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Sexual Harassment

You have the right to a workplace free of sexual harassment and abuse. Sexual harassment is a form of sex discrimination.



I watched her walk away from me as she tried to recapture her secrets and tuck them back into their hiding place. I watched her put her mask back on and go back into the world like she was all alone and I couldn't even bring myself to whisper...Me too."

– Tarana Burke,
Founder of the #MeToo Movement

What is Workplace Sexual Harassment?

Sexual harassment is a form of sex discrimination. It is unlawful under federal, state, and local laws and it includes harassment on the basis of your sex (as perceived or self-identified), sexual orientation, gender expression, gender identity, and transgender status.

Sexual harassment includes unwelcome physical or verbal conduct based on your sex that negatively impacts your work, is a term or condition of employment, or creates a hostile work environment. If you are an applicant or employed, you may be the victim of sexual harassment if you are subjected to the following:

- Unwelcome sexual advances, including unwanted touching or comments of a sexual nature. E.g., you feel uncomfortable because your co-worker keeps telling you that you look pretty or sexy.
- Requests for sexual favors and/or threats to take negative or positive action, depending on how you respond to the request. E.g., your boss threatens to notify immigration authorities, to fire you, or to assign you to another location or position if you do not go out on a date with him or if you do not engage in certain sexual acts. E.g., you were hired to provide house cleaning services and then asked to provide a massage for your employer.
- Unwanted physical or verbal conduct that creates a hostile work environment such as sexually offensive comments

or jokes, gestures, leering or staring, using sexual slurs, sending sexually explicit emails or voicemails, or displaying pornography, sexually explicit images, or written materials. E.g., your co-worker regularly stares at you at work and tells you “you’re looking really good” or texts you pornographic images; or, you are a domestic worker and your employer regularly walks around the house in a towel or in minimal clothing.

- Sex stereotyping, talking about a gender in a derogatory way, or issuing gender-based work assignments. E.g., you are regularly scolded at work by your supervisor who tells you that men are just smarter than women or makes you, but not your male coworker, get him coffee every morning.

NOTE: Conduct that occurs outside the workplace can still be sexual harassment depending on if and how it affects your work. Just because you engaged in a consensual romantic or sexual relationship with a co-worker or felt pressured to do so because of fear of losing your job, you are not obligated to continue that relationship.

Additionally, acts of sexual harassment do not have to be directed at you. For example, sexual harassment could be the result of a poster on a co-worker’s wall or from comments between coworkers made in passing.

Who is Protected by the Law?

In New York State and New York City, all employers must comply with laws that prohibit sexual harassment, so you have the right to be free from sexual harassment regardless of the size of your employer, regardless of your immigration status, and even if you are the only person who works for your employer such as a domestic worker.¹⁴ In New York State, protections now apply to anyone who provides services in a workplace based on a contract, including contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace. Protected individuals include independent contractors, “gig” workers, temporary workers, and persons providing equipment repair or cleaning services.

NOTE: The law in New York State now protects against harassment not just based on your sex or gender but based on any protected characteristics such as race and national origin.¹⁵ This also applies to domestic workers.¹⁶

NYC: In New York City, protections against harassment based on your gender-identity, including sexual harassment,

now apply to all employers, regardless of the size of your employer.

 **IMMIGRATION STATUS:** You have the same right to work in an environment free from sexual harassment regardless of your immigration status. Of course, your employer may still unlawfully retaliate against you for reporting so you should seek assistance from a lawyer or advocate to determine how best to respond. For assistance, visit the Additional Resources section at the back of this Toolkit.

Note also that if you are an immigrant victim of certain crimes, you may qualify for a special visa to stay in the country and obtain a green card. For example, you may qualify for a U Visa if you are an immigrant victim of certain violent or sexual crimes and you are willing to assist law enforcement in a criminal investigation or prosecution. Alternatively, you may qualify for a T Visa to obtain lawful status and employment authorization if you

are a survivor of sex or labor trafficking and you are willing to assist law enforcement in a criminal investigation and/or prosecution. For more information, visit the Department of Labor: <https://www.dol.gov/general/immigration/u-t-visa> or contact an attorney with expertise in immigration matters.

 **DOMESTIC WORKERS:** If you are a domestic worker (i.e., someone working for another person caring for children or an elderly person, keeping a home, or doing other domestic jobs in the home), then you are covered by protections that prohibit sexual and other forms of harassment. It is unlawful for your employer to threaten or base your employment on your submission to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.¹⁷

If you are a domestic worker, it can be difficult to report

sexual harassment because you may fear that your employer will fire you. If you are subjected to sexual harassment or encounter unsafe or uncomfortable conditions, document the behavior (see the next section for more guidance on how to document). Even if you do not think the conduct is serious enough to meet the legal definition but it makes you feel uncomfortable, you can take steps to try to address it. Consider reaching out to the National Domestic Workers Alliance or a local community based group or worker center for assistance to help you strategize about how to address the problem without leaving your job. See our Additional Resources section for more information.

 **FARMWORKERS:** If you are a farmworker in New York State, you are equally covered by the protections against sexual harassment described above.¹⁸

What are My Legal Rights?

In New York State, if you are covered by the law, you have the right to work in an environment free from sexual harassment, which is a form of sex discrimination.¹⁹

Your employer must ensure that sexual harassment does not negatively impact your employment, meaning your employer cannot fire you, refuse to hire you, pay you less, or reduce your work hours based on how you respond to sexual harassment at work.

This also means that your employer or other actors (e.g., executives, managers, supervisors, co-workers, or clients) are prohibited from engaging in unwelcome sexual conduct that creates a hostile working environment. Note that conduct does not have to be “severe or pervasive.” While conduct must still be more than “petty slights or trivial inconveniences”, based on the new standard in New York State, your employer cannot subject you to inferior terms, conditions, or privileges of employment.²⁰

Your employer not only has a responsibility to refrain from sexual harassment, it has a duty to investigate complaints. Your employer must take immediate and appropriate action to correct sexual harassment and must also take reasonable steps to prevent it. Failure to do so means your employer is violating the law.

