NEW YORK STATE UNIFIED COURT SYSTEM

SEXUAL HARASSMENT

Policy & Procedure

Hon. Janet DiFiore
Chief Judge of the State of New York

Hon. Lawrence K. Marks
Chief Administrative Judge of the State of New York

Office of Court Administration
25 Beaver Street, New York, NY 10004

MESSAGE FROM THE CHIEF ADMINISTRATIVE JUDGE

On behalf of New York State's Unified Court System, I am pleased to present this employee handbook on the Unified Court System's sexual harassment policies and procedures.

This handbook expresses the Unified Court System's unwillingness to tolerate any form of sexual harassment, and it affirms our commitment to eliminating discriminatory conduct of any nature. Besides stating in unequivocal terms the Unified Court System's policy, it maps paths for action if harassment occurs, and it sets out the informal and formal procedures for investigating and resolving claims.

It is my hope that by strongly condemning sexual harassment and by implementing clear procedures to combat it, we will succeed in fostering a workplace environment that is lawful, respectful, and fair.

Hon. Lawrence K. Marks
Chief Administrative Judge of the State of New York
2016

What is the Unified Court System's sexual harassment policy?

The Unified Court System will enforce both the letter and the spirit of laws prohibiting sexual harassment in the workplace. Action will be taken to prevent and eliminate sexual harassment not only because sexual harassment is illegal, but also because it is inconsistent with the Unified Court System's commitment to providing a workplace where all employees are treated fairly, with dignity and respect.

This means that you, as a Unified Court System employee, have a right to a workplace free of sexual harassment.

Who is protected by the Unified Court System's sexual harassment policy?

All employees, nonjudicial and judicial personnel alike are protected by the Unified Court System's policy. The policy is formulated for the benefit of everyone on the payroll by the Unified Court System.

Whose behavior is covered by the policy?

No one working for or in New York courts is free to harass anyone.

The Unified Court System's policy applies to the behavior of court employees, such as clerks, court officers, interpreters, court attorneys, and support staff, as well as judges. It also applies to attorneys who appear in court on business, litigants, witnesses, jurors, vendors and others you may encounter in your work day. Although court officials are limited in their authority over those who are not court employees, the Unified Court System will take all available steps to prevent harm to employees who encounter sexual harassment regardless of its source.

What is sexual harassment?

Sexual harassment involves unwelcome sexual behavior that has an impact on your job or your work life. Federal, state and local laws outlaw sexual harassment as a form of sex discrimination.

The definition adopted by the federal Equal Employment Opportunity Commission is more complex, but essentially the same. It describes sexual harassment as "unwelcome sexual advances, requests for sexual favors or other physical or verbal conduct of a sexual nature" when:

- submitting to the unwelcome conduct is a condition—explicit or implicit—of the job
- employment decisions are based on whether an individual submits to or rejects unwelcome sexual conduct, or
- the conduct interferes unreasonably with an individual's performance on the job or it creates a working environment that reasonable people would find intimidating, hostile, or offensive.

What kinds of behavior might be considered sexually harassing?

Sexually harassing behavior may be subtle or direct, and it might be verbal, physical or visual. It might involve, for example:

- Repeated physical contact, such as putting an arm around a shoulder when work is reviewed, finding excuses to brush against someone, or insisting on farewell or congratulatory hugs or kisses.
- Frequent inquiries about a coworker's sexual or social life and attempts to turn work discussions to sexual topics.

- Pressure for lunch, dinner, dates or social encounters.
- Displays of pornographic matter, degrading cartoons or insulting images.
- Distribution of obscene notes or e-mail.
- Foul or derogatory language of a sexual nature used to refer to someone's gender or sexual orientation.
- Uninvited sexual teasing or jokes.
- Remarks about sexual prowess or sexual characteristics.
- Demands for sexual favors accompanied by threats or promises.
- Leering, ogling or staring.
- Refusing to take seriously requests to stop any of these behaviors.

How bad must sexually harassing behavior be before I do something about it?

If sexual behavior in the workplace upsets you and you think it is inappropriate, the Unified Court System encourages you to do something about it. The behavior does not have to be severe enough to support a legal claim before you act. In fact, it is better if you don't wait too long. When unwelcome sexual behavior is ignored in the hope that it will go away, it often gets worse. Dealt with early, the behavior often can be stopped before it becomes harmful.

