

Sexual Harassment in the Workplace

Welcome to this training on Sexual Harassment issues. This course is about your rights and responsibilities as an employee of the state.

New York State has long been committed to ensuring that all individuals have an equal opportunity to enjoy a fair, safe, and productive work environment. Laws and policies help ensure that diversity is respected and that everyone can enjoy the privileges of working for New York State. Preventing sexual harassment and other prohibited forms of harassment is crucial to the state's commitment in this regard. This training will help you better understand sexual harassment so that all employees know that sexual harassment will not be tolerated and that all reports of sexual harassment will be taken seriously and promptly investigated, with effective remedial action taken where appropriate.

An Environment Free from Discrimination

All state employees have the right to work in an environment free from discrimination, including all forms of harassment. Your employer is required by law and state policy to create a workplace free from harassment based on protected characteristics including age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity, and criminal history. You have the responsibility to assure that your actions do not contribute in any way to a discriminatory environment in the workplace.

This training is intended to provide employees with information on their rights and responsibilities under applicable laws and policies. These laws and policies include the New York State Human Rights Law, federal antidiscrimination laws, and the Governor's Executive Order applicable specifically to state employees.

New York State Human Rights Law provides broad protections against discrimination and all forms of harassment. It applies to all state employees.

A statewide policy prohibiting sexual harassment in state workplaces is established by Governor's Executive Order. Each state agency must have a written policy and procedure addressing sexual harassment, and you may request this policy and procedure from your agency's Human Resources Department or Affirmative Action Officer.

What is Employment Discrimination?

Discrimination occurs when employment decisions are based on characteristics that are protected by law or when persons are denied equal terms, conditions, or

New York State Governor's Office of Employee Relations

privileges of employment because of a protected characteristic.

These protected characteristics include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity, and criminal history.

You should have already taken the mandatory online Equal Employment Opportunity training for state employees, which explains these protected characteristics. For more information on protected characteristics and other aspects of employment discrimination and equal opportunity, please see the attached publication *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies*.

Workplace Harassment is Discrimination.

When an individual is harassed because of one of these protected characteristics, it changes the terms and conditions of employment for that individual.

Harassment may interfere with the job performance of the victim, as well as other affected employees.

A harassment-free workplace allows employees to achieve their best possible work performance and to have an equal opportunity to advance in state employment.

A harassment-free workplace allows individuals to be free from unnecessary stress and distraction so that they may perform their duties to the best of their ability for the people of the State of New York.

What is Harassment?

Harassment is a form of discrimination that consists of **words, signs, jokes, pranks, intimidation, physical actions or violence** that is directed at an employee due to any protected characteristic.

It includes **offensive behavior based on stereotypes** about a protected class and behavior that is **intended to cause discomfort or humiliation** because of a protected characteristic.

Harassment includes any **expression of contempt or hatred** for the group to which the victim belongs based on a protected characteristic.

Harassment is **unlawful** when it becomes **severe or pervasive** enough to alter the terms or conditions of an individual's employment.

What Does "Severe or Pervasive" Mean?

Harassment becomes **unlawful** when it is severe or frequent enough to alter the terms and conditions of an individual's employment.

- Petty annoyances or sporadic offensive conduct will not be considered severe or pervasive.
- The more severe the conduct, the less frequent it needs to be to constitute harassment.
- A single action can be unlawful harassment if sufficiently severe.

Zero Tolerance

Any harassing behavior by a state employee, even if it is **not** sufficiently severe or pervasive to be unlawful, will be investigated and the perpetrator or perpetrators will be told to stop.

If the behavior is more than trivial, disciplinary action will be taken. If the behavior is sufficiently serious, disciplinary action may include termination.

Repeated behavior, especially after an employee has been told to stop, is particularly serious and will be dealt with accordingly.

Sexual Harassment

Sexual harassment is a particular type of **harassment** and a particular type of **sex discrimination**.

Sex discrimination in general includes:

- Any type of bias on the basis of sex.
- Sexual harassment.
- Sex stereotyping.
- Discrimination on the basis of pregnancy.

What is Sexual Harassment?

Sexual harassment is defined as any unwanted verbal or physical advance, sexually explicit or derogatory statement, or sexually discriminatory remark that is offensive or objectionable to the recipient, or which interferes with his or her job performance. **Hostile work environment** and **quid pro quo sexual harassment** are two frameworks that are used to evaluate whether actions should be regarded as sex discrimination.

