

	<b>POLICY:</b>	<b>HR1.1.05 Sexual Harassment</b>
	<i>Department:</i>	Human Resources
	<i>Reviewed and Approved by:</i>	Stephanie Reh, VP, Administrative Services      Date: 10/18/18 Jeff Sinsebox, President      Date: 10/18/18
	<i>Date(s):</i>	01/2013, 09/2015, 03/17/2017, 10/18/18
	<i>Reference(s):</i>	HR Policy 1.1.05.1 Sexual Harassment Complaint Form; Human Rights Law (codified as N.Y. Executive Law, art. 15, § 290 et seq.); Title VII of the 1964 Federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.)

## POLICY

It is the policy of Epilepsy-Pralid Inc. (EPI) to provide a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination and will not be tolerated at EPI. All applicants, employees, interns (paid or unpaid), contractors or associates conducting business with EPI are required to conduct themselves in a manner that prevents sexual harassment in the workplace. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination. This policy is one component of EPI's commitment to a discrimination-free work environment.

Sexual harassment is against the law. All employees have a legal right to a workplace free from sexual harassment. Employees can enforce this right by filing a complaint internally with EPI, or with a government agency or in court under federal, state or local antidiscrimination laws.

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## DEFINITION

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, gender identity and/or status of being transgender.

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 complaining 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 consists of 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.

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Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject EPI to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability.

Employees 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.

Any employee who feels harassed should report the harassment to Human Resources (HR) so that any violation of this policy can be addressed 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 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 victim’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 how 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/or status of being transgender, such as:

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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

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York 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. A perpetrator of sexual harassment can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, business associate, 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.

### REPORTING SEXUAL HARASSMENT

**Preventing sexual harassment is everyone’s responsibility.** EPI cannot prevent or remedy sexual harassment unless the Agency knows about it. Any employee, intern (paid or unpaid) or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or HR. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or HR.

Reports of sexual harassment may be made verbally or in writing. The written complaint form, policy HR1.1.05.1 Sexual Harassment Complaint Form, is available on EPIcenter. All employees are encouraged to use this complaint form. Employees who are reporting potential sexual harassment on behalf of other employees should use the complaint form and note that the complaint is being made on behalf of another employee.

Employees, interns (paid or unpaid) or non-employees 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.

Any employee who feels harassed should report the harassment so that any violation of this policy can be addressed promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

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## MANAGEMENT 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 HR.

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 INVESTIGATION

**All** complaints or information about suspected 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. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged perpetrators, will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. EPI will not tolerate retaliation against employees 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 complaint(s), HR will conduct an immediate review of the allegation(s), and take any interim actions, as appropriate. If the complaint is verbal, the individual will be encouraged to complete the policy HR1.1.05.1 Sexual Harassment Complaint Form, in writing. If he or she refuses, HR will prepare a Complaint Form based on the verbal report.
- If documents, emails or phone records are relevant to the allegations, steps will be taken to obtain and preserve them.
- HR will request and review all relevant documents, including all electronic communications.
- HR will interview all parties involved, including any relevant witnesses.
- HR will prepare 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;

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- 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).
- Written documentation and associated documents will be maintained by the Agency in a secure and confidential location.
  - Following the investigation, HR will promptly notify the complainant and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
  - HR will inform the complainant of their right to file a complaint or charge externally as outlined in the Legal Protections and External Remedies section of this policy.

## **CORRECTIVE ACTION**

If a report of sexual harassment is found to be valid, immediate and appropriate corrective action will be taken. Employees or interns (paid or unpaid) who violate this policy, including the provision against retaliation, will be subject to disciplinary action, up to and including termination. This determination will be based on all the facts of the case.

## **RETALIATION**

EPI will not tolerate retaliation against anyone who, in good faith, complains or provides information about suspected harassment.

Unlawful retaliation can be any action that could discourage an employee from coming forward to make or support a sexual harassment claim including, but not limited to being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action. 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).

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 a “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.

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Even if the alleged harassment does not 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.

## LEGAL PROTECTIONS AND EXTERNAL REMEDIES

Sexual harassment is not only prohibited by EPI but is also prohibited by state, federal, and (where applicable) local law. Aside from the internal process at EPI, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, employees may seek the legal advice of an attorney.

### New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to 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 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 discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to EPI 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.

An attorney is not needed 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 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, (718) 741-8400, [www.dhr.ny.gov](http://www.dhr.ny.gov).

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Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://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.

**United States Equal Employment Opportunity Commission (EEOC)**

The 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.

If an employee believes that he or she has been discriminated against at work, he or she can file a “Charge of Discrimination.” The EEOC has district, area and field offices where complaints can be filed. Contact the EEOC by calling (800) 669-4000 (800) 669-6820 (TTY), visiting their website at [www.eeoc.gov](http://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. 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, NY, NY; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

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