Harassment – Front & Center Again



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## Attachments


- Appendix 1 – Final Sexual Harassment Policy for All Employers in New York State
- Appendix 2 – Model Complaint Form for Reporting Sexual Harassment

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## Sexual Harassment – Front & Center Again



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General Harassment Concepts

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Simple Concept



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Set the Tone

**HOW CAN I  
HELP YOU?**

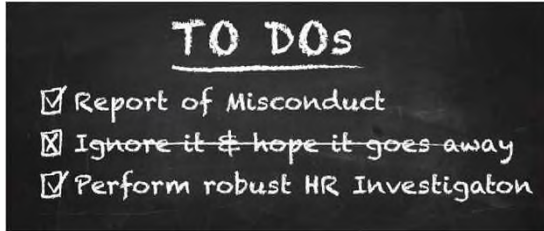
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Let Them Complain



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## Report & Investigate



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## Workplace Harassment Is More Than Sexual Harassment

- New York State and federal law prohibit harassment on the basis of:
- Age
- Race
- Creed
- Color
- National Origin
- Sexual Orientation
- Military Status

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## Ostrich Approach = Bad



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## Workplace Harassment Is More Than Sexual Harassment

- Sex
- Disability
- Predisposing Genetic Characteristics
- Familial Status
- Marital Status
- Domestic Violence Victim Status

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### Policy Catch-All

- Your policy should address all recognized protected classifications under applicable federal, state and local law.

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### Follow Your Policy

- Follow your policy in a consistent manner in determining how and when you conduct investigations
  - Ensure disciplinary actions taken are consistent
- Courts have held that deviation from company policy, particularly uneven application of company rules, is probative circumstantial evidence of discriminatory intent.

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### Policy Catch-All

- You should have a catch-all as protected classifications are being added.
- For example, the catch-all could say: “or any other legally protected class, status or activity recognized by applicable federal, state or local law.”

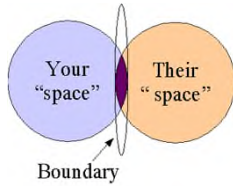
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### Policy Applies To You



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## Boundaries



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## New Deadlines

- Sexual Harassment Prevention Policy Implemented by **10/09/2018.**

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New York State  
Key Sexual Harassment  
Implementation Dates

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## New Deadlines

- First Round of Sexual Harassment Prevention Training By: **10/09/2019**

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### New Deadlines

- **Sexual Harassment Prevention Training for New Hires After 10/09/2019: As quickly as possible.**

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### New York State Labor Law §201-g

- The New York State Department of Labor (“NYSDOL”) shall consult with the New York State Division of Human Rights (“NYSDHR”) to create and publish a model sexual harassment prevention guidance document and sexual harassment prevention policy that employers may utilize in their adoption of a sexual harassment prevention policy required by the NYSLL.

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### New York State Mandatory Sexual Harassment Prevention Policy

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### Sexual Harassment Policy New York State Labor Law §201-g

- Such model sexual harassment prevention policy shall:
- (1) Prohibit sexual harassment consistent with guidance issued by the NYSDOL in consultation with the NYSDHR and provide examples of prohibited conduct that would constitute unlawful sexual harassment;

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Sexual Harassment Policy  
New York State Labor Law §201-g

- (2) Include, but not be limited to, information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment and a statement that there may be applicable local laws;

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Sexual Harassment Policy  
New York State Labor Law §201-g

- (5) Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;

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Sexual Harassment Policy  
New York State Labor Law §201-g

- (3) Include a standard complaint form;
- (4) Include a procedure for the timely and confidential investigation of complaints and ensure due process for all parties;

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Sexual Harassment Policy  
New York State Labor Law §201-g

- (6) 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

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Sexual Harassment Policy  
New York State Labor Law §201-g

- (7) Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

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Sexual Harassment Policy  
New York State Labor Law §201-g

- Such sexual harassment prevention policy shall be provided to all employees in writing.
  - Sign-Off Optional
  - Highly Recommended

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Sexual Harassment Policy  
New York State Labor Law §201-g

- Every employer shall adopt the model sexual harassment prevention policy promulgated pursuant to the NYSLL or establish a sexual harassment prevention policy to prevent sexual harassment that equals or exceeds the minimum standards provided by such model sexual harassment prevention policy.

