

EXECUTIVE ORDER NO. 11 of 2018

WHEREAS, Executive Order 3-2009, entitled “Westchester County Anti-Harassment and Discrimination Policy” was signed, filed and has remained effective since June 2009; and

WHEREAS, said Executive Order created a zero tolerance policy towards all forms of harassment or discrimination toward its employees by co-workers, supervisors, vendors, contractors or others having a relationship with the County and prohibits any conduct that creates an intimidating, hostile or offensive work environment or which is otherwise inappropriate or unprofessional; and

WHEREAS, on April 12, 2018, New York Governor Andrew Cuomo signed into law a requirement that all municipalities promulgate, by October 9, 2018, written anti-sexual harassment policies based on a model developed and published by the New York State Department of Labor and Division of Human Rights; and

WHEREAS, said model policy was published on October 1, 2018 and has been adopted for use by Westchester County; and

WHEREAS, by focusing solely on sexual harassment, the new policy is designed to supplement, not replace, Executive Order 3-2009;

NOW THEREFORE, I, GEORGE LATIMER, County Executive of the County of Westchester, in light of the aforementioned, do hereby order and direct each and every department, board, agency, and commission of the County of Westchester under my jurisdiction to ensure that the following Sexual Harassment Prevention Policy is complied with:

WESTCHESTER COUNTY SEXUAL HARASSMENT PREVENTION POLICY

Article I. Statement of Policy

Westchester County 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 Westchester County's commitment to a 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 Westchester County. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

Article II. General Harassment Prohibitions and Protections

Section 1. This Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with Westchester County. As used in this Policy, the term "employees" refers to this collective group.

Section 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 (e.g., counseling, suspension, termination).

Section 3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Westchester County will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of Westchester County 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-employees² working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or the Office of Equal Employment and Affirmative Action (EEO/AA). 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.

Section 4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and subjects Westchester County 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

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 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.

managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

Section 5. Westchester County 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.

Section 6. All employees are encouraged to report any harassment or behaviors that violate this policy. Westchester County will provide all employees a complaint form for employees to report harassment and file complaints.

Section 7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the EEO/AA.

Section 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 provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

Article III. Sexual Harassment Defined

Section 1. What is “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 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 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, 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 "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.

Section 2. Examples of sexual harassment. The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical assaults of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employees' 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 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 such 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.

Section 3. 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.

Section 4. 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.

Section 5. What is “Retaliation”? Unlawful retaliation can be any action that would keep 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.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or 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.

Article IV. Reporting Sexual Harassment

Preventing sexual harassment is everyone’s responsibility. Westchester County 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 the EEO/AA. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the EEO/AA.

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 incorporated herein by reference, 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.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the Article on Legal Protections.

Article V. 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 the EEO/AA.

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.

Article VI. 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 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. The investigation will be confidential to the extent 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. Westchester County 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 should be done in accordance with the following steps:

- Upon receipt of complaint, the EEO/AA will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If the complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.

- If documents, emails or phone records are relevant to the allegations, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo 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 actions action(s).
- Keep 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 of the right to file a complaint or charge externally as outlined in the next Article.

Article VII. Legal Protections and External Remedies

Sexual harassment is not only prohibited by Westchester County but is also prohibited by state, federal, and, where applicable, local law.

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

State Human Rights Law – 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, 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 the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** 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 to Westchester County 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 sexual harassment 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 of 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. You may call (718) 741-8400, or visit: www.dhr.ny.gov

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

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 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 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. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work 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 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at 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. In Westchester County, you can submit a complaint to the EEO/AA office at 112 East Post Road, Third Floor, White Plains, New York 10601, or by calling (914) 995-2141.

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.

Article VIII. Effective Date and Effect on Prior Executive Orders

Section 1. This Executive Order shall be effective immediately, shall be disseminated to all employees, and shall remain in full force and effect until otherwise superseded or revoked.

Section 2. This Executive Order is intended to supplement, not replace, any prior Executive Orders. However, to the extent any provisions of any prior Executive Orders are in conflict with any provisions of this Executive Order, the conflicting provision of the prior Order shall be superseded.


GEORGE LATIMER
County Executive

Dated: October 5th, 2018
White Plains, New York



SEXUAL HARASSMENT COMPLAINT FORM

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form 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 the Westchester County EEO/AA office at **112 East Post Road, Third Floor, White Plains, New York 10601**. 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:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email

Phone

In person

SUPERVISORY 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 who 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.

Signature: _____

Date: _____

Instructions for Employers

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.