

LMDA - Sexual Harassment Prevention Policy

LMDA is committed to providing a work environment in which all workers are treated with respect and dignity. Workplace violence and/or harassment will not be tolerated from any person in the workplace; including staff, volunteers (whether paid or unpaid), board members, executive, and members of the public regardless of immigration status, as applicable. This policy is one component of LMDA's commitment to a discrimination-free work environment. Sexual harassment is against the law and all persons employed or volunteering for LMDA have a legal right to a workplace free from sexual harassment.

Employees and volunteers are urged to report sexual harassment by filing a complaint internally with LMDA's Anti-Harassment Committee. A complaint form is located **on the LMDA website** and can be provided to you for that purpose. Employees and volunteers can also file a complaint with a government agency (LMDA is incorporated in NY State) or in court under federal, state or local anti-discrimination laws.

The LMDA Anti-Harassment Committee will conduct an appropriate investigation into the circumstances and deal with all complaints or incidents of workplace violence and/or harassment in a fair, respectful, and timely manner. Information provided about an incident or about a complaint will not be disclosed except as necessary to protect workers, to investigate the complaint or incident, to take corrective action or as otherwise required by law.

Definitions

- **Harassment** is:
 - offending or humiliating someone physically or verbally;
 - threatening or intimidating someone; or
 - making unwelcome jokes or comments about someone's race, national or ethnic origin, colour, religion, age, self-identified or perceived sex, gender identity, expression and the status of being transgender, sexual orientation, marital status, family status, disability, or pardoned conviction.
- **Sexual harassment** includes:
 - offensive or humiliating behaviour that is related to a person's sex or gender identity or expression;
 - behaviour of a sexual nature that creates an intimidating, unwelcome, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment; or
 - behaviour of a sexual nature that could reasonably be thought to put sexual conditions on a person's job or employment opportunities
 - 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 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 tried 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 employee or volunteer who feels harassed should report 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 describe some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

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.

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 or jokes, or comments about a person's sexuality or sexual experience, which 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 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 State Law protects employees, paid or unpaid interns, and non-employees, 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 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.

Retaliation

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. 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 employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of 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. LMDA cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to the Anti-Harassment Committee. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to the Anti-Harassment Committee. If members of the Anti-Harassment Committee are the people engaging in bullying and harassing behavior, or has a perceived conflict of interest, contact either the President or member of the Board who feels the safest for you to speak to in regards to this matter.

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 employees are encouraged to use this complaint form. Employees/members of LMDA who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's/member's behalf.

Employees, paid or unpaid interns or members 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.

Supervisory Responsibilities

All board members 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 Anti-Harassment Committee.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, board members will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Board members 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. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee/member of LMDA may be required to cooperate as needed in an investigation of suspected sexual harassment. LMDA will not tolerate retaliation against employees or members who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of the complaint, the Anti-Harassment Committee will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If they refuse, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses*;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following: A list of all documents reviewed, along with a detailed summary of relevant documents; A list of names of those interviewed, along with a detailed summary of their statements; A timeline of events; A summary of prior relevant incidents, reported or unreported; and The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

*LMDA recognizes the value of having a support person in the room during interviews both to provide emotional care and to help understand or explain the issues brought forward. This support person must not, in any way, be involved in the claim. The support person might also be asked to be part of a mediation process, if the dispute is decided to be adjudicated in that fashion. The professional mediator used for this process will have the right to ask the support person to leave the room if their presence becomes unhelpful to the process.

Legal Protections And External Remedies

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

Aside from the internal process at LMDA, employees/members 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, you may seek the legal advice of an attorney.

In addition to those outlined below, employees/members 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 members, 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 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 a HRL complaint in state court.

Complaining internally to LMDA does not extend your time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

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.

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.

Contact DHR at (888) 392-3644 or visit 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 antidiscrimination 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 or via email at 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. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Reporting Procedures

1. How to report

LMDA staff, board, executive, members, and volunteers can report incidents or complaints of workplace bullying and harassment verbally or in writing. When submitting a written complaint, please use the workplace bullying and harassment complaint form, which can be found on the LMDA website. When reporting verbally, the reporting contact, along with the complainant, will fill out the complaint form.

2. When to report

Incidents or complaints should be reported as soon as possible after experiencing or witnessing an incident. This allows the incident to be investigated and addressed promptly.

3. Reporting contact

Report any incidents or complaints to the Anti-Harassment Committee (comprised of the VP EDI, VP Advocacy, and LMDA Board Chair)

4. Alternate reporting contact

If members of the Anti-Harassment Committee are the people engaging in bullying and harassing behaviour, or has a perceived conflict of interest, contact either the President or member of the Board who feels most safe.

5. What to include in a report

A sample report can be found below and on the LMDA website.

6. Annual review

These reporting procedures will be reviewed on an annual basis, and posted online.

Sample Harassment Report

Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of harassment or sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for employees and volunteers to report alleged incidents of sexual harassment. **If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Anti-Harassment Committee at [antiharassment@lmda.org].** Once you submit this form, LMDA is required to follow its sexual harassment prevention policy and investigate all claims. If you are more comfortable reporting verbally or in another manner, LMDA is still required to follow its sexual harassment policy by investigating the claims as outlined at the end of this form.

1. COMPLAINANT INFORMATION (please complete all sections)

Name of Complainant	
Position (title) of complainant at time of incident:	
Complainant contact information: (phone, email & address where you would like to receive correspondence)	
Name of individual involved in alleged harassment:	

Select Preferred Communication Method: (please check one)

Home phone: ___

Cell phone: ___

Work phone: ___

Email: ___

2. SUPERVISOR INFORMATION (please complete all sections)

Immediate Supervisor's Name:	
Title:	
Work Phone:	
Work Address:	

3. COMPLAINT (please complete all sections)

A. Your complaint of Sexual Harassment is made against:

Name:	
Title:	
Work Phone:	
Work Address:	

B. Relationship to you: please check one

- Supervisor ___
- Co-Worker ___
- Client ___
- LMDA Member ___
- Volunteer ___
- Other _____

Please describe in detail the specific incident(s) of harassment alleged; if multiple, describe each incident separately, including

- a) the names of the parties involved,*
- b) any witnesses to the incident,*
- c) the location, date, and time of the incident,*
- d) details about the incident (behaviours, actions and/or words used),*
- e) any additional details.*

*If you cannot remember exact dates, times, and locations, please provide approximations.
If you have any supporting documents (such as emails or texts) please attach to this form.*

The last questions are optional, but may help facilitate the investigation:

Have you previously complained or provided information (verbal or written) about harassment at LMDA? If yes, when and to whom did you complain or provide information to?

Employees that file complaints with their employer might have the ability to get help or file claims with other entities including federal, state or local government agencies or in certain courts.

Have you gone through a mediation process facilitated by LMDA regarding this complaint?

Have you filed a claim regarding this complaint with a federal, state or local government agency?

Yes ___

No ___

Have you instituted a legal suit or court action regarding this complaint?

Yes ___

No ___

Have you hired an attorney with respect to this complaint?

Yes ___

No ___

Once you have completed this form, please return to the reporting contact at **antiharassment@lmda.org**. Use extra sheets as necessary.

Signature

Date