

Preventing Sexual Harassment

in the Workplace

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Presented By
New York Farm Bureau
and
Cornell Agricultural Workforce Development

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Cornell Cooperative Extension
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How Did We Get Here?

New York's budget for 2018-2019 includes new employer mandates regarding sexual harassment in the workplace as part of Gov. Cuomo's 2018 Women's Agenda for New York Equal Rights, Equal Opportunity.

Many of these measures mirror legislation that has been introduced in several other states as part of the response to the #MeToo movement.

New NYS Law Requires:

All employers to adopt a sexual harassment policy by October 9, 2018;
and

Provide sexual harassment training to all employees on an annual basis by
October 9, 2019.

Why Take This Seriously?

Because it's a problem. Sexual harassment is present in the agricultural community.

Because it's **good business**. Successful businesses have excellent employees working in great teams. **Harassment destroys people and teams.**

Because it's the **right thing to do**.

Because it's the law.

Prevalence of Sexual Harassment

EEOC's Select Task Force on Workplace Harassment found in 2016 that workplace harassment is a persistent problem that too often goes unreported.

- In 2015, the EEOC alone recovered \$164.5 million for workers alleging harassment.

Prevalence of Sexual Harassment

Some statistics:

- 25% of women reported experiencing “sexual harassment”;
- 40% of women reported experiencing sexually-based behaviors, such as unwanted sexual attention or sexual coercion;
- 50% of women reported experiencing unwanted sexual attention, sexual coercion, or other sexist or crude/offensive behavior.

Prevalence of Sexual Harassment

Anecdotally, we have heard . . .

- Women agribusiness representatives harassed while making farm visit.
- Men whistling and catcalling at women who work on the farm.
- An employee trying to get the attention of another employee, blocking her from passing by in a break room, and making unwelcome sexual advances.

It's Been Around for a Long Time. . .

Sexual harassment is a form of discrimination

Title VII of the Civil Rights Act of 1964

NYS Human Rights Law

Both prohibit discrimination based on sex.

What is Sexual Harassment?

- A form of sex discrimination that is unlawful at federal and state levels.
- Includes harassment based on sex, sexual orientation, gender identity, and transgender status.
- Unwelcome conduct either of a sexual nature or directed at someone because of a person's gender.

Examples of Workplace Sexual Harassment

Sexual harassment may be **verbal, visual and/or physical**

- Sexually offensive remarks or jokes;
- Unwanted touching or groping;
- Coerced sex acts;
- Requests for favors of a sexually suggestive nature (e.g., asking employee to dig coins out of a supervisor's pants pocket);
- Displaying pornographic images or cartoons;
- Comments (either complimentary or derogatory) about a person's gender or sexual preferences;
- Sexual gestures
- Whistling or cat-calling.

Types of Workplace Sexual Harassment

Harassment is illegal when it is so frequent or severe that it creates hostile or offensive work environment or when it results in an adverse employment decision.

- Hostile Work Environment
- Quid Pro Quo: trading this for that

Who Can Be a Harasser?

The harasser can be a supervisor, a co-worker, or someone who is not an employee, such as a client or customer.

Mandatory Arbitration Prohibition and Limited Nondisclosure Provisions

Employers **cannot require** mandatory arbitration of sexual harassment claims or nondisclosure provision to resolve sexual harassment claims.

- It may only be included **if complainant's preference**
 - **If included**, there is a three-step process for documenting such preference:
 - There must be a written agreement reflecting this preference;
 - Complainant has a full 21 days to consider the resolution;
 - Complainant has 7 days to revoke after agreeing

An Employer's Policy

- The employer's policy prohibiting sexual harassment in the workplace must be consistent with guidance issued by the NYS Department of Labor/Division of Human Rights.
- **There is a model policy on the State's website.** (<https://www.ny.gov/combating-sexual-harassment-workplace/employers>.)
- An employer that does not adopt the State's model policy must ensure that the policy they do adopt **meets or exceeds** the minimum standards in the model policy.

An Employer's Policy

Applies to all employees, applicants for employment, interns (whether paid or unpaid), contractors, and persons conducting business with the employer regardless of immigration status.

Who does that mean for YOUR farm?

