



# **ServSafe Workplace**

## **Sexual Harassment Prevention Online Course**

### **State of New York Supplement**

*Revised September 2019*

**[servsafe.com/ServSafe-Workplace](https://www.servsafe.com/ServSafe-Workplace)**

*The information found in this supplement has been taken from the New York State Model Sexual Harassment Policy website.*

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## Introduction

New York State has new laws aimed at combatting sexual harassment in the workplace. On April 12, 2018, New York Governor Andrew Cuomo signed the state budget, which mandates employers provide employees with sexual harassment training. Beginning in October 2018, employers must adopt a sexual harassment prevention policy and training or use a similar policy and training that meet or exceed the law's minimum standards. Beginning in January 2019, all state contractors must submit an affirmation that they have a sexual harassment policy and that they have trained all of their employees. Employers are required to distribute a copy of their sexual harassment policies and the information presented at their sexual harassment training programs upon hire and at every annual sexual harassment training session. New York State 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.

In 2019, Governor Andrew Cuomo signed legislation that expanded the existing New York Human Rights Law protections. The new laws have eliminated the prior requirement that harassment must be "severe or pervasive" in order to be legally actionable. With this change, the state's law now aligns with the that of the New York City Human Rights Law.

Employers will no longer be able to avoid harassment-related liability by using the Faragher/ Ellerth defense, which allowed employers to raise a defense by maintaining sexual harassment policies and by showing an employee failed to notify the employer of the alleged harassment.

## Examples of Sexual Harassment

New York state has specifically identified some additional acts that may constitute sexual harassment, which are strictly prohibited. This includes 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, or name-calling

## Training Requirements

All employers in the state, regardless of size, must abide by the state's Human Rights Law. Employers must provide sexual harassment prevention training to all workers, regardless of immigration status. This includes exempt or non-exempt employees, part-time workers, seasonal workers, and temporary workers. Individuals who work a portion of their time in New York State, even if they are based in another state, must also be trained.

Employees must be trained within 30 days of hire, and training must reoccur annually.

## Who Can Be a Target of Sexual Harassment?

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. In 2019, the Human Rights Law was expanded to include protections against all forms of discrimination or harassment to all non-employee workers in the state. 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.

One important thing to note: in addition to the classifications outlined in the National Restaurant Association Sexual Harassment Prevention training, in New York State, sexual harassment also includes harassment that occurs based on a person's gender identity and the status of identifying as transgender.

## Sample Sexual Harassment Prevention Policy

*This policy has been taken from the New York State Model Sexual Harassment Policy website.*

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

1. [Employer Name] Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with [Employer Name].
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. [Employer Name] 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 [Employer Name] 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 [name of appropriate person]. 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 [Employer Name] 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. [Employer Name] 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. [Employer Name] 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 that they receive, or any harassment that they observe to [person or office designated].
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.

## Reporting Sexual Harassment

Employees may choose to report cases of sexual harassment verbally or in writing using a form provided by their employer. A model complaint form was created by the State of New York and can be found [here](#). Employers may use this form or create their own and distribute it to their employees. Every employer in New York State is required to include a complaint form for employees in their sexual harassment prevention policy.

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 in the section on legal protections and external remedies.

## Complaint and Investigation of Sexual Harassment

New York law dictates a prompt and thorough investigation be made into any complaint, information pertaining to, or direct knowledge of suspected sexual harassment. All investigations must be completed within 30 days. All persons involved, including complainants, witnesses, and alleged perpetrators, will be accorded due process to protect their rights. The investigation must be conducted in a fair and impartial manner.

