

New York Sexual Harassment Policy

I. Introduction

The **Erie County Industrial Development Agency (ECIDA)** 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 the Agency's commitment to a harassment-free and discrimination-free work environment.

Sexual harassment is against the law¹ and all employees have a legal right to a workplace free from sexual harassment. Employees are urged to report sexual harassment by filing a complaint internally with the **ECIDA**, with a government agency, or in court under federal, state or local antidiscrimination laws.

II. Policy

This sexual harassment policy has several components:

- **Application.** This policy applies to all employees, applicants for employment, interns (paid or unpaid), non-employees² and persons conducting business, regardless of immigration status, with the **ECIDA**. In the remainder of this policy, the term "employees" refers to this collective group.
- **Sexual Harassment Prohibited.** Sexual harassment is prohibited. Sexual harassment is a form of employee misconduct and will not be tolerated. Any employee or other 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 of their employment.
- **Retaliation Prohibited.** The Agency will not take an adverse employment action against any person covered by this policy who reports an incident of sexual harassment, provides information about an incident of sexual harassment, or otherwise assists in an investigation of a sexual harassment complaint. The Agency will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of the Agency who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or Mollie Profic, CFO/Human Resources Officer. 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.
- **Individual Liability for Sexual Harassment.** Sexual harassment is offensive, is a violation of Agency policy, is unlawful, and may subject the Agency to liability for harm to targets of sexual

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 or expression, familial status, predisposing genetic characteristics, 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.

harassment. Sexual 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.

- **Investigation.** The Agency 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 Agency 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 investigation of sexual harassment.
- **Reporting for Bystanders.** All employees, as well as any other individuals covered by this policy, are encouraged to report any behavior or conduct that violates this policy. The Agency will provide all employees a complaint form to report harassment and file complaints.
- **Reporting for Managers and Supervisors.** Managers and supervisors are **required** to report any sexual harassment complaint that they receive or any sexual harassment that they observe or become aware of to Mollie Profic, CFO/Human Resources Officer.

III. Sexual Harassment

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. 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, 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 in legal terms "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:

Although it is not possible to identify every act that constitutes sexual harassment, the following describes some 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 emails, 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 these 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.

IV. 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,” which occurs when an individual has:

- made a complaint of sexual harassment either internally with the **ECIDA** or externally 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.

V. Reporting Sexual Harassment

Preventing sexual harassment is everyone’s responsibility. The **ECIDA** 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 human resources. In addition, anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or 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 other employees should use the complaint form and note that it is on another employee’s behalf.

VI. 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 human resources.

Supervisors and managers who knowingly allow sexual harassment to occur and fail to report the sexual harassment to human resources will be subject to disciplinary action up to and including termination of their employment.

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.

VII. Complaint and Investigation of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be kept confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. 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. The **ECIDA** 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 will generally be conducted in accordance with the following steps:

- Upon receipt of a complaint, the **ECIDA** will conduct an immediate review of the allegation(s) and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant) as appropriate. If the complaint is verbal, the **ECIDA** will encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, the **ECIDA** will prepare a Complaint Form based on the verbal reporting.
- Obtain and preserve documents relevant to the allegation(s).
- Request and review all documents relevant to the allegation(s) including all electronic communications.
- Interview all parties involved, including any relevant witnesses.
- Create a written document of the investigation (such as a letter, memorandum 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).
- Retain 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 the right to file a complaint or charge externally as discussed in the next section of this policy.

VIII. Legal Protections and External Remedies

Sexual harassment is not only prohibited by the **Erie County Industrial Development Agency (ECIDA)** but also by federal, state, and, where applicable, local law. In addition to the Agency's internal process, employees may 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, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

A. 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 of 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 employee 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.

If an employee believes that they have been discriminated against at work, they can file a "charge of discrimination" with the EEOC. The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by phone (1-800-669-4000) or email (info@eeoc.gov). The EEOC's website is www.eeoc.gov.

B. New York 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, interns (paid or unpaid), and non-employees, regardless of immigration status. A complaint alleging violation of the HRL may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with the DHR may be filed any time **within three years** of the harassment. If an individual did not file at the DHR, they can sue directly in state court under the HRL **within three years** of the alleged harassment. An individual may not file with the DHR if they have already filed a HRL complaint in state court. If an individual filed an administrative complaint with the NYSDHR, the NYSDHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Complaining internally to the **ECIDA** does not extend your time to file with the DHR or in court. The three years is counted from the date of the most recent sexual harassment incident.

You do not need an attorney to file a complaint with the DHR and there is no cost to file with the DHR.

The 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, the 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.

The DHR's main office is at One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You can also contact the NYSDHR by phone (1-888-392-3644) or email (info@dhr.ny.gov). The NYSDHR's website is dhr.ny.gov/complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to the NYSDHR. The website also contains contact information for the NYSDHR's regional offices.

C. Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

D. 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.

Complaint Form for Reporting Sexual Harassment ECIDA

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 sexual harassment, you are encouraged to complete this form and submit it to Mollie Profic, CFO/Human Resources Officer, or John Cappellino, President via email or paper. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

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

Complainant Information

Name:

Home Address:

Work Address:

Home Phone:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Supervisor Information

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: [[Supervisor; Subordinate; Co-Worker; Other]]

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? [[Yes/No]]

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

** The last question is optional, but may help the investigation. **

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

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

*I request that the **ECIDA** 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:

I have received the New York State Sexual Harassment Policy and Complaint Form

Employee Name (Printed) _____

Employee Name (Signature) _____

Date: _____