

Updated October 28, 2019

SEXUAL HARRASSMENT PREVENTION AND COMPLAINT POLICY

INTRODUCTION

The City of Jamestown is committed to maintaining a workplace free from sexual harassment¹. Sexual harassment is a form of workplace discrimination. The City of Jamestown has a zero-tolerance policy for any form of sexual harassment, and all employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of the City of Jamestown's commitment to a discrimination-free work environment.

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment, and employees can enforce this right by filing a complaint internally with the City of Jamestown, or with a government agency or in court under federal, state or local antidiscrimination laws.

POLICY:

1. The City of Jamestown policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with the City of Jamestown.
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, up to and including termination.
3. Retaliation Prohibition: No person covered by this policy shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in an investigation of a sexual harassment complaint. The City of Jamestown has a zero-tolerance policy for such retaliation against anyone who, in good faith, complains or provides information about suspected sexual harassment. Any employee of the City of Jamestown who retaliates against anyone involved in a sexual harassment investigation will be subject to disciplinary action, up to and including termination. Any employee, paid or unpaid intern, or non-employee² working in the workplace who believes they have been subject to such retaliation should inform a supervisor, manager, or the Department of Human Resources. Any employee, paid or unpaid intern or non-employee who believes they have been a victim of such retaliation may also seek compensation in other available forums, as explained below in the section on Legal Protections.
4. Sexual harassment is offensive, is a violation of the City's policies and subjects the City of Jamestown to liability for harm to victims of sexual harassment. Harassers may also

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 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.

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 knowingly allow such behavior to continue will be penalized for such misconduct.

5. The City of Jamestown will conduct a prompt, thorough and confidential investigation that ensures due process for all parties whenever management receives a complaint about sexual harassment or otherwise knows of possible sexual harassment occurring. 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. The City of Jamestown will provide all employees a complaint form to report harassment and file complaints.
7. Manager and supervisors are required to report any complaint that they receive or any harassment that they observe to the Department of Human Resources.
8. This policy applies to all employees, paid or unpaid interns, and non-employees. All must follow and uphold this policy. This policy must be posted prominently in all work locations 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 include harassment on the basis of sex, sexual orientation, gender identity and the status of being transgender.

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

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

A sexually harassing hostile work environment consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of 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 complain 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 types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical assaults of a sexual nature, such as:
 - Touching, pinching, patting, grabbing, brushing against another person's body or poking another person'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 victim's job performance evaluation, a promotion, or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which create a hostile work environment.
- Sexual 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, tool 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 the target of sexual harassment?

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

Where can sexual harassment occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts,

emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or not during working hours.

What is “Retaliation”?

Unlawful retaliation can be any action that would keep 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.

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

- Filed 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 superior or manager of harassment;
- Complained that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Reporting Sexual Harassment

Preventing sexual harassment is everyone’s responsibility. The City of Jamestown 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 the Corporation Counsel/Director of Human Resources. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Corporation Counsel/Director of Human Resources.

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 another employee 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 victim 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 Corporation Counsel/Director of Human Resources.

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 an Investigation of Sexual Harassment

All complaints or information about suspected 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, and should be completed within 30 days. The investigation will be confidential to the extent possible. All persons involved, including complainants, witnesses and alleged perpetrators will be accorded due process 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. Employees who participate in any investigation will not be retaliated against.

Investigations will be done in accordance with the following steps:

- Upon receipt of a complaint, the Department of Human Resources will conduct an immediate review of the allegations, and take any interim actions, as appropriate. If the complaint is oral, encourage the individual to complete the Complaint Form in writing. If he or she refuses, prepare a Complaint Form based on the oral reporting;
- If documents, emails or phone calls are relevant to the allegations, take steps to obtain and preserve them;
- Request and review all relevant documents, including 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 the 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 final result of the complaint, together with any potential corrective action(s).

- Keep the written documentation and associated documents in the employer's records.

- Promptly notify the individual who complained and the individual(s) who responded of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who complained of their right to file a complaint or charge externally as outlined below.

Legal Protections and External Remedies

Sexual Harassment is not only prohibited by the City of Jamestown, but is also prohibited by state, federal and, where applicable, local law.

Aside from the internal process at the City of Jamestown, employees may also choose to pursue legal remedies with the following governmental entities **at any time**.

New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15 §290 et seq., applies to employers in New York State with regard to sexual harassment, and 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 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 discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the City of Jamestown does not extend your time to file with DHR or in court. The one year or three years is counted from the 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 discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination 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 monetary damages, attorney's fees and civil fines.

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

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.

United States Equal Opportunity Commission (EEOC)

The 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.

If an employee believes he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at www.eeoc.gov 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.

Local Protections

Many localities enforce laws protecting individual from sexual harassment and discrimination. An individual should contact the county, city or town they live in 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

Contact the Local Police Department

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