

Please be advised that outside counsels have been retained to investigate any allegations of sexual harassment, discrimination, or retaliation. Complaints do not need to be in writing.

- If a complaint is against a Member of the Assembly, please contact Lianne Pinchuk at (518) 915-3933.
- If a complaint is against an employee of the Assembly, please contact Brian Selchick at (518) 788-9426

## **NEW YORK STATE ASSEMBLY POLICY PROHIBITING HARASSMENT, DISCRIMINATION AND RETALIATION**

### **I. STATEMENT OF POLICY**

The New York State Assembly ("Assembly") believes all persons have the right to be treated with dignity and respect and is committed to maintaining a workplace free from unlawful discrimination and harassment. The conduct prohibited by this Policy will not be tolerated, and the Assembly will take all allegations of violations seriously.

This Policy is issued to assure covered individuals that they are protected from discrimination and harassment based on race, color, sex, national origin, creed (including religion), sexual orientation, age, disability, military status, marital status, predisposing genetic characteristics, status as a victim of domestic violence, gender identity, gender expression, transgender status, or gender dysphoria to the fullest extent required by law or Assembly policies. The Assembly also fully complies with sections 296 (15) and (16) of the Executive Law, Article 23-A of the Correction Law, and section 201-g of the Labor Law.

Anyone who feels that they have been subjected to discrimination or harassment prohibited by this Policy may report the conduct using the procedures described below. Anyone who witnesses prohibited discrimination or harassment may also report the conduct using these procedures. Members, supervisors, and management personnel are mandatory reporters and are required to report prohibited discrimination and harassment of which they become aware through complaints made to them or through firsthand knowledge.

In order to assure that violations of this Policy are promptly reported and properly addressed, this Policy also prohibits retaliation against anyone who reports violations (whether the reporter is the victim or a bystander) and anyone who provides information relevant to a complaint made under this Policy. Appropriate and proportional disciplinary sanctions will be imposed upon any Member or employee who is found to have violated this Policy, the New York State Human Rights Law, or other applicable laws.

## **II. INDIVIDUALS COVERED UNDER THIS POLICY**

This Policy applies to and protects Members of the Assembly, all employees, which for the purposes only of this policy includes interns participating in the Assembly Intern Program, applicants for employment, and certain non-employees (defined as someone providing services in the Assembly workspace but not employed by the Assembly, such as a contractor, subcontractor, vendor, or consultant), regardless of whether the prohibited conduct is engaged in by a Member, supervisor, co-worker, or (in some circumstances) someone not employed by the Assembly, including, but not limited to, lobbyists, outside vendors, Member's constituents, or independent contractors. The Policy covers prohibited discriminatory behavior in the workplace and in certain settings outside the workplace, such as off-premises business meetings, work-related receptions, working meals, business trips, or business-related social events.

## **III. DEFINITIONS OF PROHIBITED HARASSMENT AND DISCRIMINATION**

### **A. Prohibited Discrimination**

It is a violation of this Policy for covered individuals to be discriminated against because of their race, color, sex, national origin, creed (including religion), age, disability, sexual orientation, military status, marital status, predisposing genetic characteristics, status as a domestic violence victim, gender identity, gender expression, transgender status, or gender dysphoria, and the other protected classes listed in the Statement of Policy (Section I), in the terms and conditions of their employment, including hiring, firing, promotion, assignment, salary, and benefits.

It is also a violation of this Policy for covered individuals to discriminate against a non-employee third party because of their race, color, sex, national origin, creed (including religion), age, disability, sexual orientation, military status, marital status, predisposing genetic characteristics, status as a domestic violence victim, gender identity, gender expression, transgender status, or gender dysphoria, and the other protected classes listed in the Statement of Policy (Section I), in the performance of the covered individual's job duties.

### **B. Prohibited Harassment**

Harassment on the basis of race, color, sex, national origin, creed (including religion), sexual orientation, age, disability, military status, marital status, predisposing genetic characteristics, status as a domestic violence victim, gender identity, gender expression, transgender status, or gender dysphoria (called protected classes) and the other protected classes listed in the Statement of Policy (Section I) violates this Policy.

While people may sometimes make comments or jokes without intending harm or realizing that their conduct is offensive to someone else, those actions can be unwanted and can create a level of discomfort and stress that interferes with the

ability of employees to perform their duties. The law and this Policy call that situation a hostile work environment. Preventing a hostile work environment requires awareness by everyone at the Assembly of the impact that these actions may have on others.

## **1. 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, gender identity, gender expression, and the status of being transgender.

