

New York University

UNIVERSITY POLICIES

Title: Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Employees

Effective Date: October 9, 2018

Supersedes: April 19, 2018

Issuing Authority: Office of the President

Responsible Officer: Mary Signor, Executive Director, Office of Equal Opportunity

STATEMENT OF POLICY

New York University ("NYU" or the "University") is committed to maintaining an environment that encourages and fosters appropriate conduct among all persons and respect for individual values. Accordingly, the University is committed to enforcing this Non-Discrimination and Anti-Harassment Policy and Complaint Procedures at all levels in order to create an environment free from discrimination, harassment, retaliation and/or sexual assault. Discrimination or harassment based on race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, pregnancy, genetic information, marital status, citizenship status, or on any other legally prohibited basis is unlawful and undermines the character and purpose of the University. Such discrimination or harassment violates University policy and will not be tolerated.

The University prohibits discrimination, harassment (including sexual/gender harassment), sexual assault and retaliation against employees, interns, contractors and other third-parties conducting business with the University. These are considered forms of employee misconduct and sanctions will be enforced against individuals engaged in such misconduct. While this Policy applies to all employees of the University, the University specifically expects management level personnel to serve as models of appropriate conduct for other employees, and will hold them to a higher standard of accountability. Management personnel must not only refrain from actions that violate this Policy, but also refrain from any activity that would give the appearance of impropriety or convey a casual approach to the enforcement of the Policy.

Any form of retaliation against anyone who has complained of or reported discrimination, harassment (including sexual/gender harassment), or sexual assault, or has participated in an investigation of such a complaint, regardless of whether the complaint relates to the complaining person or someone else, will not be tolerated, violates both this Policy and applicable law, and may result in discipline.

Inquiries regarding this Policy may be sent to the Executive Director of the Office of Equal Opportunity, Mary Signor, 212-998-2370, 726 Broadway, 7th Floor, New York, NY 10003, equal.opportunity@nyu.edu. Inquiries regarding the application of Title IX and its implementing regulations (the federal laws prohibiting gender discrimination, including sexual harassment and sexual assault, in educational settings) may be referred to NYU's Title IX Coordinator (Mary Signor, 212-998-6807, 726 Broadway, 7th Floor, New York, NY 10003, mary.signor@nyu.edu), or to the Assistant Secretary, Office for Civil Rights at OCR@ed.gov or 800-421-3481.

TO WHOM THIS POLICY APPLIES

This Policy applies to all employees of the University, and applies regardless of whether the alleged wrongdoer is an employee. Employees represented by a labor organization retain all rights under their collective bargaining agreements and labor law including the right to use the grievance process. This Policy does not override any provisions of those collective bargaining agreements.

The Policy demonstrates the University's strong commitment to prevent discrimination and harassment and reflects the requirements of the various federal, state and local laws which govern these important matters. This Policy must be read and understood in conjunction with related University policies and procedures, such as those on sexual misconduct, relationship violence and stalking, consensual relationships, the codes of conduct governing employee behavior and ethical standards for professional behavior. In handling claims made under this Policy, the University may incorporate behavioral standards that are established by related policies. When conduct may involve more than one policy, the University will determine which policy shall govern the handling of a potential violation based on the circumstances of the allegation.

POLICY AND PROCEDURES

I. DEFINITIONS

A. Discrimination is adverse treatment of any employee based on the employee's actual or perceived membership in a protected class or category of persons to whom he/she belongs, rather than on the basis of his/her individual merit with respect to the terms, conditions, or privileges of

employment including, but not limited to hiring, firing, promoting, disciplining, scheduling, training, evaluating, or deciding how to compensate that employee.

B. Harassment prohibited by applicable discrimination laws is unwelcome verbal or physical conduct directed toward, or differential treatment of, an employee because of his/her membership or perceived membership in any protected group or on any other prohibited basis (e.g., race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, pregnancy, genetic information, marital status or citizenship status). The harasser can be the employee's supervisor, a supervisor in another area, a coworker, or someone who is not an employee of the University, such as a client or customer.

