

ONEIDA COUNTY HARASSMENT AND DISCRIMINATION PREVENTION POLICY

A. Objective

1. Oneida County strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of Oneida County should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Oneida County will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this Policy and by education of employees, Oneida County will seek to prevent, correct and discipline behavior that violates this policy.
2. Oneida County 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 Oneida County's commitment to a discrimination-free work environment.
3. Harassment and discrimination are against the law. All employees have a legal right to a workplace free from harassment and discrimination, and employees can enforce this right by filing a complaint internally with Oneida County, with a government agency, or in court under federal, state or local antidiscrimination laws.
4. All employees, regardless of their positions, are covered by and are expected to comply with this Policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this Policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.
5. Managers and supervisors who knowingly allow or tolerate discrimination, harassment or retaliation, including the failure to immediately report such misconduct to the Commissioner of Personnel, are in violation of this Policy and subject to discipline.

B. Policy

1. This Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, subcontractors, vendors, consultants, anyone providing services in the workplace, and persons conducting business with Oneida County. In the remainder of this Policy, the term "Employees" refers to this collective group.
2. Harassment
 - a. Oneida County prohibits harassment of any kind, and will take appropriate and immediate action in response to complaints or knowledge of violations of this Policy. For purposes of this Policy, harassment is any unwelcome or unwanted verbal or physical conduct designed to threaten, intimidate or coerce an Employee.

- b. The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this Policy:
 - i. Verbal harassment includes comments that are offensive or unwelcome regarding a person's national origin, race, color, religion, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.
 - ii. Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital status or other protected status.
- c. Sexual harassment will not be tolerated. Any Employee covered by this Policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.
 - i. What Is “Sexual Harassment?”
 1. 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.
 2. 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:
 - a. 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;
 - b. Such conduct is made either explicitly or implicitly a term or condition of employment; or
 - c. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.
 3. 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.

4. 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.

5. Any Employee who feels harassed should file a complaint so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

ii. Examples of Sexual Harassment

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

a. Physical assaults of a sexual nature, such as:

i. Touching, pinching, patting, kissing, hugging, grabbing, brushing against another Employee's body or poking another Employee's body;

ii. Rape, sexual battery, molestation or attempts to commit these assaults.

b. Unwanted sexual advances or propositions, such as:

i. 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;

ii. Subtle or obvious pressure for unwelcome sexual activities.

c. Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.

d. Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's idea or perceptions about how individuals of a particular sex should act or look.

e. Sexual or discriminatory displays or publications anywhere in the workplace, such as:

i. 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.

f. Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:

i. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;

ii. Sabotaging an individual's work;

iii. Bullying, yelling, name-calling.

iii. Who can be a Target of Sexual Harassment?

1. Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects Employees. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including a Employee, client, customer or visitor.

iv. Where can Sexual Harassment Occur?

1. 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.

2. 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.

3. Discrimination

a. It is a violation of this Policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's actual or perceived

race, color, national origin, age, religion, disability status, gender, sexual orientation, gender identity, genetic information or marital status.

- b. Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act 1964, the Age Discrimination Act of 1975 and the Americans with Disabilities Act of 1990. This Policy is intended to comply with the prohibitions stated in these anti-discrimination laws.
- c. Any Employee who engages in discrimination in violation of this Policy will be subject to disciplinary measures up to and including termination.

4. **Hostile Work Environment.** A hostile work environment results from harassing conduct that has the purpose or effect of unreasonably interfering with an Employee's work performance, or creates an intimidating, hostile, offensive or objectionable working environment.

5. **Retaliation Prohibition:** No person covered by this Policy shall be subject to adverse employment action because the Employee reports an incident of harassment or discrimination, provides information, or otherwise assists in any investigation of a harassment or discrimination complaint. Oneida County will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected harassment or discrimination. However, filing groundless or malicious complaints is an abuse of this Policy and will be treated as a violation. Any Employee of Oneida County who retaliates against anyone involved in a harassment or discrimination investigation will be subjected to disciplinary action, up to and including termination. All Employees who believe they have been subject to such retaliation should inform a department head, supervisor, manager, or the Commissioner of Personnel. All Employees who believe they have been a target of such retaliation may also seek compensation in other available forums, as explained below in section K, "Legal Protections and External Remedies."

6. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject Oneida County 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 department heads, managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be subject to discipline up to and including termination of employment.