### **a. Types of Sexual Harassment**

Sexual harassment can violate this Policy in two different ways. It can take the form of a hostile work environment or it can be quid pro quo sexual harassment.

*Hostile work environment sexual harassment* is described by courts as conduct directed at individuals based on their sex that unreasonably interferes with their work environment, regardless of whether the person or persons intended to offend. The objectionable conduct must also be something that a reasonable person would consider to be offensive and the targeted individual herself or himself considers to be offensive and unwelcome.

*Quid pro quo sexual harassment* occurs when someone with power (to hire, fire, deny a promotion, reassign to significantly different responsibilities, or decide a significant change in benefits) demands a sexual favor and ties the performance of that favor to a tangible action (such as hiring, firing, promotion, or raise). If the employee gives in to that demand, or the employee refuses and the person with power carries out the threat, then quid pro quo sexual harassment has occurred.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when, for example:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment;

(2) submission to or rejection of such conduct by a person is used as the basis of employment decisions affecting the person; or

(3) such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. While it is not possible to list all circumstances that may constitute sexual harassment, a partial list of unwelcome behavior that may be considered sexual harassment includes:

- Making subtle or direct advances or propositions for sexual favors;
- Using sexual language or epithets;
- Making inappropriate comments about an individual's body or dress;
- Making comments about an individual's sexual prowess or deficiencies;
- Making sexual jokes;
- Engaging in flirtation and/or making sexual innuendos;
- Leering, making "elevator eyes," whistling, or making catcalls;
- Touching, which may include brushing against the body, squeezing, rubbing, hugging, massaging, patting, or other intentional or unintentional physical conduct that is sexual in nature;
- Uttering sexually suggestive insults or obscene comments;
- Subtle or obvious pressure for unwelcome sexual activities;
- Making sexual gestures;
- Coercing sexual acts;
- Displaying sexually revealing or derogatory pictures, posters, or cartoons (including in the background during virtual meetings or events);
- Circulating, whether in print or in electronic form, literature, games, or communications (for example, articles, magazines, or emails) of a sexual nature;
- Asking questions about sexual activities;
- Suggesting or demanding sexual favors in exchange for promotions, continued employment, or promises of the same;
- Physical assaults of a sexual nature (e.g., rape, sexual battery, molestation, or attempt to commit such acts, which may also constitute crimes); and
- Persistently seeking non-work-related social interaction and failing to cease such activity after the person pursued has said that they wish the pursuer to stop. (Such pursuit constitutes harassment even if the person initially agreed to engage in such social activity.)

These behaviors may constitute sexual harassment whether communicated in person or in electronic or other form, including social media sites, tweets, and the like, and whether or not anonymously. It is important to be mindful that the climate surrounding sexual harassment is constantly evolving and comments or behaviors that were previously considered acceptable may no longer be considered acceptable. Individuals should be aware of the current

environment and recognize changing attitudes toward what constitutes offensive conduct in the workplace.

**b. Targets of Sexual Harassment**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York law protects employees (including paid interns), 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 co-worker, or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer, or visitor.

**2. Other Forms of Prohibited Harassment**

Harassment directed at individuals based on race, national origin, creed (including religion), sex, age, disability, sexual orientation, and the other protected classes listed above may also create an unlawful hostile work environment that violates this Policy. This type of hostile work environment is created by verbal or physical conduct that denigrates (puts down or mocks) or shows hostility to or dislike of a person because of a person's protected class or the protected class of that person's relatives, friends, or associates, and that:

- creates an intimidating, hostile, or offensive work environment;
- unreasonably interferes with an individual's work performance; or
- otherwise adversely affects an individual's employment opportunities.

Harassment consistently targeted at one sex, even if the content is not sexual, may create a hostile work environment based on sex. This is called gender-based or sex-based harassment. For example, if a person is subjected to repeated remarks that belittle the person and those remarks are made because of the person's gender, that conduct may constitute unlawful harassment based on gender – as opposed to sexual harassment. Examples of such harassment are remarks such as:

- male directors of communication are superior to females because males are "natural leaders;"
- women are not emotionally capable of handling certain jobs;
- women's hormones interfere with handling work matters in a professional manner;
- women make better negotiators than men because they are better listeners; or
- it is risky to put women in a key position, because they are apt to take maternity leaves and time off to care for sick children.

Refusal to use a transgender person's self-identified name, pronouns, or title may constitute prohibited gender-based harassment or discrimination.

