



Jamestown Community College
Policies and Procedures

Policy Title	Sexual Harassment Response and Prevention	Policy Number	045
Section	Governance, Organization and General Information	Approval Date	8/21/2018; 9/17/2024
Subsection	Individual Rights	Effective Date	8/21/2018; 9/17/2024
Responsible Office	Human Resources	Review Date	9/17/2024

1.1 Purpose

- 1.1** To protect the safety and well-being of JCC students and staff by maintaining educational and working environments that are free from unlawful discrimination, harassment, and retaliation. This policy is one component of the College's commitment to such safe environments.
- 1.2** Additionally, this policy aims to teach employees to recognize unlawful discrimination and harassment and provide the tools to take action if it occurs. All employees and supervisors are required to work in a manner designed to prevent unlawful discrimination, harassment, and retaliation in the workplace.
- 1.3** This policy applies to all employees, applicants for employment, and interns, whether paid or unpaid. This policy also applies to additional covered individuals, including anyone who is (or is employed by) a contractor, subcontractor, vendor, or consultant or anyone providing services in our workplace. These individuals include persons commonly referred to as independent contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with the College. Throughout this policy, we may refer to covered workers who are not direct employees of the College as "covered individuals."

2.0 Policy

2.1 Discrimination is Strictly Prohibited. The College prohibits unlawful discrimination based on age, race, color, religion, creed, national origin, ethnicity, ancestry, sex (including pregnancy), gender, sexual orientation, gender identity or expression (including status as a transgender individual), physical or mental disability, citizenship or immigration status, predisposing genetic characteristics, genetic information, past, current, or prospective service in the uniformed services, familial status, caregiver status, marital status, status as a victim of domestic violence, arrest or conviction status, reproductive health decision-making, or any other characteristic protected by applicable federal, state, or local law. This policy applies to all terms and conditions of employment, including but not limited to: hiring, training, promotion, discipline, compensation, benefits, and termination of employment.

2.2 Sexual Harassment is Strictly Prohibited. One form of harassment prohibited by this policy is sexual harassment. Sexual harassment is unlawful and unacceptable. It violates College policy, subjects the College and the harasser to potential liability, constitutes employee misconduct, and will not be tolerated. Appropriate sanctions and/or disciplinary action (up to and including termination) will be enforced against individuals who engage in sexual harassment and against supervisory personnel who knowingly allow such behavior to continue.

2.3 Sexual harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their sex, sexual orientation, sex stereotypes, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender, unless the conduct does not rise above the level of what a reasonable victim of harassment with the same protected characteristic would consider petty slights or trivial inconveniences. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender, as more fully described below.

2.4 Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary.

- A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female.
- A transgender person is someone whose gender is different than the sex they were assigned at birth.
- A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do.

Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

2.5 Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment, unless the conduct does not rise above the level of what a reasonable victim of harassment with the same protected characteristic would consider petty slights or trivial inconveniences. Harassment need not be severe or pervasive to be illegal. There is no single boundary between petty slights and harassing behavior. However, New York law specifies that whether harassing conduct is considered petty or trivial is viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered a violation of the College's policy.

2.5.1 Sexual harassment includes unwelcome conduct that is either of a sexual nature or directed at an individual because of his or her gender identity or expression (perceived or actual), when:

- Such conduct is made either explicitly or implicitly a term or condition of employment;

- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- 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 complaining individual is not the intended target of the sexual harassment.

2.5.2 There are two main types of sexual harassment:

- Behaviors that contribute to a **hostile work environment** include, but are 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, gender identity, or gender expression. Such sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee finds offensive or objectionable, causes an employee discomfort or humiliation, or interferes with the employee'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 called **quid pro quo** harassment.

2.5.3 Harassers can be anyone in the workplace. A supervisor, a supervisee, or a coworker can all be harassers. Anyone else in the workplace can also be harassers including an independent contractor, contract worker, vendor, or visitor.

