

## **Introduction**

Challenge is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This policy is one component of Challenge's commitment to a discrimination-free work environment. Sexual harassment is against the law<sup>1</sup> and all employees have a legal right to a workplace free from sexual harassment. Employees are urged to report sexual harassment by filing a complaint internally with Challenge. Employees can also file a complaint with a government agency or in court under federal, state, or local antidiscrimination laws.

### **Policy:**

1. Challenge's policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, and persons conducting business, regardless of immigration status, with Challenge. In the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, 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. Challenge will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of Challenge who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees<sup>2</sup> working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or the Director of Human Resources. All employees, paid or unpaid interns, or non-employees who believe they have 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, is a violation of our policies, is unlawful, and may subject Challenge to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage

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<sup>1</sup> While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. In New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity or expression, familial status, predisposing genetic characteristics, and criminal history.

<sup>2</sup> 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 independent contractors, "gig" workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with the employer.

in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

5. Challenge will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. Challenge 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. Challenge will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Director of Human Resources.
8. This policy applies to all employees, paid or unpaid interns, and non-employees, such as contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace, and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations, to the extent practicable (e.g., in a main office, not an offsite work location). It shall 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 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 unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or 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;

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- 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 includes, but is 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. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, cause the recipient discomfort or humiliation, or 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, transfer, continued employment, or any other terms, conditions, or privileges of employment. This is also called "quid pro quo" harassment.

Any employee who feels harassed should report it to the Director of Human Resources so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, will be investigated according to this policy.

### **Examples of Sexual Harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, 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 to engage in unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience, which create 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 ideas or perceptions about how individuals of a particular sex should act or look.

- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Pictures, posters, calendars, graffiti, objects, promotional materials, 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, or the status of being transgender, such as:
  - Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform their 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 state 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. Harassers 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 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 they occur away from the workplace premises, on personal devices, or during non-work hours.

### **Retaliation**

Unlawful retaliation is any action that could discourage an employee 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 (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." It is considered protected activity when an individual has:

- made a complaint of sexual harassment, either internally or with any 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;
- reported that another employee has been sexually harassed; or,
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not rise to the level of a violation of the law once it has been investigated, the individual is still protected from retaliation if they had a good faith belief at the time of the protected activity that the harassing behavior was unlawful. However, the retaliation provision is not intended to protect persons making intentionally false allegations of harassment.

### **Reporting Sexual Harassment**

**Preventing sexual harassment is everyone's responsibility.** Challenge cannot prevent or remedy sexual harassment unless we are aware of 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, or the Director of Human Resources. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or the Director of Human Resources.

Reports of sexual harassment may be made verbally or in writing. A complaint form to submit a written complaint is available on the Challenge website, and all employees are encouraged to use this form. Employees who are reporting sexual harassment on behalf of someone else should use the complaint form and indicate such circumstances.

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 Protections.

### **Supervisory Responsibilities**

All supervisors and managers who receive a complaint of sexual harassment, receive 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 knowledge to the Director of Human Resources.

In addition to being subject to discipline if the supervisor or manager engaged in sexually harassing conduct themselves, they will also be subject to discipline for failing to report suspected sexual harassment, or otherwise knowingly allowing it to continue.

Supervisors and managers will, likewise, be subject to discipline for engaging in any retaliation related to sexual harassment complaints.

### **Complaint and Investigation Procedure**

**All** complaints or information regarding sexual harassment will be investigated, whether the information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be kept confidential to the extent possible.

The investigation into any complaint, information, or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately, and completed as soon as possible. All persons involved, including complainants, witnesses, and alleged harassers, will be accorded due process, as outlined below. This will ensure a fair and impartial investigation.

Any employee may be required to cooperate, as needed, in an investigation of suspected sexual harassment. Challenge will not tolerate retaliation against employees who file complaints, support another employee's complaint, or participate in an investigation regarding a violation of this policy.

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

- Upon receipt of a written complaint, the Director of Human Resources will conduct an immediate review of the allegations and take any interim actions, as appropriate (e.g., instructing the alleged harasser to refrain from communications with the complainant).
- If the complaint is verbal, the Director of Human Resources will encourage the individual to complete a complaint form in writing. If he or she refuses, Human Resources may prepare a complaint form based on the verbal statements.
- If documents, emails, or phone records are relevant to the investigation, Challenge will take steps to obtain and preserve them.
- The investigator will request and review all relevant documents, including all electronic communications.
- The investigator will interview all parties involved, including relevant witnesses;
- Challenge will create a written documentation of the investigation, containing the following:
  - A list of all documents reviewed, along with a detailed summary of the relevant documents;

- A list of names of parties 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 any decisions and final resolution of the complaint, together with any corrective action(s).
- Challenge will keep the written documentation and associated evidence in a secure and confidential location.
  - Challenge will promptly notify the complainant and alleged harasser(s) of the final determination and implement any corrective actions deemed necessary.
  - Challenge will inform the complainant of their 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 Challenge but is also prohibited by state, federal, and local law.

Aside from the internal complaint and investigation process at Challenge, employees may also choose to pursue legal remedies with external governmental entities. While a private attorney is not required to file a complaint with a government agency, employees may seek the advice of an attorney.

#### **New York State Human Rights Law (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and it protects employees, paid or unpaid interns, and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed with either the Division of Human Rights (DHR) or in the New York State Supreme Court (the state's trial court).

Complaints with DHR may be filed any time **within one year** of the harassment. (Please note this timeframe will increase to three years beginning on August 12, 2020). If an individual did not file at DHR, they can sue directly in state court **within three years** of the alleged sexual harassment. An individual **may not file** with DHR if they have already filed a complaint in state court.

Complaining internally to Challenge does not extend your time to file with DHR or in state court. The one-year or three-year time window begins counting from the date of the most recent incident of harassment.

**You do not need an attorney** to file a complaint with DHR and **there is no cost to file** with DHR.

DHR will investigate the complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Any case where probable cause is found will be scheduled for a public hearing before an administrative law judge. If sexual harassment is found after this hearing, DHR has the power to award relief. This may include requiring the employer to take action to stop the harassment, and/or to redress the damage caused, including paying monetary damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458. Call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov) for more information.

To file a complaint, contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint). This website has a complaint form that can be downloaded, filled out, notarized, and returned via email, fax, or mail. The website also contains contact information for DHR's regional offices across New York State, including those in Binghamton, Rochester, and Syracuse.

### **Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime **within 300 days** of the harassment. **There is no cost to file** a complaint with the EEOC and **you do not need an attorney**. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC finds reasonable cause, they will issue a "Right to Sue" letter, which permits the employee to file a complaint in federal court.

The EEOC does not hold hearings or award relief but it may take other action including pursuing cases in federal court on behalf of complainants. Federal courts may award remedies if discrimination is found to have occurred.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000, visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). The EEOC office closest to Challenge is in Buffalo, NY.

If an individual files a complaint with the New York State DHR, DHR will file the complaint with the EEOC to preserve the employee's right to proceed in federal court.



**Local Protections**

Tompkins County enforces laws protecting individuals from sexual harassment and discrimination. If you work in Tompkins County and wish to file a complaint, contact:

Tompkins County Office of Human Rights  
120 W. Martin Luther King Jr. St.  
Ithaca, NY 14850  
(607) 277-4080  
<http://tompkinscountyny.gov/humanrights>

**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** and you should contact the local police department.

Ithaca Police Department: (607) 272-9973

I have read the Sexual Harassment Prevention policy and agree to abide by its guidelines as a condition of my continued employment at Challenge. If I have any questions, I will contact Human Resources.

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Employee Signature

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Date

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Human Resources Representative Signature

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Date