

# Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Binghamton University, in its continuing effort to seek equity in education and employment and consistent with Federal and State antidiscrimination legislation, has adopted a complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Harassment on the basis of any of the above protected categories is one form of unlawful discrimination. Conduct that may constitute harassment is described in *Appendix A*. For more detailed information, contact the Affirmative Action Office (AA.)

This *Complaint Procedure for the Review of Allegations of Unlawful Discrimination* provides a mechanism through which the University may identify, respond to, prevent and eliminate incidents of illegal discrimination. The University recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial grievance process will benefit student, faculty, staff and administration, permitting investigation and resolution of problems without resorting to the frequently expensive and time-consuming procedures of State and Federal enforcement agencies or courts.

This process has been developed in accordance with guidelines and recommendations provided by the Chancellor's Office of Affirmative Action and is administered by Binghamton University's AA. The Affirmative Action Officer (AAO) directs that office and reports directly to the University President and the Associate Vice President for Human Resources. These procedures have been approved by the State University of New York, Office of the University Counsel. These procedures are intended to balance the rights of those bringing complaints of discrimination, harassment, and retaliation (the "Complainant") with those against whom such claims are brought (the "Respondent".) Throughout these procedures the "parties" shall refer to the Complainant, Respondent, and witnesses involved in the complaint.

This procedure may be used if the Complainant or Respondent is a Binghamton student or a State or Research Foundation employee. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student conduct boards and any other procedures defined by contract will continue to operate as before. Nor does this procedure in any way deprive a Complainant of the right to file with outside enforcement agencies, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the Office for Civil Rights of the United States Department of Education and the Office of Federal Contract Compliance of the United States Department of Labor. Contact information for these agencies is listed in *Appendix B*. More detailed information may be obtained from the AA.

The Complainant is not required to pursue the Binghamton internal procedure before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to pursue the Binghamton internal procedure, the Complainant is free to file a complaint with the appropriate State or Federal agency at any point during the process. ***Upon filing with an external agency, however, the Binghamton internal complaint may be referred to the Office of the University Counsel for review, defense or, if deemed appropriate by Counsel, involvement in mediation, conciliation or settlement with the external agency where the complaint was filed, or such other actions as may be in the interests of the University, including the termination of this internal process.***

During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices.

To the extent practicable, all aspects of the investigation conducted in accordance with these procedures will be confidential. All affected parties shall cooperate fully in the investigation and shall maintain and preserve the confidentiality of the investigation. All parties are required to refrain from engaging in any retaliatory action in relation to the complaint(s) and/or by responses to such complaint(s).

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## ***Jurisdiction of the Affirmative Action Office***

Binghamton University is responsible for providing a learning and working environment free from discrimination. The University reserves the right to pursue any complaint of discrimination about which it becomes aware. Based on information received by the AA, the AAO or designee may exercise their own discretion and initiate a complaint on behalf of the University community.

In addition, the AAO may determine that a specific complaint of unlawful discrimination or harassment is of such a serious or potentially criminal nature that the investigative steps outlined in this process should be accelerated or eliminated. This determination, if made, shall be communicated to the President or his designee and to Human Resource for appropriate action, which may include the initiation of disciplinary and/or other action.

If, at any time during the course of resolving or investigating a complaint of discrimination, the AAO or designee determines that a complaint is not within the jurisdiction of the office, the complaint and the Complainant shall be referred to the appropriate office and the matter shall be considered concluded for purposes of the AA.

## ***Role of the Affirmative Action Office***

The AAO and/or designee is trained in investigating and resolving complaints. The staff is available for assistance in filing the complaint with the University and will remain impartial during an investigation. AA does not represent any individual or department, but does advocate on behalf of the University's goals of equal opportunity and nondiscrimination.

