New York University
UNIVERSITY POLICIES

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

Effective Date: June 1, 2021

Supersedes: N/A

Issuing Authority: Office of the President

Responsible Officer: AVP, 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 for Non-Employees 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 basis prohibited by applicable law 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 independent contractors, freelancers, unpaid interns, research affiliates, postdoctoral fellows, volunteers, and other non-employees who are conducting business with or providing services to the University (collectively and hereinafter referred to as, “non-employees”). These prohibited actions are considered to be misconduct and sanctions will be enforced against individuals engaged in such misconduct.

The University expects managers and supervisors to serve as models of appropriate conduct for others, 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 this Policy and applicable law, and will result in appropriate action.

Inquiries regarding this Policy may be sent to the AVP of the Office of Equal Opportunity, Mary Signor, 212-998-2370, 665 Broadway, 12th Floor, New York, NY 10003, equal.opportunity@nyu.edu.
TO WHOM THIS POLICY APPLIES

This Policy applies to all non-employees who are conducting business with or providing services to the University in the United States, and applies regardless of whether the alleged wrongdoer is also a non-employee.¹

The Policy demonstrates the University’s strong commitment to prevent discrimination and harassment. 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, and consensual intimate relationships. 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 non-employee based on their actual or perceived membership in a protected class or category of persons to whom they belong, rather than on the basis of their individual merit with respect to the services they provide. Such adverse treatment may include, but is not limited to, selecting, terminating, supervising, scheduling, training, evaluating, or deciding how to compensate that individual, as applicable.

¹ Complaints from visitors and guests may be reviewed under this Policy to the extent applicable.
B. **Harassment** is unwelcome verbal or physical conduct directed toward, or differential treatment of, non-employee because of their 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 a supervisor, an employee, 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 a non-employee.

A **hostile environment** results from harassing conduct that has the purpose or effect of unreasonably interfering with a non-employee’s performance of services, or creates an intimidating, hostile, offensive or objectionable environment.

**Sexual/gender harassment is a specific form of discriminatory harassment and constitutes 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 applicable law when a non-employee is being treated “less
well” than others because of their 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, which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient’s 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 requests for sexual favors are made in exchange for continued service, or as a basis for making any other decision regarding a non-employee. A person in authority for this purpose is someone who can affect or impact a non-employee’s services because they can take or impact action such as selecting, terminating, supervising, scheduling, training, evaluating or deciding how to compensate that individual, as applicable.

A single incident of inappropriate sexual behavior may be serious 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 conduct set by the University and, accordingly, may result in appropriate action as determined 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 University premises 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 premises, not during working 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 working 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 the non-employee’s body, or poking another non-employee’s 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 non-employee’s schedule, training, evaluation, or other benefits or detriments, as applicable;

  • Subtle or obvious pressure for unwelcome sexual activities; or

  • 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 working environment, such as:

  • Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning, pornographic 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 working station, tools or equipment, or otherwise interfering with the individual’s ability to perform services;

  • Sabotaging an individual’s work; or
• Bullying, yelling or name-calling.

C. **Sexual assault** is a sexual act against the will and without the consent of the complainant or where the 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 a non-employee because they 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), or participated in a 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, providing a negative evaluation 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 a professional working environment. This behavior violates University policy even when it does not constitute a violation of law. Individuals who violate this Policy will be subject to appropriate measures, 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 non-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 non-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.

A non-employee may make a complaint to any of the offices or individuals listed below:

a) The Office of Equal Opportunity ("OEO"); or
b) A relevant supervisor, internship coordinator or volunteer coordinator, as applicable.

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, or
• By filing a complaint with an OEO professional staff member at the OEO, 665 Broadway, 12th Floor, New York, New York 10003.

All complaints under this Policy will be referred to the OEO for investigation and resolution, in consultation with the appropriate offices.

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.
Responsibilities of Managers and Supervisors

It is imperative that managers and supervisors, including internship and volunteer coordinators as applicable, 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 a non-employee. Managers and supervisors who knowingly allow discrimination, harassment (including sexual/gender harassment), sexual assault, and/or retaliation to continue will be subject to appropriate action.

III. UNIVERSITY INVESTIGATION AND DISPOSITION OF COMPLAINTS

(a) The Investigation

Where a complaint alleges a potential violation of this Policy, there will be a prompt, thorough and impartial investigation of the complaint, as necessary and appropriate. Every effort will be made to complete the investigation within forty-five (45) days of a report of discrimination or harassment and to 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 other appropriate individual(s)/office(s) with notice of any extension and, where necessary and appropriate, give them a new timetable for completion of the investigation.

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 such may include such other persons as deemed
necessary. Any person affiliated with the University 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.

Notwithstanding, if the complainant or alleged wrongdoer is an employee or contractor of an agency or company contracted to provide services to the University, then the University may require the agency or company to conduct the investigation and provide the results of the investigation to the University for any appropriate action by the University, as it sees fit. In such case, the procedures of the agency or company may govern the investigation.

(b) Findings and Recommendations

The investigator will report their 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 but not limited to: reprimand/verbal counseling, training, letters of warning or suspension, and termination. A single 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 action up to and including termination, is implemented. Management is responsible for regular
monitoring to ensure that all action steps are completed and no further discrimination or harassment occurs.

(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, if any, including a record of the remedial action to be taken, if any, and any other documents the University deems appropriate. 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 at least three (3) years after the conclusion of an investigation.

IV. LEGAL PROTECTIONS AND EXTERNAL REMEDIES FOR SEXUAL HARASSMENT

Aside from the reporting process at the University, individuals covered by this Policy may also seek to pursue judicial remedies, or administrative remedies with governmental entities, including the New York State Division of Human Rights and New York City Commission on Human Rights, if covered under the applicable governing law. The University strongly encourages individuals to use the University’s reporting process as a starting point so that the University can promptly address conduct.
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, prompt and impartial investigation and to the extent permitted by applicable law.

VI. NON-RETAIATION

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 against a non-employee under this Policy. 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 applicable 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 appropriate 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 complainant may differ from those of other harassment complainants. Sexual assault complainants who are covered by this Policy 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.

VIII. CONSENSUAL RELATIONSHIPS

Please see the University’s Policy on Consensual Intimate Relationships, as applicable.

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