Hostile environment

A **hostile environment** on the basis of sex may be created by words, signs, jokes, pranks, intimidation, physical actions or violence, ***either of a sexual nature or not of a sexual in nature***, which is directed at an individual ***because of that individual's sex***.

Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment occurs when a person in authority tries to trade job benefits for sexual favors. *Quid pro quo* is a legal term meaning "this for that," or, in other words, a trade. *Quid pro quo* harassment occurs only between an employee and someone with supervisory authority, because only a supervisor has the ability to grant or withhold job benefits.

Quid pro quo sexual harassment includes:

- Offering or granting better working conditions or opportunities in exchange for a sexual relationship.
- Threatening adverse working conditions or denial of opportunities if a sexual relationship is refused.
- Using physical or psychological coercion to force a sexual relationship.
- Retaliating for refusing to engage in a sexual relationship.

Who Can be the Recipient of Sexual Harassment?

The recipient or victim of sexual harassment, or any other type of harassment, can be any of the following:

- Any agency employee.
- Any nonemployee who interacts with agency personnel, such as an intern, vendor, building security, client, customer, or visitor. The agency is responsible to see that such nonemployees are not harassed on agency premises.
- Anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.
- Although females are more likely to experience sexual harassment, both males and females may be the recipient.
- Sexual harassment can occur between people of the same sex as well as people of the opposite sex.

Who Can be the Perpetrator of Sexual Harassment?

The perpetrator of sexual harassment can be anyone in the workplace. The employer is responsible for dealing with any harassing behavior by coworkers, supervisors, managers, or nonemployees who are in the workplace.

New York State Governor's Office of Employee Relations

Coworker

The harasser can be a coworker of the recipient. When the harasser is a coworker, the recipient should report the harassment to a supervisor, manager, or the agency's Affirmative Action Officer ("AAO") so that the agency knows about the behavior, can investigate, and can take action to prevent the harassment.

Supervisor or Manager

The harasser can be a supervisor or manager. The harassing behavior of a supervisor or manager is always extremely serious misconduct. The recipient should report the harassment to a different supervisor, manager, or directly to the agency's AAO. Any supervisor or manager to whom a complaint is made, or who is otherwise aware of sexual harassment, has a duty to report.

Third Party

The harasser can be a nonemployee or "third party," such as an intern, vendor, building security, client, customer, or visitor. When the harasser is a third party, the recipient should report the harassment to a supervisor, manager, or the agency's AAO.

Where Can Sexual Harassment Occur?

Harassment can occur **whenever and wherever** employees are fulfilling their work responsibilities, including in the field, at any agency sponsored event, trainings, conferences open to the public, and office parties.

Employee interactions during off hours, such as at a hotel while in travel status or even at "happy hour" after work, can have an impact in the workplace. Locations off site and off-hour activities can be considered extensions of the work environment. Harassing behavior that in any way affects the work environment is rightly the concern of management.

Sexual Harassment Case Studies

Now, let's take a look at a few scenarios that help explain the kind of behaviors that can constitute sexual harassment. These examples are not intended to explain what sort of harassment will create liability if a legal action is filed. Rather, they describe inappropriate behavior in the workplace that will be dealt with by corrective action, including disciplinary action. These examples are intended to encourage all employees to report inappropriate behavior in the workplace.

Not Taking "No" for an Answer [Scenario One]

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him-- dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

True or False buttons:

Question: When Ralph first asked Li Yan for a date, this was sexual harassment.

Answer: False. Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

Question: Li Yan cannot complain of sexual harassment because she went on a date with Ralph.

Answer: False. Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

[new screen]

Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the agency's AAO. Ralph is questioned about his behavior and he apologizes. He is instructed by the AAO to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.

Question: Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed.

He is just being nice to Li Yan because he likes her.

Answer: False. Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace

New York State Governor's Office of Employee Relations

behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

The Boss with a Bad Attitude [Scenario Two]

Sharon transfers to a new location with her agency. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is "easy on the eyes." Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.

Question: Because Paul did not tell Sharon that she is unattractive, he has not harassed her.

Answer: False. Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a "compliment." The discussion is still highly offensive to Sharon, as it would be to most reasonable persons in her situation.

Question: By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior.

Answer: True. Simply bringing up the visit to the strip club is inappropriate in the workplace, especially by a supervisor, and it would be appropriate for Sharon to report this conduct. A one-time comment about going to a strip club is behavior that Paul would be told to stop, even though it probably would not rise to the level of unlawful harassment, unless it was repeated on multiple occasions.

Question: Paul should be instructed to stop making these types of comments, but this is not a serious matter.

