

PROCEDURE

Non-Discrimination, Non-Harassment, Non-Retaliation

Next Scheduled Review
12/18/21

Policy Owner: Executive Direction

Approved By: Gerrard P. Bushell – President & CEO

PURPOSE

To set forth the policy of DASNY with respect to unprofessional conduct, discrimination, harassment and retaliation and DASNY's procedure for reporting and handling employee and individual complaints of alleged unprofessional conduct, discrimination, harassment, and retaliation.

This policy shall be administered by the Ombuds Officer/Affirmative Action Officer (AAO).

This policy does not replace the complaint procedure for serious wrongdoing involving alleged fraud, waste and/or abuse or the Ethics Hotline. Complaints of serious wrongdoing involving alleged fraud, waste and/or abuse, and not involving alleged discrimination, harassment, retaliation, or unprofessional conduct, will continue to be referred to the Office of Professional Integrity (OPI) for investigation.

Represented employees will continue to have the right to file grievances pursuant to the collective bargaining agreement(s) concerning contract violations.

NOTE: DASNY maintains a separate, comprehensive policy specifically addressing sexual harassment prevention.

SCOPE OF APPLICATION

This policy and procedure covers all activities and locations of DASNY and any work-related settings outside the workplace, such as business trips, business meetings, and business related social events. The policy applies to all DASNY directors, officers, employees and volunteers, and includes their interaction with non-employees such as vendors, consultants, and customers.

POLICY

Responsibility

The general administration of this policy shall be the responsibility of the Ombuds Officer/AAO. However, the Ombuds Officer/AAO shall consult with Executive Management and, where necessary for legal advice, General Counsel, in development and implementation of procedures for reporting, handling and investigating complaints of unprofessional conduct, discrimination, harassment and retaliation, and for the development of recommendations for appropriate corrective actions and/or sanctions for such conduct.

The Ombuds Officer/AAO shall disseminate information and provide mandatory training with respect to this policy and its procedures, and consult with General Counsel and Executive Management for resolution of issues that require interpretation of the policy or application. Any questions regarding this policy should be directed to the Ombuds Officer/AAO. In the event a complaint of unprofessional conduct,

discrimination, harassment or retaliation is initiated against the Ombuds Officer/AAO, the complaint shall be filed with the Vice President and the Vice President shall take over the responsibilities assigned in this policy to the Ombuds Officer/AAO.

Non-Discrimination, Non-Harassment and Non-Retaliation

It is the policy of DASNY to provide for and promote equal opportunity in employment, compensation and other terms and conditions of employment without discrimination on the basis of a person's actual or perceived race, color, religion, creed, sex, sexual orientation, gender identity or expression, national origin, age, ancestry, ethnicity, disability, pregnancy, citizenship, marital status, familial status, military or veteran status, genetic information, predisposing genetic characteristic, status as a victim of domestic violence, stalking and sex offenses, or any other status protected by applicable federal, state or local law (collectively referred to in this policy as "Protected Categories").

Discrimination

Discrimination against any DASNY Member, applicant, employee, volunteer, and/or certain non-employees (such as vendors, consultants, and customers) on the basis of any Protected Category is prohibited and shall not be tolerated. Accordingly, employment decisions are made without regard to any Protected Categories. In addition, DASNY 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. Likewise, DASNY will make reasonable accommodations, upon request, arising out of an individual's sincerely held religious beliefs or practices.

Harassment

Harassment based on any Protected Category is a form of discrimination. Workplace harassment can be difficult to define, but certainly includes inappropriate and/or unwelcome conduct, whether oral, visual, or physical, that is based on an individual's membership in one or more Protected Categories and results in a tangible employment action or that is severe or pervasive enough so as to unreasonably interfere with an individual's work performance or to create an intimidating, coercive, hostile, or offensive working environment. Harassment based on any Protected Category is prohibited.

Sexual Harassment

DASNY maintains a separate, comprehensive policy specifically prohibiting and addressing sexual harassment. Issues regarding sexual harassment should be addressed through DASNY's Anti-Sexual Harassment policy.

Retaliation

Every individual has the right to present a good faith complaint of alleged discrimination, harassment or retaliation. An individual will be protected from retaliation as a result of the exercise of this right to file a good faith complaint. This protection is extended to any individual who participates in and cooperates in any phase of investigation, proceeding or hearing pursuant to this policy. Retaliation, like discrimination and harassment, is against the law and is a serious violation of this policy. Individuals who retaliate against others who have either (i) filed a complaint alleging discrimination or harassment; (ii) participated in an investigation involving alleged discrimination or harassment or (iii) acted as a witness in any hearing or proceeding, are subject to disciplinary action, up to and including termination.