What should I do if I think I am being sexually harassed?

You have a number of options if you think that you are being sexually harassed. You don't have to try any one in

particular, and you may try more than one in succession or at the same time. What is important is taking some action rather than simply hoping the harassment will go away by itself.

Here is a checklist of steps you might take:

- Keep a written record.
- Let the harasser know that the behavior is unwelcome and that you want it to stop.
- Enlist the help of your direct supervisor.
- Discuss the problem with any supervisor or manager within the Unified Court System.
- Call on a member of the Unified Court System's Anti-Discrimination Panels.
- Make a formal complaint of sexual harassment by asking a supervisor or manager to initiate an investigation or by going to the Office of the Special Inspector General for Bias Complaints.

What kind of records should I keep and how will it help?

Keeping a log of the harassment is useful because it may help you clarify in your own mind precisely what behavior is disturbing and what steps you want to take about it. But also, if you decide to approach someone about the harassment, knowing for sure when the behavior occurred, what was said or done, and how often it happened will be valuable for sorting out your options. If you decide to make a formal complaint, a written record may be immensely helpful to an investigator.

If you decide to keep a log, you should write down the date of any incident, describe the harassment, record

your responses, and note any witnesses. You should also keep track of any steps you take to stop the harassment, such as talking to the person who is harassing you or to a supervisor, and what happens in response to your efforts.

How do I let the harasser know that the behavior is unwelcome?

Since sexual harassment is unwelcome sexual behavior, you might consider communicating directly with the person whose behavior is disturbing you so that you are sure there is no room for doubt about either the fact that you do not like the behavior or the fact you want it to stop.

You may find that a quiet conversation solves the problem. If you decide on this course of action, you should describe the behavior you do not like in a way that is as specific as possible. You should say that the behavior is unwelcome and that you want it to stop.

If you are not comfortable speaking to the person whose behavior is troubling, you might consider writing a note. Again, you should be clear about what you do not like and firm about wanting it to stop. Of course, you should keep a copy.

Confronting the harasser, even in writing, may not be the right thing for you to do. You may think it is too difficult or awkward, or you may decide it would be useless. You don't have to try to solve the problem this way. Many other kinds of help are available.

Is approaching my supervisor a good idea?

You may find that your supervisor is the best person to approach. Good supervisors understand the dynamics of work situations, know the players, and can call on people who are in positions to change things when sexual harassment arises. They are aware that they have

an affirmative obligation to do something about sexual harassment whenever and however they learn about it. They know that dealing with harassment early is easier than waiting until it becomes entrenched.

Letting your supervisor know about the harassment is often a good idea, but it is not your only option. If your supervisor is harassing you, of course you should look elsewhere for help, but there are other reasons why you might be reluctant to talk with the person who supervises your work.

You don't have to talk to your supervisor, but no one can help you unless you let someone know there is a problem.

May I choose another supervisor or manager I think would be helpful and discuss the problem with him or her?

If you would feel more comfortable discussing the harassment with a supervisor or manager who does not oversee your work, you should feel free to do so. All Unified Court System supervisors and managers are responsible for implementing and enforcing the Unified Court System's policy on sexual harassment and for helping court employees who are subjected to unwelcome sexual behavior. They are prepared to take steps to prevent harassment and to stop it when it occurs. It is simply part of their jobs.

How can the Unified Court System's Anti-Discrimination Panels help me?

The Anti-Discrimination Panels were formed to provide Unified Court System employees with an informal alternative to filing a formal, written complaint. They may be a good resource for you.

Panel members are fellow employees in the Unified Court System chosen for this assignment on the basis of their ability to listen to people and to find sensible solutions to problems. They may be judges, clerks, court officers, secretaries or anyone else appropriate. They are available to meet with you, hear your concerns, and give you immediate and practical assistance. Chief among their responsibilities is helping you to sort out your options.

Panel members are trained to understand the need for confidentiality and will respect your interest in keeping the matter private. However, you should understand that little can be done unless you are willing to allow some discussion of the problem among people with the authority to change the situation.

Lists of panel members are posted prominently in your workplace. You also may find their names from the Unified Court System's Office of Workforce Diversity, 25 Beaver Street, room 866, New York, New York 10004 (212-428-2540). The Unified Court System's website at *http://www.nycourts.gov/CAREERS/diversity/bias-free-environ.shtml* is another source for information about panel members.

