

Harassment & Discrimination Training for New Employees

Office of Equal Employment Opportunity/
Affirmative Action

Anti-Harassment & Discrimination Training for New Employees

Office of Equal Employment Opportunity/Affirmative Action

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SEXUAL HARASSMENT

Sexual Harassment Regulations Overview

Harassment on the basis of sex is a violation of Sec. 703 of Title VII of the Civil Rights Act of 1964. Sexual Harassment is a form of workplace discrimination under New York State Law.

The Westchester County Sexual Harassment Prevention Policy states that sexual harassment is offensive, violates county policy and is unlawful.

Employees of every level, who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or retaliation, or who allow such behavior to continue, will be penalized (e.g., counseling, suspension, termination).

Preventing sexual harassment is everyone's responsibility. Any suspicion of sexual harassment should be reported to a supervisor or the Office of Equal Employment Opportunity and Affirmative Action (Office of EEO/AA). Even a single incident can be addressed by this policy.

Who Is Covered by This Policy?

In the sexual harassment policy only, the term employees includes all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with Westchester County.

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.

What Is Sexual Harassment?

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.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, or harassing conduct which is directed at an individual because of that individual's sex constitute sexual harassment when:

- (1) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment,
- (2) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- (3) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual's employment.

FORMS OF SEXUAL HARASSMENT

1. HOSTILE WORK ENVIRONMENT

This refers to a work environment that includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence of a sexual nature. Hostile work environment sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks which are offensive or objectionable to the recipient, or which cause the recipient discomfort or humiliation, and which unreasonably interfere with the recipient's job performance.

2. QUID PRO QUO

This is summarized as "This for that" or "something for something." This type of sexual harassment occurs when a person in authority tries to trade sexual favors for something else, such as favorable treatment in work assignments, pay or promotion. It also occurs when employment decisions and conditions are based upon whether an employee is willing to grant sexual favors.

CONDUCT OF A SEXUAL NATURE

Conduct of a sexual nature may consist of sexually explicit behavior or comments that are sex based or directed against someone because of gender.

Verbal

- Sexually explicit derogatory statements, or sexually discriminatory remarks
- Offensive or objectionable remarks of a sexual nature
- Unwanted sexual advances
- Requests for sexual favors especially accompanied by implied or overt threats
- Repeated requests for dates after being told there is no interest
- Sexual or gender-based jokes or teasing
- Comments of a sexual nature in texts, voicemails, emails, social media messages on or off work premises and during or out of work time
- Leering, grunts, wolf whistles, cat calls, hooting, sucking, lip smacking and animal noises
- Telling tales of sexual exploitation,
- Telling lies or spreading rumors about a person's personal or sex life
- Graphic descriptions of pornography
- Obscene phone calls, sexual innuendoes or stories
- Turning work discussions to sexual topics
- Terms of endearment such as "honey", "Dear," "sweetheart," "babe" or referring to an adult as "girl" or "boy," "doll" or hunk"

Physical

- Leaning over, invading a person's space
- Deliberate or "accidental" sexual touching or brushing up against a person or their clothing
- Pinching, grabbing, kissing, hugging, patting, stroking, poking or rubbing up against someone
- Blocking someone's path with the purpose of making a sexual advance
- Uninvited neck massage
- Stalking
- Actual or attempted rape, sexual battery, or molestation

Visual

- Sexual or discriminatory displays or publications anywhere in the workplace
- Pictures, posters, cartoons, drawings, or calendars of a sexual nature
- Having knick-knacks and other objects of a sexual nature in the workplace
- Electronic bulletin boards or computer graphics of a sexual nature, sexual displays on computer screens, or smart phones and sharing such displays while in the workplace
- Staring, looking up and down (elevator eyes), derogatory gestures of a sexual nature
- Sexually suggestive looks, facial expressions of a sexual nature

CONFIDENTIALITY

If an employee reports an incident of sexual harassment, or asks for help on a question of sexual harassment, they are entitled to confidentiality *within certain limits*. If an employee requests confidentiality, they are advised that their employer needs to conduct an investigation. Those involved will need to be interviewed. Confidentiality is protected where possible. Some people may "need to know." In such cases these people will be asked to keep matters confidential where possible.

DEFAMATION

Confidentiality is important. An employee could be sued individually for defamation in the event they unnecessarily disclose sexual harassment allegations to individuals who do not have a legitimate need to know about it. When a situation arises that requires immediate intervention, remember to discuss the situation only to the extent necessary to remedy the problem.

RETALIATION

Retaliation against an employee if an he or she opposes discrimination or after he or she has complained about harassment or participated in an investigation of harassment (or threatening to retaliate if he or she complains or participates in an investigation,) is illegal and can lead to serious consequences. Participation and opposition are protected activities.

Participation

Participation refers to filing charges, testifying, participating, or assisting with an investigation, proceeding, or hearing. Talking to the Office of EEO/AA about a possible claim does not constitute participation.

Opposition

When an employee says, "I oppose" or "please stop" or complains. Protection does not necessarily extend to vague comments about mistreatment, unfair decisions, or "harassment" that are not tied to a protected basis.

Materially Adverse Action

Unlawful retaliation can be any action could well dissuade a reasonable worker from coming forward to make or support a discriminatory claim. Protection from a materially adverse action extends beyond workplace-related and employment-related retaliatory acts and harm.

Discharges, denial of wage increases, demotions, or adverse job references **are** materially adverse actions.

Causal Connection

Once an adverse employment action has been established, an employee must show the employer **knew** the employee engaged in a protected activity, and there is a causal connection between the protected activity and the adverse employment action.

