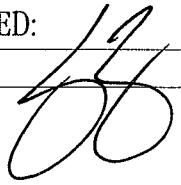
Onondaga County Directive	ADMINISTRATIVE DIRECTIVE MANUAL	
	SUBJECT: Prevention of Sexual Harassment	
	SUPERCEDES: 3 - 2018	PAGE: 1-10
	SIGNED: 	DATE: 8/17/2022
	County Executive	

Introduction

Onondaga 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 Administrative Directive is among the tools to be used by the County, demonstrating its commitment to achieving and maintaining a discrimination-free work environment.

Sexual harassment is against the law[1] 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 the County. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

Policy

1. As stated within this Administrative Directive, the County's policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with the County. In the remainder of this document, the term "employees" refers to this collective group for the purposes of administering this policy.

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) as may be appropriate to the circumstances. Any employee who has been subject to a final judgement of personal liability for intentional wrong-doing related to a claim of sexual harassment, shall reimburse the County for any payments made to a plaintiff for an adjudicated award, or his/her proportionate share of such judgement within ninety (90) days of the County's payment of such award.

Investigations will be conducted in a timely manner by the Department Head or his/her designee, but the responsibility of each investigation is owned by the Director of Employee Relations[2] and as such must be provided periodic status updates on each investigation to ensure lawful compliance measures are met.

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. The County will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of the County 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

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[1] 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.

[2] The Director of Employee Relations may designate a County employee to act on behalf of such officer in receiving complaints and conducting the investigations, provided that the designated employee keep the Director, and or his/her designee, appropriately informed regarding the investigations and complaints received.

interns, or non-employees[3] working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or Commissioner of Personnel. 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.

4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject the 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 managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

5. The County 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. The County 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. Failure to cooperate will lead to further discipline up to and including termination.

6. All employees are encouraged to report any harassment or behaviors that violate this policy. The County will provide all employees a complaint form for employees to report harassment and file complaints.

7. Department Heads, managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, one level up their respective chain of command, up to the Director of Employee Relations. Employees who feel that they have been subjected to harassment and/or discrimination must make a complaint known, preferably, in writing to their supervisor as soon as reasonably possible. If the employee cannot file a complaint with their supervisor (for example the supervisor is the harasser) they may file their complaint with another manager, their Department Head or the Director of Employee Relations.

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.

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[3] 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.

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. The County 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, Department Head or his/her designee, or Director of Employee Relations or his/her designee.

Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, Department Head or his/her designee, or Director of Employee Relations or his/her designee.

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. However, a complaint will not be treated as informal or otherwise dismissed because it is not on such form. (See Exhibit A to this Administrative Directive) 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 the next level up their chain of command, Department Head or his/her designee, or Director of Employee Relations or his/her designee.

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. A form shall be made available for use to aid in making such complaints. (See Exhibit A to this Administrative Directive)

Investigations will be conducted in a timely manner by the Department Head or his/her designee, but the responsibility of each investigation is owned by the Director of Employee Relations[4] and as such must be provided periodic status updates on each investigation to ensure lawful compliance measures are met. Employees who feel that they have been subjected to sexual harassment must make their complaint known to their immediate supervisor as soon as reasonably possible. If the employee cannot file, or is uncomfortable filing, a complaint with their supervisor (for example the supervisor is the harasser) they may file their complaint with another manager, their Department Head or the Director of Employee Relations. It is important to note that timely reporting is crucial for an effective investigation of the complaint.

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. Failure to cooperate will lead to further discipline up to and including termination. The 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.

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

- Upon receipt of complaint, Director of Employee Relations or his/her designee, your Department Head or his/her designee, or direct Supervisor, 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,

[4] The Director of Employee Relations may designate a County employee to act on behalf of such officer in receiving complaints and conducting the investigations, provided that the designated employee keep the Director, and or his/her designee, appropriately informed regarding the investigations and complaints received.

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 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 their right to file a complaint or charge, externally, as outlined in the next section.

Appeal Procedure

The employee, within 30 calendar days of their formal determination, will be entitled to an appeal if it is determined that one the following criteria are met:

- **The determination is not supported by the available evidence**
- **The investigator made an error in their application of the policy**
- **New and/or key evidence was not factored into determination**
  - i.e. accidental omission; witness previously temporarily unavailable now available, etc
- **The investigatory process was mismanaged**
  - i.e. refused to interview key witnesses; refused to consider relevant documentation; failed to make a determination within reasonable period of time, etc

All appeals must be submitted to the Division of Employee Relations for review. Each request for Appeal must explain, in writing, which of the criteria apply. The Division of Employee Relations must, within 15 business days, make a written determination on whether a valid request for Appeal has been made.