An Employer's Policy

The Policy Must:

- Prohibit sexual harassment;
- Provide examples of prohibited conduct;
- Include information concerning the federal, state and local statutory provisions concerning sexual harassment, and remedies available to victims of sexual harassment;
- Include a complaint form; and
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties.

The Policy Must:

- **Inform** employees of their remedies and all available forums for adjudicating sexual harassment complaints administratively and judicially.
- **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.
- **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.

The Complaint Form

A compliance sexual harassment prevention policy must include a **complaint form** to report alleged incidents of sexual harassment.

If an employee believes they have been subjected to sexual harassment, the policy encourages them to complete this form and submit it to the person or office designated.

Employees must be informed about **where a complaint form may be found**.

Languages

- Employers should provide the sexual harassment policy **and** training in the **language spoken by their employees.**
- Model policies are now available in the following languages:
 - Spanish, Chinese, Korean, Russian, Italian, Polish, and Haitian-Creole.
 - <https://www.ny.gov/combating-sexual-harassment-workplace/combat-harassment-translations>

Sexual Harassment Prevention Policy Notice Language (NYS Poster)

Sexual harassment is against the law.

All employees have a legal right to a workplace free from sexual harassment, and [*Employer Name*] is committed to maintaining a workplace free from sexual harassment.

Per New York State Law, [*Employer Name*] has a sexual harassment prevention policy in place that protects you. This policy applies to all employees, paid or unpaid interns, and non-employees in our workplace, regardless of immigration status.

If you believe you have been subjected to or witnesses sexual harassment, you are encouraged to report the harassment to a supervisor, manager, or [*other person designated*] so we can take action.

Our complete policy may be found: _____

Our Complaint Form may be found: _____

If you have questions and to make a complaint, please contact:

[*Person or office designated*]

[*Contact information for designee or office*]

For more information and additional resources, please visit:

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>



**Combating
Sexual Harassment**

Training

- All employees are required to receive training annually;
- New employees should be trained as soon as possible;
- No exemptions for employer size or for farm employees;
- Training should be provided in the language that employees understand;
- **Best Practice: train new employees within 30 days.**

An Employer's Policy. . . Training

Every employer in New York State is required to provide employees with sexual harassment prevention training.

NOTE: The training requirement does not apply to non-employees such as interns or volunteers. However, non-employees must be given the employer's policy.

Training Goals

- Communicate the organization's conduct expectations;
- Foster a culture where employees speak up on behalf of themselves and others and “boundary set”;
- Foster a culture where employees adjust their behaviors to accommodate others' thresholds of tolerance;
- Explain how to make a complaint;
- Assure employees that reports will be taken seriously while being fairly investigated;
- Identify and eradicate workplace harassment. **FOR REAL.**

Training Must

- **Be interactive**, meaning it requires some level of feedback by those being trained, for example:
 - Web-based with questions – employee must select correct answers to complete training;
 - Web-based with an option to submit a question and receive an immediate or timely answer;
 - Live training (in person, by phone, by video) where the presenter asks employees questions, or vice versa;
 - Web-based or in-person training with a feedback survey for employees to complete.

Watching a video or reading a document alone is not interactive training!

- Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights.

Training Must

- Include examples of conduct that would constitute unlawful sexual harassment;
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- Include information concerning employees' rights of redress and all available forums for adjudicating complaints;
- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

Employers' Training Options

- Do the training yourself, using the state provided resources.
- Use the provided videos, complete your training with information specific to your business and with interactive opportunities.
- Use an outside training provider. i.e. HR Consultant, Cornell Cooperative Extension.

New York State Provided Training Tools

- **Written document** in Word, PDF, with case studies (23 pages).
- **Presentation** in PDF and PowerPoint, with notes (32 slides).
- **Case studies** in PDF and PowerPoint, with notes (66 slides).
- **Training videos** on YouTube and downloadable.

Part 1 is the training (19 minutes).

Part 2 is the case studies (22 minutes).

All tools are available in English, Spanish, Haitian-Creole, and 5 other languages.

<https://www.ny.gov/combating-sexual-harassment-workplace/combating-harassment-translations>

Special Requirements of Supervisors and Managers

The Manager's Responsibility:

- Managers are held to a **high standard of behavior** and have a special responsibility to report sexual harassment;
- They are placed in a position of authority;
- **They are expected to model appropriate behavior;**
- Their actions can create liability for the employer without the employer having any opportunity to correct the harassment.