Applicability

All DASNY directors, officers, employees and volunteers will be expected to comply with this policy and with all applicable laws and regulations prohibiting discrimination, harassment or retaliation and must take appropriate measures to ensure that such prohibited conduct does not occur. Employees found to be violating this policy are subject to disciplinary action, up to and including termination.

Unprofessional Conduct

This policy also prohibits conduct of one individual or employee toward another that may not constitute discrimination, harassment or retaliation based upon any Protected Category, but nonetheless creates a degree of hostility or intimidation that adversely affects the work environment. Such conduct will be considered unprofessional conduct and is deemed inconsistent with the requirement that courtesy and respect for others must be observed wherever DASNY business is conducted. Therefore, DASNY encourages any employee who believes he or she has been subject to inappropriate conduct by another employee to report such conduct, even if such conduct is not based on any Protected Category. Violation of DASNY policies (including, but not limited to, policies addressing travel, time and attendance, and email) may also be considered unprofessional conduct and should be reported.

Filing and Investigation of Complaints

Any employee or individual may report alleged unprofessional conduct, discriminatory conduct, harassing behavior and/or retaliation to the Ombuds Officer/AAO, or to their supervisor or to their Managing Director. Anyone who wishes to make a complaint involving sexual harassment should refer to DASNY's Anti-Sexual Harassment policy for additional information.

Filing of Complaint

The [complaint form](#) for reporting allegations of unprofessional conduct, discrimination, harassment or retaliation is located on the Intranet in the Templates section. Individuals may keep written records of any alleged incidents, including the date, time, location, names of other people involved (if any), and who said or did what to whom. The initial complaint may be made either orally or in writing.

The person to whom the complaint is made shall make every reasonable effort to provide the individual who is filing a complaint with the opportunity to communicate the complaint in a private and confidential manner. If an oral complaint is received, the person to whom the complaint is made shall encourage the complainant to summarize the complaint in writing on the official complaint form. If the individual will only make an oral complaint, the person to whom the complaint is made must summarize the complaint in writing on the official complaint form. To the extent practicable, the written summary should be shared with the complainant to ensure its accuracy. The written complaint shall be submitted to the Ombuds Officer/AAO within three business days with a cover memo setting forth the time and date the complaint was received. The complaint and report will be protected from disclosure except to the extent required by the investigation or otherwise required by law.

It is DASNY's policy that every individual has the right to present a good faith complaint in accordance with this Policy. An individual will be protected from retaliation as a result of the exercise of this right. Individuals who retaliate against others who have either (i) filed a complaint alleging discrimination, harassment, retaliation or unprofessional conduct or (ii) participated in an investigation, proceeding or hearing involving alleged discrimination, harassment, retaliation or unprofessional conduct, are subject to disciplinary action, up to and including termination. An individual who falsely or maliciously files a complaint will be subject to disciplinary action up to and including termination.

Initial Review

The Ombuds Officer/AAO shall notify the complainant within five business days that the complaint has been received and provide the complainant with the file number that has been assigned. The Ombuds Officer/AAO shall then complete an initial review of the complaint and determine whether such complaint should be referred to OPI, or investigated directly by the Ombuds Officer/AAO as alleged unprofessional conduct, discrimination, harassment or retaliation. At any time during the investigative process, the Ombuds Officer/AAO may determine that the complaint should be reclassified as unprofessional conduct, discrimination, harassment or retaliation and/or referred to OPI for further investigation.

If the Ombuds Officer/AAO determines that the conduct alleged constitutes discrimination, harassment or retaliation, the Ombuds Officer/AAO and General Counsel will consult with Counsel to the Workforce Development Unit, Governor's Office of Employee Relations ("GOER") for legal advice in relation to the investigation of the complaint. The Ombuds Officer/AAO shall continue the investigation.

If the Ombuds Officer/AAO determines that the complaint is one for alleged serious wrongdoing involving fraud, waste and/or abuse, and not one involving conduct prohibited by this policy, then it will be referred to OPI for investigation. Where a discrimination, harassment, retaliation, or unprofessional conduct complaint also involves alleged fraud, waste and/or abuse, the Ombuds Officer/AAO may refer such issues to OPI for follow up.

