



# Sexual Harassment Policy

Essex County, New York

Policy Adopted by the Essex County Board of Supervisors as per resolution # 287 of 2018, dated October 1st, 2018.

This Policy supersedes and replaces existing Sexual Harassment Policies in the current Essex County Policy Manual (last printed January 2005).

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.

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## Section 1. Introduction:

Essex County is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. Essex County has a zero-tolerance policy for any form of sexual harassment, and all employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of Essex County's commitment to a discrimination-free work environment.

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment, and employees can enforce this right by filing a complaint internally with Essex County, or with a government agency or in court under federal, state or local antidiscrimination laws.

## Section 2. Minimum Standards for Sexual Harassment Prevention Policies

1. Every employer in the State of New York is required to adopt a sexual harassment prevention policy pursuant to Section 201-g of the Labor Law. An employer that does not adopt the model policy must ensure that the policy that they adopt meets or exceeds the following minimum standards. The policy must:
  - a. prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
  - b. provide examples of prohibited conduct that would constitute unlawful sexual harassment;
  - c. include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
  - d. include a complaint form;
  - e. include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
  - f. inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
  - g. clearly state 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; and
  - h. clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

2. Employers must provide each employee with a copy of its policy in writing. Employers should provide employees with the policy in the language that is spoken by their employees.

### Section 3. Policy:

1. The Essex County Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with Essex County.
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, up to and including termination.
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Essex County has a zero-tolerance policy for such retaliation against anyone who, in good faith complains or provides information about suspected sexual harassment. Any employee of Essex County who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. Any employee paid or unpaid intern, or non-employee<sup>1</sup> working in the workplace who believes they have been subject to such retaliation should inform a supervisor, or the Essex County Manager or the Essex County Attorney. Any employee, paid or unpaid intern or non-employee who believes they have been a victim of such retaliation may also seek compensation 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 subjects Essex County to liability for harm to victims of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be penalized for such misconduct.

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<sup>1</sup> 1 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.

5. Essex County will conduct a prompt, thorough and confidential investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. Effective remedial/corrective or disciplinary 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. Essex County 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 to the Essex County Manager or the Essex County Attorney.
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be posted prominently in all work locations and be provided to employees upon hiring.

#### Section 4. What is “Sexual Harassment”?

1. 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:
  - a. 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 complaining individual is not the intended target of the sexual harassment;
  - b. Such conduct is made either explicitly or implicitly a term or condition of employment; or
  - c. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.
2. A sexually harassing hostile work environment consists of 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.

3. 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.

## Section 5. Examples of sexual harassment:

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

1. Physical assaults of a sexual nature, such as:
  - a. Touching, pinching, patting, grabbing, brushing against another employee's body or poking another employees' body;
  - b. Rape, sexual battery, molestation or attempts to commit these assaults.
2. Unwanted sexual advances or propositions, such as:
  - a. Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion or other job benefits or detriments;
  - b. Subtle or obvious pressure for unwelcome sexual activities.
3. Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
4. Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - a. 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.
5. Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - a. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - b. Sabotaging an individual's work;
  - c. Bullying, yelling, name-calling.

## Section 6. Who can be a target of sexual harassment?

1. 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. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

## Section 7. Where can sexual harassment occur?

1. 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 or not during work hours.

## Section 8. What is “Retaliation”?

1. Unlawful retaliation can be any action that would keep a worker 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.
2. Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:
  - a. filed a complaint of sexual harassment, either internally or with any anti-discrimination agency;
  - b. testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
  - c. opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
  - d. complained that another employee has been sexually harassed; or
  - e. encouraged a fellow employee to report harassment.

## Section 9. Reporting Sexual Harassment

1. Preventing sexual harassment is everyone’s responsibility. Essex County cannot prevent or remedy sexual harassment unless it knows about 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 or the Essex County Manager or the Essex County Attorney. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, or the Essex County Manager or the Essex County Attorney.