Managers and Mandatory Reporting

- Managers must report any harassment that they observe or know of, **even if no one is objecting** to the harassment. If you see or hear something, say something!
- If a manager receives a report of harassment, or is otherwise aware of harassment, it **must** be promptly reported to the employer--**Even if the harassed individual asks that it not be reported!**
- Managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue, and for engaging in any retaliation.

Employer Obligations for Follow-Up

Investigation and Corrective Action

- Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action.
- An investigation of any complaint should be commenced immediately and completed as soon as possible.
- The investigation will be kept confidential to the extent possible.
- Any employee may be required to cooperate as needed in an investigation.



**Combating
Sexual Harassment**

Investigation Process

- [*Person or office designated*] will conduct an immediate review of the allegations, and take any interim actions
- Relevant documents, emails or phone records will be requested, preserved and obtained.
- Interviews will be conducted
- The individual who complained and the individual(s) accused of sexual harassment are notified of final determination and that appropriate administrative action has been taken.

Take Action to Protect the Person Making the Complaint

1. Take every complaint seriously;
2. Determine if immediate action is needed to protect the person's physical safety;
3. Maintain confidentiality as much as possible. It can be extremely difficult for a person to come forward with a complaint;
4. Document your actions.

Plan For an Investigation

1. Make a plan. What is the scope of the investigation and what question(s) should be answered?
2. Who will investigate? To be credible, it may be necessary to bring in someone from outside the organization such as an attorney or HR consultant.
3. What evidence needs to be collected? Phone records, time sheets, social media, other communications, camera footage, etc.
4. Who will be interviewed, in addition to the person making the complaint and the accused?
5. Prepare interview questions in advance for the complainant, the accused, and any witnesses. (See guidance at: <https://www.eeoc.gov/policy/docs/harassment.html>)
6. Document your actions.

Conduct the Investigation

1. Gather evidence.
2. Conduct interviews using your plan. Stick to your questions and leave gaps in the conversation for employees to respond.
3. Resist the urge to fill in gaps or answer for the employee.
4. Make a decision. The standard is “preponderance of evidence.” Is it more likely to have happened than not?
5. Document your actions.

Take Corrective Actions and Follow-Up

1. If warranted, take disciplinary actions against the accused. This may range from a written reprimand to termination of employment.
2. Take corrective actions as needed such as reassignment of workers. Do not inadvertently punish the person making the complaint.
3. Document your actions with a complete written report. Include: all documents reviewed and a summary, names of those interviewed and summary, timeline of events, notes of any prior events, your basis for any decisions or resolutions of the matter.
4. Communicate with the person making the complaint that appropriate action was taken.
5. Follow up frequently with the complainant to be sure that the harassment has stopped and there is no retaliation. Document your follow up.

WRAP-UP

Best Practice. . .

Tips. . .

Reminders. . .

- Your policy must **meet or exceed** NYS requirements.
- Volunteers and contractors are not subject to training but **must** be given the policy.
- Training time is generally compensable.
- Minors must be trained, but may receive simplified training.
- Training **must be interactive**. Watching a video or reading a document is not interactive training.

WRAP-UP

Best Practice. . .

Tips. . .

Reminders. . .

- Document your training: have your employees sign an attendance sheet.
- Tell your employees where to find a complaint form.
- All new employees should receive a copy of your policy prior to commencing work.
- New employees must be trained asap. Train in 30 days.
- While supervisors **MUST** report incidents of sexual harassment in the workplace, employees do not.

For more information...

- Information and sample forms can be found on New York State's Combatting Sexual Harassment in the Workplace website: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.
- Model policies and forms in languages other than English can be found at: <https://www.ny.gov/combating-sexual-harassment-workplace/combating-harassment-translations>
- New York State has made two videos available for employers to assist in the training requirements. These videos may be found at: <https://www.youtube.com/watch?v=sL7LwBsV9bM> and <https://www.youtube.com/watch?v=1za7gs9S2H0>
- More help at Cornell Agricultural Workforce Development: <http://agworkforce.cals.cornell.edu/regulations/sexual-harassment-prevention/>

QUESTIONS?