EMPLOYEE RESPONSIBILITIES

Two landmark US Supreme Court decisions on 06/26/98 clarified responsibilities of both employers and employees in preventing sexual harassment. Employers are responsible for the behavior of their employees but employees must report any complaints they have.

Employees who object to the behavior of others should:

- (1) Ask the offender to stop, and
- (2) Report their concerns to a supervisor or other member of management or the Office of EEO/AA to ensure the problem is properly handled.

WHAT TO DO IF SEXUALLY OR DISCRIMINATORILY HARASSED

- (1) Firmly, clearly and directly, tell the harasser to stop.
- (2) Make it clearly known you find the behavior offensive.
- (3) Speak up and assert your rights to a respectful work environment.
- (4) If you do not feel comfortable telling your harasser to stop, follow the Westchester County Executive Order No. 3 of 2009 complaint reporting procedures.

If the behavior continues:

- Document the conversation or offending behavior.
- Keep records of each incident, including location, date, time, place, what was said, what happened, and any witnesses who may have seen or heard it.
- Store your records at home, and save any offensive letters, photographs, cards, notes, texts or voicemails you receive.

Westchester County's policy can be obtained from either:

Your department's EEO Compliance Officer, the Office of EEO/AA, or at www.westchestergov.com/eo.

NON-SEXUAL DISCRIMINATORY HARASSMENT

All forms of discriminatory harassment are unlawful under applicable local, state and federal law, i.e. harassment based on race, color, religion, gender, sexual orientation, age over 40, national origin and disability, among others. The same general principles that constitute sexual harassment also apply to other forms of harassment except that **the harassment is based on a protected characteristic**.

Examples:

- Using epithets, slurs, negative stereotypes
- Threatening, intimidating, or engaging in hostile acts that relate to a protected characteristic
- Offensive jokes or pranks targeted at members of a protected group
- Placing on walls, bulletin boards or elsewhere on the employer's premises, or circulating in the workplace by any medium, oral, written, electronic or graphic material that belittles, mocks or shows hostility toward a person or group because of protected characteristics.

Reasonable Person Standard

The harassment must be offensive to a reasonable person in the position of the person being harassed, considering all of the circumstances including that person's protected characteristic (race, color, etc.)

Pervasive

Pervasive means that the conduct occurs often enough that it can be said to have become an implied term or condition of employment.

TITLE VII HARASSMENT IN THE WORKING ENVIRONMENT

Title VII prohibits employers from maintaining a work environment that, based on a protected characteristic, is so hostile that the conditions of an individual's employment are altered. An employer has an affirmative duty to maintain a work environment free from the type of insult, intimidation, or ridicule that would be sufficiently severe or pervasive to give rise to a Title VII claim, based on a protected characteristic.

Verbal harassment: Oral offensive epithets, slurs or comments aimed at a particular protected group or similar comments in texts, emails, voicemails, or social media.

Demonstrative conduct: Gestures, pictures, drawings and other items that offend particular protected groups.

Written harassment: Offensive words, comments, cartoons and drawings that are written, printed, posted or displayed.

HARASSMENT THAT RESULTS IN TANGIBLE EMPLOYMENT ACTION

- a. Pattern of discriminatory or harassing offensive, severe, pervasive conduct based upon a protected characteristic that a reasonable person would find hostile, and
- b. Adverse employment action such as a demotion, suspension, discharge or constructive discharge that flows from acts of discrimination or harassment.

HARASSMENT BY IMMEDIATE SUPERVISOR/SOMEBODY HIGHER IN CHAIN OF COMMAND BUT NO TANGIBLE EMPLOYMENT ACTION

- a. Conduct sufficiently severe or pervasive to alter the terms and conditions of the complainant's employment.
- b. Permitted Employer Affirmative Defense:
 - Employer exercised reasonable care to prevent and promptly correct any harassing behavior based on a protected characteristic, and
 - Employee failed to take advantage of any preventive or corrective opportunities provided by the employer.

HARASSMENT BY NON-MANAGERIAL CO-WORKER/NON-EMPLOYEE VISITING THE WORKPLACE

- a. Conduct sufficiently severe or pervasive to alter the terms and conditions of the complainant's employment.
- b. Employer is liable if it has knowledge of the harassment and fails to take immediate and appropriate corrective action to address the harassment:
 - Employee complains to a supervisor or manager, or
 - Co-worker conduct communicated in presence of a supervisor, or
 - Constructive notice of the objectionable action when the conduct is so widespread that the employer should have known.

HOSTILE WORK ENVIRONMENT

1. Totality of the circumstances: We consider the nature of the conduct, the context in which the alleged incident occurred, whether the conduct is severe and/or pervasive, whether it was physically threatening or humiliating, whether it was unwelcome, and whether it unreasonably interfered with an employee's work performance.

Factors:

Whether the conduct was verbal or physical, or both

How frequently was it repeated

Whether the conduct was hostile and patently offensive

Whether the alleged harasser was a coworker or a supervisor

Whether the others joined in perpetrating the harassment, and

Whether the harassment was directed at more than one individual

2. Whether a “**reasonable person**” in the same or similar circumstances would find the challenged conduct sufficiently severe or pervasive to create an intimidating, hostile or abusive work environment.

Title VII does not serve as a vehicle for vindicating petty slights suffered by the hypersensitive person.

3. Whether the complainant **perceived the environment to be hostile or abusive**, i.e. whether the conduct was unwelcome, taking into consideration the complainant’s behavior.