7. Oneida County will conduct a prompt and thorough investigation that ensures due process for all parties, whenever the Commissioner of Personnel, a department head, manager or supervisor receives a complaint about harassment or discrimination, or otherwise knows of possible harassment or discrimination occurring. Oneida County will keep the investigation confidential to the extent possible, and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation, and the Commissioner of Personnel and/or his/her designee will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this Policy will be maintained in secure files within the Personnel Department. Effective corrective action will be taken whenever harassment or

discrimination is found to have occurred. Such corrective action may include discipline, up to and including termination. All Employees, including department heads, managers and supervisors are required to cooperate with any internal investigation of harassment or discrimination.

8. All Employees are encouraged to report any harassment, discrimination or behaviors that violate this Policy. Oneida County will provide all Employees a Complaint Form for Employees to report harassment and discrimination. A copy of said Complaint Form is attached hereto as **Exhibit A**.

9. Department heads, managers and supervisors are **required** to report any complaint that they receive, or any harassment or discrimination that they observe or become aware of to the Commissioner of Personnel.

10. This Policy applies to all Employees 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 all Employees upon hiring.

C. Retaliation

1. Unlawful retaliation can be any action that could discourage an Employee from coming forward to make or support a harassment or discrimination 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).

2. Such retaliation is unlawful under federal, state and, where applicable, local law. The New York State Human Rights Law (“HRL”) protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- a. made a complaint of harassment or discrimination, either internally or with any anti-discrimination agency;
- b. testified or assisted in a proceeding involving harassment or discrimination under the HRL or other anti-discrimination law;
- c. opposed harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a department head, supervisor or manager of harassment or discrimination;
- d. reported that another Employee has been harassed or discriminated against; or
- e. encouraged a fellow Employee to report harassment or discrimination.

3. Even if the alleged harassment or discrimination 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, this retaliation provision is not intended to protect persons making intentionally false charges of harassment.

D. Reporting Harassment and Discrimination

1. **Preventing harassment and discrimination is everyone's responsibility.** Oneida County cannot prevent or remedy harassment or discrimination unless it knows about it. Any Employee who has been subjected to behavior that may constitute harassment or discrimination is encouraged to report such behavior to a department head, supervisor, manager or the Commissioner of Personnel. Anyone who witnesses or becomes aware of potential instances of harassment or discrimination should report such behavior to a department head, supervisor, manager or the Commissioner of Personnel.
2. Reports of harassment or discrimination 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 harassment or discrimination on behalf of other Employees should use the Complaint Form and note that it is on another Employee's behalf.
3. Employees who believe they have been a target of harassment or discrimination may also seek assistance in other available forums, as explained below in section K, "Legal Protections and External Remedies."

E. Supervisory Responsibilities

1. All department heads, supervisors and managers who receive a complaint or information about suspected harassment or discrimination, observe what may be harassing or discriminatory behavior or for any reason suspect that harassment or discrimination is occurring, **are required** to report such suspected harassment or discrimination to the Commissioner of Personnel.
2. In addition to being subject to discipline if they engaged in harassing or discriminatory conduct themselves, department heads, supervisors and managers will be subject to discipline, up to and including termination, for failing to report suspected harassment or discrimination, or otherwise knowingly allowing harassment or discrimination to continue.
3. Department heads, supervisors and managers will also be subject to discipline, up to and including termination, for engaging in any retaliation.

F. Complaint and Investigation of Sexual Harassment

1. **All** complaints or information about suspected harassment or discrimination will be investigated, whether that information was reported in verbal or written form, by the Commissioner of Personnel, or his/her designee.
2. In the event that the complaint of suspected harassment or discrimination is against the Commissioner of Personnel, such complaints shall be made to the County Attorney and will be investigated by the County Attorney, or his/her designee.

3. An investigation of any complaint, information or knowledge of suspected harassment or discrimination will be prompt and thorough, commenced immediately and completed as soon as possible.
4. The investigation will be kept confidential to the extent possible.
5. All persons involved, including complainants, witnesses and alleged harassers will be afforded due process, as outlined below, to protect their rights to a fair and impartial investigation.
6. Any Employee may be required to cooperate as needed in an investigation of suspected harassment or discrimination. Oneida County will not tolerate retaliation against Employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this Policy.
7. While the process may vary from case to case, investigations should be done in accordance with the following steps:
 - a. Upon receipt of complaint, the Commissioner of Personnel or his/her designee 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 the complaint is oral, the individual will be encouraged to complete the Complaint Form in writing. If he or she refuses, the Commissioner of Personnel or his/her designee shall prepare a Complaint Form based on the oral reporting.
 - b. If documents, emails or phone records are relevant to the allegations, take steps to obtain and preserve them.
 - c. Request and review all relevant documents, including all electronic communications.
 - d. Interview all parties involved, including any relevant witnesses.
 - e. Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - i. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - ii. A list of names of those interviewed, along with a detailed summary of their statements;
 - iii. A timeline of events;
 - iv. A summary of prior relevant incidents, reported or unreported; and
 - v. The basis for the decision and final resolution of the complaint, together with any corrective actions action(s).

