

SEXUAL HARASSMENT POLICY

Sponsor: Human Resources

Contact: Affirmative Action

Category: Human Resources

Number: 900.014 (<https://www.esc.edu/policies/?search=cid%3D41291>)

Effective Date: Jan. 1, 2012

Implementation History: Revised on: August 2019, 2011; February 1996; September 1989

Keywords: Sexual harassment, affirmative action, Title IX, Title VII

Background Information: This policy affirms Empire State College adoption of SUNY policy 6507. It replaces the college's previous Sexual Harassment Policy.

Purpose

SUNY Administration created a Uniform Sexual Harassment Policy Statement for all campuses to adopt in October of 2018 pursuant to Labor Law §201-g, which requires every employer in the State of New York to adopt a sexual harassment prevention policy that meets or exceeds enumerated minimum standards in order to prevent and combat sexual harassment in the workplace.

Definitions

Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint.

Hostile Environment is when unwelcome and demeaning behavior or conduct that "substantially interferes" with a person's performance or creates an "intimidating, hostile or offensive" exist. For example, the harasser may continually remark on someone's body or clothing, post sexually explicit photos or make sexually oriented comments. A peer, superior, subordinate or vendor can create a hostile environment.

Statements

Sexual harassment is a form of sex discrimination that is unlawful in the workplace under Title VII of the Civil Rights Act of 1964, as amended, and the New York State Human Rights Law. Under Title IX of the Educational Amendments of 1972, sexual harassment also is prohibited in the provision of educational services and protects students and employees from sexual harassment.

Civility, trust, respect and openness are professional behaviors that are expected from all members of the college community. Harassment, including sexual harassment, breaks the bonds of civility, trust, respect and openness. Sexual harassment is prohibited and will not be tolerated at Empire State College (ESC). The college has implemented measures to address and prevent sexual harassment and is taking additional

affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects.

Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting, and all employees and students are entitled to work and learn in a campus environment that prevents sexual harassment. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the University, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the University's Discrimination and Sexual Harassment Complaint Procedure.

In accordance with applicable law, sexual harassment is generally described as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment.

Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. Examples of sexual harassment may include, but are not limited to:

- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity;
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or
- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct by individuals in positions of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform their employment or academic responsibilities.
- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's 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 a target's job performance evaluation, a promotion or other job benefits or detriments, or an educational benefit or detriment;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile 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, 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 computers or cell phones and sharing such displays while in the workplace or classroom.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, 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 his or her employment or academic duties;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Employees and students who believe they have been subjected to sexual harassment may use the University's Discrimination and Sexual Harassment Complaint Procedure for more details on how to have their allegations reviewed, including a link to a complaint form.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Participants who experience retaliation should contact the campus AAO, and may file a complaint pursuant to these procedures. The college will act positively to investigate alleged harassment and to affect remedy when an allegation is substantiated.

SUNY campuses and System Administration shall take the necessary steps to ensure that this Sexual Harassment Response and Prevention Policy Statement is distributed, implemented, and enforced in accordance with their respective policies.

Applicable Legislation and Regulations

Title VII of the Civil Rights Act of 1964 (<http://www.eeoc.gov/laws/statutes/titlevii.cfm>)

EEOC Definition of Sexual Harassment (http://www.eeoc.gov/laws/types/sexual_harassment.cfm)

NYS Executive Order No.19: "New York State Policy Statement on Sexual Harassment in the Workplace"

New York State Labor Law §201-g

Related References, Policies, Procedures, Forms and Appendices

Discrimination and Sexual Harassment Complaint Procedure (<https://www.esc.edu/policies/?search=cid%3D89279>)

GOER Handbook for M/C Employees (<https://goer.ny.gov/management-confidential-mc/>) – Sexual Harassment – Labor Relations

Sexual Harassment Prevention (<https://www.labor.ny.gov/immigrants/sexual-harassment-prevention.shtm>) Department of Labor resources

GOER - Supervisor's Guide to Counseling (<https://www.esc.edu/media/president/affirmative-action-/GOER--Supervisors-Guide-to-Counseling.pdf>) (PDF 649kB)