

SEXUAL HARASSMENT IN THE WORKPLACE

**Frequently Asked Questions
and
General Legal Information on Procedures and Policies**

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Dear New Yorker:

As Attorney General, one of my most important responsibilities is to safeguard the civil rights of all New Yorkers and to enforce the State's anti-discrimination laws. One way I seek to achieve this goal is through the Civil Rights Bureau, which enforces laws prohibiting discrimination on the basis of race, color, national origin, sex, religion, age, marital status, sexual orientation, and disability. Using federal, State, and local civil rights laws, this Bureau investigates and litigates complaints alleging a pattern, practice, or policy of unlawful discrimination in employment, housing, credit, education, and places of public accommodation.

The Bureau does not proceed with cases alleging discrimination against only an individual, nor does it process cases against New York state agencies. Instead, the Bureau investigates and prosecutes cases alleging a pattern, practice or policy of discrimination that affects many people. This brochure tells you other public agencies that can take, investigate and prosecute individual civil rights complaints and complaints against State and other government agencies.

I am aware, however, that discrimination can result from indifference, carelessness, or ignorance, rather than simple bigotry. Of course, whatever the reason, the outcome is the same -- intolerance, exclusion, and the denial of equal treatment. Therefore, another major way that I seek to combat discrimination as Attorney General is through education and information.

My office developed this brochure to make individuals aware of their rights regarding sexual harassment in the workplace. It is my hope that this information will help individuals understand what constitutes unwelcome sexual conduct or sexual harassment and the appropriate actions that can be taken. If you have any questions or concerns that are not answered by this brochure, please do not hesitate to contact the Civil Rights Bureau at (212) 416-8250 (voice), (800) 788-9898 (TDD/TTY), or through the complaint hotline (800) 771-7755. Together we can strive to eliminate discrimination based on ignorance.

Sincerely,

ANDREW M. CUOMO

SEXUAL HARASSMENT IN THE WORKPLACE

PLEASE NOTE

The materials contained within this pamphlet are meant to provide general information and are for informational purposes only. This pamphlet should not be used as a substitute for an

attorney's services and nothing contained herein constitutes legal services or legal representations.

FREQUENTLY ASKED QUESTIONS

What is sexual harassment?

Sexual harassment is a form of gender discrimination. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature where:

- Submission to such conduct or communication is made or not made, or a raise, promotion, or job assignment;
- Submission to or rejection of such conduct or communication is a factor in decisions affecting the individual's status or
- Such conduct or communication has the purpose or effect of creating a substantially intimidating, hostile, or offensive work environment.

Sexual harassment comes in two forms: (1) *quid pro quo* harassment and (2) hostile environment harassment.

What is the difference between *quid pro quo* and hostile environment harassment?

***Quid pro quo*:**

■ *Quid pro quo* literally means "something for something." *Quid pro quo* sexual harassment occurs when a person in an authoritative position places a person subordinate to him in a compromising position. In other words, a supervisor conditions a raise, a promotion, or a favorable work assignment on the employee succumbing to sexual advances.

Hostile environment:

■ Hostile environment sexual harassment occurs when sexual advances or other verbal or physical conduct of a sexual nature are unwelcome and create an intimidating, hostile, or offensive work environment. The harassment can be one or more serious incidents that are so "severe" that they affect the person's job, or it can be a pattern or series of smaller incidents that are so "pervasive" or widespread that they cause the victim to have trouble performing her job. A comment may be something a person perceives as sexual harassment, but it may not be enough to give the individual a legal claim for sexual harassment. The victim does not have to be the person being harassed, but can be anyone affected by the offensive conduct. The harasser can be either a supervisor or a co-worker. In order for the employer to be liable for harassment by a co-worker, however, a supervisor must be made aware of the conduct of the co-worker or the conduct must be so obvious that the supervisor should have been aware of the conduct.

What are some examples of improper sexual conduct?

Sexual harassment occurs in three possible ways. First, sexual harassment can be mere words or jokes of a sexual nature. Second, sexual harassment can be words in conjunction with conduct, *e.g.*, asking the employee to dig coins out of a supervisor's pants' pocket. Finally, sexual harassment can be conduct alone, *e.g.*, unwanted touching or groping. Some examples of sexual conduct include the following:

- unwelcome sexual advances;
- touching of a sexual nature;
- graffiti of a sexual nature;
- displaying or distributing of sexually explicit drawings, pictures, or written materials;
- sexual gestures;
- repeatedly forcing a person to listen to dirty jokes, look at pornography, or to listen to co-workers or supervisors talk about their sexual encounters or fantasies;
- pressure for sexual favors;
- sexually explicit e-mails; and
- touching oneself sexually or talking about one's sexual activities in front of others.