SPEAK-ENGLISH-ONLY RULES

Requiring employees to speak only English in the workplace at all times, including breaks and lunch time, will almost never be justified by business necessity and will be closely scrutinized.

Exceptions might be an unusual work environment where safety considerations are of such primary concern; **if job related and consistent with business necessity where certain employees perform specific duties under specific circumstances; or to accomplish a legitimate business purpose.**

Justifications for English-Only Rules

- (a) Communication among co-workers where close coordination is required.
- (b) Communication between employees and English speaking customers.
- (c) Communication between employees and supervisors.

National Origin Harassment:

Harassment on the basis of national origin is a violation of Title VII.

AGE DISCRIMINATION IN EMPLOYMENT ACT

Complainant Complaint

- (1) The complainant was in the ADEA protected age group (over 40);
- (2) He/she applied and was qualified for the job at issue;
- (3) Despite these qualifications, he/she was rejected; and
- (4) After his/her rejection, the position remained open and the employer continued to seek applicants having the complainant’s qualifications.

Employer Response

- (1) Must have legitimate non-discriminatory reasons for actions.
- (2) Can show age is a bona fide occupational qualification (BFOQ) for the job or the differentiation is based upon one of the other ADEA exemptions.

AMERICANS WITH DISABILITIES ACT (ADA)

WHO IS PROTECTED BY ADA?

1. Individual with a Disability

A person who has:

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of such an impairment; or
- Is regarded as having such impairment.

2. Qualified Individual with a Disability

A person with a disability who “satisfies all the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the *essential functions* of such position.”

REASONABLE ACCOMMODATION

Employer must provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant/employee with a disability, unless it can show that the accommodation would impose an undue hardship on the business.

Generally, it is the obligation of an individual with a disability to request a reasonable accommodation. The employer is obligated to make a reasonable accommodation only to the known limitations of an otherwise qualified individual with a disability. The employer consults with the person with the disability and they work together to identify the appropriate accommodation.

An employer is not required to make a reasonable accommodation that imposes an undue hardship on the operation of the business, i.e. “significant difficulty or expense” in relation to the size of the employer, resources available, and nature of the operation (unduly costly; extensive; substantial; disruptive; or fundamentally alter the nature or operation of the business).

EXECUTIVE ORDER NO. 2 of 2009

WHEREAS, the County of Westchester provides equal opportunity to all individuals in its personnel and employment practices and actively seeks to employ and advance qualified individuals indiscriminately; and

WHEREAS, to further illustrate the County of Westchester's commitment regarding equal employment opportunity, Executive Order No. 5-2002 entitled "Westchester County Equal Employment Opportunity Policy" was signed, filed and has remained effective since June 2002; and

WHEREAS, said Executive Order prohibits discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other basis prohibited by law; and

WHEREAS, by Executive Order No. 8 of 2005, the terms of Executive Order No. 5-2002 were continued and expanded to include and to protect members of the military and individuals with predisposing genetic characteristics; and

WHEREAS, the Office of Equal Employment Opportunity/Affirmative Action has been moved from the Department of Human Resources to the Human Rights Commission, the Office of Equal Employment Opportunity/Affirmative Action has been restructured and there have been some slight modifications to the implementation responsibilities and the complaint procedures set forth in Executive Order No. 5 of 2002, without any diminution to the County policies prohibiting discrimination in all phases of employment including all terms, benefits and conditions thereof;

NOW THEREFORE, I, ANDREW J. SPANO, County Executive of the County of Westchester, in light of the aforementioned do hereby repeal Executive Order No. 5 of 2002, Executive Order No. 8 of 2005 and direct that the following be substituted in their place:

Westchester County Equal Employment Opportunity Policy

Article I. Statement of Policy

The County of Westchester provides equal opportunity to all individuals in its personnel and employment practices. In compliance with Federal and New York State Human Rights Laws, and its own policies, the County of Westchester prohibits discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, military status, predisposing genetic characteristics or any other basis prohibited by law, in all part-time, full-time, temporary or other employment practices including termination, promotion, compensation and other terms, conditions and privileges within County employment. Further, contractors doing business with the County are required to meet equal employment opportunity standards.

The County of Westchester actively seeks to employ and advance qualified individuals, regardless of their race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, or any other basis prohibited by law. To this end, all County appointing authorities are directed to hire, recruit, transfer and promote so as to reflect, in the County's workforce, the basic composition of the County's general labor force. The County monitors hiring, transfer, promotion, discharge and other personnel actions to identify and address instances of adverse impact caused by discriminatory practices. Additionally, the County examines its job specifications to eliminate unnecessary barriers to advancement on merit and fitness, and seeks the development of all members of the work force.

Responsibility for overall coordination, implementation and administration of the County's Equal Employment Opportunity and Anti-Discrimination Policy is vested with the Office of Equal Employment Opportunity/Affirmative Action. The Office is responsible for developing policies and programs to ensure that the County fully complies with the Equal Employment Opportunity Act of 1972, the New York State Human Rights Law, all other applicable State and Federal laws and regulations, and County laws and policies pertaining to equal employment opportunity and discrimination, whether expressed by legislative act or executive order.

Article II. Policy Objectives

Section 1. To preclude discriminatory practices in all phases of employment in Westchester County government, including all terms, benefits and conditions thereof, the County is committed to nondiscriminatory and appropriate:

A. Recruitment: including, but not limited to:

- Design and content of application forms;
- Posting of job and promotional opportunities;
- Design and content of recruitment literature to reflect the diversity of the County's population;

- Review of positions and turnover rates to identify statistically significant adverse impact and to investigate origins thereof;
- Methods and techniques used in interviewing job applicants;
- Referral agencies used by the County for the purpose of securing job applicants; and
- Maintenance of contacts with referrals from persons of color, Hispanics, women, the disabled, mature workers and professional and trade organizations using advertisements when feasible.

