

## NEW YORK'S NEW ANTI-SEXUAL HARASSMENT LAWS

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## **NEW YORK'S NEW ANTI-SEXUAL HARASSMENT LAWS: PRACTICAL GUIDANCE**

### **I. Introduction to New Law**

In April 2018, New State enacted an anti-sexual harassment law with certain requirements for employers, including cooperative and condominium buildings. Essentially, effective October 9, 2018, every New York employer, regardless of size, is required to establish a written sexual harassment prevention policy and conduct annual anti-harassment training for employees that complies with the minimum standards in New York State Labor Law § 201-G. The training must be completed by October 9, 2019, one year after the law's effective date.<sup>1</sup>

### **II. Sexual Harassment Prevention Policy**

Employers are required to adopt and distribute to employees written sexual harassment prevention policies that are compliant with the new law. An employer may: (1) adopt the State's model sexual harassment prevention policy and complaint form (attached), or (2) implement their own policy and complaint form that equals or exceeds the minimum standards provided under the statute.

As outlined in the Minimum Standards, the policy must:

- prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- provide examples of prohibited conduct that would constitute unlawful sexual harassment;
- include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;

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<sup>1</sup> The State's earlier draft indicated that the first round of employee training had to be completed by January 1, 2019; under the final guidance, all New York employees must complete sexual harassment prevention training that meets or exceeds the minimum standards no later than October 9, 2019, after which future training must be completed on an annual basis.

- include a complaint form<sup>2</sup>;
- 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.

### **Dissemination of the Policy to Employees**

Employers must distribute the policy to its employees. A signed acknowledgment of receipt is not required, but that employers are “encouraged” to obtain one from employees. Employers must provide employees with a copy of the policy in writing or electronically, and if made available electronically, employees must be able to print a copy for their records.

### **III. Anti-Sexual Harassment Training**

All full-time and part-time employees, seasonal employees and temporary employees must receive training. Unlike the draft guidance, which indicated that employers would need to train “someone [who] just works for one day for the employer, or . . . works for just one day in NY,” the final guidance states that employers need to train individuals who “work a portion of their time in New York State, even if they’re based in another state.”

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<sup>2</sup> The State’s model complaint form: (1) does not ask whether the individual has filed a claim with a government agency or a lawsuit in connection with the complaint; and (2) does not ask whether employees have hired an attorney (though it does still provide the opportunity to share contact information for a legal representative if the employee has such representation). Also, employers need not include a copy of the complaint form in their anti-harassment policy, as long as the policy informs employees where the form may be found (e.g., on the company’s internal website).

To satisfy the training requirements, employers may either: (1) adopt the State’s model training script, slides, and/or case studies; or (2) provide other live training or interactive online/video training that meets or exceeds the law’s minimum standards for training.

The training must:

- Be interactive;
- Include an explanation of sexual harassment consistent with guidance issue by the Department of Labor in consultation with the Division of Human Rights;
- Include examples of unlawful sexual harassment;
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets of sexual harassment;
- Include information concerning employee’s right of redress and all available forums for adjudicating complaints; and
- Include information addressing conduct by supervisors and additional responsibilities for supervisors.

Note also:

- There is no requirement to train (or provide a copy of the harassment prevention policy) to third-party vendors or other non-employees, though employers are “encouraged to provide the policy and training to anyone providing services in the workplace.”
- There is no minimum number of training hours required per year for employees – that is, there is no minimum length of time for each training session.
- With regard to the requirement that training address “additional responsibilities for supervisors”, the final guidance states that all employees (not just managers and supervisors) must be “[made] aware of the extra requirements for those in managerial/supervisory roles.”
- In order for training to be “interactive”<sup>3</sup>, some form of employee participation is required. Examples given of such participation include: •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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<sup>3</sup> While a live trainer is not required in order to comply with the new requirements, simply having employees watch a training video or read a document, with no feedback mechanism or interaction, would not be considered interactive. Where live trainers are used, however, they must appear in person or via phone, video conference, or other similar remote mechanism.

- 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;
- in an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;
- web-based or in-person trainings that provide a Feedback Survey for employees to turn in after they have completed the training.

#### **IV. Other Provisions of the Anti-Sexual Harassment Law**

##### **A. Arbitration Provisions**

The law bans “any clause or provision ...[requiring] that the parties submit to mandatory arbitration to resolve any allegation or claims of an unlawful discriminatory practice of sexual harassment.” CPLR § 7515 (2). Thus, the law bans new contracts from containing any prohibited clause and makes such prohibited clauses null and void, with certain exceptions, including “where inconsistent with federal law.”<sup>4</sup>

##### **B. Nondisclosure Provisions**

The law provides that no settlement agreement involving a sexual harassment claim may include a confidentiality provision unless confidentiality is the “complainant’s preference.” According to the DOL’s FAQ’s the new law takes away the authority of employers to include, or agree to include, any terms or condition that would prevent the disclosure of the underlying facts and circumstances of the harassment unless the condition of nondisclosure is the preference of the person who complained.”