Is one harassing joke or e-mail considered enough “unwelcome conduct?”

It depends. One comment alone may not be sufficient to constitute sexual harassment. Sexual harassment must be pervasive or severe so that one uncalled for joke or unwelcome e-mail sometimes may be inappropriate but may not be enough to constitute sexual harassment. On the other hand, if the one comment or event is severe enough it may constitute sexual harassment.

What if I do not immediately complain that the sexual attention is unwelcome?

A person may be intimidated and/or embarrassed and not speak out immediately. This does not mean that the person approves of the conduct and does not prevent a later complaint of sexual harassment. Also, an individual that willingly participates in conduct on one occasion may later decide that the same conduct is unwelcome on a subsequent occasion. But if an employer has established a policy and complaint procedure for sexual harassment, an employee who does not complain promptly and give the employer a chance to stop the harassment may not be able to bring a legal claim later.

How can I tell if it is really sexual harassment and not just a person being overly friendly? Who decides if an act constitutes sexual harassment?

It is not up to the offending person alone to decide what she or he thinks is sexual harassment. The law establishes a reasonable person standard. The victim must show that “an ordinary, reasonable, prudent person in like or similar circumstances” would have been similarly offended. The test is both an objective and subjective one. To satisfy the objective test, the harassment must result in a work environment that a reasonable person would find hostile or abusive. To satisfy the subjective test, the person must actually feel that the work environment is hostile or abusive.

Is it sexual harassment if my boss is mean to me?

No. If a boss yells or is nasty towards an employee, the boss is not necessarily sexually harassing such employee. There is no law against just having a “bad boss.” Thus a statement that may be rude or hurtful may not legally be sexual harassment, unless the statement is sexual in nature or the boss or co-worker singles out only women for abuse.

Can only the person being harassed complain about the harassment?

No. The person to whom the harassing conduct is aimed is not the only person that can complain about the harassment. Third parties may complain when one or more of the following occur: (1) submission to sexual demands is a general condition of employment; (2) harassment directed at others adversely affects the other person's work environment; or (3) offensive sexual conduct, even if consensual between the parties involved, is creating a hostile work environment for the third party.

Are women the only ones who can be victims of sexual harassment?

No. Sexual harassment first was raised in the early 1970's by women who were subject to unwanted sexual attention. Today, women are not the only ones exposed to this unwanted attention and the law covers both men and women who are sexually harassed. There is also harassment that is called same-sex sexual harassment. Same-sex sexual harassment is harassment where the harasser and the victim are of the same sex. Same-sex sexual harassment does not have to be related to a person's sexual orientation. Same-sex sexual harassment also can occur when a heterosexual employee harasses another employee of the same gender with conduct that is sexual in nature but not motivated by sexual desire. In other words men can sexually harass men and women can sexually harass women.

If the conduct is criminal in nature, whom should I contact?

Sexual harassment includes conduct that is criminal in nature such as rape, sexual assault, stalking, and other similar offenses. If the harassment involves physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. The conduct however need not be criminal in nature to constitute illegal sexual harassment. When the harassing conduct is criminal in nature, the individual person harassed should file a report at her local precinct. The police will take appropriate action after a complaint has been filed, including possible arrest.

Is it only sexual harassment if it happens in the workplace?

No. Sexual harassment can occur in the workplace, but also it can occur at school or during any school activity. It can take place in classrooms, halls, cafeterias, or dormitories. Non-workplace sexual harassment is covered by different laws than those that prohibit sexual harassment in the workplace. There even are special laws that prevent sexual harassment over the Internet.

Are there other kinds of discrimination?

Yes. This brochure only discusses sexual harassment, which is only one type of gender discrimination. Another type of gender discrimination occurs when a person is hired, fired, or fails to be promoted because she is a woman or he is a man. Federal, State, and City civil rights laws also prohibit discrimination on the basis of age, race, sex, sexual orientation, disability, creed, color, religion, national origin, arrest or conviction record, marital status, military status, genetic predisposition or carrier status, and prevent discrimination by job training and job placement agencies and by unions. New York City laws also prohibit discrimination on the basis of gender identity or expression and status as a victim of domestic violence, sexual offenses or stalking.