The AA staff may receive initial inquiries, reports and requests for consultation and counseling. Assistance will be available whether or not a formal complaint is contemplated or even possible. It is the responsibility of the AA to respond to all such inquiries, reports and requests as promptly as possible and in a manner appropriate to the particular circumstances. An individual may refuse to reduce a complaint to writing. However, notwithstanding that refusal, there may be a continuing obligation on the part of the University to investigate the verbal complaint to the best of its ability and proceed with any action that is warranted. Although in certain instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable the AA to conduct a full and fair investigation of the facts.

The AA shall solicit information concerning any factors that might prejudice an objective evaluation of the evidence and shall reassign an investigation if a conflict or potential conflict emerges.

## ***Supervisory Responsibility***

Complaints or concerns that are reported to an administrator, manager or supervisor concerning an act of discrimination or harassment shall be immediately referred to the AA. Complaints may also be made directly to the AAO.

## ***Retaliation***

An employee or student who participates in the procedure has the right to do so without fear of or actual retaliation. It will be made clear that retaliation against an employee, a student or a witness who has filed a discrimination complaint will result in appropriate sanctions or other disciplinary action as covered by collective bargaining agreements, and/or applicable University policies.

## ***Confidentiality***

The AA staff will conduct the investigation in a confidential manner to the extent practicable. The AA staff will instruct the parties and all other affected persons that the complaint investigation procedure is best able to achieve a mutually acceptable agreement for resolution of the complaint when confidentiality is not breached. Once breached, it will make it difficult for the AA staff to conclude successfully the complaint investigation process to the satisfaction of the Complainant.

## ***Who can file a complaint?***

Employees may file a written complaint with the AA within 90 calendar days following the alleged discriminatory act or the date on which the Complainant first knew or reasonably should have known of such act. Complainants may complete an intake form to initiate an investigation (see *Appendix C*). Students must file a complaint within 90 calendar days following the alleged discriminatory act or 90 calendar days after a final grade is received, for the semester during which the discriminatory acts occurred, if that date is later.

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It is the Complainant's responsibility to be certain that any complaint is filed within the applicable 90-day period. In the event that the Complainant would be barred under these procedures, the Complainant may contact AA with regard to other avenues of recourse that may be available.

If a Complainant elects to withdraw a complaint, this decision must be communicated in writing to the AA staff indicating the reason for withdrawal. The University may nevertheless pursue its review of the allegations.

## ***Against whom may complaints be brought?***

A complaint of unlawful discrimination may be brought against any student or employee. If your complaint concerns behavior by a vendor or contractor or some other individual who may not be a member of the University community, but who may have an affiliation or a recognized connection to Binghamton, you may bring your concerns to the attention of the AA staff and they will assist you, wherever practicable.

If the President is the Respondent, the AAO reserves the right to refer the complaint to the Office of University Counsel. The findings and recommendation shall be submitted to the Chancellor or their designee. If the AAO is the Respondent, the matter shall be referred to the President or their designee.

## ***Procedures for resolving complaints***

### ***Complaint Consultation & Review<sup>1</sup>***

Any member of the University community may consult with the AA staff regarding potential discrimination or harassment. The length of time for the consultation varies depending on factors such as the complexity of the situation, office workload, or whether the situation involves actual or imminent loss of employment or academic standing, potential physical harm, or an ongoing relationship between the involved individuals. In a telephone conversation or in person appointment, a staff member will:

- receive complaints of alleged discrimination or harassment;
- discuss the facts of a situation and help the individual identify the problem(s);
- assist the Complainant in the use of the complaint form to define the charge;
- determine if the AA is the appropriate University resource to address the concern;
- inform the individual of the ways in which the AA approaches problem solving;
- explore methods of resolving the situation on one's own, if that is the individual's preference;
- advise an individual of alternate available University resources and external options for resolution;
- provide the Complainant with information about the various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

### ***Each Party's Rights and Responsibilities***

The University's formal review procedures are not designed to replicate an external judicial process.