Examples of such conduct include, but are not limited to:

- Offensive or degrading remarks, verbal abuse, or other hostile behavior such as insulting, teasing, mocking, degrading or ridiculing another person or group;
- Racial slurs, derogatory remarks about a person's accent, or display of racially offensive symbols;
- Unwelcome or inappropriate physical contact, comments, questions, advances, jokes, epithets or demands;
- Physical assault or stalking;
- Displays or electronic transmission of derogatory, demeaning or hostile materials; and
- Unwillingness to train, evaluate, assist, or work with an employee.

A **hostile work environment** results from harassing conduct that has the purpose or effect of unreasonably interfering with an employee's work performance, or creates an intimidating, hostile, offensive or objectionable working environment.

Sexual/gender harassment is a specific form of discriminatory harassment and constitutes employee misconduct. Sexual/gender 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 and occurs under this Policy and under the law when an employee is being treated “less well” than other employees because of his or her sex/gender by being subjected to unwelcome verbal or physical conduct of a sexual nature. It can be caused by, for example, unwanted touching, offensive and suggestive gestures or comments, asking about a person’s sex life or telling sexual jokes. Generally, sexual/gender harassment is described as either “hostile environment” or “quid pro quo.” Sexual/gender harassment which creates a “hostile environment” consists of words, signs, jokes, pranks, intimidation or physical conduct, which are of a sexual nature, or which are directed at an individual because of that individual’s sex/gender. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace, which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient’s job performance.

Quid pro quo sexual/gender harassment is another form of sexual/gender harassment which occurs when a person in authority makes sexual demands or request for sexual favors are made in exchange for job benefits, continued employment, or as a basis for making any other employment decision. A person in authority for this purpose is someone who can affect or impact an employee's terms, conditions, or privileges of employment because he/she can take or impact action such as hiring, firing, promoting, disciplining, scheduling, training, evaluating or deciding how to compensate that employee.

A single incident of inappropriate sexual behavior may be enough to rise to the level of sexual/gender harassment under this Policy. Conduct that a reasonable person would consider nothing more than “petty slights” and/or “trivial inconveniences” may not amount to sexual/gender harassment under this Policy. However, such conduct may still violate other expectations for appropriate/professional employee conduct set by the University and, accordingly, may result in discipline as determined appropriate by the University. What is “reasonable” or what amounts to “trivial inconveniences” or “petty slights” will depend on the circumstances and the parties involved, as well as the nature and duration of the conduct. This Policy is not intended to be a civility code but to prevent prohibited discrimination and harassment.

Sexual/gender harassment is not limited to the physical workplace and can occur at related University activities off premises and while traveling on University business. Activity by cell phone, emails, text messages and social media, for example, even if they occur away from the workplace premises, not during work hours or involve personal devices, can also constitute harassment prohibited by this Policy.

Examples of Sexual/Gender Harassment

Sexual/gender harassment is unwelcome verbal or physical behavior based on a person’s gender; it can include unwanted touching; offensive and suggestive gestures or comments; asking about a person’s sex life or making sexualized remarks about a person’s appearance; sexualizing the work environment with imagery or other items; or telling sexual jokes. Examples of prohibited conduct and the types of acts that *may* be unlawful sexual harassment are:

- Physical assaults of a sexual nature, such as:
 - Rape, sexual battery, molestation, or attempts to commit these assaults.
 - Intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employees' body.
- Adverse action or treatment after someone refuses sexual advances;
- Unwanted sexual advances, propositions or other sexual comments, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the employee-complainant'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.
- 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, pornographic in the workplace or on computers, emails, cell phones, social media or similar physical or digital locations.

- 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.
- 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.

C. Sexual assault is a sexual act against the will and without the consent of the employee-complainant or where the employee-complainant is incapable of giving consent. This includes conduct that would be considered criminal under the New York State Penal Code. Further details on sexual assault are provided in the University’s Sexual Misconduct, Relationship Violence, and Stalking Policy.

D. Retaliation is any adverse action taken against an individual (applicant or employee) because he or she filed a charge of discrimination or harassment (including sexual/gender harassment), complained to the University or a government agency about discrimination or harassment (including sexual/gender harassment) on the job, or participated in an employment discrimination proceeding (such as an internal investigation or lawsuit), including as a witness. Retaliation also includes adverse action taken against someone who is associated with the individual opposing the perceived discrimination, such as a family member.