What are the laws governing sexual harassment in the workplace?

Sexual harassment is prohibited by federal law, specifically by Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e). Sexual harassment also is prohibited by New York State law under the New York State Human Rights Law, Executive Law § 296. In addition, sexual harassment that occurs in New York City is prohibited by the Administrative Code of the City of New York § 8-101.

Who is responsible for sexual harassment in the workplace?

In order for an employer to be liable for the harassment, the victim must show that the employer knew or had reason to know about the speech or conduct and did not intervene. If a supervisor is the harasser, then the known or should have known standard usually has been met. If the harasser is a co-worker, then the conduct should be brought to the attention of a supervisor or the company's human resources department to meet the known or should have known standard. Under State and City employment discrimination laws (but not under federal law) a victim can bring a claim against the harasser individually as well as against the company.

Who qualifies as a "supervisor" for purposes of employer liability?

Any individual that has the authority to recommend business decisions affecting the employee or any person that has the power to direct the employee's daily work activities qualifies as a "supervisor." Examples of business decisions include hiring, firing, promotion, demotion, change in pay or benefits, and work assignment.

Who is an employee/employer?

To file a sexual harassment complaint under Title VII, the company must employ at least 15 employees worldwide. To file under the State and City laws, the company must employ at least 4 employees. In many circumstances, the individual is protected only if she or he is considered an "employee" at the time that the sexual harassment occurred. An "employee" is an individual employed by an employer. Independent contractors and partners may not be considered employees. Factors that make it more likely that an employer-employee relationship exists, rather than an independent contractor relationship, include the following:

- The employer has the right to control when, where, and how the worker performs the job;
- the work does not require a high level of skill or expertise;
- the employer furnishes the tools, materials, and equipment;
- the work is performed on the employer's premises;
- there is a continuing relationship between the worker and the employer;
- the employer has the right to assign additional projects to the worker;
- the employer sets the hours of work and the duration of the job;
- the worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job;
- the worker does not hire and pay assistants;
- the work performed by the worker is part of the regular business of the employer;
- the employer is in business;
- the worker is not engaged in his/her own distinct occupation or business;
- the employer provides the worker with benefits such as insurance, leave, or workers' compensation;

- the worker is considered an employee of the employer for tax purposes, *e.g.*, the employer withholds federal, state, and social security taxes;
- the employer can discharge the worker; and
- the worker and the employer believe that they are creating an employer-employee relationship.

The above are factors to consider but are not the only factors that can be used to determine an employer-employee relationship. Not all or even a majority of these factors have to be met. The decision must be made on the circumstances of the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship.

Can a partner ever be considered an employee?

Yes. Some courts permit a partner in a firm to bring a lawsuit under Title VII if the circumstances show that the person lacks the traditional elements of partnership status. The partner is more likely to be an “employee” if there is a lack of:

- participation in firm profits and losses;
- employment security;
- investment in and partial ownership of firm assets;
- a role in management;
- operation and control;
- voting rights;
- control over hiring and firing of personnel;
- the right and duty to act as an agent of other partners; and
- fringe benefits comparable to other partners.

The above are factors to consider but are not the only factors that can be used to determine whether the person is a partner or an employee.

If I have been harassed, what are my options?

There is no one right answer to this question. There are many different ways of addressing sexual harassment and the strategy chosen will depend on the person’s long term goals and own sense of what may or may not work in the particular situation. Options include complaining internally with the employer, complaining administratively with a government agency, or taking legal action in court. Each situation should be looked at on a case by case basis and what may be appropriate in one situation may be problematic in another situation. The best approach before making any complaint of sexual harassment is to consult first with an attorney who can explain all the available options. Keep in mind, however, that there are very strict deadlines for filing a sexual harassment complaint with federal, state, and city agencies and in court. These deadlines are listed below.

Must my company have a sexual harassment policy?

No. There is no legal requirement for a company to establish a sexual harassment policy. Although if the company does have a sexual harassment policy, then the company must follow the policy. Sexual harassment policies may include the following:

- A concise written statement that provides clear definitions, covering both subtle and blatant behavior, of what exactly is prohibited sexual harassment;
- what types of disciplinary actions possibly will be taken against the harasser;
- a choice of either formal or informal complaint procedures;
- an explanation of the effects of harassment on the target of the harassment and on the company;
- a multiple complaint system that allows a victim of sexual harassment to report the problem to a manager or a responsible person outside the victim's department or area (essential for the harassed person whose supervisor is the harasser or who fears retaliation within the department or area as a result of reporting the harassment);
- a provision for investigation of complaints;
- education and training at all levels to acquaint managers and workers with sexual harassment policies and procedures and how they apply to in workplace situations; and
- protection against retaliation.