Similarly, repeated comments of a racist nature or demeaning to people of another protected class violate the Policy and may create an illegal hostile environment. Examples include, but are not limited to:

- Referring to individuals using racially, ethnically, or religiously offensive terms;
- Displaying pictures or artifacts that are commonly understood to be threatening, such as KKK hoods or nooses or swastikas or SS bolts, in ways that are likely to be interpreted as threats;
- Gossiping or speculating about individuals' sexuality or gender identity, or outing them to others against their will;
- Knowingly and intentionally or repeatedly refusing to refer to individuals by their preferred name or pronouns; or
- Ridiculing individuals or using degrading language based on their physical, mental, or psychological abilities.

### **3. Prohibited Third Party Harassment**

Harassment by non-employee and non-Member third parties such as lobbyists, constituents, or outside delivery staff can be a violation of the Policy. Any third party harassment should be reported to the Employee's supervisor, who is mandated to report violations of the Policy under Section V (D). Upon report of harassment by third parties, the Assembly will take all reasonable steps within its power to stop or prevent the continuation of this conduct. If the matter is not addressed to the Employee's satisfaction, the Employee may make a complaint using the external process set forth in Section XII.

### **4. Location of Prohibited Harassment**

Prohibited discrimination or harassment, whether based on sex or another protected category, is not limited to the physical workplace itself. It may occur while covered individuals are traveling for business or at Assembly-sponsored events or parties. Remote and virtual meetings or events conducted virtually using web-based video conferencing, calls, texts, emails, and other communications by social media by covered individuals may constitute unlawful workplace discrimination or harassment, even if they occur away from the workplace premises or not during work hours.

## **IV. PROTECTION AGAINST RETALIATION**

This Policy prohibits retaliation against an individual who, in good faith, opposes or reports harassment or discrimination that the individual reasonably believes violates this Policy, or who provides information in connection with a complaint. Retaliation will be treated with the

same strict discipline with which the Assembly treats prohibited harassment or discrimination. Retaliation should be reported in the same manner as harassment and will be handled in a similar fashion.

Retaliation includes, but is not limited to:

- Directly or indirectly causing any damage to any complainant's reputation or negatively affecting the complainant's employment and/or professional and/or future opportunities because of the assertion of a complaint under this Policy or an objection to discrimination, harassment and/or retaliation in violation of this Policy;
- Directly or indirectly causing any damage to the reputation of any witness or negatively affecting any witness's employment and/or professional and/or future opportunities because of the witness's participation in any investigation;
- Directly or indirectly causing a third party to engage in similar conduct; or
- Violating the confidentiality provisions of this Policy and any additional terms identified by the Assembly Standing Committee on Ethics and Guidance (Ethics Committee) including, without limitation, telling anyone about the investigation, other than a person's legal counsel (if any) and except (and solely) to the extent a supervisor needs to give instructions to current staff to ensure the retention of all written and electronic documents covered by any notice to preserve such material.

Upon receiving a complaint against an employee (as discussed below), the Director of Human Resources, in coordination with the Minority Director of Administration and Personnel when appropriate, shall develop a written plan to prevent retaliation against the complaining party and witnesses and take reasonable steps to implement the plan. Notice of the plan will be communicated to the person making the complaint, the accused, the direct supervisor of both the complainant and the accused, and anyone with a need to know. The notice will include the contents of the plan, the policy against retaliation, and the serious consequences that would result from retaliation.

Upon receiving a complaint against a Member (as discussed below), the Chair of the Assembly Standing Committee on Ethics and Guidance (Ethics Committee) shall develop a written plan to prevent retaliation against the complaining party and witnesses and take reasonable steps to implement the plan. In developing such plan, the Chair shall, to the extent practicable, consult with the Members of the Committee. Notice of the plan will be communicated to the person making the complaint, the alleged harasser, the Minority Director of Administration and Personnel when appropriate, and anyone with a need to know. The notice will include the contents of the plan, the policy against retaliation, and the serious consequences that would result from retaliation.

## **V. REPORTING DISCRIMINATION OR HARASSMENT – COMPLAINT PROCEDURE**

All Members of the Assembly, supervisors, and managers have the responsibility to report all incidents of discrimination or harassment, regardless of the offender's identity or position. The Assembly encourages all employees to do the same. The Assembly's procedures are

designed to help people feel free to discuss any concerns they have about discrimination or harassment with someone in a position to do something about them. This Policy also requires that employees' and interns' complaints be listened to and treated respectfully. The Assembly will investigate all complaints of Policy violations. If a complaint is found to have merit, the Assembly will respond with appropriate and proportionate action.

All information will be handled with the highest degree of confidentiality possible under all circumstances, recognizing that there are circumstances where complete confidentiality may not be possible.

