

WESTERN NEW YORK INDEPENDENT LIVING, INC.
WNYIL, Inc. Policy Prohibiting Sexual Harassment

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Western New York Independent Living, Inc. (WNYIL) is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. Sexual harassment includes harassment on the basis of sex, sexual orientation, gender identity and the status of being transgender. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of WNYIL's commitment to a discrimination-free work environment. Conduct prohibited by this Policy is unacceptable at the Agency and in any work-related setting outside the Agency, such as during business trips or business-related social events.

Sexual harassment is offensive, is a violation of our policies, is unlawful, and subjects WNYIL to liability for harm to victims of sexual harassment. Harassers may also be individually subject to liability. Employees and individuals of every level covered by this policy who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be penalized for such misconduct up to and including termination.

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment, and employees can enforce this right by filing a complaint internally with WNYIL, or with a government agency or in court under federal, state or local antidiscrimination laws.

Examples of 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.

Sexual harassment may include a range of subtle and not so subtle behavior and may involve individuals of the same or different genders. It is not possible to specify all of the comments or conduct that may constitute sexual harassment. Examples of conduct that may constitute unlawful sexual harassment include, but are not limited to:

- unwelcome or unwanted sexual flirtation, comments, discussion, questions, advances or propositions;
 - subtle or overt pressure for sexual favors;
 - lewd, off-color, sexually-oriented comments, jokes or innuendoes;
 - preferential treatment or promise of preferential treatment to an employee such as hiring, promotion or continued employment made by someone in authority in exchange for submitting to sexual conduct;
 - 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 an individual's ability to perform their job, sabotaging their work or bullying, yelling or name calling;
 - sexually suggestive touching, such as rubbing or massaging someone's neck or shoulders, stroking someone's hair, or brushing against another's body;
 - leering, whistling, grabbing, groping, kissing, pinching, fondling, assaulting, raping, molesting or coercing sexual acts;
 - suggestive insulting or obscene comments, gestures or intimations;
 - display in one's office or work space of sexually suggestive objects or pictures.
- Similarly, words or actions that insult, degrade or exploit others on the basis of gender may constitute sexual harassment. Behavior that would tend to make the working environment unpleasant, more difficult, inhospitable or hostile to employees of a given gender – whether male or female should be avoided at all times. This prohibition extends to office or work space display of materials including, but not limited to, materials sent (emails, voicemails, etc.), received or installed on a personal computer (games, screen savers or other materials sent by email, cartoons, pictures, objects, posters, etc.) that insult, degrade or exploit others based on gender (or other characteristic protected by law as described herein), whether or not intended to have that effect.

Who Can Be a Target of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. This Policy protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker, or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer, or visitor.

Where Can Sexual Harassment Occur?

Unlawful sexual harassment is not limited to business hours or the physical workplace itself. It can occur anywhere that employees interact including, but not limited to: employees traveling for business, an employer-sponsored event or party. Calls, texts, emails, and social media usage by and between employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or not during work hours.

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 Human Resources Department.

Supervisors and managers will be subject to discipline if, after a full and fair investigation, the Agency concludes that they have engaged in sexually harassing conduct, if they fail to report suspected harassment, or otherwise knowingly allow sexual harassment to continue, or if they engage in any retaliation.

A. Procedures for Reporting Harassment or Discrimination

Preventing sexual harassment is everyone's responsibility. WNYIL cannot prevent or remedy sexual harassment unless it knows about it. The Agency encourages, but does not require, individuals who believe they are being harassed or are subjected to discrimination to promptly tell the offender that his or her behavior is unwelcome and ask that it stop. Any harassing conduct, even a single incident, can be addressed under this policy.

Whether or not an individual chooses to confront the offender directly, the individual should promptly notify his or her supervisor or the Human Resource Department. An individual reporting harassment or discrimination should be aware, however, that the Agency may be obligated to take action beyond an informal discussion in order to properly address the situation.

Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor or the Human Resources Department. The Agency encourages prompt reporting of complaints or concerns so that rapid and appropriate action can be taken. 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 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.

B. Investigation of Complaints

Any reported allegations of sexual harassment, discrimination or retaliation, whether verbal or in writing, will be investigated promptly and thoroughly. The investigation may include individual interviews with the parties involved and, where necessary, with others who have seen or heard the alleged conduct or have other relevant knowledge. All individuals involved, including the complainant, may be required to cooperate as needed in an investigation of suspected harassment and will not be retaliated against for doing so in good faith. All persons involved, including complainants, witnesses, and alleged perpetrators, will be afforded due process to protect their rights to a fair and impartial investigation.

The complaint and investigation will be handled with sensitivity, and confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

Generally, investigations will be done in accordance with the following steps:

- The Human Resource Department will review the allegations and request completion of a written report. If the individual refuses, complete a report based on the oral reporting.
- Obtain and preserve any documentation such as emails, phone records, electronic communications, etc.
- Interview all parties involved, including relevant witnesses
- Create written documentation that includes:
 - A list of documents and summary
 - A list of those interviewed and statement summaries
 - A timeline of events
 - A summary of prior relevant incidents
 - The final resolution of the complaint and corrective action(s)

- Retain investigation documentation
- Notify the complainant and individual(s) who responded of the determination and implement corrective action(s), as appropriate

C. Legal Protections and External Remedies

Both the Agency and federal, state, and local law prohibit sexual and other forms of harassment. Aside from the WNYIL's internal complaint and investigation process, employees may choose to pursue legal remedies with the following governmental entities and may be entitled to remedies including hiring or reinstatement, back pay, front pay, compensatory damages, emotional distress damages, punitive damages, fees and costs (including attorneys' fees), or other equitable relief. Employers and/or perpetrators may also be liable for civil fines. In addition, if the alleged harassment involves physical touching, coerced physical confinement, or coerced sex acts, employees may also, but are not required to, report such conduct to local law enforcement.

New York State Division of Human Rights (NYSDHR)

- The NYSDHR enforces the New York State Human Rights Law (NYSHRL), codified at N.Y. Executive Law, art. 15, § 290 et seq., which protects employees and other covered individuals of New York State employers from sexual and other harassment and discrimination. Individuals may file a complaint, with or without legal representation, with:

The NYSDHR within 1 year of the harassment

www.dhr.ny.gov/complaint

(888) 392-3644

- As an alternative to the NYSDHR, individuals may file a complaint in New York State Supreme Court within 3 years of the alleged unlawful conduct. Individuals may not file with the NYSDHR if they have already filed in state court, however.
- Complaining internally will not extend the time to file a complaint with the NYSDHR or in state court.

Equal Employment Opportunity Commission (EEOC)

- The EEOC enforces federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e et seq. Individuals may file a complaint with the EEOC, with or without legal representation within 300 days of the harassment.

www.eeoc.gov

info@eeoc.gov

1 (800) 669-4000 / 1-(800)669-6820 (TTY)

If an individual files a complaint with the NYSDHR, the NYSDHR will file that complaint with the EEOC to preserve the individual's 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.

Contact the Local Police Department

If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

D. Anti-Retaliation

Any retaliation, including but not limited to intimidation, coercion, threats, discipline, change of work assignments, refusal to cooperate or discuss work-related matters, intentionally pressuring, or harassment or discrimination resulting from an individual making or encouraging another employee to make an internal or external complaint under this Policy, or testifying or assisting in any investigation of a complaint of harassment or discrimination, is also a serious violation of this Policy and is unlawful under federal, state, and local law. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation. Such conduct will itself give rise to appropriate corrective action up to and including termination of employment. Acts of retaliation should be reported immediately to the Executive Director or your supervisor, who will promptly investigate it in accordance with our complaint and investigation policies. Employees are also encouraged to submit a Complaint Form for alleged or suspected retaliation.