If an employer has a sexual harassment policy, an employee who has been harassed should make a complaint under its procedure to be able to pursue legal action later in court.

What happens if I file a complaint internally with my office?

Once a complaint of sexual harassment is made, the informed person has a legal obligation to investigate the claim, which can include questioning of co-workers and the harasser. A complaint to a person within the company will not always remain confidential. Each company is different and thus an action taken by one company may differ from an action taken by another. Complaining internally does not affect the deadlines for filing with a governmental agency or the courts.

What if the company fails to follow its sexual harassment policy?

If the employer has established a sexual harassment policy, it must publicize and enforce it. The employer should provide every employee with a copy of the policy and complaint procedure and both should be written in a manner that will be understood by all employees. An employer's failure to enforce or follow its sexual harassment policy may be evidence that the employer is liable for the sexual harassment. Conversely, if an individual fails to utilize an employer's complaint procedure, he or she may not be able to pursue a claim in court. If the employee must report the harassment only to his or her supervisor who also is the harasser, in general, that employee does not have to utilize the employer's complaint procedure.

What if I signed an arbitration clause?

It is becoming more frequent for an employer to add an arbitration clause to employment contracts or employee handbooks. These clauses require employees to submit any claims of job discrimination to an arbitration panel rather than to a court. This is especially true in the securities and banking industries. Arbitration is supposed to be a fast, efficient alternative to court for resolving employment disputes. However, an arbitration panel may not afford a person the same fairness, neutrality, and procedural protections as a court. If a person has signed one of

these agreements, then the individual may be barred from bringing a claim in court unless the person can show that she did not sign the arbitration clause, *e.g.*, a person was not shown a copy of the arbitration agreement or the arbitration clause was written in an employee handbook rather than in a document that the person signed. In addition, certain parts of the arbitration clause may be unenforceable and nothing can prevent a person from filing a charge of discrimination with an administrative agency. If a person has signed an arbitration clause, that person should consult an attorney to determine what options are available.

What happens if I file a federal complaint?

Filing a federal complaint means first filing an administrative complaint with the EEOC. This process begins by completing a form provided by the EEOC and then the EEOC investigates the sexual harassment charge and determines whether or not the charge has probable cause. Probable cause is defined as having more evidence that sexual harassment occurred than that it did not occur. The EEOC will not conduct a hearing and cannot award damages. The EEOC simply investigates the charge of sexual harassment and makes factual findings about whether or not the harassment occurred. The EEOC also can attempt to resolve the matter through discussions with the employer or through mediation. Mediation is when a neutral party is assigned to impartially speak to both parties and to try and find a solution that both parties will accept. If the mediation fails, then the claim will be returned to the investigative track and the agency will resume its inquiry as to whether the claim has probable cause or not.

What happens if I file with State or City agencies?

This process also begins by completing a form provided by State and City agencies, but then is different from the EEOC. The State and City agencies will not only investigate the charge but also will conduct a hearing before an administrative judge who can award damages. The State and City agencies, however, are extremely busy and it may take years before your claim proceeds to a hearing.

What happens if I file with the Office of the Attorney General?

You can file a complaint with the Civil Rights Bureau of the Office of the Attorney General by completing a complaint form available from the Civil Rights Bureau, or by contacting the Bureau if you are unable to file or need help with a written complaint. The Bureau does not proceed with cases alleging discrimination against only an individual, nor does it process cases against New York state agencies. Instead, the Bureau investigates and prosecutes cases alleging a pattern, practice, or policy of discrimination that affects many people. This brochure tells you other public agencies that can take, investigate and prosecute individual civil rights complaints and complaints against State and other government agencies.

The Bureau will investigate appropriate cases and attempt to resolve them with employers. If the matter cannot be resolved, the Attorney General may litigate the case in court. Because the Attorney General represents the People of the State of New York rather than the persons filing the complaint, making a complaint with the Attorney General is not a substitute for an individual's bringing his or her case in court. Making a complaint with the Attorney General also does not satisfy or affect any of the filing deadlines or other administrative prerequisites for filing a case in court under the employment laws. Therefore, in addition to making a complaint with the Attorney General, you will also have to file a charge of discrimination with the U.S.