#### **A. Self-Help**

Sometimes a person engaging in offensive conduct is unaware that the behavior is unwelcome. The Assembly supports employees (including interns) who inform offenders, in a professional manner, that their behavior is unwelcome and request that they immediately stop. This message can be spoken or in writing. Anyone who chooses this method will have the full support of the Assembly, and retaliation by anyone receiving such a message will be treated as a violation of this Policy. If efforts at self-help do not work and the offending behavior continues, then the employee (including an intern) should promptly make a complaint using the procedures discussed below.

It is *not necessary to attempt self-help*. An employee (including an intern) should never attempt self-help if the employee (including an intern) feels physically threatened or otherwise uncomfortable. In order for the appropriate authorities to be aware of harassment, discrimination, or retaliation, an employee should report as described below. An employee (including an intern) may utilize any of the following reporting mechanisms in order to apprise the Assembly of harassment, discrimination, or retaliation.

#### **B. Reporting Policy Violations Committed by an Employee (not a Member)**

Any employee or intern who believes that an employee (not a Member) is engaging in behavior that violates this Policy (whether toward the employee or someone else) may report that conduct to either (1) the Director of Human Resources at (518) 455-4001 or (2) lawyers who have been retained by the Assembly to handle these matters; contact information for members and staff is posted both on the Assembly website as well as on the first page of this Policy.

#### **C. Reporting Policy Violations Committed by a Member**

Any employee who believes that a Member is engaging in behavior that violates this Policy (whether toward the employee or someone else) is expected to report that conduct to either (1) the Chair or Ranking Minority Member of the Assembly Standing Committee on Ethics and Guidance, who shall promptly advise the other of the existence of such complaint; or (2) Counsel to the Standing Committee on Ethics and



Guidance; contact information is posted on the Assembly website for members and staff as well as on the first page of this Policy. When reporting by telephone, callers should leave a private phone number and brief message if they wish to be contacted.

**D. Mandatory Reporters**

All Assembly Members, managers, and supervisors who, through complaints made to them or through firsthand knowledge, become aware of conduct that may violate this Policy regardless of whether the conduct is committed by Members or employees, must report the conduct with due speed, even if the apparent victim does not wish to make a complaint or asks that the information be kept confidential. The failure of a Member, manager, or supervisor to timely report a potential violation of this Policy may be grounds for disciplinary action against the Member, manager, or supervisor.

**E. Timeliness in Reporting**

The Assembly expects employees, interns, and Members to promptly report complaints so that it can take prompt and constructive action. Early reporting and intervention are the most effective methods of addressing Policy violations. Violations that occurred more than three years before the date of reporting will not be investigated, nor will evidence of those violations be considered against a current alleged offender, unless they constitute crimes or violations for which the relevant statute of limitation has not yet run, or the behavior has been continuous (even if intermittent) and at least some of it has occurred within the prior three years.

**F. Standard Complaint Form**

A standard complaint form for submission of a written complaint is attached to this Policy and may also be obtained on the Assembly's website. Individuals may use this form or report orally as set forth above.

**G. Other Forums**

Employees (including interns) and non-employees who believe they have been a victim of prohibited discrimination or harassment may also seek assistance in other available forums, as outlined in Section XII on Legal Protections and External Remedies below.

**VI. INVESTIGATIONS, DETERMINATIONS, AND APPEALS WHEN COMPLAINT IS AGAINST AN EMPLOYEE (NON-MEMBER)**

**A. Investigation**

If the complaint is against an employee, the investigation shall be conducted by lawyers who have been retained by the Assembly to handle these matters. The

investigation will be completed in a timely manner after receipt of the complaint or as soon as practicable thereafter. If an investigation reasonably cannot be completed within 30 days, then the investigator shall make an interim report to the Director of Human Resources, and, when appropriate, the Minority Director of Administration and Personnel, regarding the status of the investigation and setting forth any reason for the delay. The outside lawyers will conduct an investigation, which shall be confidential to the extent reasonably possible, and will submit a confidential report to the Director of Human Resources with their findings, conclusions, and recommendations. After the witnesses have been interviewed, the outside lawyers will provide to the accused a written general summary of the evidence provided by the complaining party, which shall provide sufficient information to allow the accused employee to respond effectively but shall not reveal the identity of witnesses unless, in the discretion of the Director of Human Resources, the circumstances so warrant.

The accused employee shall have the opportunity to provide a response, either orally or in writing. The accused employee shall have no other right of access to the information gathered by the outside lawyers, except as required by law.

Any employee (including an intern) may be required to cooperate as needed with an investigation of alleged discrimination or harassment, and failing to do so may result in disciplinary sanction.