Examples of retaliation include termination, demotion, refusal to promote, or any other adverse action that would discourage a reasonable person from opposing perceived discrimination.

Discrimination, harassment (including sexual/gender harassment), retaliation, and sexual assault are unacceptable in the workplace. This behavior violates University policy even when it does not constitute a violation of law. Employees who violate this Policy will be subject to appropriate discipline, which may include dismissal. Violations of the Policy can expose the University to legal liability and can also expose the individual who has engaged in discriminatory and harassing actions to legal liability.

II. REPORTING DISCRIMINATION, HARASSMENT, RETALIATION, OR SEXUAL ASSAULT TO THE UNIVERSITY

Any employee who believes that they have been subjected to discrimination, harassment (including sexual/gender harassment), retaliation or sexual assault prohibited by this Policy, or any employee who has witnessed such discrimination, harassment (including sexual/gender harassment), retaliation or sexual assault, should immediately report the circumstances in accordance with the procedure set forth below. The University may investigate any conduct that violates this Policy, even in the absence of a complaint, and take remedial action where appropriate.

An employee may make a complaint to any of the offices or individuals listed below:

- a) The Office of Equal Opportunity ("OEO"); or
- b) The Human Resources Officer or Business Partner ("HRO") of the relevant School or Administrative Department; or
- c) Any supervisor; or
- d) If the alleged respondent is a faculty member, the Dean of the appropriate School or Faculty or the Dean's designee.

Complaints may be submitted to OEO by any of the following methods:

- By phone at 212-998-2370
- By e-mail at equal.opportunity@nyu.edu
- By completing an on-line complaint form available at <https://www.nyu.edu/about/policies-guidelines-compliance/equal-opportunity/harassment-and-discrimination/submitcomplaint.html> or
- By filing a complaint with an OEO professional staff member at the OEO, 726 Broadway, 7th Floor, New York, New York 10003.

A contact List for HROs for each School and Department is available at <https://www.nyu.edu/about/policies-guidelines-compliance/equal-opportunity/harassment-and-discrimination/submitcomplaint.html>.

All complaints under this Policy will be referred to the OEO for investigation and resolution, in consultation with University Human Resources and the relevant HRO as necessary and appropriate.

The University encourages prompt reporting of complaints so that it may respond appropriately and conduct an investigation while the matter is freshest in witnesses' memory and other evidence is most likely to be available. There is no fixed deadline for reporting discrimination, harassment, retaliation or sexual assault complaints to the University.

Responsibilities of Managers and Supervisors

It is imperative that managers and supervisors not only adhere to but enforce this Policy. Managers and supervisors have a special obligation not to engage in discrimination, harassment, retaliation or sexual assault. All management and supervisory personnel have an affirmative duty

and are required to promptly report any discrimination, harassment, retaliation or sexual assault that they observe, learn about from others, or reasonably suspect has occurred with respect to an employee. Managers and supervisors who knowingly allow discrimination, harassment (including sexual/gender harassment), sexual assault, and/or retaliation to continue will be disciplined.

III. UNIVERSITY INVESTIGATION AND DISPOSITION OF COMPLAINTS

(a) The Investigation

The University will conduct a prompt, thorough and impartial investigation of a complaint as necessary and appropriate. The University will make every effort to complete its investigation within forty-five (45) days of a report of discrimination or harassment and will keep the investigation confidential to the extent possible. The investigator may find it necessary to extend the time period for completing an investigation in some circumstances. The investigator will provide the complainant, the alleged wrongdoer, and the business unit head with notice of any extension and where necessary and appropriate, give them a new timetable for completion of the investigation.

Where a complaint alleges a potential violation of the Policy, the investigation will include an interview with both parties, as well as the person who made the initial report, if different than one of the parties, and/or any other person who may have information regarding the incident, each of whom is expected to cooperate with any investigation. The investigator may also review relevant documents. Both parties will have an opportunity to be heard and present information.

The investigation process is strictly internal to NYU. Any union represented employee retains his or her right to have union representation during the investigation process.