If at any point in the investigation it is necessary to conduct a formal interrogation of an employee, the interrogation may be referred to OPI. An interrogation is a formal interview which is recorded and the person being interrogated may have a representative present.

Investigation

The Ombuds Officer/AAO shall initiate and coordinate a prompt, thorough and impartial investigation of the complaint. That investigation shall include an interview of the complainant and such other parties and witnesses as are deemed appropriate. Any necessary interrogations shall be conducted by the Assistant Director, Human Capital, Labor Relations.

If the Ombuds Officer/AAO determines at any time during the investigation that the conduct alleged constitutes discrimination, harassment or retaliation claim filed with DASNY as defined by the New York State Executive Law Article 15 (Human Rights Law) and/or Title VII of the Civil Rights Act of 1964, as amended, the Ombuds Officer/AAO and General Counsel will consult with Counsel to the Workforce Development Unit, Governor's Office of Employee Relations ("GOER") for legal advice. Complaints of unprofessional conduct as determined by the Ombuds Officer/AAO will not be referred to GOER. The exercise of this complaint procedure for such claims does not preclude the filing of discrimination or harassment complaints with either the New York State Division of Human Rights or the Federal Equal Employment Opportunity Commission, or from pursuing any other remedies as permitted by law.

The complainant may be asked to provide a written account of events or to provide other related documentation. The investigation shall be confidential except to the extent required by the investigation or otherwise required by law. However, no individual can be promised or guaranteed strict or absolute confidentiality. All reasonable efforts will be made to ensure that the investigation is complete within thirty (30) days or within such other reasonable time as is required after the complaint is received.

The Ombuds Officer/AAO will assess whether intermediate measures should be undertaken before the investigation is completed to ensure that further prohibited conduct does not occur. The recommended

intermediate measures, if any, and the purpose of such measures shall be promptly communicated to the Vice President. The Vice President shall have the responsibility to evaluate the recommendations and to determine the reasonableness of the measures after consideration of the business needs of the Authority and the constraints imposed by any applicable collective bargaining agreement or law.

All employees are responsible for cooperating in the investigation of complaints of alleged unprofessional conduct, discrimination, harassment or retaliation by providing any information they possess concerning the matters being investigated and by telling the truth about such matters.

The Ombuds Officer/AAO shall coordinate the investigation of the complaint, and to the extent appropriate, keep the complainant apprised of the progress of such investigation. As soon as reasonably practicable, the Ombuds Officer/AAO shall inform the complainant when the investigation is complete.

In the event a complaint of unprofessional conduct, discrimination, harassment or related retaliation is substantiated the Ombuds Officer/AAO shall recommend to the General Counsel or his or her designee a proposed course of corrective and/or disciplinary action. The Ombuds Officer/AAO and General Counsel or his or her designee shall review the proposed corrective and/or disciplinary action with Executive Management. At the conclusion of this review, any required corrective and/or disciplinary action shall be initiated. Any such action shall be taken in a manner consistent with applicable law and in accordance with any applicable collective bargaining agreement.

Responsibilities of Supervisors and Managing Directors

All Managing Directors and supervisors are expected to participate in DASNY training and to be responsible for ensuring that the workplace is free from unprofessional conduct, discrimination, harassment or retaliation.

Employees should initially direct their concerns to their immediate supervisor or the Ombuds Officer/AAO. Such complaints, whether by individuals or employees, also can be submitted to the Managing Director. Any supervisor should submit such complaints to the Managing Director and each Managing Director should directly report such complaints to the Ombuds Officer/AAO.

If a supervisor or Managing Director observes unprofessional conduct, discrimination, harassment or retaliation, including situations involving individuals outside of the supervisor's or Managing Director's organizational reporting structure, or receives such a complaint, the supervisor or Managing Director should immediately address the situation and ask the employee or individual to stop such inappropriate behavior. The supervisor or Managing Director should follow up with appropriate reporting. All employees, including supervisors and Managing Directors, are expected to comply with this policy and to take appropriate remedial measures to ensure that such violations do not occur.

A supervisor or Managing Director who knew about or participated in such discrimination, harassment, retaliation, or unprofessional conduct in violation of this policy, took no action to stop it and/or did not report it to their supervisor or the Ombuds Officer/AAO may be subject to discipline up to and including termination.

HISTORY

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