## **B. Determination by Director of Human Resources**

The Director of Human Resources will make the final determination after considering the investigation report and any other evidence brought to the Director's attention. The final determination shall be made within 30 days of the Director of Human Resources' receipt of the investigation report. It shall be in writing, shall indicate whether there was a violation of the policy, and shall specify any discipline to be carried out. The finding will be placed in the file maintained by Human Resources for the person accused.

If the Director of Human Resources determines that conduct prohibited under this Policy has occurred, the Director will report that determination to the offending party's immediate supervisor, Member, and, when appropriate, the Minority Director of Administration and Personnel, along with the recommended discipline to be imposed. The Member or supervisor shall promptly carry out the discipline and confirm to the Director of Human Resources, in writing, that the Member or supervisor has done so. The confirmation will also be placed in the file maintained by Human Resources for the person accused. Discipline may include, without limitation, any or all of the following: oral warning, written warning, required attendance at additional harassment prevention training, required attendance at counseling, transfer, suspension with or without pay, discharge, and/or any other actions that the Director of Human Resources, in the Director's sole discretion, determines to be appropriate under the circumstances.

## **C. Notice**

Copies of the written determination shall be mailed, by certified mail, to the complainant at the complainant's last known home address and the employee against whom the complaint was made at the employee's last known home address. Copies of the written determination shall be delivered personally to the Speaker, and, as appropriate, the Minority Leader of the Assembly and the Minority Director of Administration and Personnel.

## **D. Appeals**

### **1. Determination of No Violation or Insufficient Evidence**

If the Director of Human Resources determines that this Policy was not violated or concludes that the Director cannot make a determination because there is not enough evidence, the complainant may appeal to the Speaker, who will designate someone to consider the appeal. The Speaker's designee shall be licensed to practice law in New York. The appeal must be in writing and delivered to the Speaker's office within 30 days of mailing the notice to the complainant in accordance with Section VI (C).

In deciding the appeal, the Speaker's designee shall review the written record of the Director of Human Resources' findings, the investigation report, and any written statements that the complainant or accused chooses to submit in support of or in opposition to the findings and recommendations of the Director of Human Resources. The Speaker's designee is not empowered to take testimony or seek any additional evidence. The Speaker's designee shall determine whether the Director of Human Resources' conclusions were arbitrary and capricious based on the information available to the Director but may not conduct a hearing to reexamine the findings of fact or consider new testimony or evidence. The Speaker's designee shall have no authority to entertain objections to the processes set forth in this Policy. The Speaker's designee shall issue the designee's determination within 30 days of submission of final written argument. If the Speaker's designee concludes that the employees who are party to the appeal cannot reasonably make their arguments without greater access to the facts of the underlying investigation, the Speaker's designee may summarize the information contained in the underlying investigative report and give the summary to the parties. However, the Speaker's designee shall not distribute the report itself to any of the employees who are party to the appeal and shall make every effort to protect the confidentiality of all witnesses. If the Speaker's designee finds that the determination was arbitrary and capricious, the Speaker's designee may send the matter back to the Director of Human Resources with instructions for further investigation or may modify the findings and make a determination that this Policy was violated. In that case, the Speaker's designee may recommend

discipline or send the matter back to the Director of Human Resources to determine discipline.

The determination of the Speaker's designee shall be the final step in the process. Nothing in this Policy prevents the complaining party from pursuing any rights the complaining party may have before the New York State Division of Human Rights or a court as noted below in Section XII.

## **2. Determination that Policy Was Violated**

If the Director of Human Resources finds that this Policy was violated, the accused may appeal to the Speaker, who will designate someone to consider the appeal. The Speaker's designee shall be licensed to practice law in the State of New York. The appeal must be in writing and delivered to the Speaker's office within 30 days of mailing the notice to the accused in accordance with Section VI (C).

In deciding the appeal, the designee shall review the written record of the Director of Human Resources' findings, the investigation report, and any written statements that the complainant or accused chooses to submit in support of or in opposition to the findings and recommendations of the Director of Human Resources' report. The Speaker's designee is not empowered to take testimony or seek any additional evidence. The Speaker's designee shall determine whether the conclusions were arbitrary and capricious and whether the discipline is shocking to the designee's conscience based on the information available to the Director but may not conduct a hearing to reexamine the facts or consider new testimony or evidence. If the Speaker's designee concludes that the employees who are party to the appeal cannot reasonably make their arguments without greater access to the facts of the underlying investigation, the Speaker's designee may summarize the information contained in the underlying investigation report and give the summary to the parties. However, the Speaker's designee shall not distribute the report itself to any of the employees who are party to the appeal and shall make every effort to protect the confidentiality of all witnesses. The Speaker's designee shall have no authority to entertain objections to the processes set forth in this Policy. If the designee finds that the determination of guilt was arbitrary and capricious or the discipline is shocking to the designee's conscience, then the designee may send the matter back to the Director of Human Resources with instructions for further investigation or the designee may modify the findings or the discipline imposed.

