



HARASSMENT AND WORKPLACE VIOLENCE

Know Your Rights

WHAT IS HARASSMENT?

Harassment includes:

- Offensive behavior based on stereotypes about people with certain protected characteristics.
- Behavior intended to cause discomfort or humiliation because of a protected characteristic.
- Any expression of dislike or hatred for the group to which the victim belongs, based on a protected characteristic.

Protected characteristics include:

- Age
- Race
- Creed
- Color
- National origin
- Sexual orientation
- Military status
- Sex
- Disability
- Marital status
- Domestic violence victim status
- Gender identity
- Criminal history

Harassment in or related to the workplace is against the law. Your employer is required by law and state policy to create a workplace free from harassment based on protected characteristics.

WHAT IS SEXUAL HARASSMENT?

Any unwanted verbal or physical advance, sexually explicit or derogatory statement, or sexually discriminatory remark that is offensive to the recipient or that interferes with their job performance. This includes:

- Sex stereotyping
- Discrimination due to gender identity or the status of being transgender

- Discrimination due to pregnancy

Sexual harassment may include:

- Unwelcome sexual advances, requests for sexual favors and other verbal or physical harassment of a sexual nature
- When a person in authority offers to trade job benefits for sexual favors, such as saying or implying, “I will give you a promotion if you will have sex with me,” or “You will be fired if you don’t let me touch you.”

Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment. It is also illegal when it results in an adverse employment decision (such as the victim being fired or demoted).

The victim and the harasser can be any gender or the same gender. The harasser can be the victim’s supervisor, a supervisor in another area, a coworker or someone who is not an employee of the employer, such as a client or customer.

WHAT IS WORKPLACE VIOLENCE?

Workplace violence is any act or threat of physical violence, harassment, intimidation or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even murder. It can involve employees, clients, customers and visitors.

HOW CAN THE DEPARTMENT OF LABOR HELP WORKERS REPORT WORKPLACE HARASSMENT OR VIOLENCE?

The Department of Labor can help workers file a complaint with the NYS Division of Human Rights or federal or local equivalent. The Department of Labor strives for a trauma-informed, victim-centered approach. It is our policy to allow victims to decide whether or not they would like to pursue a complaint.

HOW CAN THE DEPARTMENT OF LABOR HELP VICTIMS WITH SERVICES AND PROSECUTING CRIMES?

The Department of Labor can:

- Make referrals to supportive services
- Help the worker discuss the issues with the employer, if the worker chooses
- Help prepare complaint forms and send it to the right enforcement agencies
- Make referrals and assist the criminal response to crimes committed
- Where appropriate, provide referrals to legal services agencies for immigration assessments and U or T Visa certifications
- Provide a Statement of Interest for workers involved in a current or ongoing labor dispute

WHAT IS A U OR T VISA?

U Visas are humanitarian visas for victims of certain crimes. T Visas are for victims of human trafficking. The NYS DOL considers issuing certifications when an immigrant worker in New York has been a victim of a crime in the workplace.

U and T Visas offer the following benefits:

- Lawful status for up to four years
- Employment Authorization Document
- Eligibility for some public benefits
- Eligibility for Lawful Permanent Status after three years
- Derivative status for family members

WHAT IS A STATEMENT OF INTEREST?

Under the Department of Homeland Security's Prosecutorial Discretion Policy, certain individuals or their advocate may request a "Statement of Interest" from the Department of Labor.

If you are involved in a current and ongoing New York State Department of Labor (NYSDOL) investigation and afraid to cooperate in the investigation because of potential immigration-based retaliation, your attorney or advocate can request a Statement of Interest (SOI). A SOI is a letter from NYSDOL that describes our agencies' authority to investigate your case, describes the workers' retaliation-based fear, and NYSDOL's interest in ensuring that workers are free to participate in our agency's investigation by eliminating the fear of immigration-based retaliation.

NYSDOL will review the request and, if approved, issue a SOI letter to the U.S. Department of Homeland Security (DHS). Once the SOI is accepted by DHS, your attorney or advocate can apply for deferred action. DHS will review

your application along with the SOI and make their own determination on your specific case. The NYSDOL is not involved in the DHS review process.

WHAT IS PROSECUTORIAL DISCRETION?

Prosecutorial Discretion is a new, streamlined process for immigrant workers to obtain temporary protection from deportation and work authorization if they cooperate with a NYSDOL investigation.

HOW DOES PROSECUTORIAL DISCRETION WORK?

If you are involved in a current and ongoing NYSDOL investigation and afraid to cooperate in the investigation because of potential immigration-based retaliation, your attorney or advocate can request a Statement of Interest (SOI) letter. NYSDOL will review the request, and if approved, issue a SOI letter to the U.S. Department of Homeland Security (DHS). Once accepted by DHS, your attorney or advocate can apply for deferred action.

FOR EMPLOYERS:

Under the law, every employer in New York State is now required to establish a sexual harassment prevention policy pursuant to Section 201-g of the Labor Law. The Department of Labor in consultation with the Division of Human Rights has established a model sexual harassment prevention policy. The model policy, a model training, and a sample poster are available at: ny.gov/programs/combating-sexual-harassment-workplace

FOR MORE INFORMATION ABOUT AVAILABLE SERVICES AND ASSISTANCE

Call the Division of Compliance and Education toll free, at 877-466-9757 or email DOCE@labor.ny.gov.