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Application of Policy

- Who does policy apply to?
- [*Employer Name's*] policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with [*Employer Name*].

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### Cooperation Obligation

- Does your employee have an obligation to cooperate with a sexual harassment investigation?
- All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

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### Obligation to Report Sexual Harassment – Non-Managers

- Do non-management employees have to report sexual harassment?
- All employees are encouraged to report any harassment or behaviors that violate this policy. [*Employer Name*] will provide all employees a complaint form for employees to report harassment and file complaints.

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### Obligation to Report Sexual Harassment - Managers

- Do management employees have to report sexual harassment?
- Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to [*person or office designated*].

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### Broad Definition of Sexual Harassment

- Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local 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.

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### Obligation to Post Sexual Harassment Policy

- This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

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### Location of Sexual Harassment

- 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.

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### Non-Sexual Conduct May = Sexual Harassment

- A sexually harassing hostile work environment includes, but is not limited to, 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.

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### Location of Sexual Harassment

- Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

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Retaliation ≠ False Claim  
Protection

- Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful.

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New York State  
Mandatory Sexual Harassment  
Prevention Training

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Retaliation ≠ False Claim  
Protection

- However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

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Sexual Harassment Training  
New York State Labor Law §201-g

- Such model sexual harassment prevention training program shall be interactive and include:
- (1) An explanation of sexual harassment consistent with guidance issued by the NYSDOL in consultation with the NYSDHR;

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Sexual Harassment Training  
New York State Labor Law §201-g

- (2) Examples of conduct that would constitute unlawful sexual harassment;

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Sexual Harassment Training  
New York State Labor Law §201-g

- (4) Information concerning employees' rights of redress and all available forums for adjudicating complaints.

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Sexual Harassment Training  
New York State Labor Law §201-g

- (3) Information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and

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Sexual Harassment Training  
New York State Labor Law §201-g

- Such sexual harassment prevention training shall be provided to all employees on an annual basis.
  - Employees
  - Managers
  - Board of Directors (Recommended)

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### Sexual Harassment Training Considerations

- Sign-In/Sign-Out Sheet
- Training Materials
- Video of Training
- Training Certificate
- Must be Interactive

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### Interactive Requirement

- Examples of employee participation include:
- (1) If the training is web-based, it has questions at the end of a section and the employee must select the right answer;

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### Interactive Requirement

- New York State law requires all sexual harassment training to be interactive.
- Training may be online, so long as it is interactive.

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### Interactive Requirement

- (2) If the training is web-based, the employees have an option to submit a question online and receive an answer immediately or in a timely manner;

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### Interactive Requirement

- (3) In an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;

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### Interactive Requirement

- (5) Role Playing;
- (6) Opening Activity; or
- (7) Group Discussion.

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### Interactive Requirement

- (4) Web-based or in-person trainings that provide a Feedback Survey for employees to turn in after they have completed the training;


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### Interactive Requirement

- An individual watching a training video or reading a document only, with no feedback mechanism or interaction, would NOT be considered interactive.

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Independent Contractor  
Sexual Harassment Liability

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New York State Human Rights Law  
§296-d

- An employer may be held liable to a non-employee who is a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace, with respect to sexual harassment, when the employer, its agents or supervisors knew or should have known that such non-employee was subjected to sexual harassment in the employer's workplace, and the employer failed to take immediate and appropriate corrective action.

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Expanded Employer Liability  
New York State Human Rights Law  
§296-d

- Sexual harassment relating to non-employees.
- It shall be an unlawful discriminatory practice for an employer to permit sexual harassment of non-employees in its workplace.