B. Selection, Appointment and Placement: including, but not limited to:

- Examinations, including the distribution of test announcements and job relatedness of recommended test components;
- The application process from selection through appointment;
- Review of all essential job functions for jobs, and
- Provision of reasonable accommodations for otherwise qualified disabled workers and those requiring accommodations of religious beliefs and practices, if applicable and if such accommodation would not constitute an undue hardship.

C. Classification and Compensation: including, but not limited to:

- The design, review and revision of job specifications;
- Certification of new and existing titles; and
- Monitoring of vacancies.

D. Training, Promotion and Upward Mobility: including, but not limited to:

- Internal training programs;
- External training opportunities, including County-sponsored programs;
- Qualifications for promotion such as evaluations, oral examinations and seniority (to the extent permitted by New York State Civil Service Law);
- Granting of leaves, including leaves for further education and/or training, where appropriate;
- Promotion patterns within the County, departments and units;
- Upward mobility programs and the communication of these programs for all employees;
- The development and implementation of career ladders and bridges, where feasible;
- Methods for assisting employees with career development planning; and
- Inventories of skills and abilities of employees to aid in the identification of persons to be trained and promoted, to the extent permitted by New York Civil Service.

E. Termination, Resignation and Retirement: including, but not limited to:

- Review of decisions regarding of termination, resignation and retirement;
- Conducting exit interviews; and
- Monitoring of post-termination grievances or other proceedings.

Section 2. The County will take measures to develop and implement an effective system to communicate the County's Equal Employment Opportunity Policy (hereinafter "EEO policy") to employees, job applicants and residents about, inter alia:

- a. County training programs;
- b. New employee orientation sessions
- c. Yearly or other performance evaluations
- d. Periodic retraining of EEO Compliance Officers and EEO Counselors; and
- e. Intra-departmental yearly staff development programs

Section 3. To provide a procedure for addressing and resolving complaints of discriminatory conduct and harassment.

Article III. Implementation Responsibilities

Section 1. County Executive: The County Executive has the ultimate authority and responsibility for ensuring that the objectives of the County EEO policy are met, and for enforcing Federal and State equal employment opportunity and antidiscrimination laws within County government.

Specific responsibilities of the County Executive include, but are not limited to:

1. Establishing an Office of Equal Employment Opportunity/Affirmative Action, within the Human Rights Commission with personnel necessary and appropriate to effectuate this policy;
2. Effectuating corrective action, to the extent permissible under Federal, State and County laws, collective bargaining agreements, and as otherwise deemed necessary to implement the objectives of this policy and the fact-finding determinations of the Office of Equal Employment/Affirmative Action; and
3. Reviewing and approving all goals and objectives of the EEO policy.

Section 2. The Office of Equal Employment Opportunity/Affirmative Action: The Office of Equal Employment Opportunity/Affirmative Action (hereafter "Office of EEO/AA") is responsible for the implementation and administration of the County's EEO policy and reports directly to the Executive Director of the Human Rights Commission.

Specific responsibilities include, but are not limited to:

1. Reviewing, on an annual basis, the goals and objectives of the County's Equal Employment Opportunity and Anti-Discrimination policy. Developing specific programs designed to achieve measurable goals and targets for submission to the County Executive for review and approval;
2. Administering the training of EEO Compliance Officers, EEO Counselors, and others as deemed appropriate;

3. Administering the complaint procedure, by:
 - a. Making available at least one (1) trained EEO Compliance Officer in or for each department;
 - b. Making available trained EEO Counselors to respond to complaints throughout the County;
 - c. Processing, filing, monitoring and forwarding of all complaints to the appropriate parties.
 - d. Submitting written findings and determinations with respect to the alleged discriminatory conduct contained in complaints to the complainant, the Department and the alleged discriminator.
4. Communicating the County's EEO policy, internally and externally, by:
 - a. Meeting with employees, organizations, and community members and their organizations;
 - b. Participating in County training and orientation programs, and other public information outreach efforts;
 - c. Acting as liaison between the County, as directed by the Executive Director of the Human Rights Commission, and other government agencies concerned with equal employment opportunity.
5. Monitoring compliance with all Federal and State EEO/Human Rights reporting requirements;
6. Meeting individually with department heads, as needed, to implement and administer the EEO policy, plans and programs;
7. Consulting with the Executive Director of the Human Rights Commission, as needed, to implement and administer EEO policy, plans and programs;
8. Providing annual recertification of EEO Counselors.

Section 3. Executive Director of the Human Rights Commission: The Executive Director of the Human Rights Commission shall provide management oversight to the program.

Specific responsibilities include, but are not limited to:

1. Providing administrative oversight for development and implementation of the EEO policy;
2. Monitoring personnel procedures and policies that relate to recruitment, classification, compensation, training, resignation, retirement and other terms, conditions and benefits of employment;
3. Providing staff support to assist, as necessary, with implementation of County EEO goals and objectives;
4. Consulting with the EEO/AA staff, as needed, on the overall policy, plan and program administration.

Section 4. Commissioners/Department Heads/Appointing Authorities (“Department Heads”): Department Heads are generally responsible for ensuring that the County’s EEO policy is fully implemented within their departments.