Equal Employment Opportunity Commission, the New York State Division of Human Rights or the New York City Commission on Human Rights, as described in this brochure, or a separate tort lawsuit in court. It is best for an employee to consult an attorney to determine the best options.

What happens if I file in court?

An individual filing directly in court begins a court action by filing a complaint. Filing federally means first filing with the EEOC and then going to court. Filing with the State or City means that a person may go directly to State court. After the complaint is filed, the employer files an answer, and then the parties engage in discovery which includes depositions, document exchange, and motions. Both after the complaint is filed and again when discovery is completed, there can be motions to dismiss the case. If the case is not dismissed, it proceeds to a trial by jury. If the person wins and the jury awards damages, the judge can overrule or reduce the damage award. Either side always can appeal the jury's verdict or the judge's rulings after the verdict. Accordingly, it is important to note that lawsuits can take many years and are financially and emotionally draining. Discovery can include the production of medical, gynecological, and psychological (therapist) notes. The company also may attempt to contact your current and past employers to ask questions about your work performance.

Will my boss retaliate if I complain?

Many victims of sexual harassment fear that filing a complaint will result in retaliation. Retaliation occurs when an employee is fired, has had terms and conditions of work changed as a result of a complaint of discrimination, or has been deterred from making a discrimination complaint. The Federal, State, and City laws protect an individual who opposes any practice that the person reasonably believes was sexual harassment, and also protects any person who has filed a charge, testified, assisted, or participated in any manner in an investigation of an unlawful discriminatory employment practice. Although retaliation is unlawful, that does not mean that it does not occur. If you are subjected to retaliation, you will have a claim of retaliation in addition to a claim of sexual harassment.

Is there someone I can talk to about how I feel?

Being sexually harassed can be a traumatic experience and many people suffer from psychological distress as a result. Speaking to other women who have experienced sexual harassment can help a person find support and provide useful information. Local NOW chapters and other non-legal women's groups in the community may run support groups addressing sexual harassment. Two places to contact if you want to discuss how you feel are:

- NOW NYC Helpline: (212) 260-4422
- Legal Momentum (formerly NOW Legal Defense Fund): (212) 925-6635

SEXUAL HARASSMENT IN THE WORKPLACE: GENERAL LEGAL INFORMATION ON PROCEDURES & POLICIES

Filing a sexual harassment complaint with an outside entity:

A victim of sexual harassment may file with four administrative entities: (1) the Equal Employment Opportunity Commission (EEOC), (2) New York State Division of Human Rights (State Division), and/or (3) the New York City Commission on Human Rights (City Commission). A person also may proceed straight into State court on State and City claims without first filing with any administrative agency. The directions for filing a sexual harassment claim are set out below, as well as in a summary chart.

Equal Employment Opportunity Commission (EEOC) - Federal Claim

As an administrative prerequisite for suing in federal court for sexual harassment under Title VII, a person must first file with the EEOC. Filing is complete when a person fills out a sexual harassment complaint form obtained from the EEOC. The EEOC never tries a case but will issue administrative findings on the matter. The EEOC also can hold mediation and can try to settle cases. Set forth below are the time deadlines that must be followed when filing with the EEOC:

- A person must file a complaint with the EEOC within 300 days from the last date the sexual harassment occurred; any separate acts that occurred earlier may not be covered. If the person does not file within this time period, the statute of limitations is said to have run and the individual will be barred from bringing any federal claim in court.
- Although as long as a person files within 300 days of the last incident, he or she has legally filed in a timely manner for that incident, it is safer to file as close in time to as many incidents of sexual harassment as possible for that incident.
- After the individual has filed with the EEOC within the 300 day time period, the EEOC will file a complaint with the EEOC office for investigation, or (2) the individual can file a right to sue letter and pursue the claim in federal court.
- If the complaint remains with the EEOC, the EEOC will investigate and ultimately issue a probable cause or a no probable cause finding. When either finding is made, the individual then obtains a right to sue letter and has a 90 day period from the date the right to sue letter is issued to file a claim in federal court.
- Probable cause is defined as having more evidence that sexual harassment occurred than that it did not occur. This means that after looking at the complaint and investigating it, the EEOC determines that there is or is not a reasonable basis for the claims alleged. Some courts allow this finding to be entered into evidence during the court proceeding. Other courts, however, will not allow this finding to be used during the court proceeding.
- If a right to sue letter is requested after the 180 day time period, but before the investigation is complete, the EEOC will not have made a determination as to whether or not the claim has probable cause. The right to sue letter permits the individual to sue in federal court but such suit must be brought 90 days from the date the right to sue letter was issued.

