

SUBJECT: Sexual Harassment Prevention

Applies to: All Employees

Effective: October 2018

Policy:

Roberts Wesleyan College is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. Roberts Wesleyan College has a zero-tolerance policy for any form of sexual harassment, and all employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of the College'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, and employees can enforce this right by filing a complaint internally with the College or with a government agency or in court under federal, state or local antidiscrimination laws.

Procedures:

1. This policy applies to all employees, applicants for employment, interns, contractors and persons conducting business with the College.
2. Sexual harassment will not be tolerated. 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.
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because she/he reports an incident of sexual harassment, provides information, or otherwise assists in an investigation of sexual harassment. The College prohibits retaliation against anyone who, in good faith, complains or provides information about suspected sexual harassment. Any employee who retaliates against anyone involved in a sexual harassment investigation will be subject to disciplinary action, up to and including termination. Anyone who believes they have been subject to retaliation should inform a supervisor, manager, or the Office of Human Resources or seek external remedies.
4. Sexual harassment is unlawful. Harassers may also be non-employees, such as a contractors or vendors. Any employee who engages in sexual harassment, including managers and supervisors who knowingly allow such behavior to continue, will be subject to disciplinary action up to and including termination.

5. The College will conduct a prompt, thorough and confidential investigation whenever a complaint about sexual harassment is received or otherwise knows of possible sexual harassment occurring. 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.
6. All employees are encouraged to report any harassment or behaviors violating this policy. A complaint form to report harassment and file complaints is attached to this policy.
7. Managers and supervisors are required to report any complaint they receive, or any harassment observed to the Office of Human Resources.
8. This policy applies to all employees, paid or unpaid interns, and non-employees. This policy is posted on the HR intranet page and is provided to employees upon hire.

### **What Is “Sexual Harassment”?**

Sexual harassment is a form of sex discrimination and is unlawful under federal and state law. Sexual harassment includes harassment on the basis of sex, sexual orientation, gender identity and the 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 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, or which interferes 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 called “quid pro quo” harassment.

Any employee who feels harassed should share with their supervisor or Human Resources so the behavior can be corrected. Any harassing conduct, even a single incident, can be addressed.

### **Examples of Sexual Harassment**

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

- Physical assaults of a sexual nature, such as:
  - Touching, pinching, patting, grabbing, brushing against another employee's body or poking another employees' 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.
- 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 or, gender, 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 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 may be a superior, a subordinate, a coworker or anyone in the workplace including a contractor, vendor, 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 may constitute unlawful workplace harassment, even if they occur away from the workplace or not during work hours.

### **What is “Retaliation”?**

Unlawful retaliation can be any action that would keep 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. The NYS Human Rights law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- filed 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 complaint to management, or informing a supervisor of harassment;
- complained that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

### **Reporting Sexual Harassment**

Preventing sexual harassment is everyone’s responsibility. The College cannot prevent or remedy sexual harassment unless it knows about it. Any employee, intern 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 the Office of Human Resources. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or Human Resources.

Reports of sexual harassment may be made verbally or in writing. A complaint form is attached to this policy. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee’s behalf.

Employees, interns 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.

### **Supervisory Responsibilities**

All supervisors and managers who receive a complaint or information about possible sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such behavior to the Office of Human Resources.

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 knowingly allowing sexual harassment to continue.

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

*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.

Investigations of suspected sexual harassment will be prompt and thorough, and should be completed within 30 days. The investigation will be confidential to the extent possible. Anyone involved, including complainants, witnesses and alleged perpetrators are entitled to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Employees who participate in an investigation will not be retaliated against.

Investigations will be done in accordance with the following steps:

- Upon receipt of complaint, the Office of Human Resources will conduct an immediate review of the allegations, and take interim actions, if needed. If complaint is oral, encourage the individual to complete the “Complaint Form” in writing. If he or she refuses, prepare a Complaint Form based on the oral report.
- If documents, emails or phone records are relevant to the allegations, 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 written documentation of the investigation, including:
  - A list of 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 final resolution of the complaint, together with any corrective actions action(s).
- Keep written documentation in the employer's records.
- Promptly notify the individual who complained and the individual(s) who responded of the final determination and implement any corrective actions.
- Inform the individual who complained of their right to file a complaint or charge externally.

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

Sexual harassment is not only prohibited by Roberts Wesleyan College, but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process, employees may choose to pursue legal remedies with governmental entities.

#### 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 NYS 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 HRL may be filed either with DHR or in NYS 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 an HRL complaint has already been filed in state court.

Complaining internally to Roberts Wesleyan College does not extend the 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. Anyone can file a complaint with DHR, and there is no cost to file with DHR.

DHR investigates complaints and determines whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination 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) Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint.

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

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act. 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 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.

If an employee believes he/she has been discriminated against at work, he/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 1-800-669-4000 (1-800-669-6820 (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. Individuals can contact the county, city or town in which they live to find out if such a law exists.

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

Note: Employees should also reference Policy XXX "Title IX Sex Discrimination Policy"