Answer: False. Paul's comments about the female employees are a serious matter and show his contempt for women in the workplace. Paul is required to model appropriate behavior, and must not exhibit contempt for employees on the basis of sex or any protected characteristic. Sharon should not have to continue to work for someone she knows harbors such contempt for women, nor should the other employees have to work for such a supervisor. Management should be aware of this, even if the other employees are not,

New York State Governor's Office of Employee Relations

and Paul should be disciplined and, most likely, removed from his current position.

No Job for a Woman? [Scenario Three]

Carla is a licensed heavy equipment operator for the state. Some of her male coworkers think it is fun to tease her. Carla often hears comments like "Watch out, here she comes—that crazy woman driver!" in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says "Men only."

Question: Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously.

Answer: False. Whether Carla is being harassed depends in part on Carla's opinion of the situation, that is, whether she finds the behavior offensive. However, if at any point Carla does feel harassed, she is entitled to complain of the behavior and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.

Question: Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go.

Answer: False. Carla can still complain to the supervisor who is then on notice that the behavior bothers Carla and must be stopped. The supervisor's failure to take Carla's complaint seriously, constitutes serious misconduct on his or her part. Carla can also complain directly to the agency's AAO, either instead of going to the supervisor, or after doing so. The agency is responsible for assuring that all employees are aware of its antiharassment policies and procedures.

[new screen]

Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, "You're taking a job away from a man who deserves it," "You should be home with your kids," and "What kind of a mother are you?" Also, someone scratched the word "bitch" on Carla's toolbox.

Question: These behaviors, while rude, are not sexual harassment because they are not sexual in nature.

Answer: False. The behaviors are directed at her because she is a woman and appear to be intended to intimidate her and cause her to quit her job. While not sexual in nature, this harassment is **because of her sex** and will create a hostile work environment if it is sufficiently severe or frequent.

[new screen]

Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.

Question: There is nothing Carla can do because she can't prove who vandalized her toolbox.

Answer: False. Carla should speak to her supervisor immediately, or contact her AAO directly. Although the situation has become very difficult, it is the agency's responsibility to support Carla and seek a solution. A significant investigation must be promptly undertaken and appropriate remedial action must follow.

Too Close for Comfort [Scenario Four]

Keisha has noticed that her new boss, Harold, leans extremely close to her when they are going over the reports that she prepares. He touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from him in these situations, but he doesn't seem to get the message.

Question: Keisha should just ignore Harold's behavior, as it is not sufficiently severe or pervasive.

Answer: False. If Keisha is uncomfortable with Harold's behavior, she has options. If she feels comfortable doing so, she should tell Harold to please back off because his closeness and touching make her uncomfortable. Another option is to complain directly to her agency's AAO, who will speak with Harold. Although this may not be sufficiently severe or pervasive to create an unlawful harassment situation (unless it was repeated by Harold after he was told to stop), there is no reason for Keisha to be uncomfortable in the workplace. There is no valid reason for Harold to engage in this behavior.

[new screen]

Before Keisha gets around to complaining, Harold brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Harold "traps" her in his office after they finish discussing work by standing between her and the door of his small office. Keisha doesn't know what to do, so she moves past him to get out. As she does so, Harold runs his hand over her breast.

Question: Harold's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to

New York State Governor's Office of Employee Relations

complain about Harold.

Answer: False. Harold is now engaging in a pattern of escalating behavior. Given the pattern of his "too close" and "touching" behavior, it is unlikely that this was inadvertent. Even before being "trapped" in Harold's office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.

Question: Harold touching Keisha's breast is inappropriate but is probably not unlawful harassment because it is not "pervasive" enough.

Answer: False. Any type of sexual touching is considered "severe," and the more severe the behavior, the fewer times it needs to be repeated in order to be unlawful harassment. The state regards any sexual touching to be very serious misconduct, and Keisha should immediately report it without waiting for it to be repeated. Harold can expect to receive formal discipline for this behavior.

Quid Pro Quo Harassment

The following scenario will explain many aspects of *quid pro quo* sexual harassment.

A Distasteful Trade [Scenario Five]

Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying for the position, and that she is very interested in receiving the promotion. David says, "We'll see. There will be a lot of others interested in the position."

A week later, Tatiana and David travel together on state business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes he will be able to promote her, because he has always really enjoyed working with her. He tells her that some other candidates "look better on paper" but that she is the one he wants. He tells her that he can "pull some strings" to get her into the job and Tatiana thanks David. Later David suggests that they go to his hotel room for "drinks and some relaxation." Tatiana declines his "offer."