- A person filing with the EEOC can, at the same time, file a State and City claim by including the State Division of Human Rights on the EEOC form. The EEOC automatically then cross-files the complaint with both the State Division and the City Commission.
- A person who files a federal court claim also can add State and City law claims.
 - State and City laws provide different damages than Federal law, *e.g.*, unlimited amount for compensatory damages under both State and City law and punitive damages under City law so it may be advantageous to bring State and City claims along with the federal Title VII claim.
- The damages that a person may be awarded under Title VII include: backpay, front pay or reinstatement, lost benefits, compensatory and punitive damages, attorneys' fees, and prejudgment interest.
 - Compensatory and punitive damages are capped under Title VII at a maximum amount depending on the number of employees at the company.
 - The range of compensatory and punitive damages that may be awarded under Title VII is \$50,000 to \$300,000.
 - In order to receive punitive damages, the employer must have acted with malice or reckless indifference to your rights.

Filing with the State of New York or New York City:

A person can file with State or City agencies or directly in State court. Filing with the State and City of New York provides a person with different remedies than filing under Title VII. The filing deadlines for State and City claims are set forth below.

- An individual filing a complaint alleging State and City claims in State court has three (3) years from the date of the last harassing act to file before the statute of limitations is said to have run and the victim is barred from filing a State or City claim. Any separate acts that occurred earlier than three years may not be covered.
- A person filing an administrative charge with the State Division has one (1) year from the date of the last harassing act to file with the State before the statute of limitations has expired. Any separate acts that occurred earlier than one year may not be covered.
- A person filing an administrative charge with the City Commission has one (1) year from the date of the last harassing act to file with the City before the statute of limitations has expired. Any separate acts that occurred earlier than one year may not be covered.
- If a person who files with the State Division or the City Commission has elected a remedy and cannot go to court except upon obtaining an administrative convenience dismissal.
 - In order to obtain an administrative convenience dismissal, the individual must request a dismissal because she or he wants to file a lawsuit. It is ordinarily not difficult to obtain an administrative convenience dismissal.

- Once issued, the administrative convenience dismissal acts like a right to sue letter and the person has 90 days to bring an action in court.
- Though a filing deadline exists for filing with the State Division and City Commission, there is no deadline by which the agencies must investigate a complaint or schedule or hold a hearing. Thus, a large amount of time may pass between the filing of an agency complaint and the actual hearing on that complaint.
- State and City agencies act as a mini-trial system where there are State or City representatives assigned to the complaint to represent the victim.
- A hearing only will be scheduled if the State Division or City Commission first determines that the claim has probable cause. If the State Division or City Commission determines that the claim has no probable cause then the claim will be dismissed. A dismissal of a claim can be appealed to State court but the decision will be reversed only if it was an abuse of discretion, which is an extremely hard standard to meet. If probable cause is found, then the claim will proceed to discovery and eventually a hearing.
- A person filing with the State Division or filing in State court may receive damages in the form of backpay, front pay or reinstatement, lost benefits, an uncapped amount for compensatory damages, and prejudgment interest. An individual will NOT collect attorneys' fees or punitive damages under State law.
- When a person files with the City Commission or files a City claim in State court, the individual is entitled to all types of damages, including backpay, front pay or reinstatement, lost benefits, compensatory and punitive damages (without a capped maximum amount), attorneys' fees, and prejudgment interest.
- Though a person may be entitled to the above remedies, the type of damages awarded depend on each case. An individual will not necessarily receive all types of damages in every case.

Filing with the Office of the Attorney General:

- The Attorney General represents the People of the State of New York rather than the persons filing a complaint.
 - Making a complaint with the Attorney General is not a substitute for an individual's bringing a case in court with the employee's own lawyer.
 - Making a complaint with the Attorney General does not satisfy or affect any of the filing deadlines or other administrative prerequisites for filing a case in court under the employment laws.
 - To bring a case in court, in addition to making a complaint with the Attorney General, you will also have to file a charge of discrimination with the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights or the New York City Commission on Human Rights, as described in this brochure, or a separate tort lawsuit in court. It is best for an employee to consult an attorney to determine the best options.
- An employee can file a complaint with the Civil Rights Bureau of the Office of the Attorney General by completing a complaint form available from the Civil Rights

Bureau, or by contacting the Bureau if he or she is unable to file or needs help with a written complaint.