On Appeal, the Division of Employee Relations must either conduct a limited investigation based on the stated basis of appeal or re-submit back down to the Department level investigator on a limited basis. A meeting will be scheduled between the employee and the Director of Employee Relations, or his or her designee. Employees may bring a representative with them to this meeting.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by the County, but is also prohibited by state and federal law.

Aside from the internal process at the County, employees may also choose to pursue legal remedies with the following governmental entities (New York State Division of Human Rights and United States Equal Employment Opportunity Commission). 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, and this document does not present an exhaustive list.

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 three years 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 the County 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.

For free legal counseling regarding a complaint or to submit a complaint of sexual harassment you may call DHR at 1-800-427-2773 or visit dhr.ny.gov/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.

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.

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 or via email at info@eeoc.gov.

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

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.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the city or town in which they live to find out if such a law exists. Onondaga County has had a series of policies in place prohibiting sexual harassment and sexual discrimination, including, without limitation, Executive Order No. 02 – 2007. This Policy supersedes all other policies to the extent such policies are inconsistent. The intent is to provide for a greater level of protection for all who enter within the County's workplace and to proactively prevent such harassment from occurring.

Training

The County will provide employees with sexual harassment prevention training as required by state and federal law, consistent with guidance put forward by the New York State Department of Labor and New York State Division of Human Rights. Such training shall be interactive and provided annually.

Questions About This Policy

If you have questions regarding this policy or its requirements, you should contact the Employee Relations Division in the Personnel Department at 315-435-3537.

Exhibit A: Onondaga County Complaint Form

ONONDAGA COUNTY EMPLOYEE HARASSMENT, DISCRIMINATION, AND ANTI-RETALIATION

COMPLAINT FORM

Name: _____

Phone Number: _____ E-mail: _____

Title: _____

Department: _____ Supervisor / Title: _____

If you believe that you have been subjected to harassment, you are encouraged to complete this form and submit it to your Supervisor, Department Head or his/her designee and Onondaga County Division of Employee Relations, 13th floor Civic Center. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your supervisor or an Employee Relations Officer should complete this form, provide you with a copy and follow its harassment policy accordingly.

DETAILS OF COMPLAINT

I have been subjected to: □ Discrimination □ Harassment □ Retaliation
based upon: **(check those that apply)**

- □ Sex
- □ Gender Identify
- □ Sexual orientation
- □ National origin
- □ Criminal History
- □ Military status
- □ Race
- □ Age
- □ Religion
- □ Marital status
- □ Disability
- □ Other _____

Date(s) of the alleged discrimination; harassment, retaliation:_____
Is the discrimination, harassment, retaliation continuing? □ Yes □ No

Your complaint of Harassment is made about:

Name / Title: _____
Relationship to you: □ Supervisor □ Subordinate □ Co-Worker □ Other

In detail, please describe what happened and how it is affecting you / your work. **(Attach additional sheets if needed)**

_____

_____

_____

_____

Why do you believe the alleged incident(s) meet the definition of harassment/discrimination/retaliation under the Policy?

Did anyone else witness the alleged incidents or experience similar incidents by the same individual? If yes, briefly state what information each witness will be able to provide. Please list their name and contact information.

(Please note that the County may consult with additional witnesses should it be determined that these individuals possess relevant information)

Are there any documents, emails, records, or other evidence related to your complaint? Describe or attach if possible.

Have you previously reported or otherwise complained about this incident to anyone in your department or in the division of employee relations. If yes, when, to whom and what was the result?

What is the remedy you are seeking?

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

I certify that the above statements are true to the best of my knowledge.

Date: _____ Employee signature:_____

1. You must file your complaint with your supervisor, department head, another manager, or the Division of Employee Relations as promptly as possible after the occurrence. Any unreasonable delay in reporting may make it more difficult for the County to investigate the allegations
2. After you have filed your complaint an investigation will be completed as soon as possible.
3. If you have not received a response within 30 calendar days of your complaint, you may notify the Division of Employee Relations. If an extension of the investigation or time to resolve the complaint is required you will be updated on the status of your complaint.
4. The employee, within 30 calendar days of their formal determination, will be entitled to an appeal if it is determined that one the criteria listed within the County policy are found.

This internal complaint does not interfere with the right of employees to file complaints with the New York State Division of Human Rights, the Equal Employment Opportunity Commission, or any other agency.

The County will maintain the confidentiality of the complaint to the greatest extent possible in the thorough and complete investigation of the complaint. Effort will be made to safeguard the privacy and rights of all persons involved.

Onondaga County policy and federal and state laws prohibit retaliation against any person because they have filed a harassment or discrimination complaint or served as a witness in the investigation. If you believe you have experienced retaliation, notify the appropriate investigating officer as soon as possible.

For more information, read the County Internal Complaint Policy for Discrimination, Harassment and Anti-Retaliation available from your department head, the County Division of Employee Relations, or on the County Intranet.