Consequently:

- Complainants and Respondents are expected to meet with representatives of AA as needed and as requested;
- Legal counsel retained by a Complainant or a Respondent may not participate or be present at any meeting convened by AA unless otherwise required by law;
- Respondents and Complainants are expected to communicate with AA directly, not through legal counsel, other intermediaries or persons accompanying the parties;
- Complainants and Respondents have the right to receive notice of all actions, recommendations, determinations and findings made by the AA.

### ***Intake Interview***

The AA staff will ask a Complainant to participate in an initial interview. During this initial contact known as the Intake Interview, the Complainant will be:

- asked to complete an Intake and Information Sheet. (The Complainant may be asked to have this completed prior to the Intake Interview;)
- interviewed about the allegations so that the charge may be clearly stated;
- asked to provide information about witnesses and other possibly aggrieved persons;
- advised of the office's intake procedures to enhance the Complainant(s) understanding and to facilitate realistic expectations as to the role of the office;

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- referred to a proper University department/agency if the complaint does not fall within the jurisdiction of the AA;
- advised of the protection against retaliation;
- advised of the university policy on confidentiality;
- advised of the option to file a complaint with one of the external Federal/State investigative agencies at any time.

Should the AA staff determine that a complaint of unlawful discrimination merits further review, they will immediately commence an investigation. The complaint shall contain:

- The name, local and permanent address (es), and telephone number(s) of the Complainant;
- A statement of facts explaining what happened and what the Complainant believes constituted the unlawful discriminatory acts in sufficient detail to give each Respondent reasonable notice of what is claimed against him/her. The statement should include the date, approximate time and place where the alleged acts of unlawful discrimination or harassment occurred. If the acts occurred on more than one date, the statement should also include the last date on which the acts occurred as well as detailed information about the prior acts. The names of any potential witnesses should be provided, if appropriate;
- The name(s), address (es) and telephone number(s) of the Respondent(s), i.e., the person(s) claimed to have committed the act(s) of unlawful discrimination;
- Identification of the status of the persons charged, whether faculty, staff, student or affiliated individual;
- A statement indicating whether or not the Complainant has filed or reported information concerning the incidents referred to in the complaint with a non---University official or agency, under any other complaint or complaint procedure. If an external complaint has been filed, the statement should indicate the name of the person or department or agency with which the information was filed and its address or to which it was reported;
- Other supplemental information as may be requested.

If the Complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the AAO may terminate any further processing of the complaint, refer the complaint to University Counsel or direct the Complainant to the appropriate alternative forum (see *Appendix B* for a list of alternative forums).

## ***Investigative Procedures***

If a Complainant elects to have the matter dealt with in an informal manner, the AAO will attempt to reasonably resolve the problem to the mutual satisfaction of the parties. The AA staff will attempt to resolve the complaint at the earliest intervention point. If these efforts are not successful, and the AA staff has determined that the complaint merits further investigation, the Complainant and Respondent shall be advised in writing of the initiation of an investigation. During this investigation the AA staff will:

- Provide an initialed, signed, date---stamped copy of the complaint to the Complainant;
- Review all University records that concern the complaint;
- Interview witnesses;
- Review statements provided by both the Complainant and the Respondent(s);
- Review other relevant and material evidence;
- Will take all reasonable steps necessary to complete the investigation within ninety (90) calendar days after receipt of the complaint. If such is not possible, the AAO may extend this deadline for a reasonable period of time. The Complainant will receive notification from the AA regarding the basis for extension.

## ***Failure to Cooperate***

If the Respondent refuses to cooperate and/or respond in a timely manner, the AA may forego completion of an investigation and refer the matter to Human Resources, or the office may take any other action it deems necessary and appropriate to address the situation. Failure to cooperate meaningfully in a review of a complaint of discrimination may be grounds for discipline.

## ***Inaction by Complainant***

If at any time during an investigation, a Complainant declines to cooperate with the AA Office, or if the office determines that the Complainant no longer wishes to pursue his/her complaint, AA may consider the matter closed and take no further action, with appropriate notification.

