



## 2.10 Sexual Harassment and Discrimination Response and Prevention Policy

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Category: Administration

Name of Responsible Office: Human Resources and Organizational Development

Title of Responsible Executive: ~~Assistant to the President, Human Resources and Organizational Development~~ Executive Director, Human Resources and Organizational Development

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### Policy Statement

MCC is committed to maintaining a workplace free from discrimination and harassment. Sexual harassment is a form of sex discrimination which is unlawful in the workplace under Title VII of the Civil Rights Act of 1964, as amended, and the New York State Human Rights Law. Under Title IX of the Educational Amendments of 1972, sexual harassment also is prohibited in the provision of educational services and protects students and employees from sexual harassment. Discrimination can be related to or affected by other identities beyond gender. Under the New York Human Rights Law, it is unlawful to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, predisposing genetic characteristics, familial status, marital status, criminal history, or status as a victim of domestic violence. While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected categories are generally the same.

Sexual harassment is prohibited and will not be tolerated at MCC. The College has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects. All employees, managers and supervisors are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of MCC's commitment to a discrimination-free work and learning environment.

### Policy

Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting, and all employees and students are entitled to work and learn in a campus environment that prevents sexual harassment. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and ~~employees and students~~ can enforce this right by filing a complaint internally with the College, and/or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the College's Sexual Harassment Complaint and Investigation Procedure.

#### *Subsection A: Definition of Sexual Harassment*

Sexual harassment is a form of gender-based discrimination. 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. In accordance with applicable law, sexual harassment includes is generally

~~described as unwelcome conduct which is either sexual advances, requests for sexual favors or other verbal or physical conduct~~ of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Submission to such conduct is made ~~(either explicitly or implicitly)~~ a term or condition of employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment, even if the reporting individual is not the intended target of the sexual harassment.
- The conduct has the purpose or effect of subjecting an individual to inferior terms, condition or privileges of employment because of their sex or gender, gender identity, gender expression and/or sexual orientation.

In New York, sexual harassment does not need to be severe or pervasive to be unlawful. However, unlawful harassment does not include petty slights or trivial inconveniences, but rather unwanted conduct that impacts the work or academic environment as described above. Under state law, whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. The intent of one's behavior, for example, making a joke, does not neutralize a harassment claim. In other words, not intending to harass is not a defense. Just as discrimination can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment and might range from counseling to termination when appropriate.

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 as 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.

There are two main types of sexual harassment:

- Conduct that creates a 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, gender identity, or gender expression. Sexual harassment also consists of 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 also called "quid pro-quo" harassment."

Harassers can be a superior, a subordinate, a coworker or anyone else in the workplace, including an independent contractor, contract worker, vendor, client, customer, or visitor. Harassment does not have to be between members of the opposite sex or gender. 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 on black women employees than white women employees can

be both race and gender discrimination. In addition, past experiences as a survivor of domestic or sexual violence may lead an individual to feel retraumatized by someone's behaviors in the workplace. It is important for all employees to be aware of how their actions impact someone with different experiences than their own in the interest of creating a safe workplace.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline in accordance with employment contracts for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Employees and students who believe they have been subjected to sexual harassment may use the College's Sexual Harassment Complaint and Investigation Procedure for more details on how to have their allegations reviewed, including a link to a complaint form.

Allegations of student peer on peer sexual harassment and/or misconduct are addressed through the Monroe Community College Sexual Misconduct Policies and Procedures, available at <https://www.monroecc.edu/depts/title-ix/>.

### *Subsection B: Examples of Sexual Harassment*

Sexual harassment is not limited to sexual contact or touching. Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. The following is a non-exhaustive list of some types of acts that may constitute sexual harassment. Individuals who believe they have experienced sexual harassment, even if it does not appear on this list should feel encouraged to report it: Examples of sexual harassment may include, but are not limited to:

- Sexually oriented gestures, noises, remarks or jokes, or questions, and comments about a person's sexuality, sexual experience, or romantic history which 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.
- Intentional misuse of an individual's preferred identified pronouns
- Creating different expectations for individuals based on their perceived identities
- Repeated requests for dates or romantic gestures, including gift giving
- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship
- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct by individuals in positions of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform their employment or academic responsibilities
- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person'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 a target's job performance evaluation, a promotion or other job benefits or detriments, or an educational benefit or detriment
  - Subtle or obvious pressure for unwelcome sexual activities
- ~~Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile environment~~
- Sex stereotyping, which 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. This may include conduct such as remarks regarding an employee's gender expression, because that person does not conform to gender stereotypes as to "appropriate" looks, speech, personality, or lifestyle. such as wearing
- Sexual or discriminatory displays or publications, 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 computers or cell phones and sharing such displays while in the workplace or classroom
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, 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 their employment or academic duties
  - Sabotaging an individual's work
  - Bullying, yelling, name-calling

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 they occur away from the workplace premises, on personal devices or during non-work hours. Sexual harassment can occur when employees are working remotely from home as well. Harassment can happen on virtual meeting platforms, in messaging apps, or on personal cell phones.