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<sup>4</sup> This presents an interest issue given the Supreme Court’s holding that the Federal Arbitration Act (“FAA”) expresses a “liberal policy favoring arbitration” and that “when a state law prohibits outright the arbitration of a particular type of claim ...the conflicting rule is displaced by the FAA.” See *AT & T v. Concepcion*, 563 U.S. 333 (2011).

The law requires the preference to be memorialized in an agreement signed by all parties and establishes a three-step process and time frame:

1. Any nondisclosure term or condition must be provided to all parties, and the complainant shall have 21 days from the date provided to consider such term or condition;
2. If, after 21 days, such term or condition is the preference of the complainant, such preference shall be memorialized in an agreement signed by all parties; and
3. For a period of 7 days following the execution of an agreement containing such a term or condition, the complainant may revoke the agreement and the agreement shall not become effective or be enforceable until such revocation period has expired.

Under the final guidance, two agreements are needed to establish a complainant's agreement not to disclose facts underlying a claim of harassment—one agreement memorializing the complainant's preference to maintain the allegations as confidential, and a second agreement containing the nondisclosure language and any other terms of the parties' agreement resolving the dispute.

The relevant provisions of the new law are found in CPLR § 5003-b (Nondisclosure agreements) and General Obligations Law 5-335 (Nondisclosure Agreements).

#### **V. New York City Laws**

In addition to the foregoing State requirements, New York City law now requires employers in New York City to inform their employees of their rights under the Human Rights Law by displaying a poster in a conspicuous area of their building which poster must outline sexual harassment rights as well as distribute an information sheet on sexual harassment drafted by the New York City Commission on Human Rights to employees at the time of hire. A copy of the Sexual Harassment Act Fact Sheet is attached hereto.

While the New York State and New York City anti-harassment laws have similarities and differences, we believe that employers that follow the New York State models will be in compliance with both State and City laws.

We have attached: (i) Sexual Harassment Policy for All Employers in New York State (Exhibit A); (ii) Minimum Standards for Sexual Harassment Prevention Policies (Exhibit B); (iii) Model Complaint Form for Reporting Sexual Harassment (Exhibit C); (iv) New York City ‘Stop Sexual Harassment Fact Sheet’ (Exhibit D); and (v) copy of New York Labor Law § 201-G (Exhibit E.)

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### **What Is “Sexual Harassment”?**

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and 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.

### **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:
  - o Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - o Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - o 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;
  - o 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:
  - o 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:
  - o Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - o Sabotaging an individual's work;
  - o Bullying, yelling, name-calling.

## Exhibit A

### 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.

## Exhibit B

# Minimum Standards for Sexual Harassment Prevention Policies



## Combating Sexual Harassment

Every employer in the State of New York is required to adopt a sexual harassment prevention policy pursuant to Section 201-g of the Labor Law. An employer that does not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:

- i) prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- ii) provide examples of prohibited conduct that would constitute unlawful sexual harassment;
- iii) 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;
- iv) include a complaint form;
- v) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- vi) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- vii) 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
- viii) 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 each employee with a copy of its policy in writing. Employers should provide employees with the policy in the language spoken by their employees.

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*The adoption of a policy 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.*

## Exhibit C

# Model Complaint Form for Reporting Sexual Harassment



Combating 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.



## Exhibit D

# STOP SEXUAL HARASSMENT ACT FACTSHEET

All employers are required to provide written notice of employees' rights under the Human Rights Law both in the form of a displayed poster **and** as an information sheet distributed to individual employees at the time of hire. This document satisfies the information sheet requirement.

## The NYC Human Rights Law

The NYC Human Rights Law, one of the strongest anti-discrimination laws in the nation, protects all individuals against discrimination based on gender, which includes sexual harassment in the workplace, in housing, and in public accommodations like stores and restaurants. Violators can be held accountable with civil penalties of up to \$250,000 in the case of a willful violation. The Commission can also assess emotional distress damages and other remedies to the victim, can require the violator to undergo training, and can mandate other remedies such as community service.

## Sexual Harassment Under the Law

Sexual harassment, a form of gender-based discrimination, is unwelcome verbal or physical behavior based on a person's gender.