## ***Evaluating the Evidence and Resolution***

In reaching its findings, the AA staff shall evaluate the conduct alleged to have been discriminatory by considering the totality of the circumstances, including the nature, frequency, intensity, context and duration of the conduct. Although

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repeated incidents would create a strong claim of discrimination, a serious isolated incident can present sufficient grounds for corrective action.

The AA staff shall make every reasonable effort to resolve the matter. Resolution may take any form that is acceptable to the parties and to the University. It may, for example, take the form of:

- Separate meetings with the Complainant and Respondent;
- Joint meetings between the Complainant and Respondent with the AAO serving as a facilitator;
- A meeting with the supervisor of the Complainant and/or Respondent;
- A written agreement or memorandum of understanding signed by one or both of the parties;
- Mandated trainings in the areas of discrimination for the Respondent or the departmental unit;
- A verbal warning to Respondent;
- A written warning to Respondent;
- No further action at the request of Complainant.

This list is not exhaustive and another form of resolution may be appropriate although it is not listed here.

## ***Determination***

The AA staff issues a written statement to the Complainant and Respondent, indicating the finding at the conclusion of the investigation. If a resolution satisfactory to both the Complainant and the Respondent is reached through the efforts of the AA staff, the AA shall close the case, sending a written notice to that effect to the Complainant and Respondent.

The actions proposed in this finding may consist of:

- a) A determination that the complaint was not substantiated.
  - i. If the AA determines that there is insufficient credible evidence to support the allegation(s) of discrimination, the complaint shall be dismissed, the matter shall be concluded and the University shall take no further action.
- b) A determination that the complaint was substantiated.
  - i. For Employees (including student employees) not in a Collective Bargaining Unit –In consultation with Human Resource and the Office of University Counsel, the President may take such administrative action as he deems appropriate under his authority as the chief administrative officer of the University, including but not limited to termination, demotion, reassignment, suspension, reprimand, or training.
  - ii. For Students – the AA may determine that sufficient information exists to refer the matter to the student judiciary or other appropriate disciplinary panel for review and appropriate action under the appropriate student conduct code.
  - iii. For Employees in Collective Bargaining Units – the AA may determine that sufficient information exists to refer the matter to Human Resource for investigation and disciplinary action or other action as may be appropriate under the applicable collective bargaining agreement. Corrective action may include, but is not limited to: reprimand, mandatory counseling, written counseling, probation, suspension, termination of employment, non-renewal of contract or involuntary withdrawal from a program of study.

If the President is the Respondent, the Chancellor or his designee shall issue a written statement indicating what action the Chancellor proposes to take. The Chancellor's decision shall be final for purposes of this discrimination procedure.

The AA may:

- place a confidential written report in its file, subject to applicable law and policy, and disclosure, if required by law;
- prepare and distribute a written report to the Complainant, Respondent and any other person who may have need to know how the complaint was resolved;
- refer the matter to another department or administrator in the University for further review.

If the AA staff is unable to resolve the complaint to the mutual satisfaction of the Complainant and Respondent, the AA staff shall so notify the Complainant. The AAO shall again advise the Complainant of his or her right to separately file with appropriate external enforcement agencies. There is no right of appeal when the AA determines that there is insufficient reasonable, credible evidence to support the allegation(s) of discrimination.

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## ***Appendix A***

### *Definitions and Prohibited Acts and Behaviors*

#### ***Sexual Harassment in the Employment or Educational Setting is defined as:***

Unwelcome sexual advances, requests for sexual favors, or verbal/nonverbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either an explicit or implicit term, condition, status of an individual's employment, or admission to, or continued participation in, an academic program;
- Submission to or rejection of such conduct is used as a basis for decisions affecting an individual's employment status, conditions of terms of employment, or academic standing;
- Such conduct has the purpose or effect of substantially interfering with an individual's performance on the job or in the classroom or creates an intimidating, hostile, or offensive work or study environment.