- The Civil Rights Bureau does not proceed with cases alleging discrimination against only an individual, nor does it process cases against New York state agencies. Instead, the Bureau investigates and prosecutes cases alleging a pattern, practice, or policy of discrimination that affects many people. The U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, and the New York City Commission on Human Rights can take, investigate prosecute individual civil rights complaints and complaints against State and other government agencies.

- The Bureau will investigate appropriate cases and attempt to resolve them with employers. If the matter cannot be resolved, the Attorney General may litigate the case in court. If the case is litigated, the Attorney General will seek changes in the employer's practices and policies, as well as compensation for all employees discriminated against.

What should be included when filing a complaint either with an agency or in court:

The following information should be included when filing a complaint with an agency or in court:

- details of all incidents of harassment;
- information about the harasser, including the harasser's relationship to the complainant on the job;
- why the behavior was unwelcome;
- the names and contact information for any coworkers or supervisors who witnessed or know about the harassment;
- any efforts that the victim made to inform management of the unwanted conduct and management's response, if any;
- the effect that the unwelcome attention has had on the individual's ability to perform the job, as well as any emotional distress or physical symptoms; and
- any instances of retaliation.

Will I have to pay any fees to make a complaint?

Filing fees differ depending with which agency or court the individual chooses to file the complaint. If the person files with an administrative agency, then there are no filing fees. If the person files in federal court, there is \$350 fee. The filing fee in State court is \$210. A person that cannot afford these filing fees can apply for a waiver based upon a person's financial condition. The above filing fee amounts are only for the actual filing of the complaint. The fee amount does not include court reporters, transcripts of depositions and trial, or the cost of photocopying and faxing, which costs can be significant.

Other actions an individual may take after being harassed:

A person may bring a lawsuit under New York State tort laws against the individual harasser (not the employer) as well as filing sexual harassment claims with the EEOC, the State, the City, or in court. Some examples of torts that may be applicable are defamation and intentional infliction of emotional distress.

- Individuals who seek to bring State tort claims usually have one (1) year to bring an action in court against the harasser.
- A person filing a sexual harassment claim with a governmental agency does not have to file any additional forms with the agency to bring a tort claim because tort claims can be brought only in court. Filing a sexual harassment complaint with a governmental agency does not affect the one (1) year time limit to file a tort claim in court.

- Some sexual harassment victims also may have claims for lost bonuses or other wages that could be brought as breach of contract cases under New York State law or wage and hour violations under Federal and State law. Such claims include breach of contract, either oral or written; *quantum meruit*; promissory estoppel; or unjust enrichment. In New York, such claims have a three to six (3-6) year statute of limitations, meaning that such a claim must be brought within three to six (3-6) years of the date of the breach.

- If the harassment causes either emotional or physical injury, claims can be brought under New York State workers' compensation law or other New York State personal injury laws and those claims generally must be brought with three (3) years of the injury.

Do I need a lawyer?

No, but having a lawyer may be preferable. A person can pursue a claim with or without an attorney as a "*pro se*". Pursuing a claim *pro se* means appearing on one's own behalf. A person who pursues a case *pro se* does not obtain a lawyer and represents her/himself in court. A person may prefer, however, to get an attorney who can explain all the available options and be a guide or representative through the legal process.

How do I proceed *pro se*?

Many courts have *pro se* offices that help individuals navigate through the litigation process. *Pro se* offices are located in the federal courts and there is one office in the State courts. The federal *pro se* offices can provide a sample complaint specific to sexual harassment claims and personnel in these offices will assist complainants in filing an action. The federal *pro se* offices can be contacted at the following:

- Eastern District of New York *pro se* offices:
 - 100 Federal Plaza
Central Islip, NY 11722
(631) 712-6063
 - 225 Cadman Plaza East
Brooklyn, NY 11201

(718) 613-2665

■ Northern District of New York *pro se* office:

100 South Clinton Street
Syracuse, NY 13261
(315) 234-8500

■ Southern District of New York *pro se* office:

500 Pearl Street
New York, NY 10007
(212) 805-0175

■ Western District of New York *pro se* office:

68 Court Street
Buffalo, NY 14202
(716) 551-5759

The New York State Supreme Court has several *pro se* offices that can explain how to file a complaint and general court procedures. The Supreme Court offices of the Self-Represented and Resource Centers are listed at www.courts.state.ny.us/courthelp/nolawyer5.htm.

How can I contact the government agencies?

