

# **EQUAL EMPLOYMENT OPPORTUNITY, ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY**

## **I. Equal Employment Opportunity and Anti-Discrimination Policy**

Upstate Niagara Cooperative, Inc. (“Upstate”) is committed to a policy of equal employment opportunity with respect to all employees and applicants for employment. In order to provide equal employment and advancement opportunities to all individuals, employment decisions at Upstate will be based on merit, qualifications, and abilities. We do not discriminate against employees or applicants in hiring, promotion, compensation, placement, termination, layoff, recall, transfer, leaves of absence or any other term or condition of employment on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, genetic information, marital status, military status, domestic violence victim status, criminal history status, or any other protected category in accordance with applicable federal, state, and local laws.

Upstate will endeavor to make reasonable accommodations for the known physical or mental limitations of a qualified applicant or employee with a disability or who may be a victim of domestic violence, unless doing so would result in an undue hardship on Upstate. Likewise, we will make reasonable accommodations upon request arising out of an individual’s religious beliefs or practices, unless doing so would result in an undue hardship on Upstate.

This policy governs all aspects of employment, including but not limited to recruiting, advertising, hiring, job assignment, promotion, compensation, discipline, termination, and access to benefits and training.

Upstate also strongly prohibits any retaliatory behavior against complainants or witnesses who report acts of unlawful discrimination or harassment, or individuals who assist or participate in any investigation, compliance evaluation, hearing, or any other activity related to laws requiring equal employment opportunity. Retaliatory behavior may include harassment, intimidation, threats, coercion, or discrimination.

Any employee that has been subjected to, experienced, witnessed, or has knowledge of any discrimination or retaliation against an Upstate employee by another employee or by a supervisor, visitor, vendor or contractor, is encouraged to report it immediately to the employee’s supervisor. If the employee is unable to report the discrimination or retaliation to the supervisor, then they are encouraged to report to the site Human Resources Coordinator. Applicants may make complaints of discrimination or retaliation to the site Human Resources Coordinator or any other member of the Human Resources Department.

All complaints of discrimination and/or retaliation will be investigated and resolved promptly by a member of the Human Resources Department. The investigation will be kept confidential to the greatest extent practicable, consistent with Upstate’s need to conduct an adequate investigation so that, where warranted, it can take prompt and appropriate action.

Appropriate disciplinary action will be taken against any employee who violates this policy against unlawful discrimination and retaliation. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension or termination. Any retaliatory conduct by the alleged harasser shall be severely punished.

Upstate's Chief Executive Officer supports this policy and supports Upstate's affirmative action programs. For inquiries concerning Upstate's commitment to equal employment opportunity, affirmative action and general demographic information on Upstate's workforce, please refer to Upstate Niagara's Affirmative Action Plan, which can be reviewed by request directed to the Chief Human Resource Officer.

The Chief Human Resource Officer serves as our Affirmative Action Officer and overall responsibility for the implementation of equal employment opportunity and affirmative action programs. This includes implementing an audit and reporting system to evaluate the effectiveness of this equal employment opportunity and affirmative action programs and to identify potential areas and degrees of underrepresentation and underutilization, and other potential disparities in all selection processes, and indicate the need for remedial action.

## **II. Anti-Harassment Policy**

### **A. Purpose**

Upstate is committed to safeguarding the rights of all employees and to providing a work environment that is free from all forms of discrimination, including unlawful harassment and retaliation. This policy applies to all employees, whether supervisory or non-supervisory, applicants for employment, interns (paid or unpaid), contractors, vendors, volunteers and persons conducting business with the Upstate. To the extent possible, Upstate will also take efforts to protect its employees from reported harassment by non-employees who are visiting Upstate or who have a relationship with the Upstate. Upstate will also take appropriate steps, when necessary, to prevent its employees from harassing non-employees (e.g., contractors, vendors, volunteers, visitors, etc.).

Harassment is offensive, a violation of our policies, is unlawful, and subjects Upstate to liability for harm to victims of harassment. Harassers may also be individually subject to liability. Employees who engage in sexual harassment, including supervisors, who engage in such conduct or who knowingly allow such behavior to continue, will be penalized.

All employees must ensure they understand this policy and their obligations. Employees can enforce their right to a workplace free from harassment by filing a complaint internally with Upstate, with a government agency or in court under federal, state or local antidiscrimination laws.

## **B. Prohibited Forms of Harassment**

Unlawful harassment consists of unwelcome conduct (whether verbal, physical, or visual) that is based upon a person's protected status, such as actual or perceived race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, genetic information, marital status, military status, domestic violence victim status, criminal history status, or any other protected category in accordance with applicable federal, state and local laws. It includes behavior, written/graphic material or comments intended as humor. The use of Upstate's facilities to disseminate, duplicate or display such materials is prohibited. Unlawful harassment of any kind is prohibited in the workplace, in outside work assignments or at employer-sponsored functions, events or programs. Upstate will not tolerate harassing conduct in the workplace which:

- 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 at Upstate.

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker or a non-employee.
- The victim does not have to be the person to whom the conduct or comment is directed but can be anyone who is affected by the offensive conduct or comment.
- Unlawful harassment may occur without economic injury to the victim.