2.5.4 The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior on a person is what counts.

2.5.5 Sexual harassment is prohibited not only at the workplace but also while working off-premises (including, but not limited to, while on video or telephone conferences for work), while traveling for work, and at College-sponsored parties or events. Calls, texts, emails, messages on electronic messaging platforms and apps, and social media usage by employees or covered individuals can also constitute unlawful harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours. Moreover, conduct does not have to be directed at an individual for it to be sexual harassment (for example, overheard comments can qualify).

2.5.6 Any employee or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be discrimination and is covered by this policy. Individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over seemingly less severe behavior. Just as harassment can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment. It might include education and counseling, or it may lead to suspension or termination when appropriate.

2.5.7 The below list describes some of the types of acts that may be unlawful sexual harassment. This list is just a sample of behaviors and should not be considered exhaustive. Any employee who believes

they have experienced sexual harassment or other violation of this policy should feel encouraged to report it, even if it does not appear on this list.

- 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, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement if you wish to pursue criminal charges).
- Unwanted sexual comments, 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 (note: this can include sexual advances/pressure placed on an employee by patients and their family members);
 - Subtle or obvious pressure for unwelcome sexual activities; and
 - Repeated requests for dates or romantic gestures, including gift giving.
- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history that create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look. For example:
 - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity;
 - Dress codes that require employees to dress in a manner typically associated with a particular gender identity or that place more emphasis on women's attire; or
 - Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- 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. This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or 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, or name-calling; or
 - Intentional misuse of an individual's preferred pronouns.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black female employees than white female employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or

- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

2.5.8 Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

2.5.9 *Other Unlawful Harassment is Strictly Prohibited.* The College's policy prohibiting harassment applies equally to harassment based on race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy), marital status, veteran status, citizenship status, sexual orientation, gender identity, genetic information, military service, domestic violence victim status, predisposing genetic characteristics, criminal history, mental or physical disability, or other characteristic protected by applicable law. Such harassment often takes a similar form to sexual harassment and includes harassment that is:

- Verbal (e.g., epithets, derogatory statements, slurs, derogatory comments or jokes, or obscene language).
- Physical (e.g., assault or inappropriate physical contact).
- Visual (e.g., displaying derogatory posters, cartoons, or drawings or making derogatory gestures).
- Online (e.g., derogatory statements in any e-mail or through any social media platform).

This list is illustrative only, and not exhaustive. No form of harassment will be tolerated, including, but not limited to, any harassment that denigrates or shows hostility towards an individual; has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities.

2.5.10 Harassment is prohibited not only at the workplace but also while working off-premises (including, but not limited to, while on video or telephone conferences for work), while traveling for work, and at College-sponsored parties or events. Calls, texts, emails, messages on electronic messaging platforms and apps, and social media usage by employees or covered individuals can also constitute unlawful harassment, even if they occur away from the workplace premises, on personal devices, or during non-work hours. Moreover, conduct does not have to be directed at an individual for it to be harassment (for example, overheard comments can qualify).

2.5.11 Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender.

2.5.12 Sexual harassment is considered a form of misconduct which may lead to disciplinary action.

3.0 Procedures

3.1 Preventing unlawful discrimination and harassment is everyone's responsibility. The College cannot prevent or remedy harassment unless it knows about it. Anyone who witnesses, becomes aware of, or is subjected to behavior that may constitute discrimination or harassment or otherwise violate this policy should immediately report it to his or her supervisor, or if the complaint involves the supervisor or the individual is uncomfortable for any reason reporting to the supervisor, to the Executive Director of Human Resources in the Human Resources Department.

3.2 Supervisory personnel have a special obligation to make sure employees feel safe at work and that workplaces are free from unlawful harassment and discrimination. All supervisors who receive reports or information about, observe, otherwise become aware of, or suspect any potential discrimination, harassment, or other violation of this policy must immediately report it to the Executive Director of Human Resources in the Human Resources Department. A supervisor who fails to make such a report or otherwise knowingly allows discriminatory, harassing, or retaliatory behavior to continue will be subject to disciplinary action, up to and including termination of employment.

