



Committee Meeting: Policy Committee	Date: November 16, 2018
Committee Chair: Kathleen Masiello	
New or Edited: Edited VII-A-3 Sexual Harassment	

POLICY NAME: Sexual Harassment

POLICY TYPE: Managerial

SUBMITTED BY: Maria Carroll – Director of Human Resources

ISSUE OR STATEMENT OF PURPOSE: SUNY Erie Community College will provide an educational and working environment that is free of discrimination and sexual harassment.

NEW OR EDITED POLICY: Edited VII-A-3 Sexual Harassment, approved 2/81, 7/92, 9/00 and 1/04

Policy Statement

SUNY Erie will comply with all federal, state and local laws related to discrimination and sexual harassment and ideally will institute policies and procedures that ensure a nurturing workplace and school environment. The most recent New York State mandated policy is attached as Exhibit A and the SUNY Erie Sexual Harassment Complaint form is attached as Exhibit B.

DOES IT SUPERCEDE A POLICY/WHICH ONE: Edited VII-A-3 Sexual Harassment

POLICY & GOVERNANCE COMMITTEE RECOMMENDED ACTION:

Policy Committee recommends the Board of Trustees accept the Managerial policy under Committee Briefings, Policy and Governance Committee. This Policy supersedes all prior policies/procedures and practices related to Sexual Harassment.

POLICY & GOVERNANCE COMMITTEE MEMBERS PRESENT:

Trustee Len Lenihan, Trustee Kathleen Masiello, Executive Vice President for Administration and Finance Penelope Howard, VP Human Resources, Equity and Inclusion Tracey Cleveland, Director of Human Resources Maria Carroll, Vice President of Enrollment Management Steven Smith, Director of Registrar Paul Lamanna, Dean of Liberal Arts and Sciences Joanne Colmerauer, Dean of Liberal Arts and Sciences Jamie Smith and College Senate Representative Michael Delaney

DATE OF BOARD ACCEPTANCE: December 13, 2018

POLICY & GOVERNANCE COMMITTEE TEAM FOLLOW-UP:



POLICY NAME: Sexual Harassment - **Continued**

Following Trustee acceptance, this Managerial policy will be included in the SUNY Erie Community College Managerial Policy Manual.

INFORMATION/INPUT CONSIDERED DURING POLICY & GOVERNANCE COMMITTEE DELIBERATIONS:

New York State Model Policy on Sexual Harassment

The Policy has been reviewed and discussed at the Policy & Governance Committee meeting of November 16, 2018.



SUNY Erie Community College

Sexual Harassment Policy

Introduction

SUNY Erie Community College (hereinafter “ECC”) is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All ECC employees are required to work in a manner that prevents sexual harassment in the workplace. This policy is one component of ECC’s commitment to a discrimination-free work environment. Sexual harassment is against the law and all employees have a legal right to a workplace free from sexual harassment. Employees are encouraged to report sexual harassment by filing a complaint internally with Human Resources or the Chief Diversity Officer. Employees can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws.

Policy:

1. ECC’s Sexual Harassment Policy applies to all employees, applicants for employment, interns whether paid or unpaid, contractors and persons conducting business with ECC. In the remainder of this document, the term “employee” or “employees” refers to this group.
2. Sexual harassment will not be tolerated. It is considered a form of employee misconduct. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action up to and including termination.
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. ECC does not tolerate retaliation against anyone who, in good faith, complains or provides information about suspected sexual harassment. Any employee of ECC who retaliates against anyone involved in a sexual harassment investigation will be subject to remedial and/or disciplinary action up to and including termination. Any employee, paid or unpaid intern, or non-employee¹ working in the workplace who believes he or she has

¹ 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

been subject to such retaliation should inform a supervisor, manager, Chief Diversity Officer, or Human Resources. Any employee, unpaid intern or non-employee who believes he/she has been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

4. Sexual harassment is offensive, a violation of our policies, unlawful, and may subject ECC to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level 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 conduct.
5. ECC 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. ECC will keep the investigation confidential to the extent possible. 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.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. ECC will provide all employees a complaint form for employees to report harassment and file complaints. That form can be found on-line on the MyECC Human Resources portal.
7. Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe, to Human Resources.
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. A copy of this policy will be provided via email to all employees, posted on-line, in the Human Resources office, and will be provided to employees upon hiring.

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

independent contractors, “gig” workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any services provided pursuant to contract with the employer.

Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim.

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 complaining 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 consists of words, signs, jokes, pranks, intimidation or physical violence which are 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 comments or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or 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.

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, grabbing, brushing against another employee's body or poking another employee'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 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, jokes or comments about a person's sexuality or sexual experience, which creates 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 idea or perceptions of 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 or 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.

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. A perpetrator of sexual harassment can be a superior, a subordinate, a co-worker 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 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 it occurs away from the workplace premises or outside of working hours.

