

ASSEMBLY SEXUAL HARASSMENT/RETALIATION POLICY

I. Sexual Harassment

Sexual harassment in the workplace is not only an offensive working condition, it is against the law. The New York State Human Rights Law (Executive Law sec. 290 et seq.) prohibits discrimination in employment on the basis of age, race, creed, color, national origin, sex, disability or marital status. Sexual harassment is also recognized as an unlawful employment practice under Title VII of the Civil Rights Act of 1964, imposing legal responsibilities upon every Assembly employee as well as the Assembly itself as employer.

Sexual harassment in the workplace is a condition which is not only obnoxious to its victims, but costly to the employer in its impact on employee productivity and morale. For purposes of this policy, the Assembly "workplace" or "employment environment", in accordance with existing law, may include off-premises business meetings, work-related attendance at receptions, working meals, work-related travel, and any other work-related events. Every Assembly employee is entitled to an employment environment free from sexual harassment, and all Assembly Members and employees are hereby advised that sexual harassment will not be tolerated within the Assembly workplace. Disciplinary sanctions will be enforced against any Assembly employee who is found to have engaged in prohibited conduct, as defined herein, and against any supervisor who knowingly permits such conduct by employees under his or her supervision. The Assembly shall conduct awareness training for all Members and employees. Unit heads and supervisory employees shall take affirmative steps to insure that all employees are informed of the Assembly policy on sexual harassment, to assist employees who complain of prohibited conduct, and to maintain in each office a working environment free from sexual harassment.

II. Prohibited Conduct

Following the Federal Equal Employment Opportunity Commission guidelines, sexual harassment, for the purpose of this directive, is hereby defined as any unwelcome (a) sexual advances, (b) requests for sexual favors, and (c) other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- (3) 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.

Sexual harassment shall include conduct as described above by any Member or employee, whether or not in a supervisory position over the victim. The conduct need not be a condition or requirement for continued employment, promotion or other tangible employee benefit; sexual harassment shall include conduct which interferes with an individual's job performance by creating an offensive working environment.

III. Retaliation

No Assembly employee shall be subject to any form of retaliation because they report, complain of, or provide information, assistance and/or testimony related to any complaint of sexual harassment.

IV. Grievance Procedure

Any Assembly employee who feels that they may have been subjected to sexual harassment should feel free to address the situation with the person directly, but need not feel compelled to do so. If an employee chooses such method of dealing with such circumstances, and the offending behavior does not cease, the employee should pursue the grievance procedure set forth in this policy.

A. Complaints

Complaints of sexual harassment or retaliation, other than complaints subject to the provisions of Article V of this Policy, may be directed to the appropriate unit head or in writing to the Office of Counsel to the Majority, Room 448M Capitol, ext. 4191. Complainants are strongly encouraged to consult initially with their respective unit heads to attempt informal resolution, but failure to do so will in no way limit the right to utilize the Assembly grievance procedure initially or thereafter if resolution cannot be accomplished through the unit head. There shall also be Intake Representatives, made up of Majority and Minority members and staff, to whom complaints of sexual harassment can be made. A list of all Intake Representatives is maintained by the Office of Counsel to the Majority and the Office of Human Resources. Complainants may direct their complaints to any Intake Representative. Intake Representatives will assist a complainant in commencing the grievance procedure under the Assembly's policy. Intake Representatives will not participate in the formal investigation undertaken by the Office of Counsel to the Majority or any designated outside party. Interns are subject to and covered by this policy. Given the relative short duration of their employment, the Assembly encourages interns to contact Counsel's Office or any Intake Representative regarding a complaint as promptly as possible. Complaints shall be made within one year after occurrence of the alleged prohibited conduct or retaliation. Written complaints shall be maintained by the Office of Counsel to the Majority for seven (7) years.

All complaints of sexual harassment or retaliation, and information and proceedings relating thereto, shall be kept in strict confidence except as otherwise specified herein.

