

New York State amended the definition of sexual harassment under the New York State Human Rights Law (“NYHRL”) to include the following:

- ▶ Harassment is against the law whenever an individual is subjected to inferior terms, conditions or privileges of employment because of one’s gender or sex
- ▶ The harassment need *not* be severe or pervasive; it can be unlawful if it rises above “petty slights and trivial inconveniences”
- ▶ In order to establish liability, the complainant does not have to identify a similarly situated person/employee that was treated more favorably

Sexual Harassment includes all forms of gender discrimination

- ▶ This includes gender role stereotyping and treating employees differently based on their gender.
- ▶ This can occur when an individual is subjected to inferior terms, conditions or privileges of employment because of perceived or actual gender, gender identity or gender expression.
- ▶ Discrimination based on sex stereotypes and perceived identity is unlawful.

Unlawful Harassment & Discrimination is Broader than Sex or Gender-Based Harassment

- ▶ Sexual or gender-based harassment is only one type of harassment.
- ▶ An individual can be harassed or discriminated against, or subjected to a hostile work environment based on other protected characteristics, such as race, religion, national origin, disability, age, military status, predisposing genetic characteristics, familial status, criminal history, status as a victim of domestic violence, or any other characteristic protected under federal, New York, or local laws.

Who Can be the Target of Sexual Harassment?

- ▶ Unlawful sexual harassment can occur between any individuals, regardless of their sex/gender.
- ▶ Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:
 - ▶ Placing different demands or expectations on black women employees than white women employees can be both racial and gender discrimination.
 - ▶ An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment.
- ▶ Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior.

Where Can Sexual Harassment Occur?

- ▶ Unlawful harassment can occur wherever and whenever work takes place; it is not limited to the physical workplace.
- ▶ It can occur while employees are traveling for business or at employer- or industry-sponsored events or parties. For example, if a colleague gets handsy at a hotel bar during a work-related or sponsored conference.
- ▶ Calls, texts, emails and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.
- ▶ Sexual harassment can occur when employees are working remotely, and can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.
 - ▶ Any virtual video or text-based platform is an extension of the work environment
- ▶ Employees are also protected from harassment by vendors and visitors to the workplace. For example, the cleaners discuss sexual prowess loudly.

Hostile Work Environment

- ▶ A hostile work environment can be created by:
 - ▶ Displays on cell phones
 - ▶ Offensive images/words in the background during a virtual meeting
 - ▶ Intentional misuse of preferred pronouns
 - ▶ Holding different expectations for employees based on gender
 - ▶ Treating employees differently because they identify as cisgender, transgender, or nonbinary
 - ▶ Assigning job duties based on sex stereotyping (e.g., assigning logistical duties to women when it is not part of their job, calling a male worker with childcare responsibilities “Mr. Mom”, etc.)
 - ▶ Remarks about an employee’s gender expression, such as wearing a garment typically associated with a different gender identity.
- ▶ Lack of intent does not matter; you can still create a hostile work environment even if you do not intend to offend or harass someone. The impact of the behavior is what matters.

Retaliation is Unlawful & Prohibited

- ▶ It is unlawful for an employer to take action against you because you oppose or speak out against sexual harassment, provide information or participate in an investigation or proceeding relating to allegations of discrimination, or encourage someone to report harassment or discrimination.
- ▶ Title VII (federal), the New York State Human Rights Law, and New York City Human Rights Law prohibit retaliation or discriminating in any manner against any person because that person opposed an unlawful discriminatory practice or participated in an investigation or proceeding.

Examples of Retaliation

- ▶ Retaliation can manifest through direct actions, such as demotions or terminations of employment, or more subtle behavior, such as an increased workload or transfer to a less desirable location.
- ▶ Retaliation can also include threats of physical violence outside of work hours or disparaging someone on social media.
- ▶ Publicly releasing an individual's personnel file, providing an unwarranted negative reference, and undermining an individual's immigration status are also examples of unlawful retaliation.
- ▶ “Deadnaming”, which is calling a transgender person by their birthname or intentionally using incorrect pronouns.
- ▶ Employees who make reports that they reasonably believe to be true are protected from unlawful retaliation, even if it turns out they are mistaken.

