

BUFFALO

SEWER AUTHORITY

Title	Sexual Harassment Awareness and Prevention	Effective Date	10/2011
Approved by	Oluwole A. McFoy, P.E., General Manager	Date Revised	8/2018;10/2019

The Buffalo Sewer Authority "Buffalo Sewer" has zero tolerance for any forms of harassment, discrimination, or violence in the work place. Should any employee be subjected to what they perceive as any form of harassment, discrimination, or violence in the workplace that employee shall follow the same procedure for filing a complaint for sexual harassment.

INTRODUCTION

Buffalo Sewer is committed to maintaining a workplace free from sexual harassment. This policy applies to all employees at all levels of this organization. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated. Further, any retaliation against an individual who has filed a sexual harassment complaint is similarly unlawful and will not be tolerated.

Buffalo Sewer will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred. We will act promptly to eliminate the conduct and impose corrective action as is necessary, including disciplinary action if appropriate. Any possible sexual harassment will be investigated whenever management receives a complaint of alleged sexual harassment occurring.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and 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 includes unwelcome conduct which is either of a sexual nature, or which 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;
- 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, which cause the recipient discomfort or humiliation, which 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, 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 so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

EXAMPLES OF SEXUAL HARASSMENT

The following describes some of the types of acts that may be unlawful sexual harassment and that 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 for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or 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: 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.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and 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 the 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 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.

REPORTING SEXUAL HARASSMENT

Preventing sexual harassment is everyone's responsibility. Buffalo Sewer cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee 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 Employee Relations. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Director of Employee Relations.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

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 or 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 suspected sexual harassment to Director of Employee Relations.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

SEXUAL HARASSMENT INVESTIGATION

When we receive the complaint we will promptly investigate the allegation in a fair and expeditious manner. Employees are required to cooperate with management during any investigation of sexual harassment. All supervisors and management staff must report any complaint that they receive, or any harassment that they observe.

An investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. We will strive to release information arising out of a complaint or investigation only on a need-to-know basis. At times information must be shared for an effective investigation to be conducted.

Our investigation will include (but it is not necessarily limited to) a private interview with the person filing the complaint and with witnesses. We will also interview the person alleged to have committed sexual harassment. When we have completed our investigation, we will, to the extent appropriate inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct, and where it is appropriate we will also impose disciplinary action.

RETALIATION IS UNLAWFUL

It is unlawful for any employer, or any agent or employee of the employer, to retaliate against an employee who has complained of sexual harassment. All complaints and investigations are treated confidentially to the extent possible and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation and Buffalo Sewer takes adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a sexual harassment complaint or investigation is maintained in secure files within the HR department.

The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- filed a formal written complaint of sexual harassment, either internally with management or human resources, or with any anti-discrimination agency, testified or assisted in a proceeding involving sexual harassment under the NYS Human Rights Law,
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment,
- complained that another employee has been sexually harassed, or
- encouraged a fellow employee to report harassment.

DISCIPLINARY ACTION

If it is determined that inappropriate conduct has been committed by one of our employees, we will take appropriate action based on the circumstances. Such action may range from counseling to termination from employment, and may include other forms of disciplinary action, as we deem appropriate based on the circumstances. Pursuant to the Collective Bargaining Agreements and NYS Civil Service Section 75, up to and including dismissal, and may be subject to personal, legal, and financial liability.

LEGAL PROTECTIONS AND EXTERNAL REMEDIES

Sexual harassment is not only prohibited by the Buffalo Sewer Authority it is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at the Buffalo Sewer Authority, employees may also choose to pursue legal remedies with the following governmental entities at any time.

New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and 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 either with DHR or in New York State Supreme Court.

Complaints with DHR may be filed any time **within three (3) years** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three (3) years** of the alleged discrimination. An individual may not file with DHR if they have already filed an HRL complaint in state court.

Complaining internally to the Buffalo Sewer Authority does not extend your time to file with DHR or in court. The one year or three years is counted from 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 your complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

Adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, www.dhr.ny.gov

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal antidiscrimination 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 from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

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 1-800-6694000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml

Contact the Local Police Department

If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.