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# Preventing Sexual Harassment:

## What You Need to Know



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Presented by

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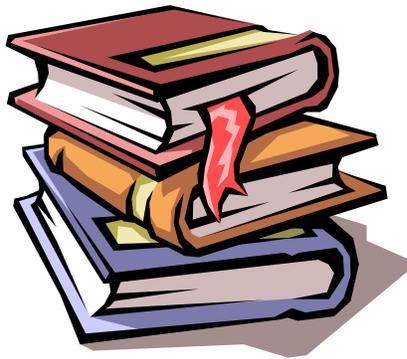
Debra Hazard, Director

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# Objectives

Upon completion of this training, you will be able to:

- Understand the definition and terminology associated with sexual harassment.
- Identify situations and behaviors that could be perceived as sexual harassment.
- Understand your obligations and responsibilities to create and maintain a harassment-free work & learning environment.
- Understand NYS Executive Order 19 as well as “agency specific” policy and procedures regarding sexual harassment.



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# Defining Harassment

**Discrimination** is an adverse action that treats someone unfavorably or denies them an opportunity because of a protected characteristic. Discriminatory employment *actions* include termination, selection for a layoff, demotion, and undesirable transfer. Discrimination can also be *inaction* such as not hiring, or failing to promote a particular applicant. Matters covered in the academic setting include admission, allocation of financial aid and/or services, use of school facilities and the assignment of grades.

**Discrimination** on the basis of gender, race, color, national origin, and/or religion is a violation of Title VII of the Civil Rights Act of 1964 and New York Human Rights Law. Other protected characteristics include age, physical or mental disability, marital status, pregnancy, sexual orientation and Vietnam-era veteran status. Discrimination occurring in an academic setting also violates Title IX of the Educational Amendments of 1972.

**Harassment** is a *form* of discrimination that can consist of words, signs, jokes, pranks, intimidation or physical violence based on the protected characteristics of an employee or student. It becomes illegal when it's severe or frequent enough to alter the terms and conditions of an individual's employment or academic performance. In today's workplace, **sexual harassment** is the most notorious.

## Sexual Harassment

**Sexual harassment** is any **unwanted** verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the **workplace** or **educational setting** which are offensive or objectionable to the **recipient**, cause the recipient discomfort or humiliation, or interfere with the recipient's job or academic performance. The two categories of sexual harassment are "quid pro quo" and hostile environment.

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# Harassment Terminology

**Recipient** – All College of Optometry employees (all teaching, administrative & support personnel) and/or students. All non-employees who interact with school district personnel such as patients, vendors, building security, etc.

**Quid pro quo** - One category of sexual harassment that arises when a person in authority tries to trade job or academic benefits for sexual favors. It can be presented to the employee or student as a benefit, or a threat. Quid pro quo is an abuse of power and authority.

**Hostile environment** - Unwelcome and demeaning behavior that creates a hostile, intimidating or offensive environment, or unreasonably interferes with an individual's work or academic performance.

**Reasonable Person's Standard:** A concept used to judge a hostile environment from the perspective of a "reasonable" person. The standard considers the perspective of the person being harassed and **NOT** stereotyped ideas of acceptable behavior.

**Retaliation:** Any adverse action taken against someone for making a complaint, bringing inappropriate conduct to the college's attention, or for participating in an investigation of an alleged act of harassment or discrimination.



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# Harassing Behaviors

## Quid pro quo includes:

- Better work or educational conditions in exchange for a sexual relationship.
- Reduced or diminished work or educational conditions when a sexual relationship is refused.
- Using physical or psychological coercion to force a sexual relationship, or as retaliation for refusal.