Specific responsibilities include, but are not limited to:

1. Designating and maintaining an EEO compliance officer for their departments;
2. Developing and implementing a departmental EEO plan, including the annual update of said plan(s);
3. Disseminating the EEO policy, to their employees, on an on-going basis; and
4. Ensuring the implementation of any actions as determined or requested by either the County Executive or the Office of EEO/AA, with regard to attaining the goals of the EEO policy within their department, including corrective actions.

Section 5. EEO Compliance Officers: EEO Compliance Officers are designated by the Commissioner/Department Head/Appointing Authority to assist her/him in the implementation and coordination of the respective department EEO policy.

Responsibilities may include:

1. Coordinating the department’s annual EEO-4 report;
2. Developing and writing the EEO Plan for the department, and annual update of said plan;
3. Developing procedures to monitor the EEO Plan within the department;
4. Upon receipt, reviewing statistical work force information such as work force analysis, availability analysis, underutilization analysis, in furtherance of achieving goals of their departmental EEO policy;
5. Providing all assistance required in any Department or elsewhere.

Section 6. EEO Counselors: The EEO Counselors are generally responsible for the investigation and resolution of complaints of discriminatory conduct to the extent possible at the departmental level, as assigned by the Office of EEO/AA.

Specific responsibilities include, but are not limited to:

1. Investigating and counseling employees on complaints filed under the EEO policy;
2. Attending training and informational meetings on EEO policy, plans and programs;
3. Communicating EEO policy and programs to workers.

Article IV. Discrimination Complaint Procedure

Section 1. Reporting of a Complaint

1. Obligations of Employee. Since Westchester County has a zero tolerance policy against discrimination, employees are expected to report incidents of discrimination, whether affecting them or anyone else, as soon as possible after their occurrence.

Anyone who feels that he or she has been subjected to discrimination or other conduct which violates this policy or who has observed such conduct should immediately report the conduct to their supervisor, their Department Head, the EEO Compliance Officer assigned to their Department, or the Office of Equal Employment Opportunity/Affirmative Action (hereafter "Office of EEO/AA"). It is the employee's choice as to where to report. If the employee's supervisor or Department Head is believed to be involved in the discrimination or does not appear helpful in addressing the complaint, the employee immediately should make a report directly and promptly to the Office of EEO/AA. *At any time, any employee who would like guidance as to how to proceed in filing a complaint or who requires assistance at any time may contact the Office of EEO/AA.*

After business hours or on weekends, you may call the Office of EEO/AA at (914) 995-2141. The voice-mail is checked throughout the evening and weekends.

2. Obligations of Supervisor. If a complainant reports allegedly discriminatory behavior to a supervisor, or if a supervisor independently observes such behavior, the supervisor shall promptly report this information to the Office of EEO/AA, which shall assign an investigator, as described below. If the initial report by the complainant was verbal, the supervisor also must document the complaint in writing and provide that document to the Office of EEO/AA. As set forth below, the Office of EEO/AA will ensure that actions are taken to address the situation and to comply with this policy.

Section 2. Time Frame. A complaint regarding discrimination should be submitted as soon as possible after an alleged act of discrimination takes place. An employee's failure to promptly report discrimination may delay the investigation, make it more difficult to gather information necessary to investigate the report, and impede the County's ability to take prompt corrective action.

Section 3. Complaint and Investigative Process

1. Investigator. Once an employee has filed either a verbal or written complaint with the appropriate supervisor, Department Head, EEO Compliance Officer or the Office of EEO/AA, an investigator will be assigned by the Office of EEO/AA and notification of the assigned investigator will be sent to the Department Head, complainant, and alleged discriminator(s). Upon receipt of said notification, Department Heads should accommodate the provision of release time for investigators, complainants, alleged discriminator(s) and relevant witnesses, as determined by the Office of EEO/AA.

Unless the complainant, the alleged discriminator, and the Office of EEO/AA agree, the investigator will not be from the same Department as the complainant or the accused employee. If the allegation of discrimination is made by or about an employee in the Office of EEO/AA, the allegation will be investigated by an official to be designated by the County Executive or his designee.

2. Investigation. The investigator will conduct a prompt, thorough and fair investigation. This investigation may include interviewing the parties involved and any relevant and necessary witnesses, as well as reviewing any appropriate records. The particular facts of the allegation will be examined individually, with a review of the nature of the behavior and the context in which the incident(s) occurred. Employees who have been accused of discrimination will be afforded the opportunity to offer and present information in their defense. Additionally, an employee accused of misconduct may have a union representative present while he or she is questioned regarding the allegations of the complaint, if it is likely to lead to disciplinary action.

3. Confidentiality. The County will make every effort to keep such complaints confidential to the extent deemed reasonably practicable. However, a full investigation may be impossible without disclosing certain information to the person allegedly engaging in prohibited behavior, or to potential witnesses. Additionally, all records, with the exception of the Complaint, Resolution of Complaint Form, Complaint Withdrawal Form and determinations by the Office of EEO/AA and appeal determinations generally will be confidential. Disclosure thereof will be made only if authorized by the Office of the County Attorney. A party opposing disclosure may be given an opportunity to provide the County, in writing, with an explanation of why he or she opposes disclosure of any information contained in an investigative file.

4. Investigation Report. Upon completion of the investigation, the investigator will prepare and submit to the Office of EEO/AA a written confidential summary of the complaint, including the response and the facts of the investigation. The investigator will endeavor to complete the investigation and to submit the report within seven (7) working days, but this time may be extended by the Office of EEO/AA, as may be required by the particular circumstances of each situation.