What is the best way to make a formal written complaint asking the UCS to investigate harassment?

You have two possible routes for making formal, written complaints about sexual harassment.

You may tell any supervisor or manager that you want to make a complaint. That person will provide you with a copy of the complaint form, and you or the manager or supervisor will send it to the Office of the Managing Inspector General For Bias Matters.

Alternatively, you may go directly to the Office of the Managing Inspector General For Bias Matters yourself.

You may write the Office of the Managing Inspector General For Bias Matters at 25 Beaver Street, New York, NY 10004. Or you may call the Office of the Managing Inspector General For Bias Matters at 646-386-3507 or the toll-free hotline at 1-877-2 END BIAS (1-877-236-3242).

The Unified Court System's website at *www.nycourts.gov* includes a copy of the complaint and instructions for filing it. You may want to print these forms for your own use. A copy of the complaint is also included as the centerfold of this book.

What should I put in the complaint?

When you make a complaint, you should be as specific as possible about what happened and how you responded. Be sure to describe each event and the date when it occurred (or as close to the date as you can remember). Providing names of people who know about the harassment, either because you told them or because they witnessed something, is also helpful. If you have kept a log of the harassment, now is the time to use it.

Don't feel confined to the space provided in the complaint form. Use additional sheets if you need them to complete your answers.

What will happen once I make the complaint?

Filing a formal complaint will start an investigation. You will be told by the Office of the Managing Inspector General For Bias Matters the name and telephone number of the staff member responsible for your case. During the investigation, you, the person you said harassed you, and others who may have information about the harassment will be interviewed. The investigation will be handled with sensitivity and with the greatest degree of confidentiality practicable.

In most cases, the Office of the Managing Inspector General For Bias Matters will complete its investigation within 45 days, although unusual cases may take longer. A report of the investigation will then be sent to appropriate administrators, including your administrative judge, for review, and then to the appropriate Deputy Chief Administrative Judge for a determination. You should receive a copy of the written determination within 60 days of the time the report is transmitted by the Managing Inspector General For Bias Matters Office, although more time also may be necessary at this stage.

In the determination, you will be told whether your charges have been substantiated, and, if so, what actions will be taken against the person who harassed you. Among the sanctions available are suspension without pay, termination, and referrals to the Commission on Judicial Conduct (for judges) or the Attorney Disciplinary Committees (for lawyers). The person about whom you complained also will receive a copy of the determination.

Will I have the opportunity to appeal the decision?

You and the person about whom you complained both have the right to appeal the determination of the Deputy Chief Administrative Judge. An appeal may be made by writing to the Chief Administrative Judge at 25 Beaver Street, New York, New York, 10004. Appeals must be made within 30 days of the date you receive the determination.

If you appeal, your case will be reviewed in its entirety. You should receive a written determination of your appeal within 30 days, although, as with all stages of the complaint process, more time may be necessary.

Is there any limit on the time for bringing a complaint?

If you are going to file a formal complaint, you have to do it within one year of the time when the harassment occurred. If you wait longer, the Managing Inspector General For Bias Matters may decline to investigate since memories grow dim and doing a fair and thorough investigation becomes more difficult as time passes.

I want to keep this as quiet as possible. Do I have a right to expect that my complaint will be treated confidentially?

Confidentiality is often important to people who make complaints about sexual harassment, and the Unified Court System has a strong commitment to respecting the concerns of people who come forward to complain about sexually harassing behavior.

However, once you make a complaint, the Unified Court System has an obligation to find out what happened and, if your allegation is substantiated, to do something about it. Realistically, a number of people will have to be brought into the process of investigating your complaint and finding a remedy. The Unified Court System is committed to keeping that number as small as possible and impressing on everyone involved the importance of seeing that the matter remains confidential.

Are there outside agencies that can help me with a sexual harassment claim?

A number of governmental agencies have jurisdiction over charges of sexual harassment in the workplace, but the Unified Court System encourages you to approach these agencies only after you decide that you cannot reasonably expect to get help within the Unified Court System. If help might be available internally, you should make an attempt to find it.

Both the New York State Division of Human Rights and the federal Equal Employment Opportunity Commission investigate charges of sexual harassment. Local Anti-Discrimination agencies also may have jurisdiction over your claim. The Anti-Discrimination Panels can provide you with the addresses and telephone numbers of these agencies.

