

Ontario Public Library

Policy 2090

SEXUAL HARASSMENT AND DISCRIMINATION PREVENTION POLICY

Purpose and Goals

Sexual harassment and discrimination are against the law. Sexual harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but Ontario Public Library (OPL) recognizes that discrimination can be related to or affected by other identities beyond gender. Under the New York State Human Rights Law, it is illegal to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or status as a victim of domestic violence.

While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same. All employees, managers, and supervisors are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of the commitment by Ontario Public Library to a discrimination-free work environment.

Goals: After reading this policy, employees will understand their right to a workplace free from harassment. Employees will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after filing a complaint.

The policy explains the investigation process into any claims of harassment. Employees are encouraged to report sexual harassment or discrimination by filing a complaint internally with to the Library Director, in person or via email to: OntarioLibraryDirector@OWWL.org. If it is unreasonable to submit this to the Library Director, submit the completed form to the Library Assistant. You will not be retaliated against for filing a complaint.

Employees can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws. To file an employment complaint with the New York State Division of Human Rights, please visit <https://dhr.ny.gov/complaint>. To file a complaint with the United States Equal Employment Opportunity Commission, please visit <https://www.eeoc.gov/filing-charge-discrimination>.

Applicability of Policy

1. This policy applies to all employees, applicants for employment, interns, and volunteers whether paid or unpaid. The policy also applies to additional covered individuals. It applies to anyone who is (or is employed by) a volunteer, contractor, subcontractor, vendor, consultant, or anyone providing services in our workplace. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with Ontario Public Library. For the

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remainder of this policy, we will use the term “covered individual” to refer to these individuals who are not direct employees of the library.

2. Any employee or covered individual who engages in sexual harassment, discrimination, or retaliation will be subject to action, including appropriate discipline for employees. In New York, harassment does not need to be severe or pervasive to be illegal. Employees and covered individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as harassment can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment and might include education and counseling. It may lead to suspension or termination when appropriate.
3. Retaliation is prohibited. Any employee or covered individual that reports an incident of sexual harassment or discrimination, provides information, or otherwise assists in any investigation of a sexual harassment or discrimination complaint is protected from retaliation. No one should fear reporting sexual harassment if they believe it has occurred. So long as a person reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee of Ontario Public Library who retaliates against anyone involved in a sexual harassment or discrimination investigation will face disciplinary action, up to and including termination. All employees and covered individuals working in the workplace who believe they have been subject to such retaliation should inform the Library Director or Library Assistant. All employees and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as explained below in the section on Legal Protections.
4. Discrimination of any kind is a violation of our policies, is unlawful, and may subject Ontario Public Library to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and employers or supervisors who fail to report or act on harassment may be liable for aiding and abetting such behavior.
5. OPL will conduct a prompt and thorough investigation that is fair to all parties. An investigation will happen whenever management receives a complaint about discrimination or sexual harassment, or when it otherwise knows of possible discrimination or sexual harassment occurring. Staff will keep the investigation confidential to the extent possible. If an investigation ends with the finding that discrimination or sexual harassment occurred, OPL will act as required. All employees, including managers and supervisors, are required to cooperate with any internal investigation of discrimination or sexual harassment.
6. All employees and covered individuals are encouraged to report any harassment or behaviors that violate this policy. All employees will have access to a complaint form to report harassment and file complaints. Use of this form is not required. For anyone who would rather make a complaint verbally, or by email, these complaints will be treated with equal priority. Complaints may be made to both the employer and noted government agencies as found on the Complaint Form.

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7. This policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently in all work locations

Forms of Harassment

Sexual harassment is a form of gender-based discrimination that 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 is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.

Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature when:

- The purpose or effect of this behavior unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. The impacted person does not need to be the intended target of the sexual harassment;
- Employment depends implicitly or explicitly on accepting such unwelcome behavior; or
- Decisions regarding an individual's employment are based on an individual's acceptance to or rejection of such behavior. Such decisions can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions.