Harassing conduct may include, but is not limited to, the following kinds of conduct:

- Verbal abuse, such as epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts (even if claimed to be "jokes" or "pranks") which relate to actual or perceived race, color, creed, religion, sex or gender, national origin, age, disability, marital status, sexual orientation, military status, veteran status, genetic predisposition or carrier status, victim of domestic violence status, or another protected status; and
- Written or graphic material that denigrates or shows hostility or aversion toward an individual or a group because of actual or perceived race, color, creed, religion, sex or gender, national origin, age, disability, marital status, sexual orientation, military status, veteran status, genetic predisposition or carrier status, victim of domestic violence status, or another protected status and is displayed or circulated in the workplace.

While petty slights, annoyances and isolated incidents typically will not rise to the level of unlawful harassment, a single severe incident of inappropriate behavior may be enough to be considered unlawful, depending on the circumstances.

Any harassment in violation of these rules is absolutely prohibited and will not be tolerated. Should unlawful harassment occur, Upstate will take appropriate corrective action to prevent its continuation or recurrence. Violation of these rules will result in disciplinary action, up to and including discharge, or termination of the contract/relationship of Upstate with a contractor or vendor.

No supervisor, employee, or any other person at Upstate has any authority whatsoever to harass employees in violation of these rules. If anyone claims to have such authority, or if you have any questions about whether conduct that you find objectionable is authorized by Upstate, please contact your immediate supervisor, or the site Human Resources Coordinator.

### **C. Sexual Harassment**

Sexual harassment is a violation of law and stands in direct opposition to Upstate's policy. Every employee is entitled to a working environment free from sexual harassment. Sexual harassment is a form of sex or gender discrimination and is unlawful under the Federal Civil Rights Act of 1964 (Title VII), as amended, the New York State Human Rights Law. Consistent with its values and legal obligations, Upstate prohibits and condemns all forms of sexual harassment by employees and non-employees, such as contractors, vendors, visitors, volunteers, etc., which occur on the premises of Upstate and at all Upstate-sponsored events, programs and activities, including those that take place at locations off Upstate's premises, such as business-related travel, business meetings and business-related social events.

#### ***1. What is sexual harassment?***

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 is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of such conduct is used as a 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.

Generally, there are two types of sexual harassment:

- “Hostile environment” sexual harassment consists of words, signs, jokes, pranks, intimidation or physical violence of a sexual nature or directed toward an individual because of the individual’s sex. Hostile environment sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace that are offensive or objectionable to the recipient, that cause the recipient discomfort or humiliation, or that interfere with the recipient’s job performance.
- “Quid quo pro” sexual harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include any term or condition of employment, such as hiring, promotion, or continued employment. Only employees who have authority to grant or withhold benefits may be deemed to engage in this type of harassment.

Sexual harassment can occur between males and females, or between persons of the same sex, regardless of sexual orientation. It can originate from a co-worker, a supervisor, or from a third party who is not an employee, such as a contractor, vendor, volunteer, visitor, etc., or any other individual associated with Upstate. A perpetrator of sexual harassment can be a supervisor, subordinate, co-worker or anyone in the workplace, including a contractor, vendor, volunteer or visitor. Sexual harassment based upon gender identity or transgender status is also unlawful.

## ***2. What conduct constitutes sexual harassment?***

Sexual Harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to gender-based discrimination or behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes with work effectiveness. Sexual Harassment may take different forms. Sexually harassing conduct can consist of unwanted verbal or physical sexual advances, sexually explicit statements, or discriminatory remarks that are offensive or objectionable to the recipient. While one joke or comment typically does not rise to the level of unlawful sexual harassment, a single severe incident of inappropriate sexual behavior may be serious enough to be considered unlawful, depending on circumstances. Examples of sexual harassment include but are not limited to:

- Physical assaults of a sexual nature, such as:
  - Rape, sexual battery, molestation, or attempts to commit these acts;
  - Intentional or unintentional unwanted physical conduct that is sexual in nature, such as touching, kissing, hugging, pinching, patting, grabbing, fondling, brushing against another employee’s body, or poking another employee’s body.

- Unwanted sexual advances, propositions or other sexual comments, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities;
  - Sexual innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, or questions/comments about a person's gender, sexuality, sexual preferences or sexual experience, that are sufficiently severe to create a hostile work environment.
- 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 sexual in nature, obscene or pornographic.

### ***3. What laws govern sexual harassment and what remedies do they provide?***

The Federal Civil Rights Act of 1964, as amended, often referred to as Title VII, and the New York State Human Rights Law, prohibit unlawful sexual harassment. There may also be local laws that govern sexual harassment in the workplace.

A victim who establishes that unlawful harassment occurred may be entitled to any of the following remedies:

- Injunctive relief ordering the employer to cease and desist in the unlawful conduct, or requiring the employer to provide affirmative relief (e.g., hiring, promotion or reinstatement);
- Back pay;
- Other compensatory or punitive damages (amount may be subject to a cap); and
- Attorney's fees and court costs.