3.2.1 While supervisors have a responsibility to report harassment and discrimination, supervisors must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors should work to accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

3.3 *Bystander Intervention.* Individuals who witness potential harassment or discrimination may also wish to engage in “bystander intervention.” There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help:

- A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
- A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
- A bystander can record or take notes on the harassment incident to benefit a future investigation;
- A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
- If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace.

3.4 *Investigation Procedure.* The College will investigate any report or complaint of discrimination, harassment, or other violation of this policy that it receives, whether in verbal or written form. Investigations will be conducted in a manner that is prompt, thorough, and fair to all parties involved, and will be started and completed as soon as possible. The investigation will be kept confidential to the extent possible, and the College will take prompt and appropriate corrective action whenever it determines that harassment or another violation of this policy has occurred.

The College recognizes that participating in a harassment investigation can be uncomfortable and has

the potential to retraumatize an employee. Those receiving claims and leading investigations will handle complaints and questions with sensitivity toward those participating.

While the process may vary from case to case depending on the circumstances, an investigation of a report made under this policy will generally include the following steps. Upon receipt of a report of harassment or other violation of this policy, the College will:

- Conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment), as appropriate.
- Take steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails or phone records that may be relevant to the investigation. The person leading the investigation will consider and implement appropriate document request, review, and preservation measures, including for electronic communications.
- Seek to interview all parties involved, including any the complainant, the accused, and any relevant witnesses.
- Create a written documentation of the investigation (such as a letter, memo or email).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed.
- Implement any corrective action and take steps to ensure a safe work environment for the employee(s) who experienced any unlawful discrimination or harassment.

All employees, including managers and supervisors, are required to cooperate fully with any investigation conducted under this policy.

3.5 The College requests that reports of discrimination, harassment, or other violation of this policy be made in writing, but verbal reports will be accepted. Employees alleging harassment may use the SUNY Discrimination Complaint procedure which can be found online at https://www.suny.edu/sunypp/documents.cfm?doc_id=451. Employees may also report such inappropriate conduct to the Human Resources Department, the Title IX Officer, their supervisor, or other responsible JCC employee. If the report is verbal, the complainant will be asked to complete a written complaint form. If he or she declines, the College may prepare a complaint form based on the verbal report. Employees and other covered individuals may also file a complaint with the New York State Division of Human Rights and/or the United States Equal Employment Opportunity Commission, as discussed in more detail below.

3.6 *Retaliation is Strictly Prohibited.* The College strictly prohibits and does not tolerate any retaliation against an individual because he or she has in good faith (1) made a complaint of, reported, or opposed discrimination or harassment, either internally or with any government agency, or

encouraged another to do so; or (2) testified or assisted in an investigation or proceeding involving discrimination or harassment under the Human Rights Law or other anti-discrimination law. Such retaliation is unlawful under federal and state law and is contrary to College policy. Any employee who retaliates against anyone involved in a sexual harassment or discrimination investigation will face disciplinary action, up to and including termination.

No one should fear reporting sexual harassment if they believe it has occurred. An individual is protected from retaliation if he or she had a good faith belief that the practice complained of was unlawful, even if it ultimately does not rise to the level of a legal violation. These protections do not apply, however, to any person making an intentionally false charge of discrimination or harassment or providing intentionally false information in connection with an investigation under this policy.

Retaliation consists of adverse action taken against the individual because he or she engaged in any of the protected activities described above. It is an action by which an employer or supervisor seeks to “punish” an individual for engaging in protected activity or discourage an individual from doing so. The action need not be job-related or occur in the workplace. For example, threats of physical violence outside of work hours or disparaging someone on social media would be covered as retaliation under this policy.

Unlawful retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable worker from engaging in any protected conduct. Examples of retaliation may include, but are not limited to, the following when done because of an individual’s protected activity:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as “difficult” and excluding them from projects to avoid “drama”;
- Undermining an individual’s immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual’s desk to a less desirable office location.

An adverse employment action is not retaliatory simply because it occurs after the protected activity in question. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in protected activity. To establish a claim of retaliation, the individual must be able to prove that the adverse action was retaliatory.

