

Allegany Rehabilitation Associates
50 Farnum Street
Wellsville, NY 14895

POLICY AND PROCEDURE

POLICY AND PROCEDURE #: HR-1210-014		REVISION :
BOARD APPROVAL DATE: 10/23/18	DATE ISSUED:	EFFECTIVE DATE:
TITLE: Workplace & Sexual Harassment	PAGE Page 1 of 8	

Purpose:

Allegany Rehabilitation Associates is committed to maintaining a workplace free of discrimination and sexual harassment based on race, color, religion, age, sex, national origin, disability, status as a veteran, or any other protected status. Offensive or harassing behavior will not be tolerated against any employee. This policy covers vendors, customers, or others who enter the workplace, as well as all employees. Supervisory or managerial personnel are responsible for taking proper action to end such behavior in their workplace.

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 Allegany Rehabilitation Associates, or with a government agency or in court under federal, state or local antidiscrimination laws.

In an effort to prevent sexual and other forms of harassment from occurring, this policy against harassment will be communicated to each employee during orientation and annually thereafter. No employee of this company is exempt from this policy.

Policy:

1. Allegany Rehabilitation Associates policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and person conducting business with Allegany Rehabilitation Associates.
2. Harassment will not be tolerated. Any employee or individual covered by this policy who engages in harassment or retaliation will be subject to corrective 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 harassment, provides information, or otherwise assists in any investigation of a harassment complaint. Allegany Rehabilitation Associates has a zero-tolerance policy for such retaliation against anyone who, in good faith complains or provides information about suspected harassment. Any employee of Allegany Rehabilitation Associates who retaliates against anyone involved in a harassment investigation will be subjected to disciplinary action, up to and including termination. Any employee, paid or unpaid intern,

or non-employee¹ working in the workplace who believes they have been subject to such retaliation should inform a supervisor, manager or Human Resources. Any employee, paid or unpaid intern or non-employee who believes they have been a victim of such retaliation in regards to a sexual harassment complaint may also seek compensation in other available forums, as explained below in the section on Legal Protections.

4. Harassment is offensive, is a violation of our policies, is unlawful, and may subject Allegany Rehabilitation Associates to liability for harm to targets of harassment. Harassers may also be individually subject to liability. Employees of every level who engage in harassment, including managers and supervisors who engage in harassment or who allow such behavior to continue, will be penalized for such misconduct.
5. Allegany Rehabilitation Associates Human Resources department will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about harassment, or otherwise knows of possible harassment occurring. Allegany Rehabilitation Associates will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of harassment.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. Allegany Rehabilitation Associates will provide all employees a complaint form for employees to report harassment and file complaints (see attached).
7. Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, to Human Resources.
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 provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and 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 (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;

¹ Employees referred to in this policy are Agency staff.

- 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.

What is Harassment?

Harassment is offensive conduct of a sexual nature or based on race, color, religion, age, sex, national origin, disability, status as a veteran or any protected status. Examples of harassment may include but is not limited to:

- Engaging in hostile physical contact.
- Telling off color jokes concerning race, sex disability, or other protected status.
- Using crude language or using demeaning or inappropriate terms.
- Sabotaging another employee's work.
- Using indecent gestures.
- Displaying sexually suggestive or racially insensitive pictures.

Any such offensive conduct will be considered a prohibited form of harassment when any of the following are true:

- Such conduct has the effect of creating an intimidating or hostile or offensive work environment, or unreasonably interferes with a person's work performance.
- A third party is offended by the sexual conduct or communication of others.
- A supervisor who fires or denies promotion to a subordinate for refusing to be sexually cooperative.
- A supervisor that requires a subordinate to participate in religious activities as a condition of employment.
- A supervisor that offers preferential treatment or promotion if a subordinate sexually cooperates or joins supervisor's religion.

Retaliation:

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment or 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 (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:

- filed a complaint of sexual harassment or harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment or harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment or other forms of 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 turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Reporting Sexual Harassment and Other Forms of Harassment:

Preventing sexual harassment and other forms of harassment is everyone’s responsibility. Allegany Rehabilitation Associates cannot prevent or remedy sexual harassment or other forms of 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 or other forms of harassment is encouraged to report such behavior to a supervisor, manager or Human Resources. Anyone who witnesses or becomes aware of potential instances of sexual harassment or other forms of harassment should report such behavior to a supervisor, manager or Human Resources.

Reports of sexual harassment or other forms of 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 or other forms of 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 or other forms of harassment, observe what may be sexually harassing or harassing behavior or for any reason suspect that sexual harassment or other forms of harassment is occurring, **are required** to report such suspected harassment to Human Resources.

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/ managers will also be held to these same standards if they have knowledge of, engage in, or fail to report other forms of harassment beyond the realm of sexual harassment.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Complaint and Investigation of Harassment:

All complaints or information about sexual harassment or other forms of 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.

An investigation of any complaint, information or knowledge of suspected sexual harassment or other form of harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

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

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

- Upon receipt of complaint, Human Resources will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant or make alternative working arrangements), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those 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 the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.

- Promptly notify the individual who complained/ reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the 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 Allegany Rehabilitation Associates but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at Allegany Rehabilitation Associates, employees may also choose to pursue legal remedies with the following governmental entities at any time. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

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 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 the Division of Human Rights (DHR) or in New York State Supreme Court.

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 sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to Allegany Rehabilitation Associates 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 sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment 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 of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: 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 1-800-669-4000 (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 unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

Model Complaint Form for Reporting Sexual Harassment



Combating Sexual Harassment

Allegany Rehabilitation Associates

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form 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 **Human Resources**. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method: Email Phone In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional but may help the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____

Date: _____

Instructions for Employers

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.