The designee's determination shall be the final step in the process.

**VII. REPORTING AND INVESTIGATION WHEN THE COMPLAINT CONCERNS THE DISCRIMINATORY OR HARASSING ACTIONS OF A THIRD PARTY WHO IS NEITHER AN EMPLOYEE NOR A MEMBER OF THE ASSEMBLY**

If the complaint concerns discrimination or harassment by a third party as listed in Section III (B) (3), the persons complaining should first bring the matter to the attention of their supervisors and ask them to attempt to cause the wrongful behavior to stop and to take such other measures as may be warranted. If the third-party discrimination or harassment continues or the complainant is not satisfied with the result of the efforts of the supervisor, the complainant may contact the Director of Human Resources seeking additional redress. The Director of Human Resources will take such actions as are warranted and may refer the matter for investigation by the independent investigator. If the supervisor who has failed to obtain a result satisfactory to the complainant is a Member of the Assembly, the Director of Human Resources will refer the matter to the Chair of or Counsel to the Assembly Standing Committee on Ethics and Guidance.

**VIII. INVESTIGATION, ETHICS COMMITTEE'S FINDINGS, AND RECOMMENDED DISCIPLINE WHEN COMPLAINT IS AGAINST A MEMBER**

**A. Investigation**

If a complaint is lodged against a Member of the Assembly, the Counsel to the Standing Committee on Ethics and Guidance shall assign an independent investigator from the Committee's pre-approved roster to investigate the matter. Barring extenuating circumstances, the investigator shall complete the investigation in a timely manner after the complaint is received by the Committee's Counsel.

The Ethics Committee may stay or decline to stay an investigation of a matter pending legal proceedings brought by the complainant in court or before an agency such as the New York State Division of Human Rights or the Equal Employment Opportunity Commission, in which case the Ethics Committee may defer or decline to defer to the outcome of such proceedings.

The investigator will conduct an investigation, which shall be maintained confidential to the extent reasonably possible. The investigator shall within seven days of receipt of the complaint present to the Ethics Committee Chair or counsel initial findings concerning the Committee's jurisdiction to hear the complaint and whether the complaint appears to have sufficient merit to continue the investigation. If there is a reasonable basis to conclude the complaint may have merit, the outside counsel will conduct further investigation and submit a confidential report within a reasonable time to the Ethics Committee with its factual findings and conclusions after its initial receipt of the complaint, barring extenuating circumstances.

If an investigation cannot reasonably be completed within 30 days, then the investigator shall make an interim report to the Committee's Counsel regarding the status of the investigation and setting forth any reason for the delay. The investigator

will conduct an investigation, which shall be maintained confidential to the extent reasonably possible, and will submit a confidential report to the Ethics Committee with its findings, conclusions, and recommendations. The accused Assembly Member will have no right of access to the information gathered by the investigator, except as provided in Section VIII (B) or as required by law.

The investigator shall immediately inform the Committee through its Chair or Counsel of any delay occasioned by lack of cooperation from a Member or witness or the counsel of either, including any failure to provide timely relevant documents in their possession. A failure to cooperate on the part of an accused or his or her counsel or staff may result in the Committee's determination to draw a negative inference as to credibility or guilt. The investigator shall report that (a) the evidence does not support a finding of violation, together with its reasons for that conclusion; (b) the evidence supports a finding that there was a violation and a hearing is warranted, together with its reasons for those conclusions; or (c) the investigator was unable to determine whether there was a violation and (1) further investigation or a hearing is warranted, together with its reasons for that conclusion or (2) further investigation or a hearing is likely to be fruitless together with its reasons for that conclusion or (3) certain actions short of further investigation leading to a Speaker-imposed sanction, if accepted and carried out by the accused Member, would obviate the need for further action.

As soon as a Member learns formally or informally of the existence of an investigation of a possible complaint against that Member by the Assembly Standing Committee on Ethics and Guidance, the Member will ensure that no workplace-related records, including electronic records that may in any way be related to the subject of the investigation, are discarded, altered, spoiled, or destroyed and will inform staff, including interns, and volunteers, to do the same. The Member will at the same time instruct staff, interns, and volunteers that should they be contacted by anyone acting under the authority of the Ethics Committee they must fully cooperate and any failure to do so may result in disciplinary sanction. The Member will inform staff, interns, and volunteers that, until the investigation is completed (including any appeal authorized under this Policy), they are not to discuss the subject(s) of the investigation except with their counsel should they choose to consult counsel. The Member will, to the maximum extent possible, ensure that the above-described records are preserved until the Committee or its counsel has communicated in writing that the records need no longer be preserved. Failure to comply with these requirements may result in the Committee's determination to draw a negative inference as to the Member's credibility or guilt.

