

City of Brisbane

PERSONNEL PROCEDURES

Subject: Policy Against Discrimination and Harassment in the Workplace

I. PURPOSE

The City of Brisbane is committed to providing a work environment free of discrimination and discriminatory harassment. This policy defines discrimination and discriminatory harassment and sets forth a procedure for the investigation and resolution of complaints of such conduct by or against any employee or applicant or from a person providing services to the City pursuant to a contract.

II. POLICY

Discrimination and discriminatory harassment violates this Policy¹ and Section 3 of the City's Personnel Rules and Regulations, and will not be tolerated. To violate this policy, discrimination and discriminatory harassment of an applicant, employee or person providing services pursuant to a contract are conduct based on the following actual or perceived protected characteristics: race, religious creed, sex, national origin, ancestry, disability, medical condition, marital status, age over 40, sexual orientation or association with a person on the basis of that person's actual or perceived protected characteristic. Retaliation against any individual for making a complaint of discrimination or discriminatory harassment or for participating in an investigation or disciplinary proceeding thereto also violates this policy. All employees who violate this policy may be subject to disciplinary action, up to and including termination.

This policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

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A violation of this policy does not necessarily constitute a violation of state and/or federal law, although discriminatory harassment is prohibited by both.

III. DEFINITION

A. Discrimination

Discrimination includes but is not limited to:

1. Any behavior or practice which treats a person differently because of that person's actual or perceived protected characteristic or association with a person on the basis of that person's actual or perceived protected characteristic;
2. Systematic exclusion of a person because of that person's actual or perceived protected characteristic;
3. Ignoring, failing to take seriously, blaming a person who reports or complains of conduct prohibited by this policy, or suggesting that he/she is "thin skinned," "too sensitive" or that he/she does not have a sense of humor;
4. Continuing behavior directed at a person's protected characteristic; and/or
5. Engaging in harassment, as more specifically defined below.

B. Discriminatory Harassment

Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. Harassment includes, but is not limited to, the following misconduct:

1. Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's actual or perceived protected characteristic. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, pregnancy, childbirth or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.
2. Physical: Inappropriate or offensive touching, assault or physical interference with free movement when directed at an individual on

the basis of that person's actual or perceived protected characteristic. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, massaging, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.

3. Visual or Written: The display or circulation of offensive or derogatory visual or written material related to race, religious creed, sex, national origin, ancestry, disability, medical condition, marital status, age over 40 or sexual orientation. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, notes, letters, invitations, computer graphics or electronic media transmissions.
4. Environmental: A work environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his/her immediate surroundings. The determination of whether an environment is hostile depends on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening and whether the conduct unreasonably interferes with an individual's work.
5. Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.
6. By definition, sexual harassment is not within the course and scope of an individual's employment with the City of Brisbane.

IV. PROHIBITED BEHAVIOR BY SUPERVISORS/MANAGERS

- A. No supervisor, manager or other authority figure may condition any employment, employee benefit or continued employment in this City on an

applicant's or employee's acquiescence to any of the behavior defined above.

- B. Also, all supervisors and managers are required to maintain confidentiality to the extent possible in communicating or investigating any claim of alleged discrimination or discriminatory harassment. No person shall destroy evidence relevant to an investigation conducted pursuant to this policy.

V. PROHIBITED BEHAVIOR BY ALL PERSONS

- A. No supervisor, manager or any other person in this City shall create a hostile or offensive work environment for any other person by engaging in any discriminatory or retaliatory conduct or by tolerating such on the part of any employee.
- B. No supervisor, manager or any other person in this City may retaliate against any applicant or employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this policy.
- C. No supervisor, manager or any other person in the City shall assist any individual in doing any act which constitutes discrimination, discriminatory harassment or retaliation against any employee.
- D. Both supervisory and non-supervisory employees may be held individually liable for civil damages for engaging in any harassing conduct or for aiding and abetting harassment.

VI. OBLIGATIONS OF SUPERVISORS/MANAGERS

- A. A copy of this policy shall be provided to all employees, as well as displayed in prominent locations throughout the City. Also, a copy of this policy shall appear in any publication which sets forth the comprehensive rules, regulations, procedures and standards of conduct for employees.
- B. A copy of the information sheet on sexual harassment prepared by the Department of Fair Employment and Housing is available to all employees upon request to the Human Resources Department. Also, further information from the Department of Fair Employment and Housing is available at its website, www.dfeh.ca.gov.

VII. OBLIGATIONS OF ALL EMPLOYEES

- A. Whenever possible, any employee who believes that he/she is experiencing discrimination or harassment is encouraged to inform the person that the particular conduct is unwelcome, offensive, unprofessional or highly inappropriate. If this does not resolve the matter or if the employee feels uncomfortable, threatened or has difficulty expressing his/her concern, the employee should report the matter to a supervisor, as set forth below.
- B. All employees shall report any conduct which fits the definition of discrimination or discriminatory harassment to their direct supervisor, Department head or the Human Resources Administrator. This includes conduct of non-employees, such as sales representatives or service vendors or harassing conduct toward such contractors. Also, all employees may make a report through the Employee Protection Line which is monitored by an independent third party. An anonymous report may be made at any time, 24 hours a day, 7 days a week, through the Employee Protection Line at 1-800-576-5262 (organization code number 10126), or an employee may file a complaint with the Equal Employment Opportunity Commission at 415-356-5100 or the Fair Employment and Housing Commission at 1-800-884-1684.
- C. All persons shall report to their direct supervisor, the Department head or the Human Resources Administrator any instances of discrimination or discriminatory harassment which they have directly observed, whether or not reported by the employee who is the object of the discrimination or harassment.
- D. All employees shall cooperate with any authorized investigation of alleged discrimination or discriminatory harassment.
- E. Any employee who makes a report or complaint which the employee knows or should know is false, under this policy, shall be subject to disciplinary action, up to and including termination.

VIII. INVESTIGATIVE/CORRECTIVE ACTION

- A. All persons shall immediately report to their direct supervisor, the Department head or the Human Resources Administrator any evidence or complaints of discrimination or discriminatory harassment made to them. Any supervisor or manager who receives a complaint regarding discrimination or discriminatory harassment shall immediately report it to the Human Resources Administrator.

- B. The Human Resources Administrator shall authorize the investigation or conduct the investigation of any incident of alleged discrimination or discriminatory harassment reported to them. The investigation shall be conducted in a way which ensures, to the extent feasible, the privacy of the parties involved.
- C. The person designated to investigate shall immediately report, in writing, the findings of fact to the Human Resources Administrator who, in turn, will determine whether the policy has been violated and communicate that conclusion to the complainant. Disciplinary action shall be decided in accordance with City policy and after consultation with the City Manager and the Human Resources Department.
- D. Under no circumstances shall an employee who believes that he/she has been the victim of discrimination or discriminatory harassment be required to first report that complaint to a supervisor if that person is the individual who has engaged in the alleged discriminatory or harassing conduct.
- E. No employee shall retaliate against another employee who reports an incident pursuant to this policy. Employees found to have violated this section may be subject to disciplinary action, up to and including termination.