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Expanded Employer Liability  
New York State Human Rights Law §296-d

- In reviewing such cases involving non-employees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of the harasser shall be considered.

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### What is Sexual Harassment?

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### Unwelcome



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### Types of Sexual Harassment

- Quid Pro Quo
- Hostile Work Environment

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### What is Sexual Harassment?

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when..

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## What is Sexual Harassment?

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or

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## Quid Pro Quo

"This for That"

*Quid pro quo* harassment generally results in a tangible employment decision based upon the employee's acceptance or rejection of unwelcome sexual advances or requests for sexual favors.

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## What is Sexual Harassment?

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

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## Examples of Quid Pro Quo Harassment

- Threatening to fire or deny a promotion to an employee for refusing to cooperate with sexual demands
- Offering preferential treatment/promotion if subordinate sexually cooperates
- Basing employee evaluation scores based on the employee's willingness to cooperate with sexual demands

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### Examples of *Quid Pro Quo* Harassment

- Assigning desirable work projects or assignments based on the employee's submission to sexual requests.
- Withholding benefits from, or otherwise penalizing, the employee who refuses to acquiesce to sexual requests.

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### What is Harassment?

- In its initial decision concerning claims of harassment in the work place, the Supreme Court held that to be actionable under a hostile work environment theory the conduct at issue "must be sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working environment."

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### Hostile Work Environment

Unwelcome conduct based on sex that is severe or pervasive enough to alter the conditions of the victim's employment and creates a work environment a reasonable person would consider intimidating, hostile, or abusive.

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### What is Harassment?

- In making this determination the fact finder must view the totality of the circumstances both from objective (i.e. reasonable person) and subjective standpoints.

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## What is Harassment?

- In other words, taking into account the frequency of the discriminatory conduct, its severity, and whether it is physically threatening or humiliating or instead merely an offensive utterance, the plaintiff must show not only that the alleged harasser engaged in conduct which the plaintiff found to be hostile and abusive, but in addition that a reasonable person would perceive the conduct to be such.

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## What is Harassment?

- The Second Circuit in Richardson v. New York State Department of Correctional Services, stated “there is neither a threshold magic number of harassing incident that gives rise, without more, to liability as a matter of law, nor a number of incidents below which a plaintiff fails as a matter of law to state a claim.” 180 F.3d 426, 439 (2d Cir. 1999).

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## What is Harassment?

- Usually, a single isolated incident of harassment will not suffice to establish a hostile work environment unless it was extraordinarily severe.
- Thus, the plaintiff must demonstrate that a single incident was extraordinarily severe, or that a series of events were sufficiently continuous and concerted to have altered the conditions of her working environment.

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## Examples of Conduct that May Contribute to Hostile Work Environment

- Discussing sexual activities
- Telling crude, lewd, suggestive jokes concerning sex
- Unnecessary touching
- Commenting on physical attributes
- Displaying sexually suggestive pictures
- Using demeaning or inappropriate terms or epithets

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### Examples of Conduct That May Contribute to Hostile Work Environment

- Using indecent gestures
- Sabotaging the victim's work
- Engaging in hostile physical conduct
- E-mails
- Texts
- Snapchat and Social Media

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### What Is Harassment?

- Jokes, cartoons & cards
  - Don't photocopy and distribute.
  - Don't use cards that could be construed as offensive.

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### What Is Harassment?

- Magazines
  - Have you looked at the covers of the magazines you can buy in the store?

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### What Is Harassment?

- Sex discussions
  - You never know who you will offend.
- Dress discussions
  - Use common sense
  - Don't say: "You look hot today!"
- Stereotype Jokes
  - Blonde jokes

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## Who Can Harass Who?