### *Subsection C: Retaliation*

Retaliation is unlawful, and in violation of this policy. Retaliation against a person who files a complaint of sexual harassment or discrimination, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result in disciplinary action. As long as an individual reasonably and in good faith believes that they have experienced retaliation, they are protected from such behavior under this policy. Retaliation includes any conduct, whether or not in the workplace or employment-related, which might deter a reasonable person from making or supporting a charge of discrimination or

harassment and is directed at someone who engages in protected activity. Protected activity includes opposing a discriminatory practice, making a good faith report of a suspected violation of this policy, filing a harassment complaint internally or with a governmental agency, participating in an investigation or proceeding of such a report or complaint, or encouraging a fellow employee to make a report. Even if the alleged harassment does not turn out to rise to the level of a violation of a law or this policy, the individual is protected from retaliation. However, the protection against retaliation is not intended to protect persons making intentionally false charges of harassment. Examples of retaliation may include, but are not limited to demotion, termination, denying accommodations, reduced hours, or the assignment to less desirable shifts, publicly releasing personnel files, undermining an individual's immigration status, or reducing work responsibilities or passing over for a promotion. Individuals who experience retaliation should contact the campus Affirmative Action Officer and may file a complaint pursuant to these procedures. Any employee who engages in retaliatory conduct against another employee will be subject to disciplinary action, up to and including termination. Participants who experience retaliation should contact the campus Affirmative Action Officer, and may file a complaint pursuant to these procedures.

#### *Subsection D: Reporting Sexual Harassment*

Preventing sexual harassment is everyone's responsibility. MCC cannot prevent or remedy sexual harassment unless the College knows about it. Any employee or student who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or Human Resources and Organizational Development. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or Human Resources and Organizational Development. If an employee makes a report to his/her their supervisor or manager and believes the supervisor or manager is not taking appropriate action, the employee should report this inaction to Human Resources and Organizational Development.

Reports of sexual harassment may be made verbally, in writing, or using an online report form. MCC's Discrimination and Sexual Harassment Complaint Form is attached to this policy, and individuals are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and should note that it is on another employee's behalf.

Employees and students 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.

The availability of this reporting procedure does not preclude individuals who believe they are being harassed from promptly advising the offender that his or her their behavior is unwelcome and requesting that it be discontinued.

#### *Subsection E: Supervisory Responsibilities*

Supervisors and managers have a responsibility to prevent sexual harassment and discrimination. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to take appropriate steps to address the conduct and report such suspected sexual harassment to Human Resources and Organizational Development.

In addition to being subject to discipline in accordance with employment contracts if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline and may be legally liable for aiding and abetting such behavior for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation. While supervisors and managers have a responsibility to report harassment and discrimination, they must be mindful of the impact that harassment and a subsequent investigation may have on victims. Supervisors and managers must 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.

### *Subsection F: Complaint and Investigation of Sexual Harassment*

MCC will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. The investigation will be prompt and thorough, commenced immediately, and completed as soon as possible. MCC will keep the investigation ~~private~~confidential to the extent possible. All individuals involved, including those making a harassment claim, witnesses, and the alleged harassers deserve a fair and impartial investigation. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment. Please refer to the Sexual Harassment Complaint and Investigation Procedure.

If it is concluded that a non-employee has subjected an employee or other person protected by this Policy to conduct in violation of the Policy, prompt and effective action will be taken to stop the harassment and deter any future harassment.

### *Subsection G: Legal Protections and External Remedies*

Sexual harassment is not only prohibited by MCC but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at MCC, 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, individuals 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 ~~three~~ three (3) years of the alleged harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three (3) 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 MCC does not extend an individual's time to file with DHR or in court. The ~~one (1) year or~~ three (3) years is counted from date of the most recent incident of alleged harassment. Individuals do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate the 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://www.dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State. You also can call DHR's toll-free sexual harassment hotline at 1-800-HARASS-3 Monday through Friday, 9:00 AM to 5:00 PM. This hotline can also

provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

## 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.

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 [email 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.

## 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.

## *Subsection H: Training*

Annual sexual harassment prevention training will be provided to all employees in compliance with applicable laws and policy.

## *Subsection I – Bystander Intervention*

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. 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
5. 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. Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

## Applicability

This policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, vendors, consultants and other persons conducting business, regardless of immigration status, with MCC. The term “employees” refers to this collective group. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring. For those working remotely, in addition to sending this policy via email, it will also be available on MCC’s internal shared network.

## Definitions

~~**Retaliation**—An adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness.~~

~~**Adverse action**—Being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint.~~

## Related Information

### *College Documents*

- [2.10P Sexual Harassment Complaint and Investigation Procedure](#) ~~2.10~~
- [MCC Discrimination and Harassment Complaint Form](#)
- [Sexual Misconduct Policies and Procedures](#)

### *Other Related Documents*

- [SUNY Sexual Harassment and Consensual Relationship Policy](#)
- [NYS Model Sexual Harassment Policy – updated hyperlink from https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training-download-model-policy](https://www.ny.gov/combating-sexual-harassment-workplace/sexual-harassment-prevention-model-policy-and-training-download-model-policy)
- [New York State Division of Human Rights](#)
- [U.S. Equal Employment Opportunity Commission](#)

## History

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