I am afraid that if I complain I will be treated unfairly or even fired. Do I have any protection?

Yes, you do have protection. The laws and policies that outlaw sexual harassment also outlaw retaliation against people who report or make complaints about harassment. Any harmful action affecting you as an employee that is taken because you have reported sexual harassment or any other kind of discrimination, either informally or through the formal complaint process, is absolutely forbidden. It does not matter whether the action was taken by a supervisor or a co-worker, the person you complained about or someone else. It is illegal.

If you think that someone might retaliate against you—for example, that you might be fired, transferred or evaluated unfairly if you complain—you should tell the person you first approach about your concerns. If someone does retaliate, you should go immediately to a supervisor or manager, an Anti-Discrimination Panel member, or the Office of the Managing Inspector General For Bias Matters. The same processes used for investigating discrimination charges will be used for handling the retaliation complaint.

Retaliation claims are considered independent of charges of harassment. They will be investigated no matter what happens to the original complaint. Even if the Unified Court System decides your harassment complaint does not have merit, you may receive a favorable determination on the retaliation claim.

I am not interested in causing trouble, either for myself or for the court system, but I don't like being harassed. Is making a complaint the right thing to do?

Often making a complaint, whether formal or informal, is exactly the right thing to do, both for you and for the court system. Complaints help court administrators pinpoint problems, which is a necessary first step to resolving them.

In fact, complaints are essential to the success of the Unified Court System's efforts to make sure that no employee is subjected to discrimination or harassment and that everyone who works in New York's courts is treated fairly, with dignity and respect.

Important References

Managing Inspector General For Bias Matters
25 Beaver Street
New York, NY 10004
646-386-3507 or 1-877-2 END BIAS (1-877-236-3242)

Office of Workforce Diversity
25 Beaver Street, Room 866
New York, NY 10004
212-428-2540

Workforce Diversity website:
NYcourts.gov/careers/diversity

NEW YORK STATE UNIFIED COURT SYSTEM

Claim of Discriminatory Treatment Form

UCS-18 (05/17)

NEW YORK STATE UNIFIED COURT SYSTEM INSPECTOR GENERAL

Please complete this form to file a claim of discriminatory treatment with the Unified Court System's Inspector General. The Inspector General is committed to preserving your confidentiality. Any individuals contacted by the Inspector General's office will be asked not to disclose the facts or contents of your claim unless disclosure is necessary.

CLAIM OF DISCRIMINATORY TREATMENT

Please print or type all information.

Name: _____

Title: _____ Work Location: _____

City: _____ State :_____ Zip :_____ Work Phone:( ) _____

Home Address: _____

City: _____ State: _____ Zip: _____ Home Phone:( ) _____

1. I believe that I have been treated in a discriminatory manner based on my:

- ☐ Race
- ☐ Color
- ☐ Sex (including Sexual Harassment)
- ☐ Age
- ☐ Disability
- ☐ Religion
- ☐ Marital Status
- ☐ National Origin
- ☐ Sexual Orientation
- ☐ Gender Identity or Expression
- ☐ Domestic Violence Status
- ☐ Genetic Status
- ☐ Other (please specify): _____

2. I believe that the act or treatment described below is discriminatory:

_____

_____

_____

_____

3. I believe that the following individual(s) has (have) acted in a discriminatory manner:

_____

_____

_____

4. Date of act or treatment (or indicate if ongoing):

_____

_____

_____

5. Witnesses (include names, work locations and telephone numbers):

_____

_____

_____

I authorize the New York State Unified Court System's Inspector General to use my name in investigating this claim.

Signature: _____ **Date:** _____

Please attach any additional information you may have about the claim and mail this form or a copy of it to:

OFFICE OF THE INSPECTOR GENERAL
Attention: Managing Inspector General for Bias Matters
Office of Court Administration
25 Beaver Street, New York, NY 10004

Please attach any additional information you may have about the claim and mail this form or a copy of it to:

Office of the Inspector General
Attention: Managing Inspector General for Bias Matters
25 Beaver Street, New York, NY 10004

Office of Court Administration
25 Beaver Street, New York, NY 10004

(646) 386-3507 or Toll Free (1-877) 2-END-BIAS