

## Sexual Harassment Policy

Policy Number: A20181008080  
 Effective Date: 10/9/2018  
 Sponsoring Department: Human Resources  
 Impacted Department(s): Independent Health, its subsidiaries and affiliated organizations (IHC, IHF, PBD, Nova, Reliance)

**Type of Policy:**  Internal  External

**Data Classification:**  Confidential  Restricted  Public

### Applies to (Line of Business):

- Corporate (All)
- State Products, if yes which plan(s):  MediSource;  MediSource Connect;  Child Health Plus;  Essential Plan
- Medicare, if yes, which plan(s):  MAPD;  PDP
- Commercial, if yes, which type:  Large Group;  Small Group;  Individual

### Excluded Products within the Selected Lines of Business (LOB)

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n/a

**Applicable to Vendors?** Yes  No

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### Purpose and Applicability:

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New York Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for associates to report alleged incidents of sexual harassment. This policy applies to all associates, applicants for employment, contingent workers and persons conducting business, regardless of their immigration status, with Independent Health, its subsidiaries and affiliated organizations within New York State.

### Policy:

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Independent Health, its subsidiaries and affiliated organizations (hereinafter “the company”) are committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All associates are required to work in a manner that

prevents sexual harassment in the workplace. This Policy is one component of the company's commitment to a discrimination-free work environment.

Sexual harassment is against the law. All associates have a legal right to a workplace free from sexual harassment, and associates are urged to report sexual harassment by filing a complaint internally with the company. Associates may also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. Additional information about the company's commitment to a discrimination-free work environment can be found in the **Nondiscrimination and Antiharassment Policy #A900800211**.

**Policy Provisions:**

Sexual harassment will not be tolerated. Any associate or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g. counseling, warning, suspension, termination).

Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the associate reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. The company will not tolerate such retaliation against anyone who in good faith complains or provides information about suspected sexual harassment. Any associate of the company who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. Any associate or contingent worker working in the workplace who believes they have been subject to such retaliation should inform a supervisor, manager, or a Human Resources Business Partner or Generalist. Any associate or contingent worker who believes they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject the company to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Associates of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

The company 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 company will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All associates, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

All associates are encouraged to report any harassment or behaviors that violate this policy. The company will provide all associates a complaint form for associates to report harassment and file complaints.

Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of to their Human Resources Business Partner or Generalist.

This policy applies to all associates and **contingent workers** and all must follow and uphold this policy. This policy will be provided to all associates and is available to all associates in the Independent Health Policy Library on Inside IH and will be provided to associates upon hire. The policy and/or complaint form is also available in Human Resources.

### **What Is “Sexual Harassment”?**

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

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

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

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient’s job performance.

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

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

### **Examples of sexual harassment**

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

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

### **Who can be a target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects associates and contingent workers, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

### **Where can sexual harassment occur?**

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

### **Retaliation**

Unlawful retaliation can be any action that would discourage a worker from coming forward to make or support a sexual harassment claim including but not limited to, disclosing an employee's personnel files, except where such disclosure is made in the course of commencing or responding to a complaint in any proceeding under NY State Human Rights Law or any other civil or criminal action or other judicial or administrative proceeding as permitted by applicable law. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g. threats of physical violence outside of work hours).

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

Protected activity occurs when a person has:

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

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

### **Reporting Sexual Harassment**

**Preventing sexual harassment is everyone's responsibility.** The company cannot prevent or remedy sexual harassment unless it knows about it. Any associate, or contingent worker who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or a Human Resources Business Partner or Generalist. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or a Human Resources Business Partner or Generalist.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all associates are encouraged to use this complaint form. Associates who are reporting sexual harassment on behalf of other associates should use the complaint form and note that it is on another associate's behalf.

Associates or contingent workers who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

### **Supervisory Responsibilities**

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 report such suspected sexual harassment to their Human Resources Business Partner or Generalist.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline 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.

### **Complaint and Investigation of Sexual Harassment**

**All** complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible.

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

Any associate may be required to cooperate as needed in an investigation of suspected sexual harassment. The company will not tolerate retaliation against any associate who files complaints, supports another's complaint or participates in an investigation regarding a violation of this policy.

### **Legal Protections and External Remedies**

Sexual harassment is not only prohibited by the company, is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the company, associates may also choose to pursue legal remedies with the following governmental entities.

### **State Human Rights (HRL)**

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

or in New York State Supreme Court. Complaints with DHR may be filed any time **within one year** (three years beginning Aug. 12, 2020) of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed an HRL complaint in state court. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR. Complaining internally to the company does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines. Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](https://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

### **Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC. An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](https://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

### **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.

## Definitions

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**Contingent Workers** -the various types include: temporaries, interns/students (paid or unpaid), consultants and contractors, vendors. This also includes Board Members who are external resources the organization utilizes to provide Board-related services.

**Due process**- while the process may vary from case to case, investigations will be done in accordance with the guidance provided by New York State.

## References

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### Related Policies, Processes and Other Documents

Complaint Form

Associate Handbook

### Regulatory References

New York State Labor Law Section 201-g

## Version Control

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### Sponsored By:

Name sponsor: Patricia Clabeaux

Title of sponsor: EVP, Chief Human Resources Officer

Signature of sponsor:



Revision Date	Owner	Notes
10/8/2019	Jen Barr	Updates from State 10/19 policy
7/1/2020	Jen Barr	Updated to remove Evolve
7/1/2021	Jen Barr	Updated to remove DxID
5/1/2022	Jen Barr	Reviewed; updated retaliation provision



## Complaint Form for Reporting Sexual Harassment

### ***Independent Health, its subsidiaries and affiliated organizations***

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to your Human Resources Business partner or Generalist via email or if you do not know who that is or prefer, you may also submit it to the Patricia Clabeaux, EVP, Chief Human Resources Officer at: [patricia.clabeaux@independenthealth.com](mailto:patricia.clabeaux@independenthealth.com) You may also choose to mail this to any of their attention to Human Resources, 511 Farber Lakes Dr., Buffalo, NY 14221. If you are more comfortable reporting verbally, or in another manner, please contact any of the resources listed above and the company will still follow its sexual harassment prevention policy by investigating the claims. You will not be retaliated against for filing a complaint. For additional resources, visit: [ny.gov/programs/combating-sexual-harassment-workplace](http://ny.gov/programs/combating-sexual-harassment-workplace)

### **COMPLAINANT INFORMATION**

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:    Email    Phone    In person

### **SUPERVISORY INFORMATION**

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

### **COMPLAINT INFORMATION**

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor    Subordinate    Co-Worker    Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing?  Yes  No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

*The last question is optional but may help the investigation.*

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

Signature: \_\_\_\_\_

Date: \_\_\_\_\_