- ❖ Male – Male
- ❖ Male – Female
- ❖ Female – Female
- ❖ Female – Male
- ❖ Supervisor – Subordinate
- ❖ Subordinate – Subordinate
- ❖ Subordinate – Supervisor
- ❖ Vendor – Employee
- ❖ Employee - Vendor

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## Male - Female



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## Female - Male




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## Male-Male



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What is Retaliation?

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What is Retaliation?

- Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

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What is Retaliation?

- Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim.

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Protected Activity

- Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.”

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### Protected Activity

- Protected activity occurs when a person has:
- (1) Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;

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### Protected Activity

- (3) Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;

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### Protected Activity

- (2) Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;

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### Protected Activity

- (4) Reported that another employee has been sexually harassed; or

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### Protected Activity

- (5) Encouraged a fellow employee to report harassment.

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### Protected Activity

- However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

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### Protected Activity

- Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful.

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[Claim Filing, Potential Damages & Remedies](#)

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## Claim Filing - EEOC

- 6 Fountain Plaza  
Suite 350  
Buffalo, NY 14202

Phone: 1-800-669-4000  
Fax: 716-551-4387  
TTY: 1-800-669-6820  
ASL Video Phone: 844-234-5122  
Director: John E. Thompson Jr.

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## Potential EEOC Damages & Remedies

- Title VII Damages & Relief
  - Equitable Relief
  - Reinstatement
  - Back Pay
  - Front Pay
  - Compensatory Damages (subject to cap for federal claims)
  - Punitive Damages (subject to cap for federal claims)
  - Attorneys' Fees
  - Pre-judgment Interest on Back Pay

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## Claim Filing - EEOC

**Office Hours:** The Buffalo Local Office is part of the Hyatt Hotel Complex, located at West Huron and Main Street. The Buffalo Local Office is open Monday - Friday from 8:30 a.m. - 5:00 p.m. Intake hours are Monday - Friday from 8:30 a.m. to 3:00 p.m. Although walk-ins are accepted, scheduling an interview is strongly recommended, and individuals with appointments will be given priority. We encourage you to schedule an interview through our online system.

**Additional Information / POC** To submit an inquiry and schedule an appointment for an interview we encourage individuals to use the online system at <https://publicportal.eeoc.gov/portal/>. The system can also be accessed by going directly to our website at [www.eeoc.gov](http://www.eeoc.gov).

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## Federal Damage Cap in Certain Cases

- 42 U.S.C. § 1981a – Limitations on Compensatory and Punitive Damages Under Title VII and ADA:
- Based on number of employees
  - > 14 and <100 \$ 50,000.00
  - >100 and <201 \$100,000.00
  - >200 and <500 \$200,000.00
  - >500 \$300,000.00

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## Claim Filing - EEOC

- Title VII Limitations Period:
  - 300 days to file Charge of Discrimination with the EEOC.
  - Once right-to-sue letter is issued – 90 days to sue in federal or state court.
  - A federal discrimination case commenced in state court should be removed to federal court by employers.

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## Claim Filing - NYSDHR

- Fill out the complaint form, answering all of the questions and sign the form. If possible, type the form. If you are filling out the form by hand, please print.
- After you fill out the form, have it notarized. Notary services are available at the Division free of charge.
- Attach copies of any documents that you think will help the Division investigate the case (pay stub, letter of termination, performance evaluation disciplinary notice, etc).

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## Claim Filing - NYSDHR

- If you are unable to access the complaint form, please call at 1-888-392-3644.

If you are blind or a person with a vision disability, you can contact John Herrion at 718-741-8332 or [john.herrion@dhr.ny.gov](mailto:john.herrion@dhr.ny.gov) to receive the form in an alternative format, including Braille in English or Spanish.

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## Claim Filing - NYSDHR

- Return the completed complaint form to the regional office nearest you. You may return the complaint by postal mail or personal delivery. You may also email your complaint to [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov), or fax it to (718) 741-8322.
- Keep a copy of your complaint and copies of any documents you attach for your own records.