## Inappropriate physical conduct of a sexual nature includes:

- Touching any part of another person's body – especially in a suggestive manner
- Back rubs, neck or shoulder “massages”
- Sexually suggestive or lewd gestures
- Cornering, trapping or blocking another's path
- Stalking or following another person
- Attempted or actual sexual assault

## Verbal conduct of a sexual nature include:

- Remarks about physical characteristics, appearance or attractiveness
- Remarks about sexual activity
- Sexual jokes, comments or innuendo
- Repeated requests for dates
- Propositions of any type

## Non-Verbal conduct of a sexual nature includes:

- Displays with sexually explicit or graphic content
- Letters, notes, e-mails of a sexual nature
- Unwanted personal gifts or attention
- Obscene gestures, ogling, leering
- Exposing oneself

The aforementioned prohibited conduct may result in disciplinary action including verbal reprimand, written reprimand to be included in the offender's personnel file, transfer, suspension or discharge of the offender, or any other action which may be appropriate under the circumstances.

The first step towards eliminating sexual and other prohibited harassment from the college is prevention. **EVERYONE** should take steps to **prevent** all types of harassment from occurring in the first place.

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# Liability Considerations

In deciding sexual and other unlawful harassment cases, the courts look at all circumstances on a case-by-case basis. Circumstances in which the employer may be held liable with regard to sexual and other unlawful harassment are as follows:

- The employer is **always** liable for damages if a supervisor takes or threatens to take a tangible employment or academic action based on admission to or rejection of sexual conduct (*quid pro quo*.)
  - In 2003, the EEOC reported that one half of all sexual harassers are the direct supervisors of their victim. If a *quid pro quo* situation results in a tangible adverse employment action, **the employer** is **always** liable.
  - In 1998, the Supreme Court expanded the definition of *quid pro quo*: “Employers are responsible for threats of adverse employment actions made by supervisors even if the threats are never carried out. Employers may defend themselves if they have well-publicized sexual harassment policies and complaint procedures and take prompt action against the supervisor.” (*Burlington Industries, Inc. v. Ellerth*, No 97-569)
- 3<sup>rd</sup> Party Impact - The employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied an employment or academic opportunity or benefit due to preferential treatment.
- The employer may be held liable for a hostile work environment created by a supervisor even if the situation does not result in a tangible action.
- Supervisors may be held personally liable for acts of harassment they commit against another individual.
- Management, including supervisors, can be held responsible for sexual harassment in instances where they *knew or should have known* that inappropriate behavior was taking place, but failed to take action.

*Supervisors are defined as anyone holding a position of real or perceived power.*



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# Employer Responsibility

An employer can prevent liability for a hostile work environment if it can prove that it took *reasonable efforts* to prevent and correct unlawful and sexual harassment.

## Senior management:

- Disseminate policies/procedures in a manner that makes them known to all employees.
- Ensure that all employees receive prevention training.
- Have an effective written policy and strategy for responding to complaints.
- Provide managers and supervisors with training tailored to their roles.
- Make alternative organizational channels available for filing complaints involving supervisory behavior.
- Enforce policies and procedures to the fullest extent.
- Through all other behavior and practices, set a tone that promotes equality and equity.

## Managers and supervisors:

- Be observant and proactive by routinely monitoring the work environment.
- Model respectful behavior.
- Respond objectively and promptly to any situation brought to your attention by staff or students. Report all allegations to Doug Shading.
- Take action against **all** complaints - **even if the complainant asks you not to**.

## All staff:

- Behave in a manner that shows commitment to a discrimination/harassment-free workplace.
- Keep current on policies/procedures and attend training regularly.
- Notify manager/supervisor about any problematic situations.

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# Preventing Sexual Harassment

Be serious about stopping and preventing sexual harassment. Don't let negative attitudes about people come out at work. Remember it is **your** responsibility to do your work and follow the policies and procedures of your employer. In the case of sexual harassment, it could cost your employer a great deal of money in a court case. And, it could cost **you** your job!

Remember to:

- Understand and avoid offensive behavior.
- Treat others as **they** would like to be treated.
- Imagine if a family member or supervisor was observing your behavior.
- Think before you speak or act.
- Act with courtesy and respect.
- Speak up if you witness someone being harassed.