2. 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.
3. Employees, paid or unpaid interns or non-employees who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

## Section 10. Supervisory Responsibilities

1. 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 the Essex County Manager or the Essex County Attorney.
2. 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.
3. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

## Section 11. Complaint and Investigation of Sexual Harassment

1. An employee or individual who feels that he or she has been the victim of sexual harassment as herein described must contact the appointing authority, the Essex County Manager or the Essex County Attorney.
2. All complaints or information about suspected sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible.



3. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough and should be completed within 30 days. The investigation will be confidential to the extent possible. All persons involved, including complainants, witnesses and alleged perpetrators will be accorded due process to protect their rights to a fair and impartial investigation.
4. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Employees who participate in any investigation will not be retaliated against.
5. Each complaint will be resolved either by voluntary withdrawal of the complaint by the complainant, dismissal of the complaint, or remedial/corrective or disciplinary action.
6. Investigations will be done in accordance with the following steps:
  - a. Upon report of alleged sexual harassment or the receipt of a complaint, whichever occurs first, the Essex County Manager and the Essex County Attorney will conduct an immediate review of the allegations, and take any interim actions, as appropriate. If complaint is oral, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the oral reporting.
  - b. If documents, emails or phone records are relevant to the allegations, take steps to obtain and preserve them.
  - c. Request and review all relevant documents, including all electronic communications.
  - d. Interview all parties involved, including, the accused and any relevant witnesses.
  - e. Inform all respondent parties/accused of the factual allegations and give them an opportunity to respond to all charges and evidence.
  - f. Immediately inform the complainant of options to pursue legal remedies outside of this policy through the New York State Division of Human Rights, United States Equal Employment Opportunity Commission (EEOC) and local law enforcement.
  - g. At any point in the procedure, a complainant may withdraw the charge/allegation, in writing to the Essex County Personnel Officer.
  - h. Enforcement: Once an investigation is complete, the appropriate appointing authority (Supervisor) or the Essex County Board of Supervisors, as the case may be, shall be responsible for enforcing this policy and for determining what remedial/corrective or disciplinary

actions must be undertaken which may include, but not limited to reprimand, suspension, reassignment, training, loss of accrued time, loss of pay, demotion, or termination. This is not an exhaustive list, each case will be judged on its own merits.

This shall be in accordance with the appropriate Collective Bargaining Agreement, employee agreement or other applicable policies and law.

7. Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - i. A list of all documents reviewed, along with a detailed summary of relevant documents;
  - j. A list of names of those interviewed, along with a detailed summary of their statements;
  - k. A timeline of events;
  - l. A summary of prior relevant incidents reported or unreported; and
  - m. The final resolution of the complaint, together with any remedial/corrective, disciplinary action(s).
8. For all officers and employees entitled to protection under New York State Civil Service Law Section 75, the appointing authority may determine that sufficient information exists to proffer disciplinary charges/action, or other actions as may be appropriate under the applicable Collective Bargaining Agreement, against the alleged accused. Such action may result in formal discipline up to and may include termination from employment. In the event that an officer or employee is entitled to the protections pursuant to Civil Service Law Section 75, all procedural protections, rights to counsel and due process contained therein shall be afforded and Section 75 rules and procedures shall control.

For all officers and employees not protected by Civil Service Law Section 75, the appointing authority may take such administrative/disciplinary action as he or she deems appropriate under his/her authority, including but not limited to termination, demotion, reassignment, suspension, reprimand, training, loss of pay, loss of accrued time, and any other measures available to him or her under policy or law.

Nothing herein shall prohibit the appointing authority, complainant and accused from seeking conciliation and an informal settlement satisfactory to all parties concerned.

9. Keep the written documentation and associated documents in the employer's records.
10. Promptly notify the individual who complained and the individual(s) who responded of the final determination and implement any corrective actions identified in the written document.
11. Inform the individual who complained of their right to file a complaint or charge externally as outlined below.

## Section 12. Legal Protections and External Remedies

1. Sexual harassment is not only prohibited by Essex County but is also prohibited by state, federal, and, where applicable, local law.
2. Aside from the internal process at Essex County, employees may also choose to pursue legal remedies with the following governmental entities as noted in Section 13., and 14., below.