Question: David's behavior could be harassment of Tatiana.

Answer: True David's behavior as Tatiana's boss is **inappropriate**, and Tatiana should feel free to report the behavior if it made her uncomfortable. It is irrelevant that this behavior occurs away from the workplace. Their relationship is that of supervisor and supervisee, and all their interactions will tend to impact the workplace.

David's behavior, at this point, may or may not constitute **quid pro quo** harassment; David has made no threat that if Tatiana refuses his advance he will handle her promotion any differently. However, his offer to "pull some

New York State Governor's Office of Employee Relations

strings” followed by a request that they go to his hotel room for drinks and relaxation might be considered potentially coercive. Certainly, if David persists in his advances—even if he never makes or carries out any threat or promise about job benefits—then this could create a **hostile environment** for Tatiana, for which the agency could be strictly liable because David is a management employee.

[new screen]

After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to “make it worth his while” to pull strings for her. He then asks, “How about going out to dinner this Friday and then coming over to my place?”

Question: David has now engaged in *quid pro quo* harassment of Tatiana.

Answer: True. It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.

[new screen]

Tatiana, who really wants the position, decides to go out with David. Almost every Friday they go out at David's insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David and is only going out with him because she believes that he will otherwise block her promotion.

Question: Tatiana cannot complain of harassment because she voluntarily engaged in sexual activity with David.

Answer: False. Because the sexual activity is **unwelcome** to Tatiana, she is a victim of sexual harassment. Equally, if she had refused David's advances, she would still be a victim of sexual harassment. The offer to Tatiana to trade job benefits for sexual favors by someone with authority over her in the workplace is *quid pro quo* sexual harassment, and the agency is exposed to liability because of its supervisor's actions.

[new screen]

Tatiana receives the promotion.

Question: Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her.

Answer: False. Tatiana can be the recipient of sexual harassment **whether or not** she receives the benefit that was used as an inducement.

Tatiana breaks off the sexual activities with David. He then gives her a bad

New York State Governor’s Office of Employee Relations

evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job.

Question: It is now “too late” for Tatiana to complain. Losing a place of favor due to the break up of the voluntary relationship does not create a claim for sexual harassment.

Answer: False. It is true that the breakup of a relationship, if truly consensual and welcomed at the time, usually does not create a claim for sexual harassment. However, the “relationship” in this case was never welcomed by Tatiana. David’s behavior has at all times been inappropriate and a serious violation of state policy. As the person who abused the power and authority of a management position, David has engaged in sexual harassment.

Sex Stereotyping

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 either sex should act or look.

Harassing a person because that person does not conform to gender stereotypes as to “appropriate” looks, speech, personality, or lifestyle is sexual harassment.

Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of the opposite sex, is sex discrimination. The previous scenario about Carla, the heavy equipment operator, shows some aspects of sex stereotyping. She was viewed negatively because she was in a job that is nontraditional for her gender. The scenario that follows about Leonard also explains aspects of sex stereotyping.

An Issue about Appearances [Scenario Six]

Leonard works as a clerk typist for a large state agency. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it’s “weird” that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him “jokingly” as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a “front desk” area, where he would interact with the public. Margaret tells Leonard that, if he wants that job, he had better look “more normal” or else wait for a promotion to mailroom supervisor.

Question (page 1): Leonard’s boss is correct to tell him wearing jewelry is inappropriate for customer service positions.

New York State Governor's Office of Employee Relations

Answer: False. Leonard's jewelry is only an issue because Margaret considers it is unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

<<new page starts here>>

Margaret also is "suspicious" that Leonard is gay, which she says she "doesn't mind," but she thinks Leonard is "secretive." She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.

Question (page 2): Leonard is the recipient of harassment on the basis of sex and sexual orientation.

Answer: True. Leonard is harassed on the basis of sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.

Leonard is also harassed on the basis of his perceived sexual orientation. It does not matter whether or not Leonard is a gay man in order for him to have a claim for sexual orientation harassment.

Leonard might also be considered a victim of harassment on the basis of gender identity, which is prohibited by a Governor's Executive Order. Leonard should report Margaret's conduct, which is clearly a violation of state policy, to the AAO.

[new screen]

Leonard decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the agency's AAO about Margaret's behavior. The AAO does an investigation and tells Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position without regard for his gender, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has much less experience than Leonard and lacks his two year degree in customer relations from a community college.

Question: Leonard has likely been the victim of discrimination on the basis of sex, sexual orientation, and/or retaliation.

Answer: True. We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. It appears that she is either biased against Leonard for the same reasons she harassed him, or she is retaliating because he complained, or both.