B. Investigation

Upon receipt of a written complaint the Counsel shall, in a timely manner, conduct an investigation of the complaint, interviewing appropriate persons, examining relevant records, and consulting with and utilizing any appropriate Assembly staff. At the recommendation of the Intake Representatives and Counsel's Office, in consultation with the complaining party, and when extraordinary circumstances warrant, an outside party shall be retained to conduct the investigation of a complaint interposed under this policy. In the event that the alleged offender might have an official role in the grievance procedure or supervision/oversight of persons involved in such process, he/she shall not perform that role or exercise any such authority in relation to such complaint.

Neither the complaining individual nor the alleged offender will be entitled to participate in the determination of whether a violation of this policy has occurred other than as witnesses.

If the Counsel deems it appropriate, the parties to the complaint may, if both parties agree, be brought together to attempt an informal resolution of the complaint in a manner satisfactory to both parties.

Both the complainant and the person against whom the complaint is made shall be permitted to have their private counsel present at an interview or any other proceeding at which their presence is required.

C. Counsel's Findings

Upon conclusion of the investigation, and within 90 days after the complaint was brought, the Counsel shall make written findings which shall consist of the following:

1. A finding that no prohibited conduct or retaliation has occurred; or
2. A finding that prohibited conduct or retaliation has occurred and a report to the offending party's immediate supervisor including a recommended remedy. This remedy which may be oral censure of the offender; written censure of the offender, to be included in the offender's personnel file; and/or, transfer, suspension, or discharge of the offender, or any other action which may be appropriate under the circumstances.

Copies of the Counsel's written finding shall be mailed to the complainant and the party against whom the complaint was made.

D. Hearing

Upon a finding by Counsel that no prohibited conduct has occurred and a written request by the complainant for a hearing, the Director of Human Resources shall conduct a formal hearing. Upon a finding by Counsel that prohibited conduct has occurred and a written request by the offender, a formal hearing shall be conducted by the Director of Human Resources only with regard to the recommended remedy. Such formal hearing shall provide a fair opportunity for parties and witnesses to be heard. At the conclusion of such hearing, the Director shall issue a written determination.

E. Record

The record maintained with respect to each complaint and investigation of sexual harassment and/or retaliation shall contain: the written complaint; any written statements produced during the investigation; the recommendation of the Counsel. Such record shall be available to either party or the designee thereof.

V. Members of the Assembly

A complaint of sexual harassment and/or retaliation against a Member of the Assembly shall be referred to the Assembly Standing Committee on Ethics and Guidance for investigation. The Committee shall conduct its investigation in the same manner as described above with respect to investigations conducted by counsel. Upon conclusion of the investigation, the Committee shall report its findings to the Speaker and, as appropriate, the Minority Leader, accompanied by a recommended remedy, or dispose of the matter in accordance with its policy regarding disciplinary matters.

VI. Appeals

If any party is not satisfied with the outcome of the grievance procedure, appeal may be taken directly to the Speaker of the Assembly or his designated representative, who may be an outside hearing officer retained on an ad hoc basis.

State and federal law also provide administrative and judicial remedies for employees which may be pursued by filing a complaint with the Albany Regional Office of the New York State Division of Human Rights or with the Federal Equal Employment Opportunity Commission. It is recommended, but not legally required, that the complainant first use the grievance procedure within the Assembly as established herein.

VII. Training

The Assembly shall conduct a sexual harassment awareness training program and every Member and employee shall receive such training. Such program shall be conducted so as to ensure that every Member and employee understands the seriousness of the problem of sexual harassment, how to recognize and address it, rights and responsibilities under the law and the Assembly Policy, and how to bring a complaint. Failure to attend such training program or re-scheduled sessions thereof shall subject a Member or employee to appropriate sanctions so as to compel and insure attendance and participation in such training by all Members and employees. Training shall be conducted separately for Members, supervisory and non-supervisory employees, and interns, with emphasis on the respective rights and responsibilities of each group.

VIII. Dissemination

A copy of this Policy shall be included in the Employee Information Guide, shall be distributed at least once annually, and shall be otherwise disseminated as the Speaker may direct.



SHELDON SILVER, SPEAKER

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