An individual who believes they have been subjected to or observed retaliation in violation of this policy should report the matter in the same way as they would report perceived harassment or discrimination (see Complaint Procedure above). As with harassment and discrimination, all supervisors who receive reports or information about, observe, otherwise become aware of, or suspect any potential retaliation must immediately report it to the HR Department. A supervisor who fails to make such a report or otherwise knowingly allows retaliatory behavior to continue will be subject to

disciplinary action, up to and including termination of employment.

All employees and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as described in the next section of this policy.

3.7 Sexual Harassment: Statutory Provisions, Redress Rights, and Adjudication Forums. Harassment, discrimination, and retaliation as defined in this policy are unlawful pursuant to the New York Human Rights Law § 296.1 (codified as N.Y. Executive Law, Article 15) (the “Human Rights Law”), and the federal Civil Rights Act of 1964, Title VII (codified as 42 U.S.C. § 2000e et seq.) (“Title VII”). Such harassment, discrimination, and retaliation may subject the College to legal liability. Under New York law, individuals who engage in harassing, discriminatory, or retaliatory behavior may also be subject to personal liability and supervisors or managers who fail to report or act on harassment may be personally liable for aiding and abetting such behavior.

The internal process outlined in the policy above is one way for employees to report discrimination or harassment. Employees and covered individuals 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, employees and covered individuals may also seek the legal advice of an attorney.

a) The Human Rights Law and the New York State Division of Human Rights

The Human Rights Law applies to all employers in New York State with respect to sexual harassment and protects employees, paid or unpaid interns, and non-employees, regardless of immigration status. A complaint alleging a violation of the Human Rights Law may be filed with either the Division of Human Rights (“DHR”) or in New York State Supreme Court within three years of the alleged violation. Complaining internally to the College does not extend an individual’s time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

An individual does not need an attorney to file a complaint with DHR, and there is no cost to do so. DHR will investigate the complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are eligible for a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring the employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive 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. An individual may call (718) 741-8400 or visit www.dhr.ny.gov. The website has a digital complaint process that can be completed on a computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR’s regional offices across New York State. Employees may also call the DHR sexual harassment hotline at 1-800-HARASS-3 for more information about filing a sexual harassment complaint. This hotline can also provide a referral to a volunteer attorney experienced in sexual harassment matters who can provide limited free assistance and counsel over the phone.

b) Title VII and the Equal Employment Opportunity Commission

The United States Equal Employment Opportunity Commission (“EEOC”) enforces federal anti-discrimination laws, including Title VII. Title VII applies to private employers with at least 15 employees.

An individual can file a complaint with the EEOC anytime within 300 days from the most recent incident of harassment. An individual does not need an attorney to file a complaint with EEOC, and there is no cost to do so. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with the employer. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Notice of Right to Sue permitting the complainant to file a lawsuit in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated, or believes that unlawful discrimination occurred but does not file a lawsuit.

Individuals may obtain relief in mediation, settlement or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. The remedies available to victims of sexual harassment vary depending on the circumstances and forum involved, but may include requiring the defendant(s) to take action to stop the harassment, or redress the damage caused, including reinstatement/instatement to a job, payment of monetary damages (e.g., back pay, out-of-pocket expenses), compensatory damages, punitive damages in certain circumstances, reasonable attorneys’ fees, and civil fines.

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 or via email at info@eeoc.gov.

If an individual filed an administrative complaint with the New York State Division of Human Rights, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

c) Local Protections

There may also be applicable local laws that protect individuals from sexual harassment. An individual may contact the county, city, town, or village in which they live to determine whether such a local law exists. If the sexual harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Redress can be sought by contacting the local police department.

3.8 Administration of Policy. This policy is intended to comply with and implement New York law regarding sexual harassment policies (Labor Law § 201-g) and any accompanying regulations. To the extent that this policy is inconsistent therewith, the law and applicable regulations will apply.

4.0 Definitions

5.0 References