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## Claim Filing - NYSDHR

- NYSHRL Limitations Period:
  - 1 year to file with the NYSDHR
  - 3 years to file in New York State Supreme Court.

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## Why You Should Care!

- Chopourian v. Catholic Healthcare West., E.D. Cal., No. CIV S-09-2972) -
- Plaintiff awarded \$168,000,000.00 in damages.
- Company had written policy, but no sexual harassment training and ignored culture in which sexual jokes were tolerated. \$41.3 million was solely for sexual harassment.

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## Potential NYSDHR Monetary Damages & Remedies

- NYSHRL Damages & Relief:
  - Back Pay
  - Front Pay
  - Compensatory Damages (Not Subject to Cap)
  - Pre-judgment Interest on Back Pay
  - Attorneys' Fees

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## Why You Should Care!

- EEOC v. Karenkim, Inc., d/b/a Paul's Big M, N.D.N.Y. No. 5:08-CV-1019)
- Plaintiffs awarded \$1,260,080 for sexual harassment by jury in Syracuse, New York.

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## Statutory & Constitutional Protections Against

- You **MUST** be concerned as a private and public employer about federal, state, county, city, town and village discrimination statutes.
- You **MUST** only be concerned about constitutional claims if you are a public employer.
- A school district must all be concerned about claims under Title IX of the Civil Rights Act.

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# **APPENDIX 1**



### Introduction

[Employer Name] is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of [Employer Name's] commitment to a discrimination-free work environment. Sexual harassment is against the law<sup>1</sup> and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with [Employer Name]. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

### Policy:

1. [Employer Name's] policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with [Employer Name]. In the remainder of this document, the term “employees” refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. [Employer Name] will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of [Employer Name] who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees<sup>2</sup> working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or [name of appropriate person]. All employees, paid or unpaid interns or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

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<sup>1</sup> While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. In New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history.

<sup>2</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.



4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject **[Employer Name]** to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.
5. **[Employer Name]** will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. **[Employer Name]** will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. **[Employer Name]** will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to **[person or office designated]**.
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

### **What Is “Sexual Harassment”?**

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local 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 reporting 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 includes, but is not limited to, 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, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

### **Examples of sexual harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's 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 target'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 or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex 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.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and 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. Harassers 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, on personal devices or during non-work hours.

## **Retaliation**

Unlawful retaliation can be any action that could discourage a worker 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 (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights 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 the Human Rights Law or 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 another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

## Reporting Sexual Harassment

**Preventing sexual harassment is everyone's responsibility.** [Employer Name] cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or [person or office designated]. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or [person or office designated].

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

## Supervisory Responsibilities

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to [person or office designated].

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.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

## Complaint and Investigation of Sexual Harassment

**All** complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. **[Employer Name]** will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, **[person or office designated]** will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains 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; and
  - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

## Legal Protections And External Remedies

Sexual harassment is not only prohibited by **[Employer Name]** but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at **[Employer Name]**, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

### 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 year** of the harassment. 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. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to **[Employer Name]** 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 harassment.

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 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 your 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. You may call (718) 741-8400 or visit: [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 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 employee 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](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.

## **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, employees 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.

# **APPENDIX 2**



# Model Complaint Form for Reporting Sexual Harassment



[Name of employer]

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to [person or office designated; contact information for designee or office; how the form can be submitted]. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: [ny.gov/programs/combating-sexual-harassment-workplace](http://ny.gov/programs/combating-sexual-harassment-workplace)

## COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email  Phone  In person

## SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

*Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.*

## COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

*The last question is optional, but may help the investigation.*

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Instructions for Employers**

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.

# Model Complaint Form for Reporting Sexual Harassment



[Name of employer]

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to [person or office designated; contact information for designee or office; how the form can be submitted]. You will not be retaliated against for filing a complaint.

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## COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email  Phone  In person

## SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

*Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.*

## COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

*The last question is optional, but may help the investigation.*

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.