New York State has outlined a specific process that must be followed when investigating complaints of sexual harassment. Investigations will be done in accordance with the following steps:

- Once a complaint is received, a designated person will conduct an immediate review of the allegations. If there are interim actions that need to be taken, the designated person should put those in place. If the complaint is made orally, encourage the person who is making the complaint to complete the complaint form in writing. If they refuse, fill out one for them based on the oral report.
- Take immediate steps to obtain, preserve, and review all relevant documents, emails, and phone records.
- Interview all parties involved, including the alleged harasser and any relevant witnesses.
- Document the investigation in writing in the form of a letter, memo, email, or any other written format agreed upon by your company. The documentation must contain the following information:
  - 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
  - The final resolution of the complaint, together with any corrective action(s)
- Store all written documentation and associated documents in a confidential location.
- Once an outcome is reached, notify the individual who filed the complaint and the subject(s) of the complaint. Immediately 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 Protection and External Remedies

Sexual harassment is prohibited by state, federal, and, where applicable, local law.

Employees who are victims of sexual harassment can in no way be forced or coerced into signing a nondisclosure agreement. A nondisclosure agreement can only be implemented if it is the complainant's preference. In cases where a complainant requests a nondisclosure agreement, said party will be given 21 days to consider the clause and seven days to revoke it.

Mandatory arbitration agreements are considered null and void in the case of sexual harassment complaints.

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

Employees who win Human Rights Law claims will be able to recover uncapped punitive damages and will automatically be awarded their attorney fees.

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

Complaining internally 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](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form to be downloaded, filled out, notarized, and mailed to DHR. The website also contains 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 a 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/they has been discriminated against at work, he/she/they 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](http://www.eeoc.gov), or via email at [info@eeoc.gov](mailto: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 New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at the 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](http://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.

# New York City Supplement

## Introduction

On May 9, 2018, New York City Mayor Bill de Blasio signed the Stop Sexual Harassment in NYC Act aimed at addressing and preventing sexual harassment in the workplace. This law increases the statute of limitations for reporting sexual harassment incidences from one year to three years. It also expands protections to all employees, regardless of the size of their employer.

Additional obligations for employers include:

1. Under [Local Law 96 of 2018](#), employers with 15 or more employees are required to conduct annual anti-sexual harassment training for all employees. Effective April 2019, employers have one year to implement the training for all employees and must ensure all employees are trained annually thereafter.
2. Sexual harassment training must include the following elements:
  - An explanation of sexual harassment as a form of unlawful discrimination under local law
  - The complaint process available through the NYC Commission on Human Rights, the New York State Division of Human Rights, and the United States Equal Employment Opportunity Commission, including contact information
  - Information concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention
3. Employers shall keep a record of all trainings, including a signed employee acknowledgment. These may be kept electronically.
4. Under [Local Law 95 of 2018](#), all employers in the city are required to conspicuously display anti-sexual harassment rights and responsibilities notices in both English ([Legal size](#), [Letter size](#)) and Spanish ([Legal size](#), [Letter size](#)) and distribute a [factsheet](#) to individual employees at the time of hire which may be included in an employee handbook.

## Case Study: Retaliation

Last year Davina made an EEOC complaint against Marshall, her functional manager. Marshall told other employees about this complaint and made comments indicating Davina was not a team player. In response to Marshall's comments and attitude, Davina's peers began leaving her off of important emails and "forgetting" to invite her to team meetings.

Marshall did nothing to stop these actions. This is considered retaliation.

## Case Study: Bystander Intervention

Aja walks into the work breakroom and sees Gayatri standing over Patrick, whispering in his ear. When Gayatri sees Aja, she quickly leaves the breakroom. Aja sees that Patrick looks uncomfortable and upset. Aja immediately approaches Patrick and tells him that she thinks Gayatri's behavior was inappropriate and asks if he wants to talk about it. Patrick reveals that Gayatri has a habit of standing too close to him, and he feels very uncomfortable. Aja then offers to go to human resources with Patrick to report the problem. The easy thing to do in this situation would be to ignore the incident and leave. But because Aja stepped in and acted on her training, she was able to help her coworker out of a difficult situation.

## Reporting Sexual Harassment in New York City

Your employer is required to provide you with a copy of your company's specific sexual harassment policies and internal complaint process available to employees to address sexual harassment claims.

If you experience sexual harassment at work, contact the NYC Commission on Human Rights to report it at (718) 722-3131. Unsure about filing a complaint? This [blog post](#) can help you understand the complaint process when filing a complaint of sexual harassment with the Commission.