Retaliation

Unlawful retaliation can be any action, more than trivial, that keeps 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 (for example, threats of physical violence outside of work hours).

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 an 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;
- complained 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. The retaliation provision, however, is not intended to protect persons from making intentionally false charges of harassment.

Reporting Sexual Harassment

Preventing sexual harassment is everyone’s responsibility. ECC 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, the Chief Diversity Officer, or Human Resources. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, the Chief Diversity Officer, or Human Resources.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this policy is available on the ECC website on the MyECC Human Resources portal, 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.

Any 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 section on Legal Procedures.

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 Chief Diversity Officer or Human Resources.

In addition to being subject to remedial and/or disciplinary action, up to and including termination, if they engage in sexually harassing conduct themselves, supervisors and managers will be subject to remedial and/or disciplinary action up to and including termination for failing to report suspected sexual harassment or otherwise knowingly allow sexual harassment to continue.

Supervisors and managers will also be subject to remedial and/or disciplinary action, up to and including termination, for engaging in any retaliation.

Complaint and Investigation of Sexual Harassment

All complaints or information about suspected 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 kept 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 or retaliation. Failure to cooperate may result in disciplinary action up to and including termination. Employees who file a complaint or who participate in any investigation will not be retaliated against.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of a complaint, whether verbally or in writing, either the Chief Diversity Officer or Human Resources will conduct an immediate review of the allegations and will take any interim actions, as appropriate.
- If the complaint is oral, the individual will be encouraged to complete the “Complaint Form” in writing. If the individual refuses, a Complaint Form will be prepared based upon the oral reporting.
- If documents, surveillance tapes, emails or phone records are relevant to the allegations, take steps to obtain and preserve them.
- Request and review all relevant documents, including electronic communications.
- Interview all parties involved, including any relevant witnesses.
- Create written documentation of the investigation (such as a letter, memo or email) including the final resolution of the complaint together with any recommended corrective action(s). This should include the following:
 - A list of 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 action(s).
- Keep written documentation and associated documents in a secure and confidential location.
- Notify the individual who complained and the individual subject of the complaint of the final determination, and implement any corrective actions.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections and External Remedies

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

Aside from the internal process at ECC, employees may also choose to pursue legal remedies with the following governmental agencies:

New York State Division of Human Rights

The Human Rights Law (HRL), codified as NYS Executive Law, Art. 15, § 290 et seq., applies to New York State employers with regard to sexual harassment, and protects employees, unpaid interns and non-employees. A complaint alleging a violation of the HRL may be filed with either the Division of Human Rights or NYS Supreme Court.

Complaints with the DHR may be filed within one (1) year of the harassment.

Alternatively, if the individual did not file a complaint with the DHR, he/she can sue directly in State Supreme Court within three (3) years of the alleged discrimination. An individual may not file with the DHR if he/she has already filed a complaint in State Court.

Contact information: New York State Division of Human Rights, 65 Court Street,
Buffalo, NY 14202, (716) 847-7632, www.dhr.ny.gov.

United State Equal Employment Opportunity Commission

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (42 U.S.C. § 2000e et seq.). An individual may file a complaint with the EEOC anytime within 300 days of the alleged harassment. The EEOC conducts an investigation and determines whether there is reasonable cause to believe that discrimination has occurred. If it so concludes, then it issues 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 a complainant. Federal courts may award remedies if discrimination is found to have occurred. If an employee believes that he/she has been sexually harassed at work, he/she can file a "Charge of Discrimination."

If an individual files an administrative complaint with the NYS DHR, the State agency will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

Contact information: EEOC, 6 Fountain Plaza, #350, Buffalo, NY 14202, (716) 551-4441,
www.eeoc.gov

Local Protections

Some localities enforce laws protecting individuals from sexual harassment. An individual should contact the county, city or local government in which they live to find out if such law exists.

Contact the Local Police Department

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



SUNY ERIE COMMUNITY COLLEGE 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 Chief Diversity Officer at 121 Ellicott Street-Room 174A, Buffalo, NY 14203, or at (716) 851-1118. The form can be submitted in person and the College will follow its sexual harassment prevention policy and investigate all claims. *Retaliation for filing a sexual harassment complaint is illegal.*

If you are more comfortable reporting verbally or in another manner, Erie Community College is still required to follow its sexual harassment prevention policy by investigating the claims as outlined in its policy.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Home Address:

Home Phone

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 against:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe the conduct or incident(s) that is the basis of this complaint and your reasons for concluding that the conduct is sexual harassment. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

a. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

3. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

4. 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?

5. Have you filed a complaint regarding this complaint with a federal, state or local government agency? Yes No

6. Have you instituted a legal suit or court action regarding this complaint?
Yes No

Have you hired an attorney with respect to this complaint? Yes No

I request that Erie Community College investigate this complaint in a timely and confidential manner, consistent with ECC policies on confidentiality, and advise me of the results of the investigation.

Signature: _____ Date: _____

Print Name: _____