#### **B. Member's Opportunity to Appear Before the Ethics Committee**

The Ethics Committee shall provide an opportunity for the accused Member to appear before the Ethics Committee at a private hearing, as defined by Section 73(1) of the New York State Civil Rights Law, to: 1) appear and testify under oath and/or 2) provide a written sworn statement from the accused Member for the Ethics

Committee's consideration. The Member may decline to attend or participate. Committee members may draw a negative inference as to credibility or guilt from a Member's refusal to participate. At least 15 days prior to the Member's scheduled appearance before the Ethics Committee, the Ethics Committee will provide the accused Member with a written general summary of the evidence provided by the complaining party, which shall provide sufficient information to allow the Member to respond effectively but shall not reveal the identity of witnesses unless, in the discretion of the Ethics Committee Chair, the circumstances so warrant.

If the Member chooses to appear and testify under oath, then any or all of the Ethics Committee members or Committee Counsel may, at their option, question the Member on the record. A Member may also provide a statement from the Member's counsel, which may be considered by the Ethics Committee but shall not substitute for the accused Assembly Member's sworn testimony.

The private hearing is the accused Member's sole opportunity to personally address and provide testimony to the Ethics Committee before it makes its findings and recommendation to the Speaker, if any.

#### **C. Ethics Committee's Findings and Recommendations to the Speaker**

The Ethics Committee shall review and consider the report submitted by the investigator, have an opportunity to question the investigator about the report, and consider the sworn testimony, if any, of the accused Member and any other evidence brought to its attention. It shall make any findings of violation of the Policy and recommendations in writing to the Speaker of the Assembly and, as appropriate, the Minority Leader. The recommended discipline, if any, may include oral censure, written admonishment or censure, removal as chair of a committee or subcommittee, required attendance at additional harassment prevention or anti-discrimination training, required attendance at counseling, periodic climate surveys (conducted by an independent consultant) of the Member's employees to ensure that there is no repeat of the conduct, removal and prohibition of interns working in the Member's office, ineligibility for future chair or leadership positions, freezing and/or reduction of staff allocations, and any other actions that may be appropriate. The Ethics Committee may make recommendations that serve to counsel, inform, and educate the accused Member even if the Committee has not determined that a violation of the Policy occurred. In a case where the Committee has not determined a violation of the Policy occurred, the Committee may authorize the Committee Counsel to inform the complainant of such determination.

#### **D. Confidentiality of Report**

The report of the independent investigator and all information created or obtained in the course of the investigation, together with any hearing before the Ethics Committee, shall be confidential as mandated by, and consistent with, Civil Rights

Law §73(8) and as required by the Speaker under this Policy. Any breach of confidentiality may result in disciplinary action.

## **E. Determination by the Speaker and Appeal**

### **1. Determination**

The Speaker shall review the Ethics Committee's findings that this Policy was violated and recommendations for sanctions and make a final written determination.

The discipline imposed by the Speaker may include oral censure, written admonishment or censure, removal as chair of a committee or subcommittee, required attendance at additional sexual harassment prevention training, required attendance at counseling, periodic climate surveys (conducted by an independent consultant) of a Member's employees to ensure that there is no repeat of the conduct, removal and prohibition of any interns working in the Member's office, ineligibility for future chair or leadership positions, freezing and/or reduction of staff allocations, and any other actions that may be appropriate under the law and circumstances.

The Speaker shall mail a copy of the determination and discipline to the Member by certified mail and shall direct that the Chair of the Committee or the Committee Counsel transmit a copy to the complainant. When appropriate, the Speaker shall also provide a copy of the determination to the Minority Leader of the Assembly. Any discipline imposed pursuant to this section and related findings shall be made public.

### **2. Appeal**

If the Speaker finds that this Policy was violated, in whole or in part, the accused Member may appeal. The appeal must be in writing and delivered to the Speaker within 30 days of the mailing of the notice to the Member in accordance with Section VIII(E)(1). Upon receipt of notice of appeal, the Speaker shall promptly appoint an independent outside appeals officer to administer the appeal. The Speaker's designee shall be licensed to practice law in New York.

The appeals officer may receive briefs from the accused and the Ethics Committee (or their respective counsel) and hold oral argument as the appeals officer determines, but is not empowered to take testimony or seek any additional evidence. The record to be reviewed by the appeals officer shall be limited to that which the Speaker considered in making his or her determination.