## Section 13. New York State Division of Human Rights (DHR)

1. 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.
2. Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination. An individual may not file with DHR if they have already filed an HRL complaint in state court.
3. Complaining internally to Essex County 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.
4. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.
5. 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.

6. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 [appropriate other contact info], [www.dhr.ny.gov](http://www.dhr.ny.gov)
7. Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://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.

#### Section 14. United States Equal Employment Opportunity Commission (EEOC)

1. The 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 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.
2. 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.
3. If an employee believes that he/she has been discriminated against at work, he/she 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 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via [email at info@eeoc.gov](mailto:info@eeoc.gov)
4. 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.

## Section 15. Local Protections

1. 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.

## Section 16. Contact the Local Police Department

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

## Section 17. Supersede

1. This Sexual Harassment Policy shall replace and supersede all the existing Sexual Harassment Policy(s) set forth in the current Essex County Policy Manual such that the existing Sexual Harassment Policy(s) shall be of no further legal force and effect.

## Section 18. Severability

1. If any clause, sentence, paragraph, subdivision, section or any part of this policy or application thereof, to any person, individual, corporation, firm, partnership, or business shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not effect, impair or invalidate the remainder thereof but shall be combined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this policy, or in its specific application.

## Appendix A. – Sexual Harassment Complaint Form

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Complaint Form attached.

## Complaint Form for Reporting Sexual Harassment:

### Essex County, New York - Employer

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for employees to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Essex County Manager or the Essex County Attorney. Once you submit this form, Essex County must follow its sexual harassment prevention policy and investigate any claims.

If you are more comfortable reporting verbally or in another manner, Essex County is still required to follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: [ny.gov/combating-sexual-harassment](http://ny.gov/combating-sexual-harassment)

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### Complainant Information:

Name:	<input type="text"/>	Email:	<input type="text"/>
Home Address:	<input type="text"/>		
Work Address:	<input type="text"/>		
Home Phone:	<input type="text"/>	Work Phone:	<input type="text"/>
Select Preferred Communication Method (Please select one) <input type="checkbox"/> Home Phone <input type="checkbox"/> Work Phone <input type="checkbox"/> Email			

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### Supervisory Information:

Immediate Supervisor's Name:	<input type="text"/>		
Title:	<input type="text"/>	Work Phone:	<input type="text"/>
Work Address:	<input type="text"/>		

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### Complaint Information:

1. Your complaint of Sexual Harassment is made against:

Name:	<input type="text"/>		
Title:	<input type="text"/>	Work Phone:	<input type="text"/>
Work Address:	<input type="text"/>		

2. Indicate the relationship the complaint is to you:

☐ Supervisor      ☐ Subordinate      ☐ Co-Worker

☐ Other (Describe):

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3. Please describe the conduct or incident(s) that is the basis of this complaint and your reasons for concluding that the conduct is sexual harassment. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

Describe:

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4. Please list the date or dates the sexual harassment occurred:

Dates:

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5. Is the sexual harassment continuing?    ☐ Yes    ☐ No

*The last series of questions are optional, but may help facilitate the investigation.*

6. Have you previously complained or provided information (verbal or written) about sexual harassment at Essex County? If yes, when and to whom did you complain or provide information to?

Describe Previous Incident:

--

*Employees that file complaints with their employer might have the ability to get help or file claims with other entities including federal, state or local government agencies or in certain courts.*

7. Have you filed a claim regarding this complaint with a federal, state or local government agency?    ☐ Yes    ☐ No

If so to whom and when?

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8. Have you instituted a legal suit or court action regarding this complaint?

☐ Yes    ☐ No

If so to whom and when?

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9. Have you hired an attorney with respect to this complaint?

☐ Yes ☐ No

If so, you may optionally provide the name and phone number of the Attorney?

10. If you hired an attorney with respect to this complaint, do you give us permission to contact the Attorney so named above as it relates to this complaint?

☐ Yes ☐ No

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**Signature Authorization:**

*I request that Essex County investigate this complaint of sexual harassment in a timely and confidential manner as outlined with the Essex County Sexual Harassment Policy, and advise me of the results of the investigation.*

Signature: \_\_\_\_\_

Date:

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