## Some Examples of Sexual Harassment

- unwelcome or inappropriate touching of employees or customers
- threatening or engaging in adverse action after someone refuses a sexual advance
- making lewd or sexual comments about an individual's appearance, body, or style of dress
- conditioning promotions or other opportunities on sexual favors
- displaying pornographic images, cartoons, or graffiti on computers, emails, cell phones, bulletin boards, etc.
- making sexist remarks or derogatory comments based on gender

## Retaliation Is Prohibited Under the Law

It is a violation of the law for an employer to take action against you because you oppose or speak

out against sexual harassment in the workplace. The NYC Human Rights Law prohibits employers from retaliating or discriminating "in any manner against any person" because that person opposed an unlawful discriminatory practice. Retaliation can manifest through direct actions, such as demotions or terminations, or more subtle behavior, such as an increased work load or being transferred to a less desirable location. The NYC Human Rights Law protects individuals against retaliation who have a good faith belief that their employer's conduct is illegal, even if it turns out that they were mistaken.

## Report Sexual Harassment

If you have witnessed or experienced sexual harassment inform a manager, the equal employment opportunity officer at your workplace, or human resources as soon as possible.

**Report sexual harassment to the NYC Commission on Human Rights. Call 718-722-3131 or visit NYC.gov/HumanRights to learn how to file a complaint or report discrimination. You can file a complaint anonymously.**

## State and Federal Government Resources

Sexual harassment is also unlawful under state and federal law where statutes of limitations vary.

To file a complaint with the New York State Division of Human Rights, please visit the Division's website at [www.dhr.ny.gov](http://www.dhr.ny.gov).

To file a charge with the U.S. Equal Employment Opportunity Commission (EEOC), please visit the EEOC's website at [www.eeoc.gov](http://www.eeoc.gov).

    @NYCCHR

[NYC.gov/HumanRights](http://NYC.gov/HumanRights)

**NYC**

BILL DE BLASIO  
Mayor

**Commission on  
Human Rights**

CARMELYN P. MALALIS  
Commissioner/Chair

## Exhibit E

[The Laws Of New York \(\(LEGISLATION/LAWS/ALL\)\) / Consolidated Laws](#)  
[\(\(LEGISLATION/LAWS/CONSOLIDATED\)\) / Labor \(\(LEGISLATION/LAWS/LAB\)\) / Article 7: General Provisions](#)  
[\(\(LEGISLATION/LAWS/LAB/A7\)\) /](#)

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[Posting Regulations On Employment Of Persons](#)  
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[SECTION 202](#)

[Protection Of The Public And Of Persons](#)  
[Engaged At Window Cleaning And Cleaning Of](#)  
[Exterior Surfaces Of Buildings](#)  
[\(\(Legislation/Laws/LAB/202\)\)](#)

## Section 201-G

Prevention of sexual harassment

Labor (LAB)

SHARE



1. The department shall consult with the division of human rights 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 this section.

a. Such model sexual harassment prevention policy shall: (i) prohibit sexual harassment consistent with guidance issued by the department in consultation with the division of human rights and provide examples of prohibited conduct that would constitute unlawful sexual harassment; (ii) 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; (iii) include a standard complaint form; (iv) include a procedure for the timely and confidential investigation of complaints and ensure due process for all parties; (v) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (vi) 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 (vii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

b. Every employer shall adopt the model sexual harassment prevention policy promulgated pursuant to this subdivision 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. Such sexual harassment prevention policy shall be provided to all employees in writing. Such model sexual harassment prevention policy shall be publicly available and posted on the websites of both the department and the division of human rights.

2. The department shall consult with the division of human rights and produce a model sexual harassment prevention training program to prevent sexual harassment in the

workplace.

a. Such model sexual harassment prevention training program shall be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the department in consultation with the division of human rights; (ii) examples of conduct that would constitute unlawful sexual harassment; (iii) information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and (iv) information concerning employees' rights of redress and all available forums for adjudicating complaints.

b. The department shall include information in such model sexual harassment prevention training program addressing conduct by supervisors and any additional responsibilities for such supervisors.

c. Every employer shall utilize the model sexual harassment prevention training program pursuant to this subdivision or establish a training program for employees to prevent sexual harassment that equals or exceeds the minimum standards provided by such model training. Such sexual harassment prevention training shall be provided to all employees on an annual basis.

3. The commissioner may promulgate regulations as he or she deems necessary for the purposes of carrying out the provisions of this section.

**PREV**

**SECTION 201-F**

**Posting Regulations On Employment Of Persons Previously Convicted Of One Or More Crimes  
(/Legislation/Laws/LAB/201-F/)**

**NEXT**

**SECTION 202**

**Protection Of The Public And Of Persons Engaged At Window Cleaning And Cleaning Of Exterior  
Surfaces Of Buildings (/Legislation/Laws/LAB/202/)**