#### ***Sexual Harassment in the Educational Setting is defined as:***

Unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student denies or limits, on the basis of gender, the student's ability to participate in or to receive benefits, services, or opportunities in the educational institution's program.

#### ***Harassment on the Basis of Other Protected Characteristic(s)***

Harassment based on race, color, age, religion, or national origin (including an individual's ancestry, country of origin, or country of origin of the student's parents, family members, or ancestors), disability, sexual orientation or other protected characteristics may be oral, written, graphic or physical conduct relating to an individual's race, color, or national origin that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities, or terms, conditions or status of employment.

#### ***Retaliation***

An employee or student who participates in the procedure has the right to do so without fear of retaliation. It will be made clear that retaliation against an employee, a student or a witness who has filed a discrimination complaint will result in appropriate sanctions or other disciplinary action as covered by collective bargaining agreements, and/or applicable University policies.

*Latest revision: March 21, 2018*

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## *Appendix B*

### *External Enforcement Agencies*

#### **New York State Division of Human Rights**

##### **State Headquarters**

New York State Division of Human Rights  
One Fordham Plaza  
4th Floor  
Bronx, New York 10458

Tel: (718) 741-8400  
Fax: (718) 741-3214

##### **Binghamton**

New York State Division of Human Rights  
44 Hawley Street, Room 603  
Binghamton, New York 13901  
[InfoBinghamton@dhr.ny.gov](mailto:InfoBinghamton@dhr.ny.gov)

Tel: (607) 721-8467  
Fax: (518) 473-2955

##### **Office of Sexual Harassment**

New York State Division of Human Rights  
Office of Sexual Harassment  
55 Hanson Place, Room 900  
Brooklyn, New York 11217  
[InfoOSHIQns@dhr.ny.gov](mailto:InfoOSHIQns@dhr.ny.gov)

Tel: (718) 722-2060  
or 1-800-427-2773  
Fax: (718) 722-2039

##### **Office of AIDS Discrimination**

New York State Division of Human Rights  
20 Exchange Place, 2nd Floor  
New York, New York 10005

Tel: (212) 480-2522  
Fax: (212) 480-0143

#### **United States Department of Labor**

##### **Office for Federal Contract Compliance Programs**

201 Varick St.  
Room 705  
New York, New York 10014

Tel: (212) 337-2006  
Fax: (212) 620 7705

##### **Buffalo District Office**

6 Fountain Plaza  
Suite 300  
Buffalo, NY 14202-2199

Tel: (716) 551 5065  
Fax: (716) 551- 4035

##### **New York District Office**

26 Federal Plaza  
Room 36-116  
New York, New York 10278

Tel: (212) 264-7742  
Fax: (212) 264-8166

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## **New York State Department of Labor**

New York State Department of Labor  
State Campus  
Building 12, Room 500  
Albany, NY 12240

Tel: (518) 457-2746  
Fax: (518) 457-6908

## **United States Equal Employment Opportunity Commission**

### **EEOC National Headquarters**

1801 L. Street, N. W.  
Washington, D. C. 20507

Tel: (202) 663-4900  
Fax: (202) 663-4912

### **EEOC Field Office**

6 Fountain Plaza  
Suite 350  
Buffalo, New York 14202

Tel: (716) 551-4441  
Fax: (716) 551-4387

## **Office for Civil Rights**

### **OCR National Headquarters**

U. S. Department of Education  
Office of Civil Rights  
Customer Service Team  
Mary E. Switzer Building  
330 C. Street, S. W.  
Washington, D. C. 20202

Tel: (800) 421-3481  
Fax: (202) 205-9862

### **Office for Civil Rights**

New York Office  
U. S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
[Email: OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