## Take Action

Harassment will not go away if you ignore it. If you think you are a victim of sexual or other unlawful harassment, consider the following steps in accordance with your personal situation.

- Tell the harasser that the behavior is unwelcome. People are often unaware of their behavior and do not intend to offend you.
- Be specific, state that the behavior must stop.
- Threaten to report the behavior if it continues.
- Document the behavior.
- Report it to your supervisor, Department Chair or Dean's Office.
- Contact Douglas Shading in the Personnel Office.

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# Take Action

Report all incidents of harassment in accordance with your organization's policy:

**Mr. Douglas Shading**  
**SUNY State College of Optometry, Room 933**  
**(212)-938-5882**

Confidentiality of all parties will be maintained to the extent possible. Details of any complaint will be shared on a "need to know" basis only.



In addition to following your organization's policy and procedures to inquire about your options and/or file a complaint regarding sexual harassment, you may also contact the following:

NYS Division for Human Rights  
One Fordham Plaza, 4<sup>th</sup> floor  
Bronx, New York 10458  
(718) 741-8400  
website: [www.nysdhr.com](http://www.nysdhr.com)

Equal Employment Opportunity  
Commission  
New York District Office  
33 Whitehall Street  
New York, New York 10004  
(212) 336-3620 or (800) 669-4000  
website: [www.eeoc.gov](http://www.eeoc.gov)

Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1100  
(202) 245-6800; 1-800-421-3481  
FAX: (202) 245-6840; TDD: (877) 521-2172  
website: <http://www.ed.gov/ocr>

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## RESOURCES

[www.eeoc.gov](http://www.eeoc.gov)

The U.S. Equal Employment Opportunity Commission

[www.lawguru.com/faq/16.html](http://www.lawguru.com/faq/16.html)

Sexual harassment frequently asked questions

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APPENDIX:

State of New York Executive Order 32  
State of New York Executive Order 19



EXECUTIVE ORDER

No. 32

REISSUING CERTAIN EXECUTIVE ORDERS

WHEREAS, Executive Order No. 3, issued January 5, 1995, directed a comprehensive review of all executive orders and amendments thereto in effect as of that date; and

WHEREAS, during the course of that review it has been determined that certain executive orders should be continued unamended and unmodified;

NOW, THEREFORE, I, GEORGE E. PATAKI, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order that the following executive orders and any amendments thereto shall remain in full force and effect until otherwise revoked, continued or modified:

Executive Order No. 1, issued January 11, 1983 (Relating to the Continued Validity of Executive Orders Previously Issued);

Executive Order No. 7, issued February 18, 1983 (Establishing a Governor's Advisory Committee For Hispanic Affairs);

Executive Order No. 12, (Directing the State Office for the Aging to Review and Comment Upon Policies Affecting the Elderly);

Executive Order No. 19, issued on May 31, 1983 (New York State Policy Statement on Sexual Harassment in the Workplace);

Executive Order No. 23, issued on September 1, 1983 (Establishing the Office of New York State Ombudsman);

Executive Order No. 26, issued October 7, 1983 (Directing the State Office of Advocate for the Disabled to Review and Comment Upon Policies Affecting Persons with Disabilities);

Executive Order Nos. 28 and 28.1, issued on November 18, 1983 and April 21, 1987, respectively (Establishing a Sexual Orientation Policy and Creation of a Task Force on Sexual Orientation Discrimination), continued and amended by Executive Order Nos. 33 and 34;

Executive Order No. 34, issued January 13, 1984 (Creating A Human Rights Advisory Council);

Executive Order No. 51, issued October 30, 1984 (Designating the Division of the budget to coordinate the intergovernmental Review of Federal Programs);

Executive Order No. 66, issued June 5, 1985 (Establishing A Governor's Advisory Committee for Black Affairs);

Executive Order No. 82, issued May 2, 1986 (Establishing Governor's Office for Hispanic Affairs);

Executive Order No. 99, issued August 10, 1987 (Restructuring the Interagency Task Force on Acquired Immune Deficiency Syndrome (AIDS));