NYC: If you work for an employer in NYC, conduct similarly does not have to be severe or frequent to create a hostile work environment. Thus, if an employer treats you less well than your co-workers because you rejected the employer’s sexual advances or requests, you may have a claim under the law in New York City.

RETALIATION: It is unlawful for your employer to engage in “retaliation” (punish you) for reporting sexual harassment, objecting to sexual harassment (for example, providing support to a co-worker who reports sexual harassment), filing

a complaint or lawsuit, or participating in an investigation. Remember, in New York State, retaliation is prohibited if it results in action that negatively impacts your job. In New York City, however, retaliation includes **any action** taken by the employer which could discourage you, or other employees, from reporting sexual harassment.

Note that while retaliation is illegal, your employer may still do it. Retaliation is a separate offense so your employer could be found guilty of punishing you for reporting sexual harassment even if your employer is not found guilty of the sexual harassment itself. As a result, your employer may be required to pay you damages.

Note, however, that you must still comply with legitimate workplace rules, and you can still be subject to discipline or adverse action for non-compliance or poor performance.

In other words, it is unlawful for your employer to fire you, demote you, suspend you, cut your pay or work hours, assign you more difficult work duties, or start issuing poor performance evaluations to punish you for reporting sex discrimination. Retaliation can also include more intensive or critical supervision, surveillance, or bad-mouthing you to other employees.

POLICIES & TRAINING: In New York State, all employers must now adopt a sexual harassment prevention policy and must conduct an annual interactive training on sexual harassment.²¹ Your employer’s policy must set forth clear steps on how and to whom you can report and must include a written form that you can complete to report sexual harassment. Your employer must also include a procedure to ensure your complaint is investigated confidentially and in a timely manner, and in a way that is fair to all parties. The policy must also provide you with information regarding the applicable laws and on how to file a lawsuit or file a complaint with an administrative agency.

You should review this policy to see what steps your employer must take to combat sexual harassment in the workplace. Your employer must provide you with a copy of its policy and training material in English and in your primary language when you are hired and annually during your training.²²

For more information, visit: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

NYC: Starting on April 1, 2019, If you work for a city agency or a private employer in New York City with **15 or more employees**, your employer’s annual anti-sexual harassment

training must include information about bystander intervention. Your employer must also train supervisory and managerial employees on their responsibility to prevent sexual harassment and retaliation at work, and how to appropriately address sexual harassment complaints. All employers in NYC must post an anti-sexual harassment poster outlining rights and responsibilities under the law. If you work for a city agency, your employer must now report annually on the number of sexual harassment complaints received and the outcomes of those complaints. This information will be publicly available on the NYC Commission on Human Rights’ website.



What Can I Do to Assert My Rights?

While taking action can be intimidating, you should never have to work in an environment where you are subjected to sexual harassment, which can result in anxiety, depression, fear, and disempowerment. If you have concerns or believe your rights have been violated, there are various actions you can take to advocate for yourself. Consider contacting an advocate for assistance to strategize ways to address sexual harassment and if you want to report, to figure out how to navigate the process with your employer and beyond.

You can contact Legal Momentum’s Helpline at (212) 925-6635, ext. 650 or help@legalmomentum.org or visit our Additional Resources section at the end of this Toolkit.

In addition to the general guidance in Section 1, consider the following:

MAKE CLEAR THAT SEXUAL HARASSMENT IS UNWELCOME: It is important to make clear that sexual harassment is unwelcome. Even if you submitted to certain behavior in the past, you can always change course and make it known that the behavior is unwanted.

DOCUMENT THE HARASSMENT: You may have to show that conduct was frequent or severe, so try to document everything that happens in detail.

CONTACT LAW ENFORCEMENT, IF NECESSARY: Keep in mind that certain acts such as unwanted physical touching, forced confinement, or forced sex acts may rise to the level of a crime, which can be reported to local police and can result in the criminal prosecution of your harasser. If you are working without work authorization and concerned about how reporting will affect you, contact a lawyer or legal advocate. See the Additional Resources section at the end of this Toolkit for more information.

INTERVENE IN SUPPORT OF OTHERS: You do not need to be the victim of sexual harassment in order to report it or take action. If you are a bystander who witnesses sexual harassment, it is important to speak up, support your co-workers, and intervene. The more people who speak out to combat sexual harassment in your workplace, the less isolating and acceptable it becomes. If you are a supervisor and you receive a complaint about sexual harassment, find out what steps you must take and report the conduct so that appropriate actions can be taken by your employer.

FILE AN ADMINISTRATIVE COMPLAINT: If you made a sexual harassment complaint with your employer and feel like your employer did not take corrective action to address it, you can file a formal administrative complaint with your local fair employment agency, the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>), and/or the federal Equal Employment Opportunity Commission (EEOC) (<https://www.eeoc.gov/field/newyork/charge.cfm>). You must do so quickly in order to comply with applicable reporting deadlines.

In New York State, if you want to file a federal complaint with the EEOC, you generally must do so within 300 calendar days from the most recent date of the harassment. To file a state complaint with the New York State Division of Human rights, you generally must file your complaint within one year from the date of the harassment. As of August 12, 2020, you will have three years from the date of harassment to file any sexual harassment complaint at the state level.²³ Local agencies have different deadlines as well. And certain localities like New York City provide longer filing deadlines for sexual harassment claims. Keep in mind, however, that figuring out the deadline that applies to you can be a complex determination, involving various factors, so consult an attorney for guidance.