The appeals officer shall decide the appeal by applying a deferential standard of review, which is limited to: (a) an examination of whether the Speaker's determination was arbitrary and capricious and (b) an assessment of whether the associated discipline shocks the appeals officer's sense of fairness. The appeals officer shall have no authority to entertain objections to the processes set forth in this Policy. The appeals officer may affirm, reject, or modify the Speaker's



determination in accordance with these standards. The appeals officer shall issue the appeals officer's determination within 30 days of submission of final briefs or oral argument, whichever is later.

## **IX. CONFIDENTIALITY**

Except as otherwise provided by law or this Policy, all complaints and any proceedings related to them shall be strictly confidential and remain so. Any person breaching such confidentiality will be subject to appropriate disciplinary action and sanction and, where appropriate, legal action.

Under this Policy, complainants retain a right to speak truthfully and publicly about their experience, situation, and complaints absent a judicial order to the contrary. However, complainants who do so thereby release the accused and others, including witnesses, from any obligation of confidentiality under this Policy.

## **X. RECORD OF COMPLAINT AND INVESTIGATION**

The Assembly shall maintain for at least seven years a confidential written record of each complaint of violation of this Policy, whether the complaint was made orally or in writing, how it was investigated, and the resolution. All records with respect to an investigation, including the reports of the investigators, shall be maintained in a manner that ensures confidentiality and as mandated by Civil Rights Law Section 73 (8).

## **XI. TRAINING**

The Assembly shall conduct regular training sessions for Members, employees, and interns to ensure that everyone understands: the seriousness of the prohibitions contained in this Policy; how to recognize violations of this Policy and applicable laws that prohibit discrimination, harassment, and retaliation; the available mechanisms for addressing those violations; and the critical importance and commitment of the Assembly to eliminating prohibited discrimination, harassment, and retaliation.

In accordance with the Assembly's commitment to eradicating discrimination, harassment, and retaliation, the Assembly shall conduct annual interactive sexual harassment awareness and prevention and diversity awareness training for every Member and employee (including interns) in accordance with the provisions of this Policy and State law. All such training shall be mandatory and failure to attend such training within three months of the date originally scheduled shall subject the Member or employee (including interns) to appropriate sanction by the Speaker.

Separate training sessions shall be conducted for Members, supervisory employees and managers (including chiefs of staff), non-supervisory employees, and interns, with emphasis on the rights and responsibilities of the group being trained and shall include a component on workplace diversity. Each interactive training session shall last approximately two hours and shall be conducted in accordance with state law.

The Assembly will offer a sufficient number of training sessions so that Members, employees, and interns can reschedule if necessary.

Failure to attend required training shall constitute a separate and distinct violation of this Policy and shall be subject to appropriate sanction.

## **XII. LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

Discrimination and harassment is not only prohibited by the Assembly but is also prohibited by federal, state, and, where applicable, local law.

Aside from the internal process at the Assembly, which is outlined above, covered individuals may also choose to pursue legal remedies with the following governmental agencies.

### **A. New York State Division of Human Rights (DHR)**

The Human Rights Law (HRL), codified as New York Executive Law, art. 15, § 290 *et seq.*, applies to employers in New York State with regard to discrimination and harassment, and protects employees (including interns) and non-employees regardless of immigration status. A complaint alleging violation of the HRL may be filed either with the New York State Division of Human Rights (DHR) or the New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the alleged discrimination or 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 or harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the Assembly does not extend your time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of alleged discrimination or harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination or 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 discrimination or harassment or redress the damage caused, including paying 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, (718) 741-8400, [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [www.dhr.ny.gov/complaint](http://www.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.

## **B. United States Equal Employment Opportunity Commission (EEOC)**

The Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime **within 300 days** from the alleged discrimination or 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. However, there are certain restrictions contained in federal law that limit the ability of the personal employees of a state or local elected official to bring an action 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.

If an individual believes that they have been discriminated against at work, they 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 its website at [www.eeoc.gov](http://www.eeoc.gov) or emailing [info@eeoc.gov](mailto: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.

## **C. Local Protections**

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

## **D. Contact Local Law Enforcement**

If the harassment involves physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. An individual should contact the appropriate local law enforcement agency (e.g., sheriff's office or local police department).

### **XIII. DISSEMINATION**

A copy of this Policy shall be included in the Employee Information Guide, distributed at all training programs, distributed at least annually to every Member, employee, and intern, made available on the internet, and otherwise be disseminated as the Speaker may direct.



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CARL E. HEASTIE, SPEAKER

Issued: