

## ~~Harassment and Discrimination~~Discrimination, Bullying, and Harassment Prevention

### I. Purpose of Policy

MHLS is committed to providing a workplace free of unlawful harassment, ~~and~~ discrimination, ~~and~~ bullying. This includes sexual harassment (which includes harassment based on pregnancy, perceived pregnancy, childbirth, breastfeeding, or related medical conditions), ~~and~~ harassment based on gender, gender identity (including transgender identity, transitioning, and gender non-conforming individuals), gender expression and sex stereotyping, ~~as~~ as well as harassment based on such factors as race, color, religion, religious creed (including religious dress and religious grooming), national origin, ancestry, citizenship, age, physical or mental disability, legally-protected medical condition or information (including genetic information), family care or medical leave status, military caregiver status, military status, veteran status, marital status, domestic partner status, sexual orientation, status as a victim of domestic violence, sexual assault or stalking, enrollment in a public assistance program, engaging in protected communications regarding employee wages, requesting a reasonable accommodation on the basis of disability or bona fide religious belief or practice, or any other basis protected by federal, state, or local laws. MHLS strongly disapproves of and will not tolerate harassment of or discrimination ~~or bullying towards against~~ applicants, employees, unpaid interns, trustees, or volunteers by managers, supervisors, co-workers or third parties with whom employees come into contact. Similarly, MHLS will not tolerate harassment by its employees of non-employees with whom MHLS employees have a business, service, or professional relationship.

### II. ~~Harassment and Discrimination~~, Bullying, and Harassment Defined

**Discrimination** is bias or prejudice resulting in denial of opportunity, or unfair treatment regarding selection, promotion, or transfer. Discrimination is practiced commonly on the grounds of age, disability, ethnicity, origin, political belief, race, religion, sex, etc. factors which are irrelevant to a person's competence or suitability.

It is the unequal treatment provided to one or more parties on the basis of a mutual accord or some other logical or illogical reason. Discrimination is also the differences of two rates not explainable or justifiable by economic considerations such as costs.

**Bullying** is repeated, health-harming mistreatment of one or more people by one or more perpetrators. It is abusive conduct that includes, but is not limited to:

- Threatening, humiliating or intimidating behaviors.
- Work interference/sabotage that prevents work from getting done/
- Verbal abuse.

Such behavior violates the MHLS Ethics Policy, which clearly states that all employees and trustees will act with the highest level of integrity.

#### Examples of bullying

MHLS considers the following types of behavior examples of bullying:

- **Verbal bullying.** Slandering, ridiculing or maligning a person, their family, or their cultural background; persistent name-calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks.
- **Physical bullying.** Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property.
- **Gesture bullying.** Nonverbal gestures that can convey threatening messages.
- **Exclusion.** Socially or physically excluding or disregarding a person in work-related activities.

In addition, the following examples, when exhibited in a pattern, may constitute or contribute to evidence of bullying in the workplace:

- Persistent singling out of one person.

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- Shouting at an individual in public or in private.
- Using obscene or intimidating gestures.
- Not allowing the person to speak or express himself or herself (i.e., ignoring or interrupting).
- Personal insults and use of offensive nicknames.
- Public humiliation in any form.
- Constant criticism on matters unrelated or minimally related to the person's job performance or description.
- Public reprimands.
- Repeatedly accusing someone of errors that cannot be documented.
- Deliberately interfering with mail and other communications.
- Spreading rumors and gossip regarding individuals.
- Encouraging others to disregard a supervisor's instructions.
- Maliciously manipulating the ability of someone to do his or her work (e.g., overloading, underloading, withholding information, setting deadlines that cannot be met, giving deliberately ambiguous instructions).
- Assigning menial tasks not in keeping with the normal responsibilities of the job.
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave.
- Deliberately excluding an individual or isolating them from work-related activities, such as meetings.
- Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property).

Individuals who feel they have experienced bullying should report this to their supervisor or to the Financial Manager & Personnel Officer before the conduct becomes severe or pervasive. All employees are strongly encouraged to report any bullying conduct they experience or witness as soon as possible to allow our organization to take appropriate action.

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**Harassment** includes verbal, physical, and visual conduct that creates an intimidating, offensive, or hostile working environment or that interferes with an employee's work performance.

Harassing behavior can take many forms and may include, but is not limited to the following (when based upon an employee's protected status as noted above): slurs, jokes, statements, gestures, assault, impeding or blocking another's movement or otherwise physically interfering with normal work, pictures, drawings, or cartoons, violating someone's "personal space," foul or obscene language, leering, stalking, staring, unwanted or offensive letters or poems, offensive email or voicemail messages.

**Sexual harassment** is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or

sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Any employee who feels harassed should report it so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

#### **Examples of sexual harassment**

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

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

**Who can be a target of sexual harassment?** Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including trustees, independent contractors, and those employed by companies contracted to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer, trustee or visitor.

**Where can sexual harassment occur?** Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if it occurs away from the workplace premises, on personal devices or during non-work hours.

### III. Reporting and Investigating Discriminatory/Bullying/Harassing Conduct

**Preventing discrimination, bullying and harassment is everyone's responsibility.** MHLS encourages employees to promptly report **any** incidents of discrimination, bullying, and/or harassment so that corrective action may be taken. Anyone who witnesses or becomes aware of potential instances of discrimination, bullying, and/or harassment should report such behavior to a supervisor, manager or the Personnel Officer.

Reports of discrimination, bullying, and/or harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy and posted on the MHLS staff page, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

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

**Supervisors and managers** who receive a complaint or information about suspected discrimination, bullying, and/or harassment, or who observe harassing-the behavior in question or for any reason suspect that discrimination, bullying, and/or harassment is occurring, **are required** to report such suspected discrimination, bullying, and/or harassment to the Personnel Officer or other appropriate company official so that an investigation may be initiated.

In addition to being subject to discipline if they engaged in harassing conduct themselves, **supervisors and managers** will be subject to discipline for failing to report suspected discrimination, bullying, and/or harassment or otherwise knowingly allowing harassment to continue.

**All** complaints or information about discrimination, bullying, and/or harassment will be investigated, whether that information was reported in verbal or written form.

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

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

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

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

- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

#### IV. Legal Protections and External Remedies

Harassment and discrimination are not only prohibited by MHLS but are also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at MHLS, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

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

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

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

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

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

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

**Civil Rights Act of 1964:** The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [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.

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

**Contact the Local Police Department** If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

#### V. Retaliation

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

#### VI. Anti-Harassment Training

Starting October 9, 2018, every MHLS employee is required to undergo annual Sexual Harassment [Prevention](#) training within his/her first three (3) months of employment and at least once every year thereafter. An employee who fails to comply with this section may be subject to disciplinary action, up to and including termination of employment.

#### VII. Corrective Action

MHLS will not tolerate retaliation against any employee for making a good faith complaint of [discrimination, bullying, and/or](#) harassment or for cooperating in an investigation. If harassment or retaliation in violation of this policy is

established, MHLS will take appropriate corrective action. Corrective action may include, for example: training, referral to counseling, or disciplinary action ranging from a verbal or written warning to termination of employment, depending on the circumstances. In the event of acts of harassment by customers or vendors, corrective action will be taken after consultation with the appropriate management personnel. Employees will not experience retaliation as a result of lodging a complaint or participating in any workplace investigation.

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