(b) Findings and Recommendations

The investigator will report his or her findings to both parties and relevant managers and supervisors as may be appropriate.

Where the investigator concludes that a violation of this Policy has occurred, the relevant School or Department will take prompt and appropriate remedial action, including disciplinary action. Depending on the circumstances, disciplinary action may include (but is not limited to): reprimand/verbal counseling, training, censure, removal of privileges, letters of warning or suspension, and dismissal. Discipline for a violation of this Policy need not be progressive, so a first violation of this Policy may warrant suspension or discharge depending on the nature and severity of the conduct.

(c) Responsibilities of Management

In cases where an investigation confirms a violation of this Policy, management in the relevant School or Department must ensure that appropriate remedial action, which may include disciplinary action, is implemented. Managers must provide confirmation to their HRO within 14 days that the appropriate action has occurred. Management is also responsible for regular monitoring to ensure that all remedial and/or disciplinary steps are completed and no further discrimination or harassment occurs in the work environment.

(d) The Investigatory File

Every complaint will trigger the creation of an investigatory file. The investigatory file will consist of the initial complaint, the final investigative report, including a record of the remedial action to be taken, if any, and any documents created or used during the investigation. For the duration of the investigation, the OEO will maintain the investigatory file. Upon completion of the investigation, the OEO will close the file. Additionally, the OEO will record and maintain complaints in a database management file consistent with the NYU fiscal year (September 1st — August 31st). The OEO will maintain records of all complaints for a period of seven (7) years after the conclusion of an investigation.

IV. LEGAL PROTECTIONS AND EXTERNAL REMEDIES FOR SEXUAL HARASSMENT

Sexual harassment is not only prohibited by the University, but is also prohibited by state, federal, and local law. Aside from the internal process at the University, employees may also choose to pursue administrative remedies with the following governmental entities. The University strongly encourages employees to use the University's internal reporting process as a starting point so that the University can promptly address conduct.

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. 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.

New York State Division of Human Rights (DHR)

The New York State Human Rights Law (NYSHRL), 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 NYSHRL 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.

Local Protections

There may also be applicable local laws. Employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights, which enforces the New York City Human Rights Law.

V. CONFIDENTIALITY

The University will maintain the confidentiality of the complaint, and the privacy of the persons involved, to the greatest extent possible, consistent with its goal of conducting a thorough and complete investigation and to the extent permitted by law.

VI. NON-RETALIATION

The University will not in any way retaliate against an individual who reports a perceived violation of this Policy, participates in any investigation, or otherwise opposes perceived discrimination,

harassment (including sexual/gender harassment), or retaliation, including as a witness. It will also not retaliate against anyone associated with the individual who engages in such protected conduct, such as a family member.

NYU further will not tolerate retaliation by any employee. Retaliation against anyone who complains of, testifies in, or assists in an investigation or proceeding involving discrimination, harassment (including sexual/gender harassment), sexual assault, or retaliation is a serious violation of this Policy, as well as federal, state, and local law. Anyone who believes they have been subjected to retaliation should report the matter immediately according to the same procedure provided in this Policy for making complaints of discrimination, harassment (including sexual/gender harassment), or sexual assault. Any person found to have retaliated against another individual will be subject to the same disciplinary action provided under this Policy for other violations.

VII. SEXUAL ASSAULT

As noted above, further details on sexual assault are provided in the University's Sexual Misconduct, Relationship Violence, and Stalking Policy. The medical, emotional, and legal needs of a sexual assault victim may differ from those of other harassment complainants. Sexual assault victims who are employees may, therefore, in addition to filing a complaint under this policy, report the assault to the police and pursue counseling and other services available at the University. Student employees may consult the Wellness Exchange at 212-443-9999 for guidance on medical and counseling services. Employees should consult the Carebridge Corporation at 1-800-437-0911 for guidance on medical and counseling service referrals.

VIII. CONSENSUAL RELATIONSHIPS

Please see the University's Policy on Consensual Intimate Relationships.

This Policy does not form a contract of any kind. Any comments or suggestions concerning this Policy should be forwarded to the Executive Director of the Office of Equal Opportunity at equal.opportunity@nyu.edu.