



City of Oneonta Sexual Harassment Policy

Adopted October 2, 2018

INTRODUCTION

The City of Oneonta is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. The City of Oneonta 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 Oneonta'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 Oneonta, or with a government agency or in court under federal, state or local antidiscrimination laws.

POLICY

1. This policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with the City of Oneonta.
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 any investigation of a sexual harassment complaint. The City of Oneonta 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 Oneonta who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. Any employee, paid or unpaid intern, or non-employee working in the workplace who believes they have been subject to such retaliation should inform a supervisor, manager, or the Personnel Director. 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 our policies, is unlawful, and subjects the City of Oneonta to liability for harm to victims 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 knowingly allow such behavior to continue, will be penalized for such misconduct.

5. The City of Oneonta 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 Oneonta 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 they receive, or any harassment that they observe to the Personnel Director.
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 posted prominently in all work locations and be provided to employees upon hiring.
9. 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 and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

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, 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 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, and/or 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 of the 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 employee's body or poking another employees' 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, 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. 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 work 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 supervisor 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 Oneonta cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Personnel Director. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Personnel Director.

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 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 Personnel Director.

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 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.

All harassment complaints will be investigated as promptly as possible and resolved within a reasonable time after the receipt of the complaint. The Personnel Director (or City Attorney, in the event that the Personnel Director is conflicted or is otherwise unavailable in a timely manner) will coordinate an investigation of the complaint in accordance with the following steps:

- Upon receipt of complaint, the Personnel Director (or City Attorney, if necessary) will conduct an immediate review of the allegations, and take any interim actions, as appropriate.
- If complaint is made verbally, the individual will be encouraged to complete the "Complaint Form" in writing. If he or she refuses, a Complaint Form will be prepared for the individual based on the verbal report.
- If documents, emails or phone records are relevant to the allegations, steps will be taken to obtain and preserve them. All relevant documents will be requested and reviewed, including all electronic communications.
- All parties involved, including any relevant witnesses, will be interviewed.
- A written documentation of the investigation will be created (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 final proposed resolution of the complaint, together with any recommended corrective action(s).
- Following the investigation, the Personnel Director (or City Attorney, if necessary) shall issue a written report of findings and conclusions to the City Manager. Thereafter, an initial determination on the complaint will be issued from the City Manager and results promptly communicated, in writing, to the complainant.
- If, at the end of the investigation, misconduct is found, appropriate remedial measures shall be taken including, but not limited to, discipline up to and including termination from employment.
- Complainants will be informed 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 Oneonta but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at the City of Oneonta, 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 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 [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 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. Adoption of this 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. Page 7 of 7 DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 [appropriate other contact info], 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 Employment 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 that 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 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 the City of Oneonta may file complaints of sexual harassment with the City's Human Rights Commission. If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. The City of Oneonta Police Department can be reached at (607) 432-1113.

ABUSE OF THE POLICY

Reporting of a false complaint is a serious act. In the event it is found that the complainant has made false accusations, the City will take action in accordance with the provisions of the applicable collective bargaining agreements and/or state law, if applicable.

RECORDKEEPING

The City shall maintain a written record of all complaints of discrimination and/or harassment for a period of at least three years. The City shall also document the steps taken with regard to investigations, as well as conclusions reached and remedial action taken, if any.

COMPLIANCE OFFICER

In addition to other responsibilities as laid out in this policy, any questions about this Policy or potential harassment or discrimination should be brought to the attention of the Personnel Director, who is the City's designated compliance officer:

Katie Böttger, Personnel Director / Compliance Officer

Office Location: City Hall 2nd Floor Personnel Office

Mailbox Location: City Hall 1st Floor Mailroom

Address: 258 Main Street, Oneonta, NY 13820

Email: kbottger@oneonta.ny.us

Office: (607) 432-0670

Direct: (607) 431-1334

Cell: (607) 435-3998

POLICY DISSEMINATION

The Personnel Office shall ensure that this policy is adequately disseminated and made available to all employees of the City. Training on this Policy and related laws will occur on an annual basis for all employees. In addition, copies of this Policy and Complaint Form shall be maintained in the Personnel Office.



CITY OF ONEONTA SEXUAL HARASSMENT COMPLAINT FORM

The City of Oneonta is committed to maintaining a workplace free from sexual harassment, and where complaints are promptly remedied. If you feel that you have been subjected to unlawful sexual harassment, please complete this form and submit it to the City's Compliance Officer – the Personnel Director, City Hall (2nd Floor), 258 Main Street, Oneonta, NY 13820, (607) 431-1334. **Completing this form in no way deprives you of the right to file a complaint with the U.S. Office of Civil Rights, New York State Division of Human Rights, or the Federal or State courts.** Once you submit this form, the City of Oneonta must follow its sexual harassment prevention policy and investigate any claims.

If you are more comfortable reporting verbally or in another manner, the City of Oneonta is still required to follow its sexual harassment prevention policy by investigating the claim.

COMPLAINANT INFORMATION

Name: _____

Title / Department: _____

Work Phone / Email: _____

Home Phone / Email: _____

Preferred method of communication: _____

SUPERVISORY INFORMATION:

Immediate Supervisor's Name: _____

Title: _____

Work Phone / Email: _____

Work Address / Location: _____

AUTHORIZED REPRESENTATIVE INFORMATION

Are you filing this complaint on behalf of another person? Please circle: YES NO

If NO, please skip to "COMPLAINT INFORMATION"

If YES, please indicate your contact information below:

Name: _____

Address: _____

Phone / Email: _____

COMPLAINT INFORMATION

Your complaint of Sexual Harassment is made against:

Name: _____

Title / Department: _____

Work Phone / Email: _____

Relationship to you:

- Supervisor Subordinate
- Co-Worker
- Other

Please describe the conduct or incident(s) that is the basis of this complaint and your reasons for concluding that the conduct is sexual harassment. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

Date conduct occurred (on or about): _____

Is the alleged discrimination continuing? Please circle: YES NO

Name(s) and contact information of any potential witness(es), if any:

The last two questions are optional, but may help facilitate the investigation.

Have you previously complained or provided information (verbal or written) about sexual harassment at the City of Oneonta? YES NO

If yes, when and to whom did you complain or provide information? _____

Employees that file complaints with their employer might have the ability to get help or file claims with other entities including federal, state or local government agencies or in certain courts.

Have you filed a claim regarding this complaint with a federal, state or local government agency?

- a) YES NO
- b) Have you instituted a legal suit or court action regarding this complaint? YES NO
- c) Have you hired an attorney with respect to this complaint? YES NO

I swear or affirm that I have read the above related facts, as well as any facts which are submitted on attached sheets, and that the statements are true and correct to the best of my knowledge, information and belief. I request that the City of Oneonta investigate this complaint of sexual harassment in a timely and confidential manner as outlined below, and advise me of the results of the investigation.

Signature

Date

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

INFORMATION PROVIDED WILL BE CONFIDENTIALLY MAINTAINED TO THE EXTENT POSSIBLE