Leonard should speak further with the AAO, and the circumstances of the

New York State Governor's Office of Employee Relations

promotion should be investigated. If it is found that Margaret had abused her supervisory authority by failing to fairly consider Leonard for the promotion, she should be subject to disciplinary action. This scenario shows that sometimes more severe action is needed in response to harassment complaints, in order to prevent discrimination in the future.

Retaliation

The Human Rights Law protects an employee who has engaged in "protected activity" from being retaliated against in any manner.

In addition to any complaint or statement about any kind of discrimination, protected activity with regard to harassment includes:

- Making a complaint to a supervisor, manager, or AAO about harassment.
- Making a report of suspected harassment, even if you are not the recipient.
- Filing a formal complaint about harassment.
- Opposing discrimination.
- Assisting another employee who is complaining of harassment.
- Providing information or testifying in connection with a complaint of harassment filed with a government agency or in court.

An individual who engages in any of the above activities should expect to be free from any negative actions by supervisors, managers, or the agency motivated by these protected activities.

What is Retaliation?

Retaliation can be any negative action taken against the employee by the employer, which is more than trivial, that could have the effect of discouraging a reasonable worker from making a complaint about harassment or discrimination. The negative action need not be job-related or occur in the workplace.

What is Not Retaliation

A negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. In order to establish a claim of retaliation, an individual must be able to show that the adverse action was motivated by the protected activity.

The Supervisor's Responsibility

As shown in some of the scenarios above, supervisors and managers are held to a higher standard of behavior. This is because:

New York State Governor's Office of Employee Relations

- They are placed in a position of authority by the agency and must not abuse that authority.
- Their actions can create liability for the agency without the agency having any opportunity to correct the harassment.
- They are required to report any harassment that is reported to them or which they observe.
- They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
- They are expected to model appropriate workplace behavior.

Mandatory Reporting

Supervisors **must report any harassment** that they observe or know of, even if no one is objecting to the harassment.

If supervisors have questions about whether behavior that they have observed or learned about constitutes harassment, they should consult with their agency's Affirmative Action Officer.

If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, it must be promptly reported to the agency, without exception,

- **Even if the supervisor or manager thinks the conduct is trivial.**
- **Even if the harassed individual asks that it not be reported.**

What Should I Do If I Am Harassed?

Your employer cannot stop harassment in the workplace unless management knows about the harassment. Harassment should be reported to a supervisor, manager, or AAO. Agencies are required to have sexual harassment policies and procedures in place and to inform all employees about them regularly.

You should feel free to report any behavior that you experience or know about that is **inappropriate**, as described in this training, without worrying about whether or not it is unlawful harassment. Behavior does not need to be a violation of law in order to be in violation of state policy.

Individuals who report or experience harassment should cooperate with management so that a full and fair investigation can be conducted and any necessary corrective action can be taken.

If you report harassment to a manager or supervisor and receive an inappropriate response, such as being told to "just ignore it," do not hesitate to take your complaint to the next level of management or to go directly to your agency's AAO.

Investigation and Corrective Action

Your employing agency has the duty to investigate all reports of harassment. If it is determined that harassing behavior is occurring, the agency has a duty to take prompt and effective corrective action to stop the harassment. The agency also has a duty to take appropriate steps to ensure that harassment will not occur in the future.

All employees are required to cooperate with management and the AAO during investigations of possible harassment or other discrimination.

Other Types of Workplace Harassment

Remember that workplace harassment is not just about gender or inappropriate sexual behavior in the workplace. Any harassment based on a protected characteristic is prohibited in the workplace and may lead to disciplinary action against the perpetrator. Much of the information presented in this training applies to all types of workplace harassment.

Summary

All state employees should understand what we have discussed in this training, including:

- How to recognize harassment as inappropriate workplace behavior.
- The nature of sexual harassment.
- That harassment because of any protected characteristic is prohibited.
- The reasons why workplace harassment is employment discrimination.
- That all harassment should be reported.
- That supervisors and managers have a special responsibility to report harassment.

With this knowledge, state employees can achieve appropriate workplace behavior, avoid disciplinary action, know their rights, and feel secure that they are entitled to and can work in an atmosphere of respect for all persons.

The handbook referenced on page 2 of this training, titled *Equal Employment Opportunity in New York State: Rights and Responsibilities: A Handbook for Employees of New York State Agencies*, can be found at the following internet address:

http://www.goer.ny.gov/Employee_Resources/employee_handbook/2011Employee_Handbook.pdf