### **Retaliation**

Retaliation for making a complaint about harassment, sexual harassment or other discrimination is prohibited by law. No employee will be retaliated against for making a good faith complaint of discrimination or harassment. Upstate prohibits any retaliatory behavior, including intimidation, threats or coercion, directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of discrimination or unlawful harassment.

No person covered by this policy shall be subject to adverse employment action as a result of one's engagement in protected activity. Adverse actions can include, but are not limited to, discharge, refusal to hire, and denial of promotion. Protected activity can include, but is not limited to, filing a formal written complaint of harassment, either internally, or with any anti-discrimination agency; testifying or assisting in a proceeding involving harassment; opposing harassment by reporting harassment of one's self or another to an immediate supervisor or a member of the Human Resources Department; or encouraging another individual to report harassment.

Follow-up inquiries shall be made to ensure that the discrimination and/or unlawful harassment has not resumed and that all those involved in the investigation of the complaint have not suffered retaliation. Individuals who violate this policy or retaliate against another in any way will be subject to disciplinary action, up to and including discharge. Any employee or non-employee who believes they have been a victim of such retaliation may seek compensation in other available forums.

#### **D. Complaint Procedures**

##### ***1. How does an employee submit a complaint?***

Upstate is committed to investigating all complaints about alleged harassment or sexual harassment occurring in the workplace, but it can only act on the conduct of which it is aware. In order for Upstate to enforce this policy, and to take corrective measures as may be necessary, it is essential that any employee who believes he/she has been a victim of harassment in the work environment, as well as any other person who is aware of and/or who has knowledge of or witnesses any possible occurrence of harassment, immediately report such alleged harassment to their immediate supervisor or the site Human Resources Coordinator. The Chief Human Resource Officer has overall responsibility for investigating complaints and this Policy's enforcement. These concerns may be raised at any time, without the scheduling of an appointment. Any individual affected by harassing or sexually harassing behavior may complain, even if he/she was not the direct victim of the offensive behavior. Even in the absence of a complaint, if Upstate has knowledge or, or has reason to know of or suspect any occurrence of harassment, it will investigate such conduct promptly.

All supervisors 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 the site Human Resources Coordinator.

Employees may use the Harassment/Discrimination Complaint Form, available in the Human Resources Department to make a complaint, but they are not required to do so, and the choice to make a complaint in another format (e.g., orally, via email, etc.), will not cause a delay in investigating the complaint.

## ***2. What procedures does Upstate follow to investigate complaints?***

All complaints or information about suspected harassment will be investigated, whether that information was reported in verbal or written form. Upon receipt of an informal/formal complaint, Upstate will conduct an investigation of the complaint, according due process to all involved in order to protect the rights of all involved parties to a fair and impartial investigation. However, even in the absence of a complaint, if Upstate has knowledge of or has reason to know of or suspect any occurrence of harassment, it will investigate such conduct promptly.

The nature, details and length of the investigation process will vary depending on the details of the complaint. The objective of Upstate in every instance is to make a fair determination of what happened so it can then take corrective action, if warranted. The investigation may include, among other things, interviews of witnesses and the person who is the subject of the complaint, as well as reviews of relevant documents, emails, phone records, etc. The accuser and accused will both be given the opportunity to provide relevant information.

Upstate will create a written documentation of the investigation, which contains information related to all information reviewed and all individuals interviewed in relation to the alleged harassment. The documentation will include the final resolution of the complaint, together with the corrective action(s) taken, if any.

Upstate considers harassment to be a form of employee misconduct and will enforce sanctions against any employee found to have engaged in harassment. Specifically, any employee who has been found to have harassed another employee or a third party based upon the results of an investigation may be subject to appropriate disciplinary action, such as training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, or discharge. Further, Upstate will enforce corrective action against any supervisor who knowingly allows such behavior to occur or continue.

Even if no specific violation of this policy is found, Upstate may nonetheless still impose corrective action if an individual engages in other behavior inappropriate for the workplace. Third parties (such as contractors, vendors, volunteers, visitors, etc.) who are found to have violated this policy will be subject to appropriate sanctions as warranted and in compliance with applicable law.

To the greatest extent possible, within legal constraints, all complaints will be treated as confidentially and privately as possible. However, limited disclosure may be necessary to complete a thorough investigation of the charges, and any disclosure will be provided on a “need to know” basis.



### ***3. What other forms of redress are available to address complaints of harassment?***

Upstate hopes that employees will be comfortable reporting their concerns about suspected harassment so that it may investigate and address those concerns, although it understands that some employees may choose to pursue other avenues to redress their concerns. Employees may file an administrative complaint of harassment with the U.S. Equal Employment Opportunity (“EEOC”) or the New York State Division of Human Rights (“Division”).

An individual can file a complaint with the EEOC anytime within 300 days from the harassment. 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 via email at [info@eeoc.gov](mailto:info@eeoc.gov).

Complaints with the Division may be filed at any time within one year of the harassment (three years as of August 12, 2020). If an individual does not file at the Division, he/she can sue directly in state court under the Human Rights Law, within three years of the alleged harassment. More information can be found at [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint).

If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.