Section 4. Final Fact-Finding Determination of EEO/AA Office. The Office of EEO/AA after reviewing the report, promptly will issue a final written fact-finding determination. If there is cause to believe that the County's policy against discrimination has been violated and that disciplinary or corrective action should be taken, depending on the nature and severity of the conduct, the Office of EEO/AA in the final fact-finding determination, shall, if appropriate, recommend appropriate disciplinary or corrective action.

The final fact-finding determination promptly shall be forwarded to the Head of the Department where the employee accused of misconduct is employed, to the complainant and to the alleged discriminator(s).

Section 5. Corrective or Disciplinary Action. Any employee who is found to have committed an act of discrimination may be subject to corrective or disciplinary action as provided by County procedures, up to and including termination.

In the event that the final fact-finding determination issued by the Office of EEO/AA includes a recommendation that disciplinary or other corrective action be taken, then the Head of the Department shall independently determine if it is appropriate to initiate a disciplinary proceeding or take other corrective action, pursuant to Civil Service Law § 75 and applicable collective bargaining agreements. If the Department Head determines that it is not appropriate to initiate a disciplinary proceeding or take other corrective action, the Department Head may contact the Office of EEO/AA to discuss the fact-finding determination.

Section 6. Appeals. After a fact-finding determination has been made pursuant to the sections set forth above, the complaining employee or the person who has been found to have engaged in the discriminatory behavior may appeal the decision. To ensure that the Office of EEO/AA is apprised fully of the basis for the appeal, the person appealing should submit a detailed written memo. Such appeal must be submitted within seven (7) working days of the issuance of the final fact-finding determination. A designated Hearing Officer shall make such additional investigation as is reasonably necessary, and then, unless a longer period of time is required, within seven (7) working days after such further investigation promptly issue a written appeal recommendation. The Executive Director of the Human Rights Commission shall review such recommendation and make a final determination. A copy of the appeal determination shall be provided to the Department, the complainant and the employee accused of misconduct.

Section 7. Monitoring. After corrective action has been taken, the Office of EEO/AA will monitor the conduct of the employee accused of discrimination or the department in which the alleged discrimination occurred, for approximately ninety (90) days to ensure compliance with the proposed recommendation, to prevent subsequent acts of discrimination or misconduct, and to prevent retaliation. (The employee who reported the discrimination can request a longer period of oversight.)

Section 8. False Complaints. An employee who in bad faith makes a false complaint or statement, whether during an investigation or otherwise, is subject to disciplinary action.

EFFECTIVE DATE

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

Andrew J. Spano
County Executive
Dated: June 30, 2009
White Plains, New York

EXECUTIVE ORDER NO. 3 of 2009

WHEREAS, the County of Westchester maintains a zero tolerance policy towards all forms of harassment or discrimination toward its employees by coworkers, 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, to further illustrate the County of Westchester's commitment regarding anti-harassment and discrimination in the workplace, Executive Order 6-2002 entitled "Westchester County Anti-Harassment and Discrimination Policy" was signed, filed and has remained effective since June 2002; and

WHEREAS, said Executive Order prohibits discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other basis prohibited by law in the workplace; and

WHEREAS, by Executive Order No. 8 of 2005, the terms of Executive Order No. 6-2002 were continued and expanded to include and to protect members of the military and individuals with predisposing genetic characteristics; and

WHEREAS, the Office of Equal Employment Opportunity/Affirmative Action has been moved from the Department of Human Resources to the Human Rights Commission, the Office of Equal Employment Opportunity/Affirmative Action has been restructured and there have been some slight modifications to the implementation responsibilities and the complaint procedures set forth in Executive Order No. 6 of 2002 as continued and expanded by Executive Order No. 8 of 2005, without any diminution to the County policy of maintaining zero tolerance towards all forms of harassment or discrimination toward its employees by coworkers, supervisors, vendors, contractors or others having a relationship with the County;

NOW THEREFORE, I, ANDREW J. SPANO, County Executive of the County of Westchester, in light of the aforementioned do hereby repeal Executive Order No. 6 of 2002 and direct that the following be substituted in its place:

**Westchester County
Anti-Harassment and Discrimination Policy**

Article I. Statement of Policy

Westchester County maintains 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. The County prohibits any conduct that creates an intimidating, hostile or offensive work environment or which is otherwise inappropriate or unprofessional. Simply stated, Westchester County seeks to ensure that none of its employees is subjected to any form of harassment or discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, military status, predisposing genetic characteristics or any other basis prohibited by law.

Moreover, the County believes in the dignity of every individual and recognizes the rights of all people to equal opportunity and to a workplace free from all forms of harassment or discrimination. To that end, the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by coworkers, supervisors, vendors, contractors or others. The County encourages everyone to work together amicably and respectfully.

All employees will be expected to comply with this policy and to take appropriate action so that such conduct does not occur. In addition, each supervisor has a special duty to maintain a workplace free of all types of discrimination and harassment. This duty includes discussing this policy with subordinates, other employees and non-employees. Finally, the County expects that corrective action, as appropriate, will be taken promptly whenever discriminatory or harassing conduct is identified.

Article II. General Anti-Discrimination and Harassment Protections

Section 1. Prohibited Practices. Westchester County prohibits all forms of harassment and discrimination, including, but not limited to, the following areas:

- a. Harassment, discrimination, or hostile environment on the basis of race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other characteristic protected by law;
- b. Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- c. Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other characteristic prohibited by law;
- d. Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, color, religion, sex, page, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, or any other basis prohibited by law;

- e. Denying employment to a person because of an arrest or criminal accusation which terminated in favor of that person, or because of a conviction record, other than as permitted by the New York State law;
- f. Failure to reasonably accommodate the disability of an otherwise qualified employee or prospective employee, unless doing so would impose an undue hardship on the County;
- g. Failure to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship on the County.