Telephone: (646) 428-3800  
Fax: (646) 428-3843



# Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Appendix C

## BINGHAMTON UNIVERSITY – Affirmative Action

### Complaint Intake Form

This form can be used by students, employees, and third parties to file a complaint of discrimination based on race, color, national origin, religion, creed, age, disability, sex, gender identity, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

### Complaint Intake & Information (please print or type)

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1. Your Name: \_\_\_\_\_

Preferred Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Primary Phone #: \_\_\_\_\_

Additional Phone #: \_\_\_\_\_ E-Mail address: \_\_\_\_\_

Your University affiliation (circle all that apply):

Faculty   Staff   Graduate Student   Undergraduate   Student   Alumni   Unaffiliated   Unknown

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2. ALLEGED DISCRIMINATION IS BASED ON (list all characteristics that apply from above)

\_\_\_\_\_

Alleged discrimination took place on or about: Month: \_\_\_\_\_ Day: \_\_\_\_\_ Year: \_\_\_\_\_

Is the discrimination continuing now:  Yes  No

Name of the person who allegedly discriminated (if known): \_\_\_\_\_

Title (if known): \_\_\_\_\_

Address (if known): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Relationship to complainant (e.g. supervisor, co-worker, professor etc.): \_\_\_\_\_

University Affiliation of person who allegedly discriminated (circle all that apply):

Faculty   Staff   Graduate Student   Undergraduate   Student   Alumni   Unaffiliated   Unknown

Name(s) of others who witnessed the alleged discrimination (if known): \_\_\_\_\_

\_\_\_\_\_ (use additional pages if needed)

Was anyone else the recipient of this discrimination:  No  Yes

Would they be willing to speak to AA about the allegations:  No  Yes (if yes include name[s] below)

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Name(s) \_\_\_\_\_

3. Have you previously filed an informal complaint:  No  Yes (approx. date): \_\_\_\_\_

To whom (person or office) have you previously reported the informal complaint: \_\_\_\_\_

Have you previously reported information concerning this individual/behavior:

No  Yes (approx. date): \_\_\_\_\_

Have you filed this charge with a federal, state, or local government agency:  No  Yes

If yes, which agency: \_\_\_\_\_ Date? \_\_\_\_\_

Have you instituted a suit or court action on this matter:  No  Yes

If yes, which court: \_\_\_\_\_ Date: \_\_\_\_\_

Court Address: \_\_\_\_\_

Court Contact: \_\_\_\_\_

- 
4. Describe briefly the act or acts which occurred and your reason(s) for believing that it was discriminatory (attach extra pages and/or information if necessary).

5. Describe any corrective or remedial action you would like to see taken (attach extra pages if necessary).

6. How has this alleged discrimination affected you in your education/employment setting?

**I affirm that I have read the above allegation(s) and that it is (they are) true to the best of my knowledge.** The AA and the Complainant shall agree to keep all information gathered relative to allegations of discrimination in confidence to the extent practicable or allowable by law. However, with the consent of the Complainant, the AA may provide relevant information to the appropriate University staff when necessary.

I have been advised that it is a violation of State and Federal statutes to retaliate against an individual because they have filed a discrimination complaint. If I am subjected to any adverse action that I feel may be retaliatory, I will promptly report such to the AA.

I have been further advised that the filing of an internal complaint with the AA is not a waiver of my right to file a formal complaint of unlawful discrimination with the New York State Division of Human Rights, the Equal Employment Opportunity Commission (EEOC), the Federal courts, or the State courts.

In addition, I am advised that the filing of an internal complaint does not stop the statute of limitations for filing external complaints with EEOC, the NYS Division of Human Rights, litigation, or any other agency hearing such complaints. I am aware that should I choose to file a verified complaint with an outside agency, such a complaint must be filed with EEOC within 180 days of the alleged incident, and with the State Division of Human Rights within 365 days of the alleged incident. <sup>1</sup>

**Complainant's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**AA Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<sup>1</sup>. Please note that this policy and the information contained in it does not constitute legal advice. If you require legal advice, consult an attorney