The RF Preventing Harassment
and Discrimination Policy
applies to all employees
equally, regardless of where
they live or work

Reporting Sexual Harassment

The RF encourages all RF employees and representatives, applicants for employment, paid or unpaid interns, contractors, students, and third-parties conducting business with the RF to report any occurrences of Sexual Harassment or Retaliation.

- ▶ Employees may report to:
 - ▶ your supervisor
 - ▶ manager
 - ▶ RF campus human resources office ("RF Campus HR")
 - ▶ campus diversity office
 - ▶ RF Operations Manager or Deputy Operations Manager
 - ▶ the RF Central Human Resources Office ("RF Central HR")
 - ▶ the Office of General Counsel
 - ▶ the Office of Internal Audit
 - ▶ the Office of Compliance Services
 - ▶ anonymously through the [Speak Up RF - Ethics Hotline](http://www.rfsuny.org/speakuprf-ethicshotline): 800.461.9330 or online
<http://www.rfsuny.org/speakuprf-ethicshotline>

Reporting Sexual Harassment (cont'd)

- ▶ Individuals should not report suspected or actual Sexual Harassment to any individual suspected of engaging in that conduct, even if that person is identified as an avenue for reporting a complaint
- ▶ Reports of Sexual Harassment may be made verbally or in writing
- ▶ The RF recognizes that participating in a harassment investigation can be uncomfortable and has the potential to retraumatize the person complaining. Those receiving claims and leading investigations will handle complaints and questions with sensitivity toward those participating.

Supervisors & Managers Duty to Stop & Report Sexual Harassment

- ▶ All RF supervisors and managers have a duty to act to stop sexual harassment.
- ▶ All RF supervisors and managers who receive a complaint or information about alleged Sexual Harassment, or Retaliation (whether verbal or in writing), observe what may be sexually harassing behavior, or for any reason suspect that Sexual Harassment or Retaliation is occurring, are required to report such suspected Sexual Harassment or Retaliation to:
 - ▶ their Operations Manager or designee
 - ▶ RF Central HR
 - ▶ RF Office of the General Counsel
 - ▶ RF Campus HR
- ▶ Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workspace is safe, supportive and free from retaliation for them during and after any investigation.
- ▶ The RF will enforce disciplinary actions against supervisory and managerial personnel who fail to report or who knowingly allow Sexual Harassment, Retaliation, or other misconduct covered by RF Policy to continue.
- ▶ Managers & supervisors may be personally legally responsible if they do not act to stop sexual harassment and if they are the sexual harassers.

Supervisors and Managers Responsibilities (cont'd)

- ▶ While supervisors and managers have a responsibility to report harassment and discrimination, supervisors and managers must be mindful of the impact that harassment and a subsequent investigation has on victims.
- ▶ Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals.
- ▶ Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

Legal Remedies

- ▶ Sexual harassment is prohibited by state, federal and local law (where applicable), including but not limited to:
 - ▶ The New York Human Rights Law (NY state);
 - ▶ Title VII of the Civil Rights Act of 1964 (federal); and
 - ▶ The New York City Human Rights Law (New York City)
- ▶ In addition to filing an internal complaint, employees may also choose to pursue legal remedies with:
 - ▶ the New York State Division of Human Rights;
 - ▶ in New York State Supreme Court;
 - ▶ with the Equal Employment Opportunity Commission; or
 - ▶ with a local agency, such as the New York City Commission on Human Rights.
- ▶ Remedies may include but are not limited to monetary damages, attorneys' fees, civil fines, or other equitable relief, such as reinstatement of employment

Contact Information

- ▶ New York State Division of Human Rights (“DHR”)
 - ▶ To file a complaint with the NYS DHR, visit www.dhr.ny.gov.
 - ▶ Call the DHR sexual harassment hotline at 1(800) HARASS3.
 - ▶ You must file within 3 years of the sexual harassment.
- ▶ Equal Employment Opportunity Commission
 - ▶ To file a charge with the US EEOC, visit www.eeoc.gov
 - ▶ You must file within 300 days of the sexual harassment.
 - ▶ If you want to file a complaint in federal court, you must file a complaint with the EEOC first.
- ▶ NYC Commission on Human Rights
 - ▶ To file a complaint, call 212-416-0197 or visit nyc.gov/humanrights
- ▶ New York State Court
 - ▶ Individuals may file a case in state court.
 - ▶ You must file within 3 years of the sexual harassment.