There are two main types of sexual harassment:

- Behaviors that contribute to a **hostile work environment** include, but are not limited to, 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, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee finds offensive or objectionable, causes an employee discomfort or humiliation, or interferes with the employee'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: The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited. **This list is just a sample of behaviors and should not be considered exhaustive.** Any employee who believes they have experienced sexual harassment, even if it does not appear on this list, should feel encouraged to report it:

- Physical acts of a sexual nature, such as:

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- Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body; or
 - Rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
- Unwanted sexual comments, 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;
 - Subtle or obvious pressure for unwelcome sexual activities; or
 - Repeated requests for dates or romantic gestures, including gift-giving.
- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
 - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity; or
 - Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- 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;
 - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
 - Interfering with, 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, or name-calling;
 - Intentional misuse of an individual's preferred pronouns; or
 - Creating different expectations for individuals based on their perceived identities:
 - Dress codes that place more emphasis on women's attire;
 - Leaving parents/caregivers out of meetings.

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New York Law protects employees and all covered individuals described earlier in the policy. Harassers can be anyone in the workplace including, but not limited to, an independent contractor, contract worker, vendor, client, customer, patient, constituent, or visitor.

Where Can Sexual Harassment Occur?

Sexual harassment can occur while employees are traveling for business or at library sponsored events or vendor parties. Calls, texts, emails, and social media usage by employees or covered individuals can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours.

Any behaviors outlined above that leave an employee feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee or covered individual is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

Retaliation

Retaliation is any action by an employer or supervisor that punishes an individual upon learning of a harassment claim, that seeks to discourage a worker or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as “difficult” and excluding them from projects to avoid “drama”;
- Undermining an individual’s immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual’s desk to a less desirable office location.

Such retaliation is unlawful under federal, state, and (where applicable) local law. The NYS Human Rights Law protects any individual who has engaged in a “protected activity.” Protected activity occurs when a person has:

- Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
- Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposed sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of suspected harassment;
- Reported that another employee has been sexually harassed or discriminated against; or
- Encouraged a fellow employee to report harassment.

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Reporting Sexual Harassment

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached to this policy if an employee would like to use it, but the complaint form is not required. Employees who are reporting sexual harassment on behalf of other employees may use the complaint form and should note that it is on another employee's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another employee is also acceptable.

Employees and covered individuals who believe they have been a target of sexual harassment may at any time seek assistance in additional available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

The Director and all supervisors who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment. If they observe such behavior, they must act.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Bystander Intervention

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Investigations of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information, or knowledge of suspected sexual harassment will be started and completed as soon as possible. The fair and impartial investigation will be kept confidential to the extent possible.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. OPL will take disciplinary action against anyone engaging in retaliation against

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employees who file complaints, support another's complaint, or participate in harassment investigations.

While the process may vary from case to case, investigations will be done in accordance with the following steps. The Library Director or other designated management leader:

1. Will conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions, as appropriate.
2. Will seek to interview all parties involved, including any relevant witnesses;
3. Will create written documentation to be kept in a secure and confidential location of the investigation, which contains the following:
 - a. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - b. A list of names of those interviewed, along with a detailed summary of their statements;
 - c. A timeline of events;
 - d. A summary of any prior relevant incidents disclosed in the investigation, reported or unreported; and
 - e. The basis for the decision and final resolution of the complaint, together with any corrective action(s).
4. Will promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions identified in the written document; and
5. Will inform the individual(s) who reported of their right to file a complaint or charge externally as outlined in the next section, Legal Protections.

Legal Protections and External Remedies

The internal process outlined in the policy above is one way for employees to report sexual harassment. Employees and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may also seek the legal advice of an attorney.

New York State Division of Human Rights:

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State and protects employees and covered individuals, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints of sexual harassment filed with DHR may be submitted any time **within three years** of the harassment. If an individual does not file a complaint with DHR, they can bring a lawsuit directly in state court under the Human Rights Law, **within three years** of the alleged sexual

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harassment. An individual may not file with DHR if they have already filed an HRL complaint in state court. Complaining internally to Ontario Public Library does not extend your time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge.

Complaints may be filed with DHR through initial contact via dhr.ny.gov/complaint, or call the DHR sexual harassment hotline at 1(800) HARASS3 for more information about filing a complaint.

The United States Equal Employment Opportunity Commission

In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

The United States Equal Employment Opportunity Commission (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 can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment.

If an individual filed an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.