Set forth below is the contact information for the Office of the Attorney General, the EEOC, the New York State Division, and the New York City Commission:

■ Office of the Attorney General:

Civil Rights Bureau
120 Broadway
New York, NY 10271
(212) 416-8250,
(800) 788-9898 (TDD/TTY for hearing impaired) or
(800) 771-775 (hotline)

* Please note that filing with the Office of the Attorney General does not affect the statute of limitations for filing with the EEOC, the State Division, the City Commission, State court, or for filing a State tort claim.

■ New York District Office of the EEOC:

33 Whitehall Street
New York, NY 10004
(800) 669-4000 or
(212) 336-3620

■ New York State Division of Human Rights:

When filing with the State Division, you should try to file with the office located within the county in which you worked.

Albany:

Empire State Plaza
Corning Tower, 25th Floor
P.O. Box 2049
Albany, NY 12220
(518) 474-2705

Binghamton:

44 Hawley Street, 6th Floor
Binghamton, NY 13901
(607) 721-8467

Bronx:

Administrative Offices
1 Fordham Plaza, 4th Floor
Bronx, NY 10458
(718) 741-8400

Brooklyn:

- 55 Hanson Place, Room 304
Brooklyn, NY 11217
(718) 722-2856
- Office of Sexual Harassment Issues
55 Hanson Place, Room 347
Brooklyn, NY 11217
(718) 722-2060

Buffalo:

The Walter J. Mahoney State Office Building
65 Court Street, Suite 506
Buffalo, NY 14202
(716) 847-7632

Manhattan:

- 20 Exchange Place, 2nd Floor
New York, NY 10005
(212) 480-2522

- State Office Building
163 West 125th Street, 4th Floor
New York, NY 10027
(212) 961-8650

Nassau:

175 Fulton Avenue, Suite 211
 Hempstead, NY 11550
 (516) 538-1360

Peekskill:

8 John Walsh Boulevard, Suite 204
 Peekskill, NY 10566
 (914) 788-8050

Rochester:

259 Monroe Avenue
 1 Monroe Square, 3rd Floor
 Rochester, NY 14607
 (585) 238-8250

Suffolk:

State Office Building, Room 3A-15
 Veteran's Memorial Boulevard
 Hauppauge, NY 11787
 (631) 952-6434

Syracuse:

State Office Building
 333 East Washington Street, Room 443
 Syracuse, NY 13202
 (315) 428-4633

■ New York City Commission on Human Rights:

40 Rector Street, 9th Floor
 New York, NY 10006
 (212) 306-7500

Laws	Where to File	When to File	What happens at each agency	How to go to Court	Damages
Title VII	EEOC and then to Court	300 days from the last incident (separate acts that occurred earlier may not be covered)	Investigation and probable cause finding. A right to sue letter is issued with the probable cause finding. No time limit on how long EEOC has to investigate.	Must allow the EEOC 180 days to investigate and then the individual may request a right to sue. Right to sue letter will be issued without a probable cause decision. The individual then has 90 days from the date the right to sue letter was issued to bring a claim in federal court.	-backpay -front pay or reinstatement -lost benefits -compensatory and punitive damages (ranges from a combined amount of \$50,000 to \$300,000) -attorneys' fees -prejudgment

					interest
State	Court or State Division	3 years from last incident for filing with State court and 1 year from last incident for filing with State Division (separate acts that occurred earlier may not be covered)	Investigation and if probable cause finding, discovery and then hearing	Can file immediately in State court without filing first with the State Division. Alternatively, if file with the State Division first and want to go to State court, an administrative convenience dismissal must be issued. If administrative convenience dismissal is granted, a right to sue letter also will be issued, and then a person has 90 days to bring a claim in State court.	-backpay -front pay or reinstatement -lost benefits - compensatory damages (unlimited) -prejudgment interest - NO attorneys' fees -NO punitive damages
City	Court or City Commission	3 years from last incident for filing with State court and 1 year from last incident for filing with City Commission (separate acts that occurred earlier may not be covered)	Investigation and if probable cause finding, discovery and then hearing	Can file immediately in State court without filing first with the City Commission. Alternatively, if file with the City Commission first and want to go to State court, an administrative convenience dismissal must be issued. If administrative convenience dismissal is granted, a right to sue letter also will be issued, and then a person has 90 days to bring a claim in State court.	-backpay -front pay or reinstatement -lost benefits -compensatory and punitive damages (unlimited) - attorneys' fees -prejudgment interest