Section 2. No Retaliation. Retaliation against an employee who makes a good faith complaint of harassment or discrimination or who provides information or participates in the complaint or investigative process is strictly prohibited and shall be subject to appropriate corrective or disciplinary measures. Retaliation includes such prohibited acts as intimidation, coercion, threats, reprisals and adverse job actions taken because a complaint was made or because he or she participated in an investigatory process.

Pending resolution of a complaint and within twelve (12) months thereafter, the Department Head must first review personnel action against an employee accused of misconduct or an employee who makes such a complaint.

Any employee who believes that he or she has been retaliated against for filing a discrimination complaint or otherwise participating in the investigation or resolution of a complaint, should follow the harassment and discrimination complaint procedures as set forth in this Policy. Supervisors are required to assist employees to utilize that procedure.

Section 3. Other Employee Rights. Nothing in this policy or procedure shall be construed as in any way limiting any employee's right to use any collective bargaining agreement procedure, to file a complaint with the New York State Division of Human Rights, the U.S. Equal Employment Opportunity Commission, or any other fair employment practices agency, or to take any legal action which the employee may deem advisable.

Article III. Sexual Harassment

Section 1. Generally. Sexual harassment is a form of employment discrimination based upon gender, which is prohibited by federal, state and County law. Sexual harassment can occur between individuals of different sexes or of the same sex. It may be overt or subtle sexually-related conduct that is not welcome, is personally offensive, interferes with an individual's work performance and effectiveness, or creates an intimidating, hostile or offensive work environment.

Section 2. Definition of Sexual Harassment. The County prohibits all forms of harassing conduct. For example, prohibited sexual harassment consists of unwelcome advances and other unwelcome physical, verbal and nonverbal conduct of a sexual nature, including conduct where:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment; or
- d. In third party situations, an individual is offended by the sexual interaction, conduct or communications between others.

Section 3. Forms of Sexual Harassment. Forms of sexual harassment may include, but are not limited to, the following:

- a) *Verbal:* Abusive verbal language related to an employee's sex, including sexual innuendos, sexual advances, demands for sexual favors, slurs, suggestive or derogatory or insulting comments or sounds, lewd whistling or other noises, jokes of a sexual nature, sexual propositions, threats, sexually-oriented comments about an employee's body, continuing to express sexual or social interest after being informed directly that the interest is unwelcome, or any similar conduct that interferes with an employee's work performance, creates an intimidating, hostile or offensive working environment, or that is otherwise unwelcome.
- b) *Visual:* Abusive written language, such as sexually suggestive or obscene letters, e-mails, notes, invitations; circulating or displaying pornographic or sexually explicit objects, pictures, cartoons, posters, magazines or graphic commentaries, including by computer; leering or staring at another's body; obscene gestures.
- c) *Physical:* Physical contact and gestures, including petting, pinching, coerced sexual interactions, assault, brushing up against a person's body, impeding or blocking movement, or any other inappropriate physical conduct. Like other forms of conduct, unwanted touching can also be sexual harassment, depending on the context.

Article IV. Harassment and Discrimination Complaint Procedure

A. General guidelines. Westchester County has a zero tolerance policy and prohibits all forms of harassment, discrimination, or other hostile work environment on the basis of race, color, religion, sex, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or other characteristics protected by law.

The County encourages all employees to report any behavior or conduct that they believe is harassing, discriminatory, unprofessional or inappropriate in the workplace, regardless of who engages in that conduct. If an employee believes that he or she has been harassed or discriminated against, or has observed such misconduct, the employee should follow the steps set forth below under the section entitled "**B. Procedures**".

B. Procedures.

Section 1. Reporting of a Complaint

1. Obligations of Employee. Since Westchester County has a zero tolerance policy against all forms of harassment or discrimination, employees are expected to report incidents of harassment or other discrimination, whether affecting them or anyone else, as soon as possible after their occurrence.

Anyone who feels that he or she has been subjected to harassment, discrimination or other conduct which violates this policy or who has observed such conduct should immediately report the conduct to their supervisor, their Department Head, the EEO Compliance Officer assigned to their Department, or the Office of Equal Employment Opportunity/Affirmative Action (hereafter "Office of EEO/AA"). It is the employee's choice as to where to report. If the employee's supervisor or Department Head is believed to be involved in the harassment or discrimination or does not appear helpful in addressing the complaint, the employee immediately should make a report directly and promptly to the Office of EEO/AA. *At any time, any employee who would like guidance as to how to proceed in filing a complaint or requires assistance at any time may contact the Office of EEO/AA.*

After business hours or on weekends, you may call the Office of EEO/AA at (914) 995-2141. The voice-mail is checked throughout the evening and weekends.

2. Obligations of Supervisor. If a complainant reports allegedly harassing or discriminatory behavior to a supervisor, or if a supervisor independently observes such behavior, the supervisor shall promptly report this information to the Office of EEO/AA, which shall assign an investigator, as described below. If the initial report by the complainant was verbal, the supervisor also must document the complaint in writing and provide that document to the Office of EEO/AA. As set forth below, the Office of EEO/AA will ensure that actions are taken to address the situation and to comply with this policy.

Section 2. Time Frame. A complaint regarding discrimination or harassment should be submitted as soon as possible after an alleged act of discrimination or harassment takes place. An employee's failure to promptly report harassment or discrimination may delay the investigation, make it more difficult to gather information necessary to investigate the report, and impede the County's ability to take prompt corrective action.

Section 3. Complaint and Investigative Process

1. Investigator. Once an employee has filed either a verbal or written complaint with the appropriate supervisor, Department Head, EEO Compliance Officer or the Office of EEO/AA, an investigator will be assigned by the Office of EEO/AA and notification of the assigned investigator will be sent to the Department Head, complainant, and alleged discriminator/harasser(s). Upon receipt of said notification, Department Heads should accommodate the provision of release time for investigators, complainants, alleged discriminator/ harassers and relevant witnesses, as determined by the Office of EEO/AA.

Unless the complainant, the alleged harasser, and the Office of EEO/AA agree, the investigator will not be from the same Department as the complainant or the accused employee. If the allegation of harassment or discrimination is made by or about an employee in the Office of EEO/AA, the allegation will be investigated by an official to be designated by the County Executive or his designee.

2. Investigation. The investigator will conduct a prompt, thorough and fair investigation. This investigation may include interviewing the parties involved and any relevant and necessary witnesses, as well as reviewing any appropriate records. The

particular facts of the allegation will be examined individually, with a review of the nature of the behavior and the context in which the incident(s) occurred. Employees who have been accused of harassment or discrimination will be afforded the opportunity to offer and present information in their defense. Additionally, an employee accused of misconduct may have a union representative present while he or she is questioned regarding the allegations of the complaint, if it is likely to lead to disciplinary action.

3. Confidentiality. The County will make every effort to keep such complaints confidential to the extent deemed reasonably practicable. However, a full investigation may be impossible without disclosing certain information to the person allegedly engaging in prohibited behavior, or to potential witnesses. Additionally, all records, with the exception of the Complaint, Resolution of Complaint Form, Complaint Withdrawal Form and determinations by the Office of EEO/AA and appeal determinations the Office of EEO/AA, generally will be confidential. Disclosure thereof will be made only if authorized by the Office of the County Attorney. A party opposing disclosure may be given an opportunity to provide the County, in writing, with an explanation of why he or she opposes disclosure of any information contained in an investigative file.

4. Investigation Report. Upon completion of the investigation, the investigator will prepare and submit to the Office of EEO/AA a written confidential summary of the complaint, including the response and the facts of the investigation. The investigator will endeavor to complete the investigation and to submit the report within seven (7) working days, but this time may be extended by the Office of EEO/AA, as may be required by the particular circumstances of each situation.

Section 4. Final Fact-Finding Determination of EEO/AA Office. The Office of EEO/AA after reviewing the report, promptly will issue a final written fact-finding determination. If there is cause to believe that the County's policy against harassment and discrimination has been violated and that disciplinary or corrective action should be taken, depending on the nature and severity of the conduct, the Office of EEO/AA in the final fact-finding determination, shall, if appropriate, recommend appropriate disciplinary or corrective action.

The final fact-finding determination promptly shall be forwarded to the Head of the Department where the employee accused of misconduct is employed, to the complainant and to the alleged harasser/discriminator(s).

Section 5. Corrective or Disciplinary Action. Any employee who is found to have committed an act of harassment or discrimination may be subject to corrective or disciplinary action as provided by County procedures, up to and including termination.

In the event that the final fact-finding determination issued by the Office of EEO/AA includes a recommendation that disciplinary or other corrective action be taken, then the Head of the Department shall independently determine if it is appropriate to initiate a disciplinary proceeding or take other corrective action, pursuant to Civil Service Law § 75 and applicable collective bargaining agreements. If the Department Head determines that it is not appropriate to initiate a disciplinary

proceeding or take other corrective action, the Department Head may contact the Office of EEO/AA to discuss the fact-finding determination.

Section 6. Appeals. After a fact-finding determination has been made pursuant to the sections set forth above, the complaining employee or the person who has been found to have engaged in the harassing or discriminatory behavior may appeal the decision. To ensure that the Office of EEO/AA is apprised fully of the basis for the appeal, the person appealing should submit a detailed written memo. Such appeal must be submitted within seven (7) working days of the issuance of the final fact-finding determination. The designated Hearing Officer shall make such additional investigation as is reasonably necessary, and within seven (7) working days after such further investigation promptly issue a written appeal recommendation. The Executive Director of the Human Rights Commission shall review such recommendation and make a final determination. A copy of the appeal determination shall be provided to the Department, the complainant and the employee accused of misconduct.

Section 7. Monitoring. After corrective action has been taken, the Office of EEO/AA will monitor the conduct of the employee accused of harassment or discrimination or the department in which the alleged harassment or discrimination occurred, for approximately ninety (90) days to ensure compliance with the proposed recommendation, to prevent subsequent acts of harassment, discrimination or misconduct, and to prevent retaliation. (The employee who reported the harassment or discrimination can request a longer period of oversight.)

Section 8. False Complaints. An employee who in bad faith makes a false complaint or statement, whether during an investigation or otherwise, is subject to disciplinary action.

EFFECTIVE DATE

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

Andrew J. Spano
County Executive
Dated: June 30, 2009
White Plains, New York

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:

RECEIVED
OCT 05 2018
TIMOTHY C. ICONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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

DHC 10/3/2018



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.

WHERE TO GET MORE INFORMATION

Westchester County

Office of Equal Employment Opportunity/Affirmative Action

Human Rights Commission

112 East Post Road, 3rd Floor

White Plains, New York 10601

Telephone: 995-2141

Telefax: 813-4018

www.westchestergov.com/eeo