- f. Keep the written documentation and associated documents in a secure and confidential location.
- g. Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective action(s) identified in the written document.
- h. Inform the individual who reported of their right to file a complaint or charge externally as outlined in section H, “Legal Protections and External Remedies.”

G. Responsive Action

1. The Commissioner of Personnel and the appropriate department head(s) will review the results of the investigation, including other management staff as appropriate, and decide what action, if any, will be taken.
2. Once a final decision is made, the appropriate department head(s) will meet with the complainant and the respondent separately and notify them of the findings of the investigation. If disciplinary action is to be taken, the respondent will be informed of the nature of the discipline and how it will be executed.
3. If the investigation is inconclusive or if it is determined that there has been no violation of this Policy but potentially problematic conduct may have occurred, the Commissioner of Personnel or his/her designee may recommend appropriate preventive action.

H. Legal Protections and External Remedies

1. Harassment and discrimination are not only prohibited by Oneida County, but are also prohibited by federal, state and, where applicable, local law. Aside from the internal process at Oneida County, Employees may also choose to pursue legal remedies with the following governmental agencies. While a private attorney is not required to file a complaint with a governmental agency, an individual may seek the legal advice of an attorney of his/her choosing. In addition to those outlined below, Employees in certain industries may have additional legal protections.

a. HRL

- i. The HRL, codified as N.Y. Executive Law, art. 15, § 290 et seq.
- ii. A complaint alleging violation of the HRL may be filed either with New York State Division of Human Rights (“DHR”) or in New York State Supreme Court.
- iii. Complaints with DHR may be filed any time **within one (1) year** of the harassment or discrimination. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three (3) years** of the alleged

harassment or discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

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

v. An individual does not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

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

vii. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 or visit www.dhr.ny.gov

viii. Contact DHR at (888) 392-3644 or visit 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.

b. Civil Rights Act of 1964

i. 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 or discrimination. 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 harassment or 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.

ii. 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 harassment or discrimination is found to have occurred. In general, private employers must have at least 15 Employees to come within the jurisdiction of the EEOC.

iii. 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 or via email at info@eeoc.gov

iv. 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.

c. Local Protections

i. Many localities enforce laws protecting individuals from harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

d. Contact the Local Police Department

i. If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

Adopted: 10/9/2018

Revised:

Exhibit A

ONEIDA COUNTY HARASSMENT AND DISCRIMINATION COMPLAINT FORM

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

If you believe that you have been subjected to harassment or discrimination, you are encouraged to complete this Complaint Form and submit it to the Commissioner of Personnel, 800 Park Avenue, Utica, New York 13501. If your complaint is against the Commissioner of Personnel, submit this Complaint Form to the County Attorney.

You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, Oneida County should complete this Complaint Form, provide you with a copy and follow its Harassment and Discrimination Prevention Policy by investigating the claims as outlined on this Complaint Form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name: _____ Job Title: _____

Work Address: _____ Work Phone: _____

_____ Email: _____

Select Preferred Communication Method: (please select one)

Work Address Work Phone Email In Person

SUPERVISORY INFORMATION

Immediate Supervisor's Name: _____

Immediate Supervisor's Title: _____

Work Address: _____ Work Phone: _____

_____ Email: _____

COMPLAINT INFORMATION

1. Your complaint of harassment or discrimination is made against:

Name: _____ Title: _____

Work Address: _____ Work Phone: _____

_____ Email: _____

Relationship to you: (please select one)

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) harassment/discrimination occurred: _____

Is the harassment/discrimination continuing? (please select one) Yes No

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

The following 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 his/her contact information. _____

Signature: _____

Date: _____

Instructions for Employers

If you receive a complaint about alleged harassment or discrimination, you must follow the Harassment and Discrimination Prevention Policy by investigating the allegations. 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 action(s) taken, and notify the complainant and the individual(s) against whom the complaint was made. This may be done via email.