Executive Order No. 113, issued October 27, 1988 (Replacing Derogatory Place Names);

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~~Executive Order No. 169, issued March 22, 1993 (Directing State Agencies to Act Consistently with the Upper Delaware River Management Plan);~~  
and

~~Executive Order No. 180, issued February 17, 1994 (Requiring Attorney General to Supersede District Attorney of St. Lawrence County with Respect to the Investigation into the Allegations Involving Mario Pistolessi, Mark Hartle, David Cummings, Michael Curcio and Greg Streeter).~~

G I V E N under my hand and the Privy  
Seal of the State in the  
City of Albany this ninth  
day of April in the year  
one thousand nine hundred  
ninety-six.

L.S.

BY THE GOVERNOR

/s/ George E. Pataki

/s/Bradford J. Race, Jr.  
Secretary to the Governor



No. 19

EXECUTIVE ORDER

NEW YORK STATE  
POLICY STATEMENT ON  
SEXUAL HARASSMENT IN THE WORKPLACE

WHEREAS, sexual harassment in the workplace is not merely offensive but is a form of discrimination in violation of Federal and State law; and

WHEREAS, every State employee is entitled to a working environment free from sexual harassment and its deleterious economic, psychological and physical effects; and

WHEREAS, the cost to the State is considerable in both human and financial <sup>terms</sup> including the replacement of personnel who leave their jobs, increased use of health benefit plans due to emotional and physical stress, absenteeism, and decline in individual and workgroup productivity;

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby establish a New York State Policy Statement on Sexual Harassment in the Workplace.

I. The head of each department, agency, board, commission or other entity under the jurisdiction of the Executive Branch shall:

- a. Issue a strong management policy statement defining and prohibiting sexual harassment in the workplace. The policy statement should inform employees of their rights of redress, and the availability of complaint resolution channels and assistance with incidents or sexual harassment. The policy statement should make clear that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.
- b. Widely distribute the policy statement by providing it to all employees, including it in new employee orientation, and publicizing it in internal employee publications.
- c. Conduct appropriate training to instruct and sensitize all employees.

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- d. Develop guidelines to ensure the swift and thorough investigation of allegations and complaints of sexual harassment and enforcement of appropriate sanctions including disciplinary actions. The affirmative action officer shall have responsibility for processing complaints.

Because of the sensitivity of the issue, particular efforts should be made to conduct investigations with due regard for confidentiality to ensure protection of the complainant and the accused. Although the intent is to address and resolve these matters at the workplace, victims should be informed of the various administrative and legal remedies available.

The complaint procedure should provide for subsequent review to determine if the sexual harassment has been effectively stopped.

- e. Provide the Governor's Office of Employee Relations with a copy of the policy statement and a brief description of the actions taken and planned in regard to preventing and combating sexual harassment in the State workplace, and report all complaints and their resolution to the Governor's Office of Employee Relations.

As used in this Order, unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature will constitute sexual harassment when:

1. Submission to the conduct is either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. The conduct has the purpose or effect of unreasonably interfering with an affected person's work performance, or creating an intimidating, hostile, or offensive work environment.

II. The Governor's Office of Employee Relations shall provide information to the entities covered by this Executive Order to assist in the implementation and the operation of the policy established by this Executive Order.

Nothing in this Order shall be construed to enlarge upon nor limit or abridge the rights of any person under the United States or State Constitutions or the Statutes of the United States or the State of New York.

G I V E N under my hand and the Privy

Seal of the State in the City of

Albany this thirty-first day of

(L.S.) May in the year one thousand nine

hundred eighty-three.

BY THE GOVERNOR

/s/ Mario M. Cuomo

/s/ Michael J. Del Giudice

Secretary to the Governor



***Empire State Training Associates, Inc.***  
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and Interpersonal Skills Training & Development  
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(518) 372-5921 ♦ [dhazard